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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive Framework and to
Examine the Integration of Greenhouse Gas Emissions
Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

California Energy Commission Docket #07-OIIP-01

**COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL
(NRDC) AND THE UNION OF CONCERNED SCIENTISTS (UCS) ON
THE JOINT COMMISSIONS' PROPOSED OPINION ON GREENHOUSE
GAS REGULATORY STRATEGIES**

October 2, 2008

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I. INTRODUCTION

The Natural Resources Defense Council (NRDC) and Union of Concerned Scientists (UCS) respectfully submit these comments on the joint Commissions' Proposed Opinion on Greenhouse Gas Regulatory Strategies in accordance with Rules 1.9, 1.10 and 14.3(b) of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure. NRDC/UCS also concurrently submit these comments to the California Energy Commission (CEC) in Docket #07-OIIP-01, the CEC's sister proceeding to this CPUC proceeding.

NRDC is a non-profit membership organization with a long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy needs. In this proceeding, NRDC represents its more than 124,000 California members' interest in receiving affordable energy services and reducing the environmental impact of California's energy consumption.

UCS is a leading science-based non-profit working for a healthy environment and a safer world. Its Clean Energy Program examines the benefits and costs of the country's energy use and promotes energy solutions that are sustainable both environmentally and economically.

II. SUMMARY

A. NRDC AND UCS APPRECIATE THE OPPORTUNITY TO SUBMIT THESE COMMENTS TO AID THE COMMISSIONS' RECOMMENDATIONS TO THE CALIFORNIA AIR RESOURCES BOARD (CARB) ON A COMPREHENSIVE APPROACH FOR REDUCING GREENHOUSE GAS (GHG) EMISSIONS IN THE ELECTRICITY AND NATURAL GAS SECTORS. IN SUMMARY: A MULTI-SECTOR CAP-AND-TRADE PROGRAM SHOULD INCLUDE AS MANY SECTORS AS POSSIBLE AS SOON AS POSSIBLE.

We support the PO's recommendation that electricity should be joined by as many sectors as possible in the cap-and-trade program. (p.122-123) In March 2008, the Commissions issued a recommendation to CARB that the natural gas sector should not be included in a cap-and-trade program at this time, but that it should be included at a future time. The Western Climate Initiative (WCI) has also recommended that the natural gas sector should be included in a regional cap-and-trade program in 2015. We believe that the natural gas sector should be included in a cap-and-trade program as soon as possible. Just as with the electricity sector, we believe a successful strategy to reduce emissions would be to use energy efficiency and renewable alternatives as the foundations of the reduction strategy, and to layer cap-and-trade program on top to achieve further reductions. As discussed in our previous comments and in section VIII(B) below, there are many reduction opportunities in the natural gas sector.

As the PO makes clear, the specific levels of appropriate reductions from any one sector in a multi-sector cap-and-trade program will depend on the available reductions in other sectors. The more sectors that are included in the program, the greater range of possible low cost emissions reduction measures and the smaller the emission reduction burden for any one sector. If only one or two sectors are included in the initial cap-and-trade program, all reductions will have to come from those sectors. In addition, including some sectors and not others could result in perverse incentives for fuel-switching between sectors. The Commissions should recommend that the natural gas sector be included in the cap-and-trade sector as soon as possible so as to incentivize reductions in that sector, and to ensure equity between sectors.

- We urge the Commissions to recommend taking steps to enable inclusion of the natural gas sector in the cap-and-trade program as soon as possible.
- We support 100% auctioning.

- We oppose allocating any allowances for free to unregulated private entities that will reap windfall profits at the expense of consumers.
- We oppose allocating allowances for free on a fuel-differentiated basis.
- The Commissions should recommend a mechanism to recognize and account for the GHG emissions reductions from the voluntary renewables market.
- **Error! Reference source not found.** on behalf of their customers.
- The Commissions should recommend specific guidelines for how the auction revenue should be used.
- Retail providers should be required to show that they have used auction revenues for purposes that meet the specified guidelines.
- The Commissions should urge CARB to exercise caution when deciding to link with other systems, to ensure linking will not prevent California from meeting the requirements of AB 32.
- We urge the joint Commissions to make a preliminary recommendation on a quantity limit on offsets, given the other market design features the Commissions have recommended.
- The Commissions should recommend additional energy efficiency measures for electricity and natural gas.
- We strongly support a 33% Renewable Portfolio Standard.

III. GENERAL COMMENTS

A. WE SUPPORT THE PROPOSED OPINION’S RECOMMENDED OVERALL STRATEGY FOR THE ELECTRICITY SECTOR.

We strongly support the Proposed Opinion (PO)’s recommendation to use “both regulatory and market approaches” to achieve AB 32’s aggressive GHG reduction goals (p.4), and its recognition that these tools can work together in a “mutually reinforcing framework.” (p.8) Aggressive energy efficiency and a 33% RPS are the cornerstones of the strategies to reduce GHG emissions in the electricity sector. A well-designed cap-and-trade program that is layered on top of these direct regulations can achieve further reductions. This use of regulatory programmatic strategies as the “foundation” of the reduction strategy in the electricity sector, and complementary use of a cap-and-trade program as a backstop to ensure we reach our goal (p.8) is both a wise way to utilize California’s existing expertise in energy efficiency, and is also consistent with the approach outlined in CARB’s Draft Scoping Plan.

B. A MULTI-SECTOR CAP-AND-TRADE PROGRAM SHOULD INCLUDE AS MANY SECTORS AS POSSIBLE AS SOON AS POSSIBLE.

We support the PO's recommendation that electricity should be joined by as many sectors as possible in the cap-and-trade program. (p.122-123) In March 2008, the Commissions issued a recommendation to CARB that the natural gas sector¹ should not be included in a cap-and-trade program at this time, but that it should be included at a future time.² The Western Climate Initiative (WCI) has also recommended that the natural gas sector should be included in a regional cap-and-trade program in 2015.³ We believe that the natural gas sector should be included in a cap-and-trade program as soon as possible. Just as with the electricity sector, we believe a successful strategy to reduce emissions would be to use energy efficiency and renewable alternatives as the foundations of the reduction strategy, and to layer cap-and-trade program on top to achieve further reductions. As discussed in our previous comments and in section VIII(B) below, there are many reduction opportunities in the natural gas sector.

As the PO makes clear, the specific levels of appropriate reductions from any one sector in a multi-sector cap-and-trade program will depend on the available reductions in other sectors. The more sectors that are included in the program, the greater range of possible low cost emissions reduction measures and the smaller the emission reduction burden for any one sector. If only one or two sectors are included in the initial cap-and-trade program, all reductions will have to come from those sectors. In addition, including some sectors and not others could result in perverse incentives for fuel-switching between sectors. The Commissions should recommend that the natural gas sector be included in the cap-and-trade sector as soon as possible so as to incentivize reductions in that sector, and to ensure equity between sectors.

¹ As in our previous comments, we are referring to residential and small commercial users of natural gas, for whom the Local Distribution Company (LDC) would be the point of regulation. Large industrial users and natural gas fired power plants would already be included in the program as parts of the industrial and electricity sectors, respectively.

² D.08-03-018, p.12 (March 13, 2008)

³ WCI, *Design Recommendations for the Regional Cap-and-Trade Program*, §1.2.4, (Sept. 23, 2008) available at <http://www.westernclimateinitiative.org/ewebeditpro/items/O104F19865.PDF>

1. We urge the Commissions to recommend taking steps to enable inclusion of the natural gas sector in the cap-and-trade program as soon as possible.

Even though the Commissions have already recommended against including natural gas in the cap-and-trade program immediately, this Final Opinion should nonetheless address the steps that must be taken in order to include the natural gas sector as soon as possible. The main barrier to inclusion is that CARB has not yet finalized reporting protocols for the sector. The joint Commissions' Final Decision should urge CARB to finalize these protocols in order to be ready to include the natural gas sector in a cap-and-trade program as soon as possible, even as early as 2012.

IV. DISTRIBUTION OF ALLOWANCES

A. WE SUPPORT 100% AUCTIONING.

We support the PO's statement that we should move quickly to 100% auction (p.202). We are pleased to see the recommendation for a relatively quick transition to 100% auction by 2016 (p.203). As we explained in our previous comments,⁴ auctions are the fairest, simplest, most transparent method of distributing allowances.⁵ Auctioning avoids unfair windfall profits, encourages innovation, rewards early action,⁶ and auctions will benefit consumers and further AB 32's goals if the revenues are used for the public good, as the PO recommends.

⁴ See NRDC/UCS Comments, p. 5 (June 2, 2008)

⁵ Many RGGI states have already recognized the benefits of auctioning and are starting out with an auction of 100% of their allowances. The first RGGI auction was held on September 25, 2008. RGGI Press Release (Sept. 25, 2008), available at http://www.rggi.org/docs/rggi_press_9_25_2008.pdf. We note that large industrial and commercial end-users supported 100% auctioning during the RGGI design process. The Multiple Intervenors, an unincorporated association of large industrial and commercial energy consumers, argued in its comments to the Regional Greenhouse Gas Draft Model Rule that the best way to ensure that electricity price increases were used for consumer benefit was to auction 100 percent of emissions allowances. "If RGGI is implemented, the costs for energy consumers in the RGGI states will increase even further. However, auctioning the RGGI emissions allowances and utilizing the auction proceeds to provide direct per-kWh credits to those consumers will offset the increased costs that energy consumers surely will pay." (p. 13) While NRDC/UCS note that the distribution of auction funds recommended by the Multiple Intervenors would be contrary to the requirements of AB 32, we include these comments to show agreement that free allocation of allowances would provide a windfall profit to deliverers at the expense of consumers. See Attachment 3.

⁶ For more detail on the benefits of auctions, see *NRDC/UCS Comments on the Proposed "Interim Opinion on Greenhouse Gas Regulatory Strategies,"* submitted February 28, 2008, pp.9-10.

B. WE OPPOSE ALLOCATING ANY ALLOWANCES FOR FREE TO UNREGULATED PRIVATE ENTITIES THAT WILL REAP WINDFALL PROFITS AT THE EXPENSE OF CONSUMERS.

We oppose allocating any allowances for free to unregulated private entities that stand to reap a windfall profit from the free allocation. An entity stands to reap a windfall profit if it is able to keep the value of the allowance that it receives for free while passing the cost of that allowance on to consumers. An entity is able to pass through costs if it is not constrained from doing so by regulation or market forces. Giving away allowances to unregulated private entities is like writing a check to those entities' shareholders: consumers will pay more and we will not make any progress towards our emissions reductions goals.

There are two main ways to avoid this undesirable situation: 1) auction allowances, thus fairly and transparently putting a price on carbon, and invest the revenue in transitioning to a lower carbon economy; 2) distribute allowances to entities that are required to invest the value in emissions reductions and to reduce costs for customers. Retail providers are in the best position to make investments in energy efficiency and renewable energy on behalf of their customers. Retail providers also are subject to regulatory oversight that can ensure that the value of the allowances is in fact being invested in ways that will help our transition to a lower carbon economy.

1. Deliverers who are not also retail providers will pass through the costs of allowances to customers, even if they received those allowances for free.

Most deliverers who are not retail providers will be able to pass through the costs value of the allowances whether they buy them or get them for free.⁷ The wholesale price of power will rise by the same amount whether allowances are auctioned or given away for free because the wholesale price will reflect the market price for allowances. Unregulated deliverers will be able to pass through to customers the market price of carbon even if they don't have to pay for allowances. If allowances are auctioned and

⁷ It is possible that some deliverers will be bound by contract to sell power to retail providers at a fixed price, and thus unable to pass through the additional cost of allowances. However, in those cases it is almost certain that the contract will include a provision dictating which party accepts the risk of changes in price due to new environmental regulation, and that this provision would have been part of the contract negotiation. However, we believe that there are very few existing fixed price contracts that will still be in effect post 2012, and there are other ways to compensate in these situations. (see the next section, below)

the value of the allowances is returned to retail providers with a requirement that they invest the value on behalf of their customers, this will offset the rise in prices and speeding our transition to a low-carbon economy. If allowances are given away for free to deliverers who are not retail providers, the consumers will pay more, the retail providers will have less to invest, and the deliverers will reap a windfall profit from receiving a higher price for which they have already been compensated.

A recent report from New Carbon Finance analyzes Europe's plan to move to full auctioning, and finds that, in this context, the method of allocation has no effect on prices.⁸ Wholesale electricity prices are predicted to be the same under a 100% auction as under free allocation scenarios. The difference is that free allocation would lead to another round of massive windfall profits for power producers.⁹

Deliverers are able to pass through costs resulting in windfall profits under free allocation. When demand is relatively inelastic, meaning not particularly responsive to price, firms are able to increase their selling price to reflect increased costs. The market will determine the value of an allowance based on the trading value and the allowances auctioned, and deliverers will raise the wholesale price of electricity to reflect the market cost of allowances- regardless of how they receive them. The rules of supply and demand will set a market price for allowances regardless of how they are distributed. Deliverers will have little incentive to give up that value for free, even if they received it for free.¹⁰ The opportunity cost of the allowance – its trading price or value – will be determined by the market and not by the method of distribution. The opportunity cost is equal to the revenue not earned by selling the permit received for free. So, despite the intuitive, surface appeal of the notion that free allocation will assist consumers, in fact the opposite is true.

⁸ New Carbon Finance. "The impact of auctioning on European wholesale electricity prices post-2012" (Sept. 16, 2008), available at <http://www.newcarbonfinance.com/?p=about&i=freereports>

⁹ Id.

¹⁰ The proposed recommendation to have allocation determined on a fuel-differentiated output basis makes this problem even worse. Since dirtier plants will automatically receive more permits than cleaner plants of similar power output, they will have little incentive to not pass through the market cost of emissions permits.

2. Free allocation to deliverers would be expensive for California customers.

Allowances are valuable public assets. They should be used for the public good and not given away for free to private entities who will pocket the windfall profit with no requirement or incentive to invest the money towards reducing emissions. The Commissions have identified minimizing costs to customers as their first criterion. Free allocation to deliverers increases costs for customers compared with other allocation options.

The E3 modeling results indicate that “distribution of allowances at no cost to deliverers would result in large windfall profits to independent generators and marketers, including allowance rents and clean generation rents.” (p.60) Although the PO suggests that output-based allowance distribution to deliverers could in theory mitigate this effect through price competition among deliverers, the modeling does not provide any information to explain how *fuel-differentiated* output-based allocation would reduce customer costs and windfall profits. The Commissions should be wary of recommending an allowance allocation method whose cost impacts have not been sufficiently analyzed. The Commissions should instead recommend to CARB that auctioning be the method of allowance distribution for 100% of allowances, with the majority of the value of allowances distributed to retail providers for investment in low-carbon resources and mitigation of rate impacts for low-income customers.

In addition, there is some reason to believe that allowing for this sort of “transition period” could actually *increase* the price of allowances in the short-term, compared with 100% auctioning.¹¹ During the RGGI design process, Morgan Stanley

¹¹ In its comments on the Regional Greenhouse Gas Initiative Pre-proposal Draft, Morgan Stanley Capital Group explained that free allocation actually caused market prices for allowances to increase, because of inadequate market liquidity: “In order to get the market off to a robust start, it is essential to have liquidity. With adequate liquidity, parties needing allowances to operate quickly gain confidence that they can purchase what they need, when they need it. In Europe, at start-up, the problem was that many of those who received allocations simply held on to them, not selling unneeded consignments into the market. The psychology was understandable. Holders with excess allowances were typically industrial entities. Besides the fact that allowance trading was not a core business for them, they were very fearful that if they sold apparently excess allowances, they would miscalculate future needs, perhaps be unable to buy back their requirements at the same prices they sold them for, or perhaps not be able to buy back the required allowances at any price. Utilities, on the other hand, were typically “short”. Furthermore, managing risk was more core to the utilities’ business, and they used sophisticated forward hedging processes to manage the market price risk of allowances. The result was that utilities were active buyers in the forward markets,

concluded that “both experience and theory indicate that allocations do create problems. A superior approach is to auction all of the allowances directly into the market.”¹²

The E3 modeling results suggest that full auctioning of allowances with auction revenues returned to retail providers “would largely mitigate the potential effect of carbon costs on total utility costs and retail rates while still providing powerful incentives to reduce emissions.” (p.59) NRDC/UCS strongly agree. Figures 3-7 and 3-8 in the Proposed Opinion indicate that auctioning with either the allowances or allowance value distributed to retail providers for the benefit of their customers results in the least cost of the three allocation methods considered by the E3 modeling. (pp.57-58)

3. Free allocation is regressive.

Free allocation is regressive compared to allocation methods that ensure the allowance value flows back to customers.¹³ As Burtraw et. al. note: “Free allocation of emissions allowances to emitters (grandfathering) offers no trade off; it is costly and has negative distributional consequences as well. One reason is that free allocation directs about 10 percent of the allowance value overseas to foreign owners of shareholder equity. Additionally, because the value of the free allowances accrues primarily to higher-income households, this option is decidedly regressive.”¹⁴

4. Retail providers are better suited to make investments to reduce emissions than are deliverers who are not retail providers.

The PO argues that free allocation to deliverers would “provide time and financial resources that deliverers may need to make necessary adjustments to their financial and investment plans to account for the impacts of GHG compliance obligations.” (p.202) NRDC/UCS do not believe that windfall profits are necessary to help unregulated private entities adjust to operating in a carbon-constrained world. It is not clear what adjustments deliverers will be making between 2012 and 2016, but even if adjustments are necessary, deliverers who are not retail providers have years between now and the

in which there were few active natural sellers. This led to an upward bias in the forward price, as well as an associated lack of liquidity.” (p. 1, 2). See Attachment 3.

¹² Id. at 1.

¹³ See Dallas Burtraw, Rich Sweeney, and Margaret Walls, The Incidence of U.S. Climate Policy: Where You Stand Depends on Where You Sit, pp.47-48 (September 2008), available at <http://ideas.repec.org/p/rff/dpaper/dp-08-28.html>

¹⁴ Id. at ii.

start of the program in 2012 to make those adjustments. In contrast, it is clear that retail providers have a number of opportunities to make investments and adjustments that will benefit their customers and get us on the path to a low carbon economy: notably, investing in energy efficiency and renewable energy.

Free allocation to deliverers will not reduce electricity prices for consumers and it prevents deliverers from internalizing the cost of emissions. There is no evidence that an additional four years of transition will benefit deliverers or energy consumers. Available research in this area indicates that the free allocation of eighty percent of emissions permits would provide an economic subsidy to deliverers far beyond the cost to them of a cap-and-trade program.¹⁵ Free allocation to private unregulated entities is like writing a check to those firms' shareholders, at the expense of consumers. We urge the Commissions to recommend that CARB distribute this valuable public asset to those entities that are best positioned, both because of their relationship to customers and because they are subject to regulatory oversight, to invest the value on behalf of customers.

C. WE OPPOSE ALLOCATING ALLOWANCES FOR FREE ON A FUEL-DIFFERENTIATED BASIS.

1. Fuel-differentiated allocation sends a perverse incentive.

The fuel-differentiated allocation basis recommended by the PO is very similar to grandfathering. It will result in higher allocation to the highest emitting deliverers, and lower allocation to lower emitting deliverers, with only a slight advantage given to cleaner deliverers within a certain fuel class. In other words, coal will be advantaged compared to natural gas, but a cleaner coal plant will have a slight advantage over a dirtier coal plant. As we have previously stated, grandfathering rewards polluters, penalizes early actors, and does not send signals encouraging a transition to lower-emitting technologies.¹⁶ We do not see any compelling reason for creating such perverse incentives and rewards.

¹⁵ Burtraw, Dallas and Karen Palmer, "Compensation Rules for Climate Policy in the Electricity Sector," Resources for the Future DP 04-41 (January, 2007).

¹⁶ NRDC/UCS Comments, p.4 (June 2, 2008)

2. Fuel-differentiated allocation sets a bad precedent for California in a future federal program.

California is attempting to design a program that will work for California, but that could also serve as a model for a future federal program. California is well ahead of the national curve in terms of low-carbon resources and energy efficiency. If a federal system adopts a grandfathering or fuel-differentiated allocation scheme, California will be at a disadvantage. Instead, we should be setting an example for rewarding early actors, since California itself is an early actor. We urge the Commissions not to recommend an allocation method that would disadvantage California.

D. ERROR! REFERENCE SOURCE NOT FOUND. ON BEHALF OF THEIR CUSTOMERS.

For all the reasons stated in our previous comments,¹⁷ we support the PO's recommendation to distribute all, or almost all,¹⁸ of the value of allowances from the electricity sector be distributed to retail providers on behalf of their customers. (pp.204; 211; 289). We would support the same principle for the natural gas sector. If coupled with adequate oversight, this will provide a mechanism for continued investment in the state's energy efficiency and renewable energy resources, as well as support for low-income customers.

1. The Commissions should recommend specific guidelinesThe Commissions should recommend specific guidelines

The PO states that "retail providers receiving auction revenues should be required to spend such proceeds in a manner consistent with the Energy Action Plan loading order and the goals of AB 32." (p.223) The PO goes on to state that "the scope of permissible uses would include a wide range of direct steps aimed at reducing GHG emissions and also bill relief to the extent that the GHG program leads to increased utility costs and wholesale price increases." (pp.224-225) These statements are very broad and could be interpreted to sanction a broad variety of uses of auction revenue.

We urge the Commissions to recommend that CARB develop specific guidelines for acceptable uses of electricity sector auction revenue. NRDC/UCS urge the joint

¹⁷ See NRDC/UCS Comments, pp.11-13 (June 2, 2008)

¹⁸ We note that we believe a small percentage of allowances should be set aside for statewide purposes, as the PO suggests on p.225.

Commissions to recommend to CARB that retail providers be required to use allowance value for the following purposes:

- Investments in technologies to reduce GHG emissions, including energy efficiency and renewable energy;
- Research, development, and demonstration (RD&D) and deployment of new technologies to reduce GHG emissions;
- Reduce costs to consumers, particularly low-income consumers, for example by supplementing funding for existing low-income energy efficiency and bill assistance programs;
- Support for air and toxic pollution reduction efforts, especially in communities historically burdened by air and toxic pollution;
- Support for green collar job development and training; and
- Providing economic assistance for low-income and disadvantaged communities.

2. Retail providers should be required to show that they have used auction revenues for purposes that meet the specified guidelines.

NRDC/UCS urge the joint Commissions to use our proposed “use it or lose it” mechanism in which retail providers must use the auction revenue for specified purposes (such as those listed above) within a certain amount of time. Retail providers’ use of the revenue would be subject to oversight and verification by appropriate regulatory bodies. Retail providers that fail to spend the revenue appropriately would forfeit the value.¹⁹ This mechanism ensures that auction revenue is being put to use to start the transition that we must begin now in order to achieve the transformative changes needed to meet our 2020 and 2050 goals.

The PO states that the CPUC and the governing boards for publicly owned utilities should “determine the appropriate use of retail providers’ auction revenues” and that the CEC should “have broad review authority of publicly-owned utilities’ expenditures, with the publicly-owned utilities required to demonstrate annually to the Energy Commission that their expenditures of auction revenues during the prior year were consistent with the purposes of AB 32.” (p.225) We agree, and note that CARB will have ultimate oversight over the use of auction revenue. We urge the Commissions to not only recommend regulatory oversight, but also an enforcement mechanism. The Commissions should recommend that retail providers must forfeit the funds if they do not use them for the specified purposes (see above) within a certain amount of time. This

¹⁹ See NRDC/UCS Comments, p.12 (June 2, 2008)

mechanism will insure that the auction revenue is being quickly and effectively invested for the benefit of customers.

3. The Commissions should recommend moving to a sales-based distribution of allowances to retail providers as soon as possible.

We urge the Commission to recommend moving to a sales-based distribution of allowances to retail providers as soon as possible. We understand that it is important to allow those retail providers with higher historical emissions time to invest and transition to a lower-carbon portfolio. Starting by allocating allowance value to retail providers on a historical emissions-basis can give those retail providers the time and capital necessary to transition to a lower-carbon portfolio. However, as the PO notes, a sales-based distribution will provide “strong incentives for both deliverers and retail providers to reduce GHG emissions, both through reductions in the emissions profile of electricity that is delivered to the grid and procured by the retail providers, and through aggressive actions by retail providers and others to improve the efficiency with which electricity is used.” (pp.206-207) We must provide those strong incentives as soon as possible.

In addition, it is important to reward, and not penalize, those entities that have already made investments in low-carbon resources. Given that many carbon-intensive California retail providers have been on notice that a carbon-constrained world was coming since at least 1990,²⁰ and will still have time between now and the start of the program in 2012 to make changes, we believe a quick transition to sales-based allocation is warranted.

If all or almost all of the value of allowances from the electricity sector is distributed to retail providers from the outset of the program, as we recommend, then retail providers will have more funds to invest in their customers from the outset of the program, compared with the PO’s proposal. Having this early infusion of funds to invest could help those retail providers with higher-carbon resources make the transition to lower-carbon resources more quickly, thus allowing a faster transition to 100% sales-based distribution.

²⁰ As we pointed out in our November 14, 2007 reply comments on allocation, the electric industry has been on notice since 1990 about the threat of global warming and the risk of forthcoming GHG regulations, and major utilities including LADWP and SCE made voluntary pledges to reduce their emissions at that time, a long transition period has already been underway. (See *NRDC/UCS/GPI Reply Comments on Allowance Allocation Issues*, pp.5-6 (Nov. 14, 2007))

4. Sales-based distribution to retail providers should include verified energy efficiency savings.

As we and other parties noted in our previous comments, a sales-based allocation should include verified energy efficiency savings. The PO acknowledges the many parties who have advocated for this (p.214), but concludes that more analysis is needed. (p.215) It is not clear to us what analysis is needed, so we urge the Commissions to clearly identify the analysis that is needed and to undertake that analysis in a timely fashion in order to recommend to CARB a system that will not perversely disincentivize energy efficiency. Energy efficiency will be one of the most effective mechanisms for emissions reduction and retail sellers of electricity should not face a disincentive to reducing energy use.

E. THE COMMISSIONS SHOULD RECOMMEND A MECHANISM TO RECOGNIZE AND ACCOUNT FOR THE GHG EMISSIONS REDUCTIONS FROM THE VOLUNTARY RENEWABLES MARKET.

The PO recognizes the importance of developing a cap-and-trade system that encourages the generation and sale of renewable energy through the voluntary market (p.217). However, while the PO describes an approach that would set aside and retire GHG allowances that correspond to voluntary renewable energy sales, it falls short of making a recommendation that CARB adopt such an approach due to a few lingering questions. NRDC/UCS believe that recommending a policy mechanism to CARB that accounts for the emission reductions from voluntary renewable energy sales is an important and necessary step that should be taken now to encourage additional renewable energy development in the voluntary market.

California's voluntary renewable energy market is significant. In 2006, voluntary renewable energy sales in California approached 400,000 million kWh.²¹ The demand for renewable energy in the voluntary market often promotes projects that have desirable co-benefits such as local economic development and distributed generation projects. Moreover, a regional generation attribute tracking system – WREGIS – is now online and can be used to ensure generation in the voluntary market will not also be counted for RPS compliance. While the PO indicates the need to investigate how to assign emission

²¹ National Renewable Energy Laboratory, *Interaction of Compliance and Voluntary Renewable Energy Markets*, October 2007, p.19.

reduction values to voluntary renewable energy credits (RECs), this technical detail can be left to a later date. In the meantime, it is important that the Commissions recommend a set-aside mechanism to CARB to account for emissions reductions from voluntary renewable sales.

A system to account for voluntary market emission reductions has already been developed by the Northeast Regional Greenhouse Gas Initiative (RGGI). This so-called “off-the-top” rule is essentially the “set-aside” method described in the PO. NRDC/UCS supported this approach during the development of RGGI rules and have included this recommendation and additional descriptions of “off-the-top” in earlier comments in this proceeding.²² Although NRDC/UCS agree with the PO that specific details of such a mechanism require further investigation, it is nonetheless appropriate for the final decision to recommend an allowance set-aside to avoid discouraging the continued growth of the voluntary renewables market. Policymakers in the Northeast have recognized the importance of accounting for emissions reductions provided by the voluntary renewables market. California should adopt a similar policy.

V. FLEXIBLE COMPLIANCE MECHANISMS

A. WE URGE THE COMMISSIONS TO RECOMMEND THAT CARB EXERCISE CAUTION WHEN CONSIDERING BILATERAL LINKAGE.

We largely support the PO’s recommended design of flexible compliance mechanisms for a cap-and-trade program. However, in light of the current activity in WCI, we note that one of the most important decisions facing California is whether, when and how to link with other systems. We agree that a regional or national program is desirable (p.256). Nonetheless, California must ensure that it can still meet the requirements of AB 32 even if it links. This means California must be certain that other systems have a comparably tight cap and system of allocation, comparable quality and quantity limits on offsets, comparable verification and reporting requirements, and comparably strong enforcement before California decides to link with them. If California links with a system that does not have comparably strict design features, it is essentially adopting the less stringent system. California does not want to see its efforts leak away

²² See *NRDC/UCS/GPI Reply Comments on Proposed Decision on GHG Regulatory Strategies*, submitted June 16, 2008, p.8-9

as a result of linking with a system that has, for example, insufficient quality requirements on offsets. California may not link to a system if that linkage will compromise California's ability to meet the requirements of AB 32.

B. WE SUPPORT THE COMMISSIONS' RECOMMENDATION NOT TO ALLOW PRICE TRIGGERS AND SAFETY VALVES.

For all the reasons stated in our previous comments,²³ we are extremely supportive of the PO's recommendation not to allow price triggers or safety valves (p.262).

C. WE SUPPORT THE COMMISSIONS' RECOMMENDATION FOR MULTI-YEAR COMPLIANCE PERIODS.

For all the reasons stated in our previous comments,²⁴ we support the PO's recommendation to allow a three-year compliance period (p.265).

D. WE SUPPORT THE COMMISSIONS' RECOMMENDATION TO ALLOW BANKING.

For all the reasons stated in our previous comments,²⁵ we support the PO's decision to allow banking (p.266).

E. WE SUPPORT THE COMMISSIONS' RECOMMENDATION NOT TO ALLOW BORROWING.

For all the reasons stated in our previous comments,²⁶ we support the PO's recommendation not to allow borrowing (p.260). However, we note that this sentiment appears to be missing from the Final Order. (p.291) We urge the Commissions to add this to the Final Order in the Final Decision. (see Appendix 1)

F. WE SUPPORT THE COMMISSIONS' RECOMMENDATION THAT OFFSETS SHOULD BE LIMITED.

We are in complete agreement with the PO's statement that offsets must be real, additional, verifiable, permanent, and enforceable (p.270). We also support the statement that there should be a quantity limit on offsets, but that the limit should be determined in light of the rest of the program design (p.270). However, we note that these sentiments

²³ See NRDC/UCS Comments, p.21 (June 2, 2008)

²⁴ See NRDC/UCS Comments, p.22 (June 2, 2008)

²⁵ See NRDC/UCS Comments, pp.22-23 (June 2, 2008)

²⁶ See NRDC/UCS Comments, p.23 (June 2, 2008)

appear to be missing from the Final Order. (p.291) We urge the Commissions to add this to the Final Order in the Final Decision. (see Appendix 1)

In addition, we urge the joint Commissions to make a preliminary recommendation on the quantity of offsets that should be allowed, given the other market design features the Commissions have recommended. If the quantitative limit on offsets is too lenient, offsets could replace all reductions in capped sectors that would otherwise be required by a cap-and-trade program. This possibility is demonstrated in CARB's Draft Scoping Plan's suggestion for a potential limit on offsets of 10% of compliance obligations. As the Draft Scoping Plan's numbers show, this limit would allow all of the reductions from the larger cap-and-trade program to be accounted for by offsets, rather than reductions in capped sectors.

The WCI has recommended that no more than 49% of the expected reductions from the cap-and-trade program come from offsets.²⁷ We believe this limit is also too high and sacrifices the local benefits and technology innovation that would occur if more reductions were required to occur within the capped sectors. In order to ensure that most of the emission reductions from the cap-and-trade program occur inside the electricity sector, NRDC/UCS urge the Commissions to recommend that CARB limit offsets to 10% of the reductions expected from the cap-and-trade program.

VI. LEGAL ISSUES

The legal issues mentioned in the PO have been thoroughly briefed by the parties. We have nothing further to add to the Commissions' decisions on these issues.

VII. CHP

NRDC/UCS generally support the PO's treatment of CHP issues. We appreciate the staff's recognition that efficient CHP can be an important means of reducing GHG reductions in the electric and natural gas sectors, and we applaud their efforts to address the complex issues of addressing CHP.

²⁷ WCI, *Design Recommendations for the Regional Cap-and-Trade Program*, §9.2, (Sept. 23, 2008) available at <http://www.westernclimateinitiative.org/ewebeditpro/items/O104F19865.PDF>

A. WE SUPPORT THE PO'S PROPOSAL NOT TO MAKE CHP A SEPARATE SECTOR UNDER CAP AND-TRADE.

We agree with the recommendation that CHP not be treated as a separate sector. (PO 239-240) We agree that CHP should not receive special treatment in terms of allowance allocation (see section IV for our general comments on allowance allocation). Treating CHP as a separate sector or differentiating between CHP emissions and emissions from other capped entities would create unnecessary complexity and might improperly award inefficient CHP facilities. While the recommendation leaves open for further investigation the possibility of favorable distribution to CHP, we believe that differentiation is unnecessary and could create unwelcome consequences. CHP facilities should acquire allowances in the same manner as all other electricity providers.

The division of emissions between heat generation and electricity generation recommended in the PO (p.239-240) is workable, and does not seem to cause double counting of emissions or any disincentive for efficient CHP. The Commissions should recommend expand their recommendation to explicitly recommend the emissions associated with thermal output are included in the cap under the industrial/commercial sector. If industrial and commercial sectors are included in the cap-and-trade program, this design will provide additional encouragement to efficient CHP.

We believe that the division of emissions responsibility between industrial/commercial processes and electricity generation does not preclude alternative methods of allowance distribution. We discuss our priorities for allowance distribution at greater length in section IV of these comments, but here note only that auctioning, if carried out in the electricity, natural gas, and large industrial and commercial sectors, would reward early actors thereby meet AB 32 objectives to incentivize emissions reductions in CHP facilities.

We concur with the recommendation that electricity production by CHP facilities should be treated no differently based on whether it is used on site or sold into the grid. Exempting electricity used on site would undermine the legislative purpose of AB 32 to reduce emissions from all sectors in the statewide cap.

On the other hand, we see no reason for an efficiency threshold that would exempt certain CHP facilities and support the Commissions recommendation that such a threshold is unnecessary. (PO p. 238) We agree that the cap-and-trade system will prefer

more efficient systems by design, because lower emissions will ultimately mean lower costs. An efficiency-based exemption would be both unnecessary and would potentially undermine the intended economic incentive for constant efficiency improvement under a cap-and-trade system.

B. IN ORDER TO TREAT CHP MOST FAIRLY, WE URGE THE COMMISSIONS TO RECOMMEND THAT THE NATURAL GAS SECTOR BE INCLUDED IN THE CAP-AND-TRADE PROGRAM.

As we stated in our previous comments,²⁸ we believe that the best way to avoid any possible perverse incentive for net GHG reducers and to avoid unproductive incentives for inefficient CHP facilities that are not net GHG reducers is to include the electricity, natural gas, and industrial sectors under the cap-and-trade program. If all are included, then all will be paying the market price for emissions, and there will be no perverse incentive for being all in the system rather than half in and half out.

VIII. EMISSION REDUCTION MEASURES

NRDC/UCS support the recommendation that a substantial portion of emissions reductions will come from direct regulatory measures and programs. (p.77-79) In particular, we support the central recommendations of this PO, including additional and strengthened energy efficiency programs, codes and standards; a 33% RPS by 2020; full implementation of the Million Solar Roofs initiative; time of sale energy efficiency requirements; appliance feebates; water efficiency measures; and additional effort to remove barriers to CHP. We fully agree with the PO's recommendation that CARB establish similarly aggressive energy efficiency investment and savings requirements for POU's and IOU's. (p.82)

We agree that energy efficiency will continue to be the cheapest resource and the foundation for reducing emissions in California. We fully support the recommendation that all cost-effective energy efficiency be achieved. As such, we encourage the Commissions to recommend the adoption of further policy tools to support energy efficiency in both the electricity and natural gas sectors, including time of sale energy efficiency requirements and appliance feebates. We also offer suggestions for policies specific to the natural gas sector: adoption of a loading order for natural gas sector that

²⁸ NRDC/UCS Comments, p.30-31 (April 13, 2006)

prioritizes all cost-effective natural gas efficiency, followed by renewable resources such as solar and biomethane.

A. EMISSION REDUCTION MEASURES FOR BOTH ELECTRICITY AND NATURAL GAS

1. We support the Commissions' goals for Zero Net Energy Buildings as stretch goals.

We support the stretch goal established by the Commissions that all new residential construction should be zero-net energy by 2020 and all commercial by 2030. However, as we have stated in other proceedings, we do not believe that legislation to require zero-net buildings is appropriate at this time. We believe that further analysis into what will be required for qualification as “zero-net” is necessary before such mandates become useful. The current definition of zero-net energy (ZNE) makes it extremely difficult, if not impossible, to reach zero-net energy for certain buildings. NRDC/UCS therefore recommends that the Commissions consider modifying the language of the definition to allow for more flexibility in approaches to reach ZNE. NRDC/UCS further reiterates that we support ZNE as a stretch goal to spur innovation, but we caution against ZNE requirements, such as requiring ZNE buildings through codes and standards. We believe that the best step now will be continued modification and upgrades to building standards to require all cost-effective energy efficiency measures. We also believe a continued emphasis on upgrading the current building stock to obtain cost effective energy efficiency is important, since most energy demand by 2020 will come from buildings already in place.

2. We urge the Commissions to recommend adopting these additional measures to promote energy efficiency: Feebates, Time of Sale Requirements and Water Efficiency

While further study may be useful on time of sale energy efficiency requirements, appliance feebates and water end-use efficiency we believe the Commissions should recommend that action be taken to quickly adopt programs in these areas. (PO at 102) Each of these areas represents potentially very significant energy savings and emissions reductions. Feebates are a logical extension to rebates already used by IOUs. As we have commented, a feebate structure could help to encourage greater appliance

efficiency: a fee would be assessed for appliances that use more energy than a benchmark level of performance, and a rebate would be given for appliances that use less energy than the benchmark. These fees could be a useful tool to guide consumers to energy and money saving efficient appliances, minimize split incentives and reduce the pay-back time of energy efficient appliances.

As we stated in our previous comments, time-of-sale requirements were supported by the CEC in its 2007 *Integrated Energy Policy Report* and can work in concert with the utilities' energy efficiency programs as well as the Title 24 standards for new buildings and Title 20 appliance standards.²⁹ One of the key opportunities to make efficiency improvements in existing buildings is at the time the building is sold, since owners often have inspections of the property and make improvements associated with a sale. Energy efficiency inspections, ratings, and improvements at the time of sale represents a significant opportunity to improve the existing building stock, since over 600,000 existing homes are sold each year (triple the number of new homes built).³⁰ The Commissions should recommend time-of-sale information disclosure requirements, followed by time-of-sale efficiency requirements, to ensure that this key opportunity to reduce GHG emissions is captured.

There is significant potential to reduce GHG emissions by saving energy through increased water efficiency. We support the Commissions interest in further investigation into this area, (PO at 102) but believe there is sufficient information available now to support a recommendation to CARB to include water efficiency as a recommended measure for GHG emissions reductions, and note that CARB's Draft Scoping Plan already includes a measure for water efficiency.

B. ELECTRICITY EMISSION REDUCTION MEASURES

1. We strongly support a 33% Renewable Portfolio Standard.

NRDC/UCS commend the PO's support for a 33% renewables mandate by 2020. The PO appropriately recognizes that a 33% renewables mandate is "an important step" towards achieving California's long-term 2050 GHG reduction goals. (p.94) The most

²⁹ California Energy Commission, *2007 Integrated Energy Policy Report*, Publication CEC-100-2007-008-CMF, p. 87.

³⁰ California Energy Commission, *Options for Energy Efficiency in Existing Buildings*, CEC-400-2005-039-CMF, December 2005, p. 21.

effective policy to ensure that the state reaches 33% renewables is to enact Renewables Portfolio Standard (RPS) legislation that applies the 33% requirement to all retail providers. We strongly agree with the PO's assertion that "a target of 33% renewables by 2020 is achievable." We suggest that the final decision include language to clarify that a 33% RPS mandate is the best way to realize the 33% target.

While the Proposed Opinion appropriately recognizes that there exists "significant uncertainty associated with modeling the costs of achieving 33% renewables," (p.92) the Commissions should also acknowledge that the E3 modeling estimates of a 33% renewables mandate are based on conservative assumptions regarding the cost of renewable resources.³¹

2. The E3 Modeling estimates of renewable costs are based on conservative assumptions.

The Proposed Opinion states that "E3's analysis suggests that the average costs for new renewable projects may reach approximately \$130 per ton of GHG emissions abated." (p.92) NRDC/UCS believe that this estimate reflects highly conservative assumptions concerning the cost of renewable energy relative to conventional generation. As the Proposed Opinion acknowledges, this cost estimate would be lower if the E3 modeling assumptions were revised to reflect expectations that renewable energy installation costs will decline relative to conventional generation costs in the future.³² In previous comments, NRDC/UCS provided references to several government analyses that have predicted significant cost reductions for solar thermal and rooftop photovoltaic technologies over time.³³ NRDC/UCS also identified other conservative assumptions and characteristics of the GHG calculator that would tend to overstate the cost of renewable resources relative to conventional generation.³⁴

C. NATURAL GAS EMISSION REDUCTION MEASURES

We believe the natural gas sector has potential for significant savings that are not yet reflected in the PO. We mentioned a number of promising measures and technologies

³¹ See Appendix A to these comments for suggested changes to the PO's Finding of Fact #6.

³² Ibid.

³³ *Comments of the Natural Resources Defense Council and the Union of Concerned Scientists on Allowance Allocation, Flexible Compliance, CHP, Emission Reduction Measures, and Modeling Issues*, filed June 2, 2008 in R.06-04-009, at 42-44.

³⁴ Ibid. at 44-49.

in our previous comments and repeat those recommendations here. We believed these measure can provide cost-effective³⁵ emissions reductions to further the goals of AB 32. We urge the Commissions to recommend that CARB include them in its AB 32 strategy.

1. The Commissions should develop a loading order for natural gas.

NRDC/UCS support developing a loading order for natural gas that prioritizes efficiency and renewable fuels. We are highly supportive of the Commissions successful adoption of a loading order for electricity and believe a similar step should be taken to ensure the prioritization of efficiency as the lowest cost means of emissions reductions in the natural gas sector. As discussed below, solar hot water and biomethane provide additional resources to reduce fuel consumption and emissions associated with many traditional uses for natural gas. The Commissions should work with CARB to develop a loading order for natural gas that prioritizes emissions reductions consistent with AB 32.

2. The Commissions should recommend adoption of a standards-based approach to solar hot water.

We support the Commissions position that solar hot water is worthy of inclusion in the Scoping Plan and urge the Commission to go further in their recommendations. The Draft Scoping Plan states CARB's interest in expanding solar hot water programs³⁶ and we suggest the Commissions provide targets and potential methods of expansion. As we and others have previously comments,³⁷ solar hot water is an important way to reduce natural gas consumption and has the technical potential to save over one billion therms of

³⁵ Note that "cost-effective" is an important term in AB 32, and also has a well-established definition in the utility energy efficiency practice. However, these definitions are different, and we are here referring to the cost-effectiveness requirement under AB 32.

³⁶ CARB, Climate Change Draft Scoping Plan, p. 38.

³⁷ See NRDC/UCS Comments On the Proposed "Interim Opinion on Greenhouse Gas Regulatory Strategies," on Proposed Decision on GHG Regulatory Strategies, submitted February 28, 2008, pp.4-5; NRDC/UCS Comments on Modeling Related Issues, submitted January 4, 2008, p.5; Prehearing Hearing Conference Statement of NRDC, UCS and ED Comments on Preliminary Staff Recommendations for Treatment of Natural Gas Sector GHG Emissions, submitted July 26, 2007, pp.6; Southern California Generation Coalition Reply Comments, submitted January 8, 2008, pp.7-8; Community Environmental Council Reply Comments, submitted January 8, 2008, pp.5-6; California Solar Energy Industries Association and the Solar Rating and Certification Corporation Comments on Type and Point of Regulation Issues For the Natural Gas Sector, submitted December 17, 2007, p. 3; Community Environmental Council Comments on Natural Gas Sector Point of Regulation Issues, submitted December 17, 2007, pp.5-7.

natural gas in California every year,³⁸ or approximately 5.3 MMTCO₂e reductions.³⁹ The PO should recommend consideration of solar hot water technology as a loading order requirement for natural gas. It should also recommend that mechanisms for ensuring that the funding authorized by AB 1470 (The Solar Water Heating and Efficiency Act of 2007, Huffman) is fully utilized so that as many solar water heating units as possible are incentivized by the Act. We also reiterate our recommendations that the Commissions recommend timelines for implementation of AB 1470 and funding sources for incentive for solar hot water beyond those provided for in AB 1470, to achieve all cost-effective savings.

3. The Commissions should recommend policies to encourage biomethane.

We believe that the recommendation should incorporate our previous comments⁴⁰ that indicate that biomethane is an important renewable alternative to natural gas with the potential to save 7.2 MMTCO₂e of emissions by 2020 from dairies⁴¹ and additional savings from wastewater treatment facilities. The scoping plan should include mechanisms for promoting the use of biomethane, solar hot water and efficiency to replace natural gas.

³⁸ National Renewable Energy Laboratory, *The Technical Potential of Solar Water Heating to Reduce Fossil Fuel Use and Greenhouse Gas Emissions in the United States*, March 2007, p.10; See also Environmental California Research & Policy Center, *Solar Water Heating: How California Can Reduce Its Dependence on Natural Gas*, April 2007, p.14, citing Fred Coito and Mike Rufo, KEMA-Xenergy Inc, for Pacific Gas & Electric Company, *California Statewide Residential Sector Energy Efficiency Potential Study*, April 2003 and Fred Coito and Mike Rufo, KEMA-Xenergy Inc, for Pacific Gas & Electric Company, *California Statewide Commercial Sector Natural Gas Energy Efficiency Potential Study*, May 14, 2003.

³⁹ California Air Resources Board, *Updated Macroeconomic Analysis of Climate Strategies Presented in the March 2006 Climate Action Team Report: Final Report*, October 15, 2007, p.11, available at http://www.climatechange.ca.gov/events/2007-09-14_workshop/final_report/2007-10-15_MACROECONOMIC_ANALYSIS.PDF states that 1MMBtu = 53.06 kg CO₂e (1,000 million therms * (100,000 MBtu / million therm) * (53.06 kg CO₂ / MBtu) * (1 metric tons CO₂ / 1,000 kg CO₂) = 5,306,000 metric tons CO₂)

⁴⁰ See NRDC/UCS Comments on Proposed Decision on GHG Regulatory Strategies, submitted February 28, 2008, p.4-5; Prehearing Hearing Conference Statement of the Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS) and Environmental Defense (ED) Comments on Preliminary Staff Recommendations for Treatment of Natural Gas Sector GHG Emissions, submitted July 26, 2007, pp.6-7.

⁴¹ See NRDC's scoping plan recommendation, available at http://www.arb.ca.gov/cc/scopingplan/submittals/agriculture/nrdc_biomethane_final.pdf.

IX. CONCLUSION

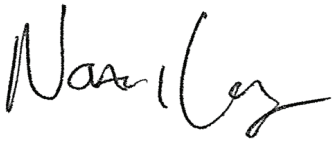
We appreciate the Commissions' and staffs' efforts in formulating this Proposed Final Opinion on recommendations to CARB. We urge the Commissions to consider our recommendations described above.

Dated: October 2, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **“Comments of the Natural Resources Defense Council (NRDC) and the Union of Concerned Scientists (UCS) on Proposed Opinion on GHG Regulatory Strategies”** in the matter of **R.06-04-009** to all known parties of record in this proceeding by delivering a copy via email or by mailing a copy properly addressed with first class postage prepaid.

Executed on October 2, 2008 at San Francisco, California.



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Appendix 1

Suggested Language Changes to PO

I. ALLOCATION

Text of PD

- p.211 To summarize, we recommend that ~~auctions~~ 100% of allowances be phased in for in the electricity sector be auctioned in 2012, beginning with 20% of allowances in 2012 and reaching 100% in 2016. We recommend that the allowances that are not auctioned be distributed on a fuel-differentiated output basis to emitting deliverers. Allowances that are to be auctioned should be distributed to retail providers, with a requirement that they then sell the allowances through a centralized auction. The distributions to retail providers should be made on the basis of historical emissions in 2012, transitioning to a 100% sales basis as soon as possible by 2020.
- p.217 ~~Currently, we do not have enough information to determine the desirability of allowance set-asides for the voluntary renewables market.~~
- p.218 ~~While w~~We support continuing opportunities for voluntary reductions, consistent with the cited provisions of AB 32, ~~we do not and therefore~~ recommend the creation of a set-aside for the voluntary market at this time. While a~~A~~ number of questions ~~would need~~ remain to be answered about the design of the cap-and-trade market and the RPS compliance market that may include provisions for RECs, we believe that it is important that CARB adopt a set-aside mechanism to recognize and account for the GHG reductions provided by voluntary renewable sales, with the specific details of such a mechanism to be determined at a later point in time. These details include ~~We would need to investigate~~ the types of RECs that would count under a set-aside, including whether RECs from capped and uncapped electricity markets should count. In addition, we, along with CARB, would need to investigate how to assign emission reduction values to the RECs that would be counted. These issues will be further complicated in a regional cap-and-trade system. ~~For all of these reasons, we need further investigation and analysis before recommending a set-aside for the voluntary renewables market.~~

Findings of Fact

- p.281 ~~23. Distributing some free allowances to deliverers would reduce short-term impacts on generating resources, and would help generators adapt to the new regulatory environment.~~

- p.281 24. ~~A transition to a~~Auctioning would help protect ratepayers ~~if problems arise as ARB implements AB 32 and experience is gained with the auctioning process.~~
- p.282 25. ~~A transition to 100% auctioning in 2012~~by 2016 would avoid all windfall profits to unregulated private entities at the expense of California customers~~ensure that any allowance rents would be short term and would give existing high-emitting resources time to adjust their generation investments.~~
- p.282 26. It is reasonable to ~~introduce auctioning in a phased approach, with begin auctioning 100% in 2012~~by 2016, so that California can reap initial benefits from auctioning ~~and, at the same time, provide some protection and stability while the cap and trade market develops and matures.~~
- p.282 27. ~~A fuel-differentiated output-based allocation approach with distributions limited to emitting deliverers would provide all deliverers with allowances roughly in proportion to the amount they need and would reduce the potential for allowance rents.~~
- p.282 30. ~~If 100% auctioning is not implemented by 2016, a~~ An important longer-term goal of deliverer distributions should be to provide strong incentives for GHG reductions.
- p.282 31. It is reasonable that allowance distributions to deliverers start with transition toward an output-based approach that weights all types of generation equally, to be reached by 2020 if 100% auctioning is not implemented from the outset achieved by that time.
- p.283 37. It is reasonable to transition allocation of allowances to retail providers from an historical emissions basis to a sales basis as soon as possible by 2020 because a sales-based allocation would provide an long-term incentive to reduce reliance on high emitting resources.

Ordering Paragraphs

- p.288-289 6. We recommend that, for 2012, ARB distribute 2100% of the allowances allocated to the electricity sector to retail providers, with a requirement that they sell the allowances through a centralized auction, ~~and distribute 80% of the allowances without cost to electricity deliverers.~~
- p.280 7. ~~We recommend that ARB increase the portion of allowances allocated to the electricity sector that are distributed to retail providers and sold at~~

~~auction by 20% each year so that all of the electricity sector allowances are auctioned in 2016 and each year thereafter.~~

- p.289 ~~8. We recommend that for the portion of allowances distributed to deliverers, ARB distribute the allowances using a fuel-differentiated output-based approach with distributions limited to emitting deliverers, as described in this decision.~~
- p.289 11. We recommend that ARB initially distribute electricity sector allowances to retail providers (which will be required to sell them at auction) in proportion to the historical emissions of the retail providers' portfolios, transitioning to a sales basis as soon as possible, but no later than 2020~~by 2020~~.
- p.289 12. We recommend that ARB require that all allowance auction revenues be used for purposes related to Assembly Bill (AB) 32, ~~including the support of investments in renewables, energy efficiency, new energy technology, infrastructure, customer bill relief, and other similar programs.~~
- p.290 13. We recommend that ARB require all, or almost all, auction revenues from allowances allocated to the electricity sector be used for the benefit of consumers in the electricity sector. ARB should specify that electricity sector revenue must be used for the following purposes:
- Investments in technologies to reduce GHG emissions, including energy efficiency and renewable energy;
 - Research, development, and demonstration (RD&D) and deployment of new technologies to reduce GHG emissions;
 - Reduce costs to consumers, particularly low-income consumers, for example by supplementing funding for existing low-income energy efficiency and bill assistance programs;
 - Support for air and toxic pollution reduction efforts, especially in communities historically burdened by air and toxic pollution;
 - Support for green collar job development and training; and
 - Providing economic assistance for low-income and disadvantaged communities.
- p.290 14. We recommend that ARB allow the Public Utilities Commission for investor-owned utilities and the governing boards for publicly-owned utilities to determine and oversee the appropriate use of retail providers' auction revenues consistent with the purposes specified above~~of AB 32~~.
- p.290 15. We recommend that ARB require each publicly-owned utility to demonstrate annually to the Energy Commission that its use of auction revenues during the prior year was consistent with the purposes of AB 32, according to pre-specified criteria. If the utility can not show that it has

used all the funds for a pre-approved purposes, it should be forced to forfeit the un-used or inappropriately used funds.

- p.291 19. We recommend that, if ARB adopts a cap-and-trade program, ARB ~~not pursue a California-only program, but rather~~ consider pursuing bilateral linkage with other states in the Western Climate Initiative to help create a regional cap-and-trade market. When considering linking, ARB should ensure that the other program has similarly strict design characteristics and will not prevent California from meeting all the requirements of AB 32.

II. FLEXIBLE COMPLIANCE

Text of PD

- p.258 ~~While w~~We recognize the possibility that certain design features of other systems, such as price triggers or inadequate enforcement provisions, or insufficient safeguard on offsets, could affect environmental integrity adversely if linked with California's program, and we believe that these issues must ~~can~~ be worked out in advance through negotiations for bilateral linkage. We strongly support ARB's effort to link California's cap-and-trade system with the Western Climate Initiative. We recommend that ARB continue this effort and also pursue bilateral linkage with other local, regional, national, and international GHG cap-and-trade systems, as they emerge and are rigorously studied to establish that they have comparable stringency, monitoring, compliance, ~~and~~ enforcement and offsets provisions.

Findings of Fact

- p.283 50. It is reasonable for California to pursue bilateral linkage with other local, regional, national, and international GHG cap-and-trade systems ~~that~~ only if those other systems have comparable stringency, monitoring, compliance, enforcement, and offsets provisions.

Ordering Paragraphs

- p.291 19. We recommend that, if ARB adopts a cap-and-trade program, ARB not pursue a California-only program, but rather pursue bilateral linkage with other states in the Western Climate Initiative to help create a regional cap-and-trade market, only if the other state have comparable stringency, compliance, enforcement, and offsets provisions.
- p.291 21. We recommend that ARB, in developing a cap-and-trade program, avoid any borrowing of allowances.

p.291 21. We recommend that, if ARB develops a cap-and-trade program, ARB establish three-year compliance periods and allow unlimited banking of emissions allowances ~~and offsets~~.

p.291 23. We recommend that ARB, in developing a cap-and-trade program, ensure that offsets must be real, additional, verifiable, permanent and enforceable, and limited to 10% of reductions from the cap-and-trade program.

III. CHP

Ordering Paragraphs

p. 290 16. We recommend that, for combined heat and power (CHP) facilities that exceed the minimum size threshold that ARB sets for other emission sources ~~deliverers~~, ARB include the emissions associated with CHP-generated electricity consumed in California in the electricity sector and any emission associate with industrial/commercial uses with those sectors in any multi-sector GHG emissions cap-and trade program.

p.290 17. We recommend that ARB treat entities that deliver CHP-generated electricity to the grid just like other deliverers for GHG regulatory purposes, and that ARB treat CHP operators comparable to deliverers for purposes of regulating GHG emissions associated with CHP-generated electricity used onsite, as described in this decision. Recognizing that they may be the same entity, the deliverer for the CHP electricity delivered to the grid and the CHP operator for CHP electricity used on-site should be responsible for surrendering allowances for the portion of CHP-generated electricity delivered to the grid and the portion used on-site, respectively. ~~To the extent that allowances are distributed for free to deliverers, t~~ The deliverer for CHP delivered to the grid and the CHP operator for CHP electricity used on-site ~~should receive~~ be required to hold allowances on the same basis as deliverers of electricity from other sources.

p. 291 18. We recommend that ARB treat CHP operators comparable to retail providers for the portion of CHP-generated electricity that is used on-site. ~~To the extent that allowances are distributed to retail providers, the~~ CHP operators ~~should receive~~ be distributed allowances on the same basis as retail providers and should be required to sell the received allowances at auction and use the proceeds for purposes consistent with AB 32.

IV. EMISSIONS REDUCTION MEASURES

Text of PD

- p. 92 Using conservative ~~current~~ estimates, E3's analysis suggests that the average costs for new renewable projects to achieve 33% renewables may reach approximately \$130 per ton of GHG emissions abated.

Findings of Fact

- p.279 6. Using conservative cost and performance assumptions for renewable technologies, E3 estimates that GHG emissions reductions obtained through achievement of 33% electricity from renewables may have an average incremental cost of \$133 per ton, compared to the current 20% RPS mandate.
- p. 280 11. Having all retail providers deliver 33% renewable energy to their customers by 2020 ~~would be~~ is an important first step in achieving this transformation.
- p.280 12. It is reasonable for the State of California to set as a requirement ~~target~~ that all retail providers deliver 33% renewable energy to their customers by 2020.

Suggested additional FOFs, to be added between the current 15 and 16:

Appliance feebates and time of sale energy efficiency requirements are reasonable policies to help achieve all cost effective energy.

Significant emissions reductions are possible from the natural gas sector from efficiency, solar hot water and bio-methane. A loading order that prioritizes efficiency and renewable fuel sources in the natural gas sector would provide a good first step towards emissions reductions.

Completion of the natural gas emissions protocol is a necessary step towards inclusion of natural gas in the cap-and-trade program. Inclusion of natural gas would lead to further reductions and increase the depth and liquidity of the allowance market.

Ordering Paragraphs

- p. 287 1. We recommend that the California Air Resources Board (ARB) set energy efficiency requirements in its Scoping Plan for all utilities at the level of all cost-effective energy efficiency, with energy efficiency goals for investor-owned utilities set based on those adopted by the California Public Utilities Commission (Public Utilities Commission) in Decision 08-07-047.

Attachment 2

New York Department of Environmental Conservation
Pre-Proposal Draft for Implementation of the Regional Greenhouse Gas Initiative Rule
Comments of Morgan Stanley Capital Group Inc.
March 13, 2007

Morgan Stanley Capital Group Inc. (MSCG) has reviewed the pre-proposal release of the Draft Rule for implementation of the Regional Greenhouse Gas Initiative (RGGI) in New York, and appreciates the chance to offer comments. MSCG has been an active participant in emissions trading markets in the US since their inception, and is one of the most active traders in the existing European GHG markets and worldwide through the UN approved CDM/JI mechanisms. In part through these comments, we seek to help New York optimize its Greenhouse Gas emission regulations by sharing the lessons of our experiences in those markets.

First and foremost, MSCG believes that the RGGI model, and the variant proposed for adoption by New York, has correctly made the most crucial decision, which is to regulate via a cap and trade mechanism. The aim of any regulation should be to achieve the underlying policy goal, in this case reduction in greenhouse gas emissions, at the least overall cost to society, and in the most efficient manner possible. Cap and trade ensures that the target total emission level is not exceeded, and harnesses the power of markets to choose and implement the methods that work best. Those who can reduce emissions at a low cost do so, and those who cannot reduce emissions for less than the cost of an emissions allowance instead purchase them for surrender. The goal is achieved in the most efficient and least costly manner, and society's resources are not squandered.

Below are specific comments on key areas of the proposed regulations:

Auctions versus Allocations, and Market Liquidity

While MSCG endorses the fundamental framework of RGGI, we can nonetheless identify certain aspects that our experiences, especially in Europe, indicate are sub-optimal. The first target for an upgrade in the model framework is the intent to allocate rather than auction allowances. While an allocation scheme is not a fatal flaw, both experience and theory indicate that allocations do create problems. A superior approach is to auction all of the allowances directly into the market. If allocations to particular parties are deemed essential for whatever reason, the better approach is to allocate those parties Auction Revenue Rights (ARRs), rather than actual allowances. This is the approach used in RTO New England for transmission rights. It motivates high participation in the auction, as well as a critical evaluation of value by those with ARRs, rather than the possible "sit on them" strategy evidenced in Europe.

In order to get the market off to a robust start, it is essential to have liquidity. With adequate liquidity, parties needing allowances to operate quickly gain confidence that they can purchase what they need, when they need it. In Europe, at start-up, the problem was that many of those who received allocations simply held on to them, not selling unneeded consignments into the market. The psychology was understandable. Holders with excess allowances were typically industrial entities. Besides the fact that

allowance trading was not a core business for them, they were very fearful that if they sold apparently excess allowances, they would miscalculate future needs, perhaps be unable to buy back their requirements at the same prices they sold them for, or perhaps not be able to buy back the required allowances at any price. Utilities, on the other hand, were typically “short”. Furthermore, managing risk was more core to the utilities’ business, and they used sophisticated forward hedging processes to manage the market price risk of allowances. The result was that utilities were active buyers in the forward markets, in which there were few active natural sellers. This led to an upward bias in the forward price, as well as an associated lack of liquidity.

We note that section 242-5.3 (a) (2) & (3) says that the Department will first allocate 100% of its allowances to an “energy efficiency and clean energy technology account”. It further states that this is “...so allowances for each allocation year will be sold in an open and transparent auction or auctions...”. Later, in 242-5.3 (4) iii, the possibility is raised of a further re-allocation to “energy efficiency service providers” contingent on their prompt sale. For the reasons in the paragraphs above, we heartily endorse the decision to ensure that 100% of all allowances are promptly auctioned to the market. However, the allocation and re-allocation process described adds needless administrative complexity. It would be far simpler for the Department to auction all allowances directly to the market, and assign ARRs to entities it deems should have a stake in the proceeds. Any organization or agency that is allocated an allowance will have to figure out how to manage, market and track its allocations. The process envisioned in the draft would also complicate the process for market participants, potentially requiring them to follow and participate in multiple auctions, each of which might be conducted under different procedures. All of the added complications would add costs to the system with no incremental benefit to any public policy goal.

MSCG anticipates that other commenters are likely to argue strongly for allocations to various parties. We will take no position on the merits of any of these proposals, but if the Department ultimately finds them persuasive, we do strongly advocate that any allocations be awarded in the form of ARRs, just as described above for the entities already identified.

Interoperability

Cap and trade systems work best when their scope is widest. This is true of any market. Efficiency is enhanced by broad participation. The broader and deeper the area of coverage, the more efficient the sourcing of compliance, and the less likely it is for any “crises” to arise. This axiom applies both over geographic areas, and over industries. If it is abnormally hot in one area, causing generators to run extraordinarily “hard” and therefore requiring large numbers of allowances, it is likely that some other location will be having cooler than normal weather and not need as many allowances as usual, making a surplus available for sale. If electric power generation is consuming abnormally large amounts of allowances in any one year in all geographic locations, it is likely that some other industry, perhaps cement, is running below average rates and will not need as many allowances. It may turn out that investments to reduce CO2 emissions in one industry are very costly, while, conversely, there are many inexpensive opportunities to reduce emissions in another industry. For all these reasons, diversity across geographical areas

and types of emissions sources maximizes the ability to achieve the desired goal with minimal financial and operational disruption to society.

MSCG recognizes that the RGGI model law is intended to apply only to electric generation. While this is workable, the lack of diversity does increase the risk of disruption, either societal (electric generators could have to shut down, due to having exhausted all allowances, as occurred in southern California due to exhaustion of NOx RECLAIM allowances during the 2000 energy price spikes) or programmatic (an ex-quota “emergency” sale of additional allowances is made to keep prices reasonable, but which circumvents the inherent purpose of the program by exceeding the cap, and significantly disrupts the forward market that relies heavily on certainty of supply). For these reasons, we strongly recommend that New York’s program maintain a strong focus on interoperability with other RGGI states, California, Europe and other jurisdictions. The program should also be devised in such a manner that it can easily include additional industries at a future date.

A simple but perhaps non-obvious example of an interoperability consideration is the unit of measurement. The EU issues allowances in metric “tonnes”. New York and other RGGI states choosing to do the same would be a simple way to enhance interoperability. However, market participants can readily convert between metric and Imperial measures of weight. More important is that the RGGI protocols use the same units of CO2 equivalence, measure for measure, that the Kyoto Protocol does for the other greenhouse gases.

It may end up for whatever reasons that it is not possible or expedient to actually trade the same allowance certificates that other jurisdictions use. If so, Morgan Stanley recommends that the regulation mandate that if parties in New York purchase and retire certificates from other approved jurisdictions, a New York allowance be created for every other such allowance verifiably retired. This provides a safety valve on prices without undermining the validity of the system in a way the other price capping proposals do. Morgan Stanley recommends that, at a minimum, UN Certified Emissions Reductions (CERs) and European Allowances (EUAs) be eligible for such retirement. We note that Section 242-10.2 addresses such retirements, but limits them to allowances or credits issued outside the United States, and only after the occurrence of a “stage two trigger event”. This seems needlessly restrictive, and decreases the “safety valve” properties of being interoperable with other jurisdictions. Since climate change is an unambiguously global problem, no purpose is served in restricting allowable sources of reductions to specific geographic areas or event occurrences. The only real question is whether the instrument represents a legitimate reduction in greenhouse gas emissions. Either it does or it doesn’t, and if it does, then it should be usable at any time under any circumstance.

Transparency

It is axiomatic that markets function best in the presence of complete information. MSCG urges New York to collect, aggregate and publish data regarding actual emissions, allowances surrendered, and other such activity as frequently as practicable. In April 2006 in Europe, the market had run up strongly on speculation about the high level of emissions to date. When actual figures were released, emissions were much less than speculated, and the price of allowances collapsed. Further, the issue was made more

controversial by evidence the information was leaked to some players ahead of time. All markets run on information. Data should be frequently and impartially released to promote confidence in the market and the prices therein. We urge New York to be cognizant of this potential, and to gather and release information on surrenders, actual emissions, and similar statistical information, regularly and frequently.

This would be particularly germane to New York's proposal to issue "Early Reduction CO2 Allowances" (ERAs). The timeline calls for all applications to be made by May 1, 2009, with final allocations into compliance accounts by December 31, 2009. The issuance of such instruments in any significant amount would have a material effect on the allowance market. New York should immediately release information about each application when made, a summary soon after the May 1, 2009, deadline, the decision made on each application as soon as rendered, and a summary of all ERAs issued as soon as all have been processed.

New York proposes a 3-year "Control Period" compliance timeframe. The European experience suggests that a more frequent administration of compliance would provide a significant contribution to the maintenance of orderly markets. An extended compliance period such as the one proposed, especially with no interim data collection or dissemination as to actual emissions, could heighten uncertainty, potentially injecting a "fear" premium into allowance prices. Alternatively, even utilizing a three-year control period, more frequent reporting of actual emissions data (perhaps quarterly) would at least enable the market to match known totals of allowances issued against actual consumption, providing a fairly accurate picture of the supply/demand balance all along.

Miscellaneous Comments and Observations

Morgan Stanley does not hold strong views as to what the exact requirements or penalties for failure to meet requirements should be, or how and when program changes should be allowed. What we do consider to be important is that the rules are clear and known well in advance. If changes are to be made, we recommend that they be must be vetted via a public stakeholder process well in advance. Emissions allowances are similar to a currency, and any agency charged with custodianship should think of itself as analogous to the Federal Reserve Bank, acting independently of political whim and with a duty to maintain stable market conditions for that currency. A couple of observations:

- 1) The requirement to pay a fine and surrender triple the otherwise required allowances for any "excess" emissions is harsher than the European approach. In Europe, the penalty is a monetary fine, plus a requirement to obtain and surrender the missing allowances in the amount of the shortfall in the next administrative period. The Kyoto Protocol follows a harsher line at the country level for failure to comply. MSCG believes the European fines (€40/tonne-equivalent in Phase 1 and €100/tonne-equivalent in Phase 2) are likely to be more than sufficient to motivate compliance. Any requirement to surrender extra allowances in subsequent periods can impart unnecessary market volatility, since the level of non-compliance is ultimately always very uncertain. The "extra" surrendered

- penalty allowances constitute an unknown incremental short position. This makes the future supply-demand balance difficult to estimate.
- 2) The New York proposal does not appear to contemplate circumstances whereby additional allowances would be issued in an “emergency”. In some jurisdictions, it is proposed that if the price climbs above a certain level, or if it appears that there is danger to the smooth functioning of the economy, a “safety valve” release of additional allowances will be undertaken in order to limit the “damage”. Without necessarily supporting or opposing either approach, we would note that there is no practical difference if the fine rate for excess emissions is set at the level deemed to be representative of economic hardship. Parties could then simply elect to emit without surrendering an allowance, and pay the fine. It should be noted that this approach would only be used in cases of declared “emergency”, where the decision has been explicitly made to allow incremental allowances. It should not be applicable in simple cases of non-compliance by individual entities, where fines plus surrenders are valid and useful enforcement tools.
 - 3) The New York proposal does not explicitly discuss the expiration of allowances. “Banking” is briefly mentioned in 242-6.6. Inferentially, based on the cross-references to 242-4.2, 242-6.5, 242-6.7 and 242-7 it appears that allowances never expire, since they can be held in the compliance account until deducted for compliance matching. In Europe, allowances are generally bankable within but not across the two contemplated Phases and do not expire until the end of each Phase. Thus at the end of 2007, unused Phase 1 allowances will expire and cannot be carried forward into Phase 2. This approach was not taken because it was felt that allowances should eventually expire. Rather, it was done because the EU divided its implementation into two phases. The first phase was, essentially, a “practice” phase. It was anticipated that there would be suboptimum design elements in the first iteration, and that the second phase could be much better designed after some actual experience. Therefore, it was decided in advance to build in a “re-start” to take advantage of lessons learned. MSCG is not necessarily recommending New York adopt a two-phase approach. However, we do believe it is important to be explicit about expiration dates (if any) and banking rules, and suggest that a discussion and/or statement be added to explicitly address these issues, even if it is just to state that there is no expiration date.

In conclusion, Morgan Stanley Capital Group Inc, wishes to express our appreciation for the opportunity to participate in the development of New York’s Greenhouse Gas emissions trading program, and hopes our comments have been helpful and informative for all stakeholders. If there is a desire for follow-up discussions, interested parties should contact:

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Attachment 3

COMMENTS OF MULTIPLE INTERVENORS REGARDING THE REGIONAL GREENHOUSE GAS INITIATIVE DRAFT MODEL RULE

**COUCH WHITE, LLP
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P.O. BOX 22222
ALBANY, NEW YORK 12201**

MAY 22, 2006

I.

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of 53 large industrial, commercial, and institutional end-use energy consumers with facilities throughout New York State, by its attorneys Couch White, LLP, hereby respectfully submits its “Comments of Multiple Intervenors Regarding the Regional Greenhouse Gas Initiative Draft Model Rule” (“Comments”).

As explained herein, the Regional Greenhouse Gas Initiative (“RGGI”) Draft Model Rule should not be implemented at this time by or within the respective RGGI states because, if implemented, the Draft Model Rule will drive up energy costs for end-use consumers without correspondingly reducing the levels of carbon dioxide in the ambient atmospheres of the respective RGGI states. However, if, arguendo, the Draft Model Rule is implemented in the RGGI states, then the cost-impacts to end-use electric consumers should be mitigated to the maximum extent possible by auctioning all of the RGGI air emissions allowances and applying all of the proceeds from such auctions as a per-kilowatt hour (“kWh”) credit to retail electric distribution rates within the RGGI states. Moreover, if, arguendo, the Draft Model Rule is implemented, then the rule should be harmonized with the respective states’ distributed generation policies and otherwise amended and implemented as described herein.

II.

CONTACT INFORMATION

The following person is the designated contact point for all inquires and/or service of process related to these Comments:

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III.

DESCRIPTION OF MULTIPLE INTERVENORS

Multiple Intervenors is an unincorporated association of 53 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the service territories of all of the state's major regulated electric utilities. Formed in 1972, Multiple Intervenors represents its members' interests in regulatory, administrative and legal forums at the national, regional and New York State levels.

Multiple Intervenors has been an active participant in the restructuring of the electric industry on both the federal and New York State levels. In the course of such participation, Multiple Intervenors represents its members' interests in select electric and natural gas utility rate cases and other proceedings before the New York State Public Service Commission ("NYSPSC"). Moreover, Multiple Intervenors represents its members' interests in numerous Federal Energy Regulatory Commission ("FERC") proceedings. Finally, Multiple Intervenors also represents its members' interests before other New York State regulatory agencies and, where necessary, in state and federal courts.

By way of further introduction, Multiple Intervenors also is an active participant in the governance of the New York Independent System Operator, Inc.

(“NYISO”). Specifically, through five of its members, Multiple Intervenors is a voting member of the NYISO’s Management Committee, Business Issues Committee and Operating Committee, and participates actively in selected NYISO planning and operations matters.

Multiple Intervenors members support environmental initiatives, and most are leaders in their respective industries with respect to environmental compliance. However, many members have strong concerns about environmental rules, such as RGGI, that will provide little or no direct environmental benefit for the implementing state, but will increase energy costs significantly. Large employers in the RGGI states already face severe competitive pressures due to energy prices that afford other regions, and nations, a significant competitive advantage. Accordingly, any measure, such as RGGI, that will further exacerbate the competitive imbalance by increasing energy rates must be scrutinized carefully. It is Multiple Intervenors’ position that the Draft Model Rule cannot pass a balanced cost/benefit analysis and, as a result, the Rule should not be adopted or implemented at this time.

IV.

COMMENTS

The Draft Model Rule should not be implemented in the RGGI states at this time because implementing the Rule will drive up energy costs for end-use consumers without providing commensurate reductions in the levels of carbon-dioxide gas in the RGGI states’ ambient atmospheres. However, if, arguendo, the Draft Model Rule is implemented: (a) the cost-impacts to end-use electric consumers in the RGGI states should be mitigated to the maximum extent possible; and (b) the rule should be harmonized with the distributed

generation and other energy policies of the respective states; and (c) the Rule otherwise should amended as described herein.

A. The Cost To Implement The Draft Model Rule Outweighs Its Benefits to the RGGI States

As explained herein, Multiple Intervenors believes that the costs associated with implementing the Draft Model Rule will exceed the direct environmental benefits to the end-users of electricity, including the residential, commercial and industrial electric consumers in the RGGI states, that would result from implementation of the Rule.

1. Implementing The Model Rule Will Drive Up Energy Costs

Large energy consumers in the RGGI region pay some of the highest, if not the highest, energy costs in the nation. For example, as the data in the following table reflects, New York’s commercial and industrial end-use energy consumers pay substantially more for electricity than similarly-situated consumers in neighboring states and regions, as well as the nation as a whole.

Average Monthly Electric Costs as of January 1, 2006 – \$/kWh

Customer Type	Commercial	Industrial	New York Commercial % Difference	New York Industrial % Difference
kW Demand	500	50,000		
Monthly kWh Used	180,000	32,500,000		
New York Average	\$0.1389	\$0.1228	-	-
Pennsylvania Average	\$0.0979	\$0.0724	41.814%	69.766%
Mid-Atlantic Average	\$0.1170	\$0.0964	18.749%	27.466%
Ohio Average	\$0.0860	\$0.0527	61.544%	133.087%
East North Central Average	\$0.0726	\$0.0489	91.226%	151.335%
U.S. Average	\$0.0836	\$0.0690	66.062%	78.071%

See Edison Electric Institute, Typical Bills and Average Rates Report – Winter 2006, pp. 128-30, 134, 136, 163, available at, <http://www.eei.org/products_and_services/index.htm>. Moreover, New York’s largest natural gas end-use consumers pay an annual average of 35.6% more than the national annual average price for natural gas. New York State Energy Research & Development Authority, Patterns and Trends – New York State Energy Profiles: 1990-2004, p. 5 (2005), available at, <<http://www.nyserda.org/publications/trends.pdf>>.

In addition, numerous environmental initiatives already have been implemented in the RGGI states, and are included in the non-competitive energy rates paid by consumers in those states. For example, in recent years, New York has implemented “Systems Benefits Charge” (“SBC”), “Retail Renewable Portfolio Standard” (“RPS”), and “Acid Deposition Reduction” (“ADR”) programs. It is estimated that these programs cumulatively increase electric rates for New York’s commercial and industrial electric consumers by as much as 9.5%.¹

¹ The SBC surcharge can range as high as 1.75% of an industrial end-user consumer’s monthly electric distribution bill. See NYSPSC Case No. 94-E-0952, Competitive Opportunities Regarding Electric Service, Order Continuing and Expanding the Systems Benefits Charge for Public Benefit Programs, p. 25 (2001), as adjusted NYSPSC Case No. 05-M-0090, System Benefits Charge III, Order Continuing the System Benefit Charge (2005). The RPS program is projected to increase electricity costs for large consumers by as much as 2.4%. NYSPSC Case No. 03-E-0188, Proceeding Regarding a Retail Renewable Portfolio Standard, New York Renewable Portfolio Standard Recommended Decision Cost Analysis, Table 13, p. 5 (June 3, 2004), but see NYSPSC, New York Renewable Portfolio Standard Cost Study Report II, Volume A, p. 2 (February 27, 2004) (RPS bill impacts for industrial electricity consumers could range as high as approximately 4.2%). And, the ADR program is projected to increase electricity costs on a state-wide average basis by 5.4%, with a consequential loss of 4,020 to 5,920 jobs. NYSDEC, 6 NYCRR Parts 237 and 238, Consolidated Regulatory Impact Statement, pp. 21-22, 23 (2003); NYSDEC, 6 NYCRR Parts 237-38, Consolidated Jobs Impact Statement, p. 20 (2003).

If implemented, RGGI will further exacerbate the competitive disadvantage that large end-use electric consumers in the RGGI states already face. During the course of developing the Draft Model Rule, economic modeling was conducted under two “scenarios” to determine the economic consequences of implementing the Model Rule: (a) the “standard reference run,” which is based on current projections regarding construction of new, (comparatively) low-emissions generation sources in the RGGI region; and (b) the “high-emissions reference run”, which is based on the assumption that 11,500 megawatts of new coal-fired electric generating capacity will be constructed in the RGGI region.²

The standard reference run model concluded that, absent federal implementation of a greenhouse gas emissions policy, implementing the Draft Model Rule would increase commercial and industrial electric costs by 0.5% to 1%. However, if a federal greenhouse gas emissions policy is implemented (which, significantly, is one of the stated goals for the RGGI program), electricity costs for commercial and electric consumers would increase by approximately 4.5% to 9%. Economic Development Research Group, REMI Impacts for RGGI Policies, pp. 4-5, (November 17, 2005), available at http://www.rggi.org/docs/remi_stakeholder_presentation_11_17_05-final.ppt.

Moreover, the high-emissions reference run model concluded that, absent a federal greenhouse gas emissions policy, implementing RGGI would increase commercial and industrial electricity costs from approximately 2% to 4%. However, if a federal

² Additional modeling was run under a “2-times present energy efficiency spending” scenario. Multiple Intervenors considers the factual assumptions that underlie this model run (i.e., that the RGGI states will double present ratepayer-funded spending on energy efficiency and that, as a result, significant increases in energy efficiency will be realized) to be too speculative to warrant further analysis. Accordingly, Multiple Intervenors does not address the 2x EE model run in these Comments.

greenhouse gas emissions policy is implemented, implementing RGGI would drive up commercial and industrial electricity costs by approximately 4% to 7%. Economic Development Research Group, REMI Impacts for RGGI Policies, pp. 4-5.

There is reason to believe that the economic impacts of implementing the Draft Model Rule may be understated. For example, the standard reference run economic model was premised on natural gas prices of approximately 2003\$5.00/MMBTu. See http://www.rggi.org/docs/ipm_docs_reference_case.xls. Similarly, the RGGI high-emissions reference run was premised on assumed natural gas prices of 2003\$7.00/MMBTu. See http://www.rggi.org/docs/ipm_docs_high_e-missions.xls. Recent developments in volatile short and long term gas markets render these gas price assumptions highly questionable and, as a result, the economic modeling results could be skewed significantly.³

Finally, there is the question of whether the RGGI economic model accurately reflects the true costs of implementing RGGI. For example, one document alleges that “policies to deliver meaningful end-use energy efficiency measures (both through RGGI and due to other state energy efficiency policies) are effective in sufficiently reducing total electricity usage by households so as to overcome the price increase impact of RGGI – resulting in a new reduction in expenditures on average across households.” RGGI Staff, RGGI Region Projected Household Bill Impacts, p. 1, available at http://www.rggi.org/docs/rggi_household_bill_impacts12_12_05.ppt. However, closer examination suggests that many of the alleged energy efficiency gains described in this

³ Moreover, the high-emissions reference run also was premised on the assumption that 11,500 mW of new coal-fired electric generating capacity would be constructed in the northeastern United States; an assumption that even RGGI Staff seemingly agree “represents an unlikely outcome.” RGGI Staff, RGGI, Frequently Asked Questions, p. 7, fn. 1 (March 23, 2006), available at http://www.rggi.org/docs/faqs_at_draft_mr_re-lease.pdf.

document do not derive from implementing RGGI but, instead, derive from existing or pending non-RGGI governmental programs and initiatives – all of which suggests that benefits from other programs are being counted as reductions to the costs of implementing RGGI. Moreover, many the remaining energy efficiency gains are premised entirely on speculation – both that additional funding for energy efficiency programs will be available and will result in actual net reductions of energy consumption by affected end-users. Id.

Multiple Intervenors is aware of still other claims that the RGGI modeling demonstrates that, under certain scenarios, there would be little or no economic impact on the RGGI states. However, the economic impacts outlined above are hardly immaterial.⁴ Moreover, neither the factual assumptions that underlie the RGGI modeling, nor the application of the economic modeling formulas to such assumptions, have been subjected to credible rigorous review by an independent entity. Given the potential dramatic adverse impact on economic development the RGGI states, at a minimum, the economic modeling and conclusions that underlie the current Draft Model Rule should be subjected to a rigorous independent review before the RGGI states accept any modeling results suggesting that economic impacts would be minimal.

In light of the above, it is clear that the Draft Model Rule will have significant, adverse economic impact on the RGGI states. Indeed, the above analysis suggests that the RGGI economic model results may significantly understate the true economic impacts of implementing the Draft Model Rule. Under these circumstances, the Draft Model Rule

⁴ As noted earlier, and by way of comparison, when it implemented the ADR program, the NYSDEC conducted modeling to determine the consequences of the projected ADR program-driven state-wide average electric rate increase of 5.4%, concluding that the consequence would be the loss of between 4,070 and 5,920 jobs in New York.

should not proceed at this time. At a minimum, the economic modeling conducted as part of developing the Draft Model Rule should be redone or at least subjected to rigorous independent review before a decision is made to implement the Draft Model Rule.

2. Implementing The Draft Model Rule Will Not Reduce Carbon-Dioxide Levels In The RGGI States

One of the primary justifications for implementing the Draft Model Rule is the premise that implementing the rule would control carbon-dioxide emissions, and thereby serve to address global climate change issues. See RGGI Memorandum of Understanding, p. 2, available at http://www.rggi.org/docs/mou_12_20_05.pdf. Reduction of carbon-dioxide emissions is a laudable goal. However, there is no direct link between the implementation of the Draft Model Rule and a corresponding direct effect on global climate change, or even climate change within the RGGI states.

It is generally recognized that carbon-dioxide emissions disperse worldwide within mere days after release. Thus, cutting emissions of carbon-dioxide gas in the RGGI region will not necessarily result in reductions in the levels of carbon-dioxide gas in the atmospheres of the respective RGGI states, or anywhere else. And, even if, arguendo, the RGGI states implement the Draft Model Rule and thereby reduce emissions of carbon-dioxide within the RGGI region, emissions of carbon-dioxide gas emissions from other states, or other countries such as China and India, or other regions such as South America, still will disperse worldwide within days of release. Thus, despite RGGI, carbon-dioxide levels in the RGGI states' ambient atmospheres could continue to increase absent a concerted federal, and even worldwide effort to implement effective controls on carbon-dioxide or other greenhouse gas emissions. These considerations suggest that implementation of the

Draft Model Rule is not likely to reduce overall levels of carbon-dioxide gas in the RGGI states' atmospheres.

To summarize Multiple Intervenors' concerns, implementing the Draft Model Rule will drive up electricity costs for the end-use electric consumers in the RGGI states. The impact of these price increases could result in job losses and further economic retreat for the RGGI states vis-à-vis the rest of the country and the world. Furthermore, while implementing the Draft Model Rule seemingly would reduce carbon-dioxide emissions in the RGGI states, to date, no one has established that there would be a corresponding reduction, or any reduction, in the level of carbon-dioxide in the ambient atmosphere affecting the RGGI states.

All of which is to say that the cost of implementing the Draft Model Rule drastically exceeds any direct environmental benefits that may flow to the electric consumers that must bear the costs. And, in light of this clear mismatch of costs versus benefits, Multiple Intervenors respectfully submits that the RGGI Draft Model Rule should not be implemented at this time. Rather, the issues associated with greenhouse gas emissions should be addressed at the national, or even global, level.

B. If The Model Rule Is Implemented, Then Costs To End-Use Consumers Should Be Mitigated To The Maximum Extent Possible

Assuming, arguendo, that some or all of the RGGI states proceed to implement the Draft Model Rule, or a similar rule, and given that electric consumers in the RGGI states will bear all of the economic impacts of implementing the Rule, Multiple Intervenors respectfully submits that the costs of implementing the Draft Model Rule to the end-use

electric consumers should be mitigated to the maximum extent possible. Further, Multiple Intervenors submits that the best means for mitigating the cost impacts to electric end-use consumers would be for each RGGI state to auction all of the RGGI emissions allowances and to apply all of the proceeds from such auctions as a direct per-kWh credit to retail electric distribution rates. In addition, the other mitigation measures described herein should be applied.

1. All RGGI Emissions Allowances Should Be Auctioned
And The Proceeds Should Be Applied As A Per-kWh
Credit To Retail Electric Distribution Rates

The RGGI Memorandum of Understanding (“MOU”) and the Draft Model Rule each call for 25% of the RGGI emissions allocations to be for “consumer benefit or strategic energy purposes,” which are defined as programs that: (a) promote energy efficiency; (b) directly mitigate electricity ratepayer impacts; (c) generate renewable or non-carbon-emitting energy technologies; (d) stimulate or reward investment in the development of innovative carbon emissions abatement technologies; and/or (e) fund administration of the RGGI program. RGGI Memorandum of Understanding, ¶ 2(G)(1); Draft Model Rule, § 5.3(a). However, the “consumer benefit” and “strategic energy purpose” programs can be classified into two groups: (a) programs that apply any proceeds from implementing the Draft Model Rule directly to electric rate relief; and (b) programs that apply any proceeds from implementing the Draft Model Rule as funding for new public policy initiatives.

Initially, Multiple Intervenors does not agree that only 25 percent of allocations should be used to benefit consumers. Given the likely significant economic and competitive harm to consumers in the RGGI states identified in Section A of these

Comments, it is imperative that all available steps be taken to mitigate the costs of implementing the Draft Model Rule. The best, and fairest, way to mitigate the economic harm to consumers in the RGGI states is to auction all of the RGGI emissions allocations, and apply all of the auction proceeds as a per-kWh credit to retail electric distribution rates.

Auctioning all of the RGGI emissions allowances for the direct benefit of consumers in the RGGI states and applying the auction proceeds as a per-kWh credit to retail electric distribution will ensure that the impacts of RGGI implementation on the customers that bear the costs of RGGI will be mitigated to the maximum extent possible. Consumers in the affected RGGI states already are struggling to pay electric bills that are far greater than similarly-situated consumers elsewhere in the nation and the world. If RGGI is implemented, the costs for energy consumers in the RGGI states will increase even further. However, auctioning the RGGI emissions allowances and utilizing the auction proceeds to provide direct per-kWh credits to those consumers will offset the increased costs that energy consumers surely will pay. To the extent necessary, the RGGI states should amend the RGGI MOU to describe a process for developing a regulatory program that can direct all auction proceeds to consumers as a per-kWh credit through the retail electric distribution rates of the regulated electric distribution utilities.

Multiple Intervenors does not believe that financial proceeds realized as a consequence of implementing the Draft Model Rule should be used to fund new spending for energy efficiency or environmental programs. As explained supra, electricity consumers in the RGGI region already fund numerous energy efficiency and environmental benefit programs. In addition, many other energy efficiency and environmental initiatives exist, or are pending, as a result of separate state and federal programs. For example, RGGI Staff

describe appliance and equipment energy efficiency standards as having been enacted recently in New York, New Jersey, Connecticut, Massachusetts and Rhode Island. RGGI Staff, RGGI Region Project Household Bill Impacts, p. 1. RGGI Staff also note that improved building codes recently have been enacted or are pending in Delaware, Maine, New Jersey, New York and Vermont. Id.

In light of these initiatives, as well as the numerous energy efficiency and renewables programs that are funded through electric rates (e.g., New York’s SBC, RPS and ADR programs), it is reasonable to conclude that the individual and collective RGGI states devote extensive resources to energy efficiency issues. And, there is no evidence that additional funding of similar initiatives is needed, or that it will result in meaningful consumer benefits. Moreover, diverting any proceeds that may be realized from auctioning the RGGI emissions allowances from electric consumer rate relief in order to fund additional spending on energy efficiency and renewables programs would deprive consumers of an effective offset to the increased costs of RGGI implementation. The bottom line is that because end-use electric consumers in the RGGI states must bear the costs to implement the Draft Model Rule, all proceeds that result from the RGGI emissions allowances auctions should be applied directly to mitigate retail electric rates for consumers.

2. If Implemented, The Draft Model Rule Must Energy Flows And Thereby Drive Up Energy Costs

The RGGI region covers all or parts of three separate, but adjoining, electric energy markets: (a) all of the NYISO control area; (b) part of the PJM Interconnection, LLC (“PJM”) control area; and (c) part of the ISO New England, Inc. (“ISO-NE”) control area. Moreover, the three energy markets are not isolated from adjoining markets. Specifically,

additional energy markets lie to the north, west, and south of the NYISO, PJM and ISO-NE control areas.

Each the NYISO, ISO-NE and PJM energy markets, is responsible for scheduling and operating the bulk electric transmission system within its respective control area. However, physical, operational and legal constraints, which often are described as “seams issues,” limit the free flow of electricity between the NYISO, PJM, and ISO-NE markets. Moreover, similar seams issues exist with respect to the energy markets that border the NYISO, PJM and ISO-NE control areas. Given that seams issues amount to limitations on the free exchange of electric energy between the markets, where a seams issue exists, there is an actual or potential constraint on electricity supply. And, there is a direct relationship between a seams issue-based constraint on electricity capacity or supply and increased electric capacity and energy costs for end-use consumers.

The Draft Model Rule should be implemented, if at all, in a manner that will not further exacerbate seams issues or cause electricity reliability problems. Specifically, the Draft Model Rule, or any following implementation thereof, should not seek to resolve the so-called “imports and leakage” issue (see RGGI Memorandum of Understanding ¶ 6(A)) in a manner that exacerbates existing seams issues or creates new seams issues. In particular, the RGGI states should not try to solve the “imports and leakage” issue by adopting a “RGGI-compliant portfolio standard” that would require that retail electric energy sales in the RGGI states achieve prescribed levels of RGGI-compliant energy.

A RGGI-compliant portfolio standard would further balkanize regions within the PJM and ISO-NE markets because not all of the states that lie within the geographic borders of these markets have joined the RGGI program. Given that the RGGI states’

political boundaries do not match the NYISO, ISO-NE and PJM control area boundaries, applying a RGGI-compliant portfolio approach would amount to moving RGGI-compliant power through splintered PJM and ISO-NE markets, with the likely result that electric consumers in the RGGI states could face higher electric costs and reduced electric reliability. Given these considerations, Multiple Intervenors respectfully submits that the RGGI Staff working group that is addressing the “leakage and imports” issue should reject adoption of a RGGI-compliant portfolio standard or any similar approach to the problem.

C. If The Model Rule Is Implemented, Then The Following Issues Must Be Addressed

Multiple Intervenors position is that the Draft Model Rule must be harmonized with the RGGI states’ respective distributed generation programs. Moreover, the RGGI program should terminate automatically if the comprehensive review of the program that currently is planned for 2012 establishes that a comparable federal program has been implemented or that implementing the Draft Model Rule has externalized carbon-dioxide emissions into non-RGGI states. In addition, the RGGI states’ respective obligations to fund the regional organization described in the RGGI MOU should be clarified and limited. Finally, certain elements of the Draft Model Rule should be amended as described herein.

1. The Draft Model Rule Should Be Harmonized With The RGGI States’ Respective Distributed Generation And Other Energy Programs

Section 1.4(b) of the Draft Model Rule describes an “optional” partial exemption for units that serve electric generators that are larger than 24 mW and that are willing to accept air emissions permits that limit electric energy sales to less than or equal to

10% of the affected generator's annual gross generation. Multiple Intervenors understands this provision as affording affected industrial end-users with the opportunity to sell excess electric generation into the markets without thereby triggering significantly burdensome air emissions program requirements, which presumably benefits not only the industrial end-user but, in certain circumstances, could benefit all electric end users by making critical energy, capacity or ancillary services available to the grid.

However, Multiple Intervenors believes that Section 1.4(b) should be amended in a manner that would harmonize the Draft Model Rule with the various RGGI states' distributed generation policies. First, the rule should be amended to be consistent with the similar federal "Title IV" "behind the meter" exemption. Specifically, the calculation of the limitation on energy sales should be based on the electricity generator's net nameplate capacity, not the generator's annual gross generation. Moreover, the limitation on electric sales into the grid should be increased from equal to or less than 10% of the electricity generator's net annual mWh output capacity to the lesser of: (a) equal to or less than one-third of net annual mWh output capacity; or (b) 219,000 mWh. Furthermore, sources that limit energy sales to one-third or less of their affected electricity generator's net annual mWh output capacity should be exempted fully and automatically from the Draft Model Rule and/or the RGGI program, without further requirement to apply for the exemption and without further compliance obligations. See 40 C.F.R. § 72.6(a)(3), incorporating by reference 40 C.F.R. § 72.6(b)(ii).

In addition, Multiple Intervenors submits that the Draft Model Rule should be harmonized with the RGGI states' oversight of electric utilities programs. For example, New York statutes provide for significantly reduced regulatory structure for generators with

nameplate capacities of less than 80 mW. See e.g., N.Y. Pub. Serv. L., §§ 2-a through 2-c (definitions of co-generation, alternate energy production, and small hydro facilities). Given that New York’s Public Service Law fixes the point of differentiation for electricity generators at 80 mW, New York should draft its version of the RGGI regulations to provide that electricity generators of less than 80 mW nameplate capacity qualify for the “behind the meter exemption” described in Section 1.4(b) of the Draft Model Rule. Moreover, to the extent that other RGGI states apply electric generating capacity thresholds for purposes of determining the scope of electric utilities regulatory programs, these states also should draft their state-specific RGGI programs to provide the same generation capacity threshold for the “behind the meter” exemption to the RGGI program.

2. The RGGI Program, And All RGGI Regulations, Should Terminate Under Certain Circumstances

The RGGI MOU establishes a comprehensive review process and sets 2012 as the deadline for the review. RGGI Memorandum of Understanding ¶ 6(D). However, the memorandum does not describe action to be taken in the event that the review establishes that certain goals have, or have not, been met. Moreover, the MOU provides that, if the RGGI states determine that implementation of the Draft Model Rule has resulted in significant air emissions increases from electric generators outside of the RGGI states, the RGGI states are to implement unspecified “appropriate measures to mitigate such emissions.” Id. ¶ 6(A)(6). As explained herein, Multiple Intervenors respectfully submits that the RGGI program, including all implementing statutes and regulations in the respective RGGI states, should terminate under certain circumstances.

The RGGI program should terminate automatically if the 2012 review, or any other review, determines that a comparable federal program has been implemented. One of the principal reasons for implementing the Draft Model Rule is to encourage the federal government to establish a regulatory approach to greenhouse gas emissions. However, while the RGGI MOU provides that if a “comparable” federal program is established, the RGGI states will transition into the federal program, there is no express statement that at the conclusion of such transition the RGGI program will terminate. See RGGI Memorandum of Understanding ¶ 6(C). In order to resolve any potential ambiguity or confusion that may arise if and when such a comparable federal program is established, the RGGI states should agree that the RGGI program will terminate automatically, either in its entirety or after a period of transition into the federal program.

Further, the RGGI program should terminate if the 2012 review, or any subsequent review, establishes that one result of implementing the Draft Model Rule, or other rules under the RGGI program, is that carbon-dioxide emissions from electricity generators in non-RGGI states or regions have increased significantly. See RGGI Memorandum of Understanding, ¶ 6(A)(5). One of the cardinal principles of environmental regulation is that implementing a new regulation or program must not result in “externalizing” costs from the entity or region that is newly subject to the regulation to an entity or region that is not subject to the regulation. See e.g., Platter, Environmental Law and Policy, p. 37 (West, 2d ed. 1998). Accordingly, in the event that 2012 review, or any other program review, establishes that implementation of the Draft Model Rule has resulted in increased carbon-dioxide emissions in non-RGGI states or regions, then the RGGI program, and all implementing state statutes and regulations, should terminate.

3. The RGGI States' Obligations To Fund The Regional Organization Described In The RGGI MOU Should Be Clarified And Limited

Article 4 of the RGGI MOU establishes a regional organization for the purpose of providing technical assistance to the RGGI states. In addition, the MOU provides that the RGGI states are to fund the regional organization. However, the scope and means of the funding obligation is not explained. Multiple Intervenors respectfully submits that the RGGI states should limit the scope of their respective funding obligations for the regional organization and, moreover, that the RGGI states should clarify that the regional organization shall not be funded from proceeds derived from any auction of RGGI emissions allocations.

The RGGI states should limit the scope of their respective funding obligations for the regional organization in such a manner to ensure that the organization is operated with maximum efficiency. As noted, supra, energy consumers in the RGGI states can ill afford any spending that could add to their cost of electricity. Multiple Intervenors submits that the RGGI states should protect their electric consumers by limiting their respective funding obligations for the regional organization described in the RGGI MOU.

One means of capping the funding obligation for the regional organization would be to make funds available only from each state's general budget or tax revenues. In this manner, funding requests for the regional organization would be subject to the review and scrutiny of the respective RGGI states' legislatures, thereby furnishing a powerful incentive to limit costs and expenses only to those that are easily demonstrated to be absolutely necessary for the continued effective implementation of the Draft Model Rule. And, for the reasons already cited, under no circumstances should proceeds from auctions of

RGGI emissions allowances be diverted from direct rate relief to end-use electric consumers to pay for the regional organization.

4. The Draft Model Rule Should Be Amended As Provided
Herein

Multiple Intervenors is aware that significant resources and time were applied to develop the Draft Model Rule. However, the two amendments described herein should clarify the scope and operation of the RGGI program.

Initially, Multiple Intervenors respectfully submits that a new term should be added to the “definitions” section of the Draft Model Rule. Specifically, given that the Rule applies only to units that serve certain “electricity generators” (see Draft Model Rule §1.4), Multiple Intervenors submits that a term “electricity generator” should be added to the rule, and that the term be defined as “a unit that produces electricity.” Assuming that this suggested addition is accepted, the existing definition of “gross generation” would need to be amended to reference an “electricity generator” as opposed to the current reference to an (undefined) “generator.”

Next, Multiple Intervenors submits that Section 5.3 should be amended to limit allocations of “CO₂ allowances” to a regulatory agency or entity. There should be no other initial allocations to any other parties (although any person would remain free to purchase CO₂ allowances through the emissions credits auctions, in any secondary markets or trading programs).

V.

CONCLUSION

Based on the foregoing, Multiple Intervenors respectfully submits that the RGGI states should not implement the Draft Model Rule at this time. However, if, arguendo, the Draft Model Rule is implemented, it should be amended and implemented only as described herein.

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