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Gavin J. Donohue, *President &
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December 3, 2010

Mr. Jonathan Schrag
Executive Director of RGGI, Inc.
Regional Greenhouse Gas Initiative, Inc.
90 Church Street, 4th Floor
New York, NY 10007

Dear Mr. Schrag:

The Independent Power Producers of New York, Inc. (IPPNY) is a not-for-profit trade association representing the independent power industry in New York State. IPPNY and its members participated actively in the development of the Regional Greenhouse Gas Initiative (RGGI), at both the regional and New York State levels.

IPPNY's members are companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. The companies generate almost 75 percent of New York's electricity using a wide variety of generating technologies and fuels, such as hydro, nuclear, wind, coal, oil, natural gas, energy-from-waste, and biomass. All of the views expressed in IPPNY's comments do not necessarily represent the positions of each of our members. Since IPPNY represents a broad spectrum of companies, we anticipate some of our members also may submit comments on their own. In addition, nothing in these comments should be deemed to waive any rights that IPPNY or any of its members may have to challenge the procedural or substantive legality of the RGGI program, any variation of the existing program, or any element thereof.

At the September 13, 2010 RGGI regional stakeholder meeting, the RGGI Participating States began preparing to support the 2012 program review called for in the RGGI Memorandum of Understanding (MOU). At the November 12, 2010 RGGI stakeholder meeting, RGGI, Inc. requested feedback on additional program parameters that should be considered by the review. This letter provides IPPNY's comments on the scope and nature of the 2012 review and accompanies our other letter (to which these comments are attached) on the matters discussed directly at the November 12, 2010 meeting.

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As the MOU specifies, the program review will be a comprehensive evaluation of all components of the program, including but not limited to, program success, program impacts, additional reductions, imports and emissions leakage, and offsets. Additionally, the MOU states that the 2012 review will assess whether the program has been successful in meeting its goals. According to a document adopted by the RGGI State Commissioners on September 29, 2003, the goal of the RGGI program was to develop a multi-state cap and trade program covering greenhouse gas emissions. The program initially was aimed at developing a program to reduce carbon dioxide (CO₂) emissions from power plants in the participating states, while maintaining energy affordability and reliability and accommodating, to the extent feasible, the diversity in policies and programs in individual states. After the cap and trade program for power plants was implemented, the states could consider expanding the program to other kinds of sources.

1. Maintaining Energy Affordability

The MOU states that the 2012 review will assess the impacts of the program as to price.

A. No Increase to Minimum Reserve Price

IPPNY is strongly opposed to the RGGI states taking any steps to increase the minimum reserve price of \$1.86 per ton for the RGGI allowance auction. As discussed below, wholesale electricity prices, which are the source of revenues for owners of generating facilities, are at a ten year low, and independent power producers have a reduced ability to afford artificial increases to allowance prices.

B. Low Wholesale Electricity Prices

According to the modeling that was the basis of the RGGI program, firm power prices (2003\$/MWh) under the RGGI program overall were projected to range from \$75.5 in 2006 to \$63.7 in 2009 to \$61.5 in 2012.

According to the March 11, 2010 press release of the New York Independent System Operator (NYISO), the average annual price of wholesale electric energy in the state was \$48.63 per megawatt-hour (MWh) in 2009. The 2009 average was below the previous low of \$49.90 per MWh set in 2002 and 49 percent below the 2008 average of \$95.31 per MWh. The declining wholesale electricity energy prices in 2009 largely were attributable to reduced power consumption and reductions in the cost of natural gas, which is used to fuel a significant portion of New York State's electricity supply.

C. Impact of the Recession

As a paper discussed at the November 12 meeting indicates, the recession has led to declined economic activity, associated reduced energy demand and correspondingly lower allowance prices.

D. Allowance Market to Determine Allowance Prices

Given that CO₂ price signal mechanisms (through the allowance market and the allowance auctions to date) have been established, the allowance market now should determine allowance prices. According to the November 23, 2010 issue of *Megawatt Daily*, RGGI carbon allowance

futures were \$1.9 per allowance on October 11, 2010. This market price is similar to recent allowances auction prices of \$1.86 per ton.

According to the modeling results that are the basis for the RGGI program, CO₂ allowance prices were predicted to be about \$2 per ton in 2009 through 2012, and prices were modeled to rise to \$3 per ton in 2015. Since the allowance auction process began in 2008, allowance auction prices peaked at \$3.51 per ton in the third auction and have declined steadily to \$1.86 per ton in the two most recent auctions.

E. Need Better Re-investment of Allowance Auction Proceeds

IPPNY is concerned that the RGGI states may become motivated to increase the amount of monies being generated from the auctions for the use of state programs, by artificially increasing the \$1.86 per ton minimum auction reserve price. Indeed, a main purpose of the auctions now is to raise money for state programs. As has been the case in New York, auction proceeds have been used for state financial budget deficit relief, a use not anticipated originally by the MOU. As of the September 8, 2010 allowance auction, New York has raised a total of more than \$265 million. \$90 million of this amount has been diverted for New York State Budget deficit reduction. According to a November 28, 2010 article in the *New York Times*, New Hampshire (\$3.1 million) and New Jersey (\$65 million) also have used RGGI monies for general spending purposes. Decisions regarding the use of RGGI monies should be made based upon the goal of reducing CO₂ emissions, while maintaining energy reliability and affordability, and not upon the needs of states to balance budgets. To the extent that the RGGI states intend to continue to use the RGGI auction to obtain funds for state programs, allowances should be distributed to RGGI affected sources at the flat price of \$1.86 per ton.

According to the RGGI Model Rule, the proceeds of the CO₂ allowance auctions are to be used to promote and implement programs for energy efficiency, direct mitigation of electricity ratepayer impacts, renewable or non-carbon emitting technologies, innovative carbon emissions abatement technologies with significant carbon reduction potential, and for reasonable administrative costs. However, the *Operating Plan for Investments in New York under the CO₂ Budget Trading Program and the CO₂ Allowance Auction Program*, adopted by the New York State Energy Research and Development Authority (NYSERDA) on June 21, 2010, proposes to provide only \$15 million over three years for renewable energy programs and a scant \$9 million over the same period for the development of carbon capture and sequestration technology, even though the Operating Plan assumes that approximately \$446.2 million in auction proceeds are to be received from the sale of New York's CO₂ allowances at the regional RGGI auctions during the December 2008 through March 2012 timeframe. Furthermore, New York State has refused to provide any funding for non-carbon emitting technologies, which were understood during the development of the RGGI program at the regional level to include nuclear energy activities.

F. Higher New York State Taxes and Fees

Since 2000, competitive markets in New York have contributed to an 18 percent reduction in fuel-adjusted wholesale power costs; however, the impact of the savings from market efficiencies has been diminished by rising taxes, fees and assessments on electricity. New York's power industry, in total, paid an estimated \$6.367 billion in state and local taxes, assessments and fees in 2009.

The policy documents of New York's upcoming governor state that he will freeze taxes and veto tax increases. Press accounts have reported that the new governor will not support increased taxes or fees and understands the need for a positive business climate with regulatory certainty. Consistent with the intentions of New York's next Administration, IPPNY urges the RGGI states to avoid escalating RGGI compliance burdens, such as any increase to the allowance auction reserve price, as these extra costs would amount to increased taxes and fees. The use of RGGI allowance auction revenues for general state spending purposes by New York, New Hampshire, and New Jersey established the precedent that the allowance auction is a mechanism for the collection of revenues for the state treasuries, among other purposes.

Indeed, taxes and fees on New York's energy industry are taxes and fees on New York's energy consumers. Although all costs incurred by generators cannot be recovered from the electricity marketplace, generators are forced to pass some burdens onto consumers, as taxes, combined with charges from ever expanding environmental and other regulations, drive up the cost of operations. Any increased costs on energy production translate into increased costs for energy consumers, which cannot be borne during these trying financial times and when the state is seeking to improve its economic vitality and stabilize energy prices. Taxes and fees also exacerbate competitive disadvantages faced by the affected companies and the consumers who use the electricity produced. The financial impact especially is harmful, when coupled with the large costs that already result from other existing requirements, and many of these mandates already have associated fees, which were raised substantially during last year's New York State budget process.

Importantly, for the independent power producer sector, generators already pay annual taxes of over \$600 million and invest more than \$50 million in their communities. An important lesson to be learned from the current state economic environment is that state and local governments depend on the tax revenues and jobs created by the private sector. Increased taxes and fees have a chilling effect on future investment, and policies put forth by the state during these critical financial times will determine, in large part, if needed investments can continue.

2. Reducing Power Plant Emissions

The MOU states that the 2012 review will consider whether additional reductions after 2018 should be implemented. In light of all of the activities described below by New York State and the Federal Government, are more emission reduction efforts through RGGI really necessary, in advance of other Federal actions and especially without the availability of carbon capture and sequestration in a commercially cost-effective manner?

New York and the rest of the nation are experiencing an economic downturn that has contributed to the reduced operation of generating facilities and a lower demand for CO₂ allowances. Adjustments to the RGGI cap would be premature during this temporary period, as the economy begins to recover its vitality and experiences growth and as undue burdens should not be placed on RGGI states during the economic recovery. However, to the extent that New York's Climate Action Plan, as discussed below, may require additional reductions for electric generating facilities and other sectors, those emission reductions should not be implemented on a New York State-only basis.

A. The Ongoing and Pressing Need to Demonstrate Carbon Capture and Sequestration in New York

Before the RGGI states seek to change the current program, the states should focus on developing technologies and processes that will avoid, abate, mitigate, capture and / or sequester CO₂ and other greenhouse gases in a viable and economic manner, especially in New York State. The ongoing success of the RGGI program depends on the development and implementation of this essential technology, in order to achieve major CO₂ emission reductions. The development of this technology also is essential for compliance with the Climate Action Plan as required by Governor Paterson's Executive Order #24. The successful development and implementation of carbon capture and sequestration technology represents the next major step in addressing climate change. This action also would help the states meet their own energy needs using diversified and domestic fuels. Additionally, economic development would be spurred, stimulating significant private-sector investment, driving technology and innovation, and creating high technology jobs. Furthermore, the states would improve their energy security and reduce energy price volatility. In particular, New York State's businesses that pioneer this technology then could export it throughout the world, as other states and developing nations seek to power their economies using abundant and economical fuel supplies and, at the same time, limiting CO₂ emissions.

B. Benefits of Competitive Wholesale Electricity Markets

According to the NYISO, New York's competitive wholesale electricity markets have encouraged improvements in power plant efficiency, which has contributed to significant reductions in greenhouse gas emission rates over the past decade. The efficiencies spurred by New York's electricity markets have combined with air quality regulations and carbon control programs, such as the RGGI program, to produce significant reductions in power plant emissions.

The emission rates of New York State's electricity generation fleet rank among the lowest in the continental United States. Based upon data from the United States Environmental Protection Agency (EPA), the rate of power plant emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x) and CO₂ sharply declined between 1999 and 2009 in New York State. SO₂ rates have seen the most dramatic decrease, dropping 82 percent over the 10-year period, while CO₂ rates have been reduced by 31 percent and NO_x rates have been lowered by 62 percent.

The emission reductions have occurred, as over 8,000 megawatts (MW) of new, more-efficient, less-emitting generation has come into service in New York State. Nearly 1,300 MW of the new power capacity is emission-free electricity generated by wind power projects. The system-wide "heat rate" for fossil-fueled power plants in New York State also has declined by 25 percent in the past decade.

C. Power Plant Emission Requirements Adopted by New York State Since RGGI

The New York State Department of Environmental Conservation (DEC) has promulgated its version of the federal Clean Air Interstate Rule to reduce emissions of SO₂ and NO_x and intends to revise its regulations in the future to address the requirements of the EPA's Transport Rule. In order to control NO_x emissions further, the DEC recently has adopted its Best Available Retrofit Technology (BART) Determinations Rule and its Reasonably Available Control Technology for

the Control of Nitrogen Oxides (NO_x RACT) Rule. The DEC already promulgated its versions of the Clean Air Mercury Rule and the New Source Review Rule, both in a stricter manner than Federal requirements, and has policies in place to address fine particulate matter (PM 2.5), environmental justice, Greenhouse Emissions and the State Environmental Quality Review Act, and Climate Change and DEC Action.

In addition, Governor Paterson's Executive Order #24 established an ambitious goal to reduce greenhouse gas emissions in New York State by 80 percent below the levels emitted in 1990 by the year 2050. The order created a Climate Action Council, which has released for public comment an Interim Report on a draft Climate Action Plan.

Furthermore, the New York State Public Service Commission (PSC) and NYSERDA are implementing the Renewable Portfolio Standard to increase the use of renewable energy sources and the Energy Efficiency Portfolio Standard to reduce electricity consumption.

D. RGGI As a Model for a National Program

According to the RGGI Program Fact Sheet on the RGGI website, the RGGI program is intended to provide a model for a national program to reduce CO₂ emissions. Arguably, the RGGI program has accomplished this principle purpose, to the extent that it has spurred actions at the national level as described below. As other states outside the RGGI region take actions to reduce emissions, RGGI should work with those states to ensure a fluid market for allowances.

1) EPA's Greenhouse Gas Tailoring Rule

The EPA's Greenhouse Gas Tailoring Rule establishes a two-step process for implementing regulation of greenhouse gases under the Prevention of Significant Deterioration (PSD) and Title V programs. The first step, which will begin on January 2, 2011, limits the applicability of the PSD and Title V programs to sources that emit 75,000 tons per year (tpy) of carbon dioxide equivalent (CO₂e) or more and already are subject to PSD or Title V, based upon their level of non-greenhouse gas emissions. The second step, which will begin on July 2, 2011, applies the Title V and PSD programs to sources that emit 100,000 tpy of CO₂e, regardless of whether they would otherwise be regulated under the Clean Air Act.

Additionally, the EPA has proposed two measures related to facilitating state compliance with the EPA's Tailoring Rule. Notably, the EPA is proposing a rule to allow for a Federal Implementation Plan (FIP) to address circumstances in which states are unable to develop and submit revisions to State Implementation Plans (SIP) by January 2, 2011 or for some period of time beyond that date. According to the EPA, any source that requires a PSD permit for its greenhouse gases located in an area that is subject to this FIP would be issued a permit by EPA. The FIP would assure that PSD permitting for greenhouse gases can continue, until the state's required SIP revision is complete.

The DEC is in the process of initiating a rulemaking on the EPA's Greenhouse Gas Tailoring Rule, and IPPNY will be involved in that effort. Given that, due to required timelines, the DEC likely will not be able to complete a rulemaking before the end of this year, new and modified major sources (PSD and Title V GHG equivalent of 100/250 TPY thresholds) will be required to obtain a PSD and Title V permit, starting on Jan 2, 2011.

2) Congressional Activities

IPPNY strongly supports the development of a properly structured national greenhouse gas program. Various bills have been introduced in the Senate and in the U.S. House of Representatives. In part, the lack of a Federal law may be due to the inability of the U.S. Senate, U.S. House of Representatives, and the President to agree on a law. Additionally, it could be argued that the RGGI program contains components that are not translatable to the national level, such as the near 100 percent auction of allowances. Federal legislation, which has been described as “cap and tax,” not surprisingly, has a reduced chance of becoming law.

3. Maintaining Reliability

The MOU states that the 2012 review will assess the impacts of the program as to system reliability.

A. Peak Demand and Installed Reserve Margins (IRM)

The all-time system peak in New York State was set on August 2, 2006 at 33,939 MW. The standard for resource adequacy sets requirements for reserves over and above the amount needed to meet forecasted peak demand. In 2010, the standard required that 38,970 MW, 18 percent above the summer peak forecast, be available to serve New York.

The total capacity available for the state is roughly 43,000 MW, which includes 37,416 MW of existing in-state generation, the addition of 689 MW of new generating capacity, 2,251 MW of demand response resources (programs under which consumers reduce usage) and 2,645 MW of import capability that could be used to supply capacity from neighboring regions.

In the past decade, the resources available to serve New York’s electricity needs have expanded with the addition of more than 7,800 MW of new generation capacity, nearly 1,300 MW of new interstate transmission capability and over 2,200 MW of demand response.

B. 2010 NYISO Reliability Needs Assessment (RNA)

According to the NYISO’s 2010 RNA, New York State’s electric power resources (generation, transmission and demand-side programs) are expected to meet the state’s electricity reliability needs through 2020, assuming energy efficiency programs and planned resource additions proceed as anticipated and no significant facilities are retired from service.

However, as noted in our comments for Sensitivity Cases in response to the November 12, 2010 RGGI stakeholder meeting, the RNA also looked at several risk scenarios that adversely could impact electric system reliability. IPPNY urges the RGGI program review to take into account the possibility of these outcomes and plan to address their potential impact on the program.

4. Offsets

The MOU states that the 2012 review will evaluate the offsets component of the program, with attention to price, availability, and environmental integrity, and recommend whether changes to the program are warranted. According to the RGGI CO₂ Allowance Tracking System, no offset projects are mentioned in the public reports. The RGGI program review should evaluate the impact of allowance prices on the potential for offset project investment, as well as the

complexity of the offset project requirements in relation to the viability of offset project investments.

Additionally, the MOU states that the RGGI states will develop additional offset project categories and types. Throughout the development of the RGGI program, IPPNY has urged, and continues to emphasize, that among the offset project categories that should be added to the RGGI program are those for which protocols already exist. Specifically, the offset project category involving the reduction of methane emissions from natural gas transmission and distribution pipelines should be re-included as eligible, given that an approved methodology (United Nations Framework Convention on Climate Change - AM0023) is available. Also, offset projects that involve the avoidance of methane emissions by facilities that produce energy-from-waste should be eligible, given that accepted methodologies (United Nations Framework Convention on Climate Change - AM0025) are available. Additionally, the program should include as eligible offset projects that involve displaced CO₂ emissions from landfill gas (LFG) generation (renewable energy), given that recognition of this project type is consistent with the current voluntary carbon markets.

5. Imports and Emissions Leakage

The MOU states that the 2012 review will consider the effectiveness of any measures put in place to control emissions leakage. On April 1, 2008, the Emissions Leakage Staff Working Group forwarded to the RGGI Agency Heads a final report evaluating potential emissions leakage under the RGGI program and policy mechanisms available to mitigate potential emissions leakage.

IPPNY is not aware of any additional RGGI state efforts to monitor or mitigate any effects of leakage. RGGI, Inc. should provide a public update as to the amount of emissions leakage that has occurred or may occur in the future, as well as a reassessment of options that are available to address emission leakage.

Thank you for the opportunity to provide these comments. IPPNY urges you to incorporate our recommendations into the RGGI states' decision-making process on the 2012 RGGI program review. IPPNY appreciates your taking the time to review and act on our comments. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gavin J. Donohue", is written over a horizontal line. The signature is stylized and cursive.

Gavin J. Donohue
President & CEO

cc: Governor Paterson's Deputy Secretary for Energy Thomas Congdon
DEC Acting Commissioner Peter Iwanowicz
PSC Chairman Garry Brown
NYSERDA President Frank Murray