Independent Power Producers of New York, Inc. (IPPNY)

19 Dove Street, Suite 302
Albany, NY 12210
phone: 518-436-3749
fax: 518-436-0369
www.ippny.org
Gavin J. Donohue, *President & Chief Executive Officer*

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Via email to info@rggi.org

Nicole Singh
Acting Executive Director
Regional Greenhouse Gas Initiative, Inc.
90 Church Street, 4th Floor
New York, NY 10007

Dear Ms. Singh:

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 has submitted written comments[1] on each aspect of the 2012 RGGI program review process.

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 produce over 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.

Modeling of Indian Point

Currently, the RGGI Reference Case is modeling that Indian Point will discontinue its operations at the end of its license year. However, the owner of Indian Point, Entergy, filed in April of

[1] http://www.rggi.org/design/program_review/stakeholder_comments

2007 with the Federal Nuclear Regulatory Commission (NRC) to renew the operating licenses for Indian Point Units 2 and 3. As part of the comprehensive analysis done by the NRC, both units continue to undergo rigorous evaluation. The NRC issued its final safety report for Indian Point, stating that the facility is safe and can continue to operate for an additional 20 years. As a result, the Reference Case should be based on the continued operation of Indian Point.

Numerous recent studies by acclaimed and independent entities have found that Indian Point is vital to the region's power supply and environmental quality. According to the New York Independent System Operator's Reliability Needs Assessment, closing Indian Point would pose serious challenges to New York's statewide power system. Absent adequate replacement supplies, the power grid would not have sufficient resources to meet mandatory resource adequacy rules from 2016 through 2020.

Furthermore, the Reference Case modeling contains assumptions that are inconsistent with the core purpose of the RGGI program, i.e., reducing emissions. These assumptions are a complete reversal of the basic assumptions under which the RGGI program and its current emission cap first were established, i.e. that all existing nuclear electric generating facilities would continue operating. The Reference Case modeling now assumes that Indian Point's 2,000 megawatts of generation with virtually no air emissions would be replaced by new natural gas facilities and some renewable energy resources. Also, existing gas and coal units are projected to increase their operation to help cover the forgone power from Indian Point. More fossil generation that is projected to replace Indian Point leads to an increase in emissions in an area of the state that is already in non-attainment. Specifically, according to an August 2011 report commissioned by the City of New York's Department of Environmental Protection (DEP), New York would see approximately a 15 percent increase in carbon dioxide (CO_2) emissions under most conventional replacement scenarios, with roughly a 7 to 8 percent increase in nitrogen oxide emissions.

Also, the price of wholesale electricity will increase, if Indian Point retires, significantly increasing burdens for New Yorkers in the midst of tough economic times. According to the August 2011 report commissioned by the DEP, closing Indian Point would increase electricity costs for New York City residents, and consumers would pay between $2 billion and $3 billion in higher energy costs.

A Sensitivity Run to the Reference Case will review the possibility of Indian Point not retiring, in order to have a bookend on the range of potential impacts. However, if a theoretical retirement of Indian Point is to be modeled, the Reference Case must assume that Indian Point will continue to operate, and a Sensitivity Run should evaluate what may happen if the facility were to retire.

<u>Initial Goals of RGGI Accomplished</u>

The RGGI Memorandum of Understanding (MOU) states that the 2012 RGGI program 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 (GHG) emissions. The program initially was aimed at developing a program to reduce CO_2 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. This original goal of the first part of the RGGI program has been accomplished, given that emissions from electric generating facilities are below the RGGI emissions cap.

According to a RGGI Program Fact Sheet on RGGI's website, the RGGI program also is intended to provide a model for a national program to reduce CO_2 emissions. Arguably, the RGGI program has accomplished this purpose, as well, to the extent that it has spurred actions at the national level. The United States Environmental Protection Agency (EPA) has:

- Adopted the GHG Tailoring Rule, which has been in effect since January 1, 2011
- Adopted the GHG Reporting Rule, as of October 30, 2009
- Announced a settlement agreement under which the EPA will establish new source performance standards for new and modified electric generating facilities and emission guidelines for existing ones and that these requirements would be finalized in May of 2012

Also, the New York State Department of Environmental Conservation (DEC):

- Has adopted both the GHG Tailoring Rule and the GHG Reporting Rule
- Has adopted two DEC Commissioner Policies: (1) Greenhouse Gas Emissions and the State Environmental Quality Review Act and (2) Climate Change and DEC Action
- Is required, under the state's recently enacted Power NY Law, to promulgate by August 4, 2012 a CO_2 emission performance standard for new electric generating facilities

Given these regulatory developments at the Federal and state levels since the creation of the RGGI program, no lack of a regulatory structure exists for addressing GHG emissions separate from the RGGI program or a tightening of the RGGI emissions cap.

<u>RGGI Emissions Cap</u>

Confusion seems to exist among panelists that presented at the September 19 regional RGGI meeting and at the September 26 DEC-RGGI meeting about the binding nature of the RGGI emissions cap. The RGGI emissions cap is binding, and major penalties would be incurred if the cap were to be exceeded. The fact that emissions from electric generating facilities are below the cap does not mean that the cap is not binding; it just means that emissions are below the cap.

The fact that emissions from generating facilities are lower than the cap is an environmental benefit and not an outcome that warrants action to change the RGGI program. Making the cap stricter in tough economic times would send a double negative business signal – not only is the economy bad, but, also, the cost of compliance with the RGGI program is increasing.

So Called "Over-Allocation" of RGGI Allowances

Governor Cuomo is placing a high priority on improving the New York State economy. More economic activity usually means more electricity use and associated emissions. The seeming surplus of allowances likely is temporary, given the amount of emission reductions that are driven by the declining economy. If allowances are removed from the program prematurely, how likely is it that they will be re-added later to the program, if the economy improves, energy demand increases, fuel prices increase, and/or weather is more severe than normal? RGGI is only in its third program year; a lot has happened to reduce emissions over these three years, and much can happen to the operation of the program by 2018.

RGGI, Inc. is seeking guidance upon whether or not to create a strategic reserve of CO_2 allowances as a cost containment mechanism. The RGGI program provides that unsold allowances can be made available for sale in the next auction. Furthermore, the RGGI program allows unlimited banking of allowances. The idea of adding unused allowances at the end of each control period to this reserve would be preferable to allowance retirement.

Confusion also seems to exist among panelists that presented at the September 19 regional RGGI meeting about an over-allocation of allowances being a problem from a market perspective. Indeed, the following aspects of the RGGI allowance market have been successful: (1) allowance auctions are proceeding; (2) allowance trading has occurred; (3) the CO_2 allowance price has been established; and (4) allowance banking is permissible and is occurring. Presenters noted that RGGI allowance price signals are not driving the achievement of policy actions; however, the achievement of public policy goals is not a market issue.

The concern of RGGI program designers and administrators about an over-allocation of allowances seems to be that these allowances are not being sold in the allowance auction and that RGGI allowance revenues are not being increased. Although the RGGI program leaders claimed the revenue raising was not a chief element of the program when it first was established, revenue raising now seems to be the program's principle remaining purpose, given that power plant emissions have been reduced and Federal action has been spurred.

No Increase to Minimum Allowance Price

IPPNY strongly continues to urge the RGGI states NOT to increase the minimum reserve price. Electric generating companies that must purchase CO_2 allowances in the auction cannot afford another cost increase. These companies already face many burdens, such as those arising from the recent spot price of natural gas averaging \$3.772 per million Btu and from Installed Capacity payments of \$0.18 per kilowatt-month.

Importantly, a hallmark of Governor Cuomo's Administration is his opposition to increasing taxes and fees and his understanding of the need for a positive business climate. As a result, 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.

Price Collar

As recommended by our prior written comments[2], IPPNY supports a price collar but no increase to the minimum allowance sale price.

Expand RGGI to Other Sectors

The RGGI MOU also states that, after the cap and trade program for power plants is implemented, the states could consider expanding the program to other kinds of sources. IPPNY recommends that the 2012 program review focus upon expanding the RGGI program to other sectors, including translating RGGI program mechanics and the allowance auction mechanism to other sectors. This approach could be an interim step on the way to having the state's whole economy comply with New York's Executive Order #24 of 2009, which has set a goal to reduce GHG emissions in New York State by 80 percent below the levels emitted in 1990 by the year 2050.

Thank you for the opportunity to provide these comments. IPPNY urges you to incorporate our recommendations into the RGGI states' decision-making process. 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,

Radmila P. Miletich

Radmila P. Miletich
Legislative & Environmental
Policy Director

CC: Governor Cuomo's Deputy Secretary for Energy Thomas Congdon
DEC Commissioner Joe Martens
PSC Chairman Garry Brown
NYSERDA President Frank Murray

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[2] http://www.rggi.org/docs/IPPNY_Comments_Nov_12_RGGI_meeting.pdf