The Business Council

Darren Suarez
Director of Government Affairs

December 6, 2012

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

Dear Ms. Singh:

In response to RGGI, Inc.'s request for stakeholder input, please find enclosed comments by the Business Council of New York State (the "Business Council"). These comments address issues associated with the ongoing program review of the Regional Greenhouse Gas Initiative ("RGGI").

The Business Council is the leading business organization in New York State, representing the interests of more than 2,500 member businesses statewide. Our membership is composed primarily of electric power consumers, including more than 1,100 manufacturing firms. We also represent a number of businesses engaged in the generation of electric power within the state. The primary function of the Business Council is to serve as an advocate for its members in policy matters affecting economic development, jobs and the general business climate in the state.

The Business Council is concerned that the RGGI program review is coming to completion very shortly, limiting the real opportunity to provide meaningful and comprehensive input on significant policy changes The members of the Business Council are concerned that the micro-concentrated program review approach has not afforded stakeholders an ability to adequately assess the impacts of possible program changes. Even though RGGI has provided a draft Model Rule and modeling information, many central decisions about the program still have not been determined. Specifically, informing stakeholders about the chosen emissions cap would influence stakeholders' response regarding program changes and modifications being evaluated by the RGGI.

The Business Council will be following the attached comments with general comments that will focus on our concerns regarding cost of the program to consumers.

If you have any questions about our comments or would like to discuss them further, please contact me (518-465-7511, darren.suarez@bcnys.org).

Sincerely,

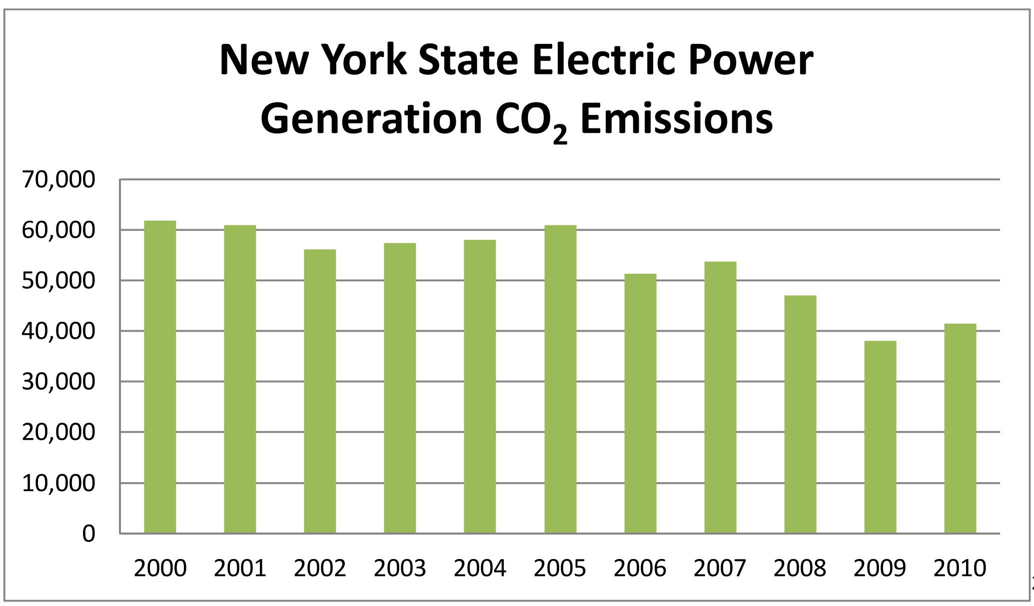
Darren Suarez
Director of Government Affairs
The Business Council of New York State

Enclosure

Overview

The Business Council of New York State does not support jurisdictionally imposed costs on firms that competitors in other localities do not have to similarly endure to address a matter of global concern. Proponents of a regional approach to greenhouse gas (GHG) reduction may try to question the Business Council's commitment to addressing global warming. Our comprehensive concerns about this program are rooted in the inefficiency of the program itself to address climate change, balanced with the price tag of the program.

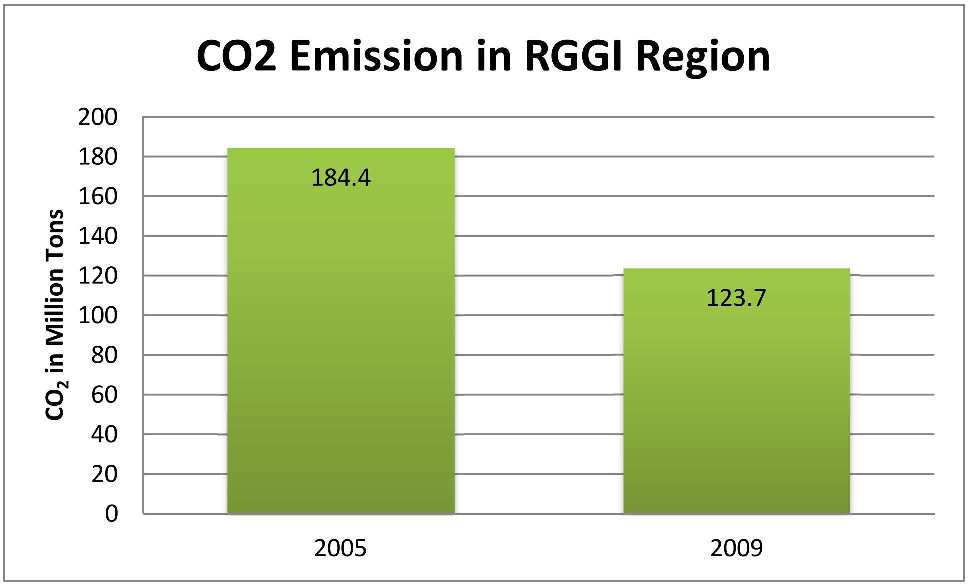
Many of the Business Council's members have committed significant resources to reducing or removing sources of the release of GHG. Additionally, many members of the Business Council have demanded "prompt enactment of national legislation in the United States to slow, stop and reverse the growth of greenhouse gas emissions over the shortest time reasonably achievable."[1] The Business Council agrees that human actions may contribute to climate change, but the Business Council will not embrace out of fear a myopic single-sector, approach to global matters. Clearly more efficient and effective solutions to addressing the release of GHG must be part of the discussion.



[2]

[1] USCAP "A Blueprint for Legislative Action" http://www.us-cap.org/PHPages/wp-content/uploads/2010/05/USCAP_Blueprint.pdf
[2] U.S. Energy Information Administration, State Energy Data System and EIA calculations made for this analysis.

Substantive and unpredicted reductions in carbon dioxide (CO_2) emissions outside of the RGGI market have led some to demand-related lowering of RGGI emissions below its current CO_2 cap. Between 2005 and 2009, CO_2 emissions in the RGGI region have declined from approximately 184.4 million tons to 123.7 million, or 33 percent.[3]



Furthermore, the IPM Reference Case, as updated in August 2012, projected emissions were significantly lower than previous modeling. Cumulatively emissions dropped about 17 percent from the previous Reference Case[4]. Disappointment that the RGGI program did not directly drive CO_2 reduction should not overshadow the significant CO_2 reduction realized in the past few years.

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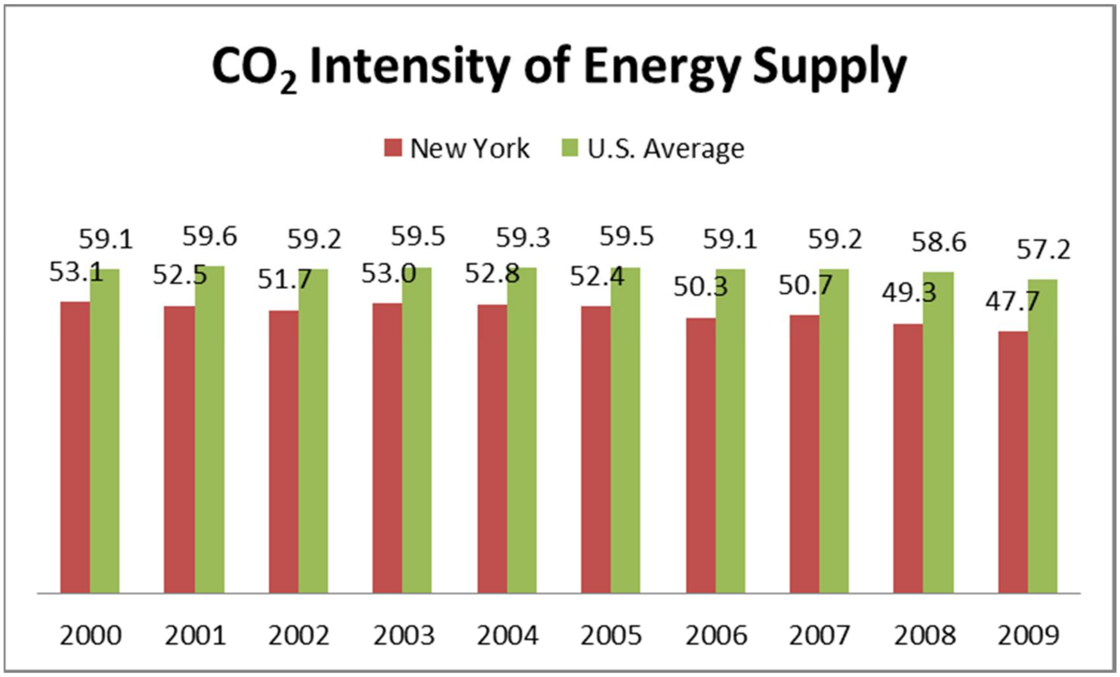
[3] NYSERDA "Relative Effects of Various Factors on RGGI Electricity Sector CO2 Emissions: 2009 Compared to 2005"

[4] http://www.rggi.org/docs//ProgramReview/November28/12_11_28_IPM_Presentation.pdf



Carbon intensity of the energy supply by demonstrates that the New York energy supply has become less CO_2 intensity in the past ten years, and the declines have outpaced the national decline in kilograms of energy-related CO2 per million Btu since 2000.[5]

The RGGI program was not a failure because it did not drive CO_2 reduction, in that the aim of the RGGI program was "to stabiliz(e) and then reduce CO2 emissions from the Signatory States, and implement a regional CO_2 emissions budget trading and allowance program."[6] The stated goals of the program have been meet. The goal of the program was not to establish a constrained allowance trading program.

The Business Council remains concerned that RGGI represents a program that is focused on the most expensive ways of mitigating climate change, rather than the cheapest, imposing high costs for little gain. Moreover, by concentrating on single-sector regional CO_2 production, and how to reduce it, the RGGI states have ignored the impact of continued consumer demand for goods made using carbon-intensive processes both domestically and abroad.

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[5] U.S. Energy Information Administration, State Energy Data System and EIA calculations made for this analysis.
[6] RGGI MOU

Until this point, the current RGGI program review has been focused upon the structural details of a CO_2 budget trading program while delaying decision-making on the more salient questions about the true public good provided (or not provided) by RGGI in the face of significant CO_2 reductions occurring outside of the RGGI market.

Public Participation

The Business Council appreciates the many opportunities for stakeholders to participate and comment upon on the Comprehensive Program Review. But, by delaying decision-making about the CO_2 cap adjustment until the end of the process, RGGI Inc. has denied participants the information needed to participate in the evaluation in a meaningful way. Specifically, it is impossible to determine the relative importance of design elements under consideration, including but not limited to offsets, control period and cost containment reserves, without first knowing the proposed cap adjustment.

The International Association for Public Participation ("IAP2") – is the preeminent international organization advancing the practice of public participation. IAP2 has developed "IAP2 Core Values for Public Participation" for use in the development and implementation of public participation processes. Seven core values advanced by IAP2 foster better decision-making processes, which reflect the interests and concerns of potentially affected people and entities. The RGGI Comprehensive Program Review addresses many of these core values but fails significantly to address principle six:

> *"Public participation provides participants with the information they need to participate in a meaningful way"*[7]

The same guiding principle is contained in those of the National Environmental Justice Advisory Council's Federal Advisory Committee to the U.S. EPA ("NEJAC") Public Participation/Accountability Workgroup to ensure the early involvement of the public.

The failure to provide participants with the information that they need to evaluate proposed program design changes significantly negates the value of the public participation process that has otherwise occurred thus far. General consensus exists that the identification of the CO_2 cap emission level is the single most important

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[7] "IAP2 Core Values for Public Participation"
http://iap2.affiniscape.com/associations/4748/files/CoreValues.pdf

information needed for consideration during the current Comprehensive Review, yet the proposed allowance cap has not been announced to date.

Specifically, the draft Model Rule contains language for the creation and use of a cost containment reserve ("CCR"), but the value of the proposed CCR cannot be properly determined without knowing the size of the CO_2 cap. Since RGGI's establishment, the vast majority of CO_2 allowances have been purchased at or near the reserve price, because of the ample supply for market participants. The CO_2 allowance pricing history so far has been influenced most by the lack of a constrained CO_2 allowance market. If the proposed CO_2 cap is established at a level that will not drive market scarcity, then the design of the CCR is not as important. On the other hand, if the CO_2 allowances are reduced significantly, (i.e., a 91 million ton cap), then modeling indicates that the design of a CCR is material. It is therefore nearly impossible to evaluate design elements of the CCR, such as the fixed quantity of allowances, the trigger price and the effectiveness.

RGGI Inc. and the participating States should learn from the past. Currently, regulated power plants may use CO_2 offset allowances to satisfy 3.3 percent of their CO_2 compliance obligation. This amount may be expanded to 5 percent and 10 percent, if CO_2 allowance prices reach thresholds of $7 and $10 per allowance, respectively. A significant amount of time and resources were used to develop an offset program, but because of the abundance of CO_2 allowances, these offsets were not utilized.

RGGI Inc. should prepare an ongoing responsiveness summary. Federal and many State agencies require a responsiveness summary at specific decision points - as specified in program regulations or in the approved public participation work plan. Each responsiveness summary should:

- identify the public participation activity conducted;
- describe the matters on which the public was consulted;
- summarize the public's views, significant comments, criticisms and suggestions; and
- set forth RGGI Inc.'s or the respective State's specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public.

The preparation of responsiveness summaries should not only be at the conclusion of the decision-making process. Indeed, stakeholders have stated technical concerns throughout the Program Review process, without response or reply. This lack of response has now resulted in stakeholders publicly expressing frustration with the process itself.

To date, stakeholders have had to comment on design changes and modeling on a piecemeal basis. Proposed Memorandum of Understanding (MOU) and Model Rule changes can only be truly evaluated by knowing the chosen cap adjustment; anything less deprives stakeholders from real and meaningful public participation**.**

Missing Consumer Costs

A number of studies have detailed the benefits of the RGGI program. Most of these focus upon the long term benefits of energy efficiency projects, while discounting the short term consumer costs. Representations often are made that customer benefits are considerably larger than the net revenue of power plant owners for facilities subject to RGGI. In the interest of intellectual honesty, projected power commodity costs (firm power prices, wholesale prices, and capacity prices) per sector should be juxtaposed against consumer savings on an annual basis.

During the November 28th webinar, we were profoundly distressed that the projected influence of allowance purchases on the wholesale price was not shared with stakeholders for the most recent emission cap evaluations. Both the IPM and REMI studies determined that the avoided load effects, avoided energy capacity costs, and avoided distribution cost outweighed any influence allowance purchases had upon on the wholesale price, but the underlying data for those conclusions were not shared. Due to the complex and costly models, stakeholders are unable to easily duplicate the stated outcomes; stakeholders are instead dependent on reviewing only the data shared through the stakeholder process.

Leakage

The Business Council is concerned that a large amount of the emission reductions as projected will occur outside the RGGI states. We urge the RGGI states to provide a further review of the impact of the leakage that would result from the increased electricity imports that are projected to accompany a reduced draft potential RGGI emissions cap. Leakage has not been much of a factor under the current RGGI program, but the IPM modeling results under the RGGI review process indicate that at least two thirds of the emission reductions projected for RGGI is displaced outside of the region. Additionally, there is some concern that analysis conducted thus far on leakage contains some technical errors. Corrected results of the projection should be shared with the all RGGI stakeholders.

Comments on Proposed Model Rule

Control Period

The Draft Model Rule would amend the current Control Period of 3 years (and extension to a four year period if a stage two trigger event occurs) to require covered generators to acquire and surrender allowances for 75-85 percent of their annual emissions over each of the first two years of the control period. Final compliance true-up would occur at the end of the three-year period.

The Business Council supports maintaining the current Control Period, as it reduces the risk of adverse price spikes (associated with weather events, changes in the generation mix, or other foreseeable but not predictable events). The current Control Period increases market participants' confidence in their ability to remain in compliance with program goals. Interim compliance increases information submission burdens without contributing to the program's success.

Although some compliance issues have occurred with less than a few generators, this concern should not result in an elimination of current flexibility that allows for compliance with the goal of the program while buffeting consumers from possible price spikes. RGGI Inc. should review other methods of determining generators that maybe at risk for economic insolvency. If the owners of a generating facility were to reach a threshold of economic stress that reasonably jeopardizes program compliance, then and only then should that generator's facility be subject to a shorter control period.

Cost Containment Reserve (CCR)

RGGI Inc., in recent modeling considered the following trigger prices $5 in 2014, $7 between 2015 and 2017, and $10 in 2018, with up to 10 million allowances in reserve. The Business Council believes that, in order to provide an accurate evaluation of the proposed CCR, the CO_2 emission cap must be known. If RGGI Inc. chooses an aggressive CO_2 cap, then the CCR should be designed to mitigate the ultimate cost of energy to consumers.

During the webinar, RGGI state officials indicated that purchase of CCR allowances would be open to all registered entities. The Business Council is concerned about allowing access to CCR allowances to non-covered entities. Access to the CCR should be limited to entities subject to compliance under the RGGI program, since they would be the entities potentially in need of allowances. The Business Council recommends that RGGI should sell CCR allowances to compliance entities only.

There has been a quixotic request, to consider that the market allowances that are released if the trigger price is released should come from future auctions (or as described below the cap). Brian C. Murray at the RGGI Learning Session on Flexibility Mechanisms had the following to say about were the reserve comes from

> "*Upshot: discussions about whether the Reserve comes from "inside" or "outside" The cap are a bit of a shell game …*"[8]

Although he did conclude some have argued "that tightening of future cap makes banking allowances more attractive which drives up current price and makes current cost containment more difficult". The Business Council tends to believe that "system borrowing" is at best a hollow action, and may have the effect of negating some of the perceived benefits of a CCR. Without knowing the CO_2 emission cap it is difficult to evaluate proposed trigger prices, and/or allowance reserves.

Reserve Price

The draft model rule contains language to simplify the calculation of the reserve price. The draft model rule proposes to increase the minimum reserve price by 2.5 percent each year and eliminates the text for current market reserve price. No rationale has been given for why the reserve price should be changed or for whom the simplification is being made. No documentation has been provided that the current process for determining the reserve price is not effective. Consideration should be given to having the CCR price be adjusted by the Consumer Price Index (as provided for in the current RGGI program) or 2.5 percent, whichever amount is smaller, in order to maintain program cost-effectiveness and contain costs for energy consumers.

Offsets

RGGI is seeking comments on whether to modify its requirement that offsets not exceed 3.3 percent of the tons of CO_2 emissions for a control period, unless: there has been a stage one trigger event (5 percent used for compliance); or there has been a stage two trigger event (10 percent used for compliance).

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[8] "Cost containment reserve: features and design issues"
Brian C. Murray Director for Economic Analysis Nicholas Institute for Environmental Policy Solutions Duke University
http://www.rggi.org/docs/ProgramReview/LearningSession2/Murray_120124.pdf

A cap-and-trade program is intended to achieve a defined environmental goal. RGGI has achieved its emissions reduction targets for the capped power sector during the first control period between 2009 and 2011.

Offsets provide greater opportunities for emissions reductions to be achieved from outside the capped sector, as compared to relying solely upon abatement by capped entities (especially given the unavailability of a direct emission reduction options such as those available for other emission categories). However, currently, RGGI has been able to achieve its emissions reductions within the power sector at a cost lower than offsets created from abatement from alternative sectors. According to State of the Voluntary Carbon Market 2011, voluntary offset credit prices in 2010 averaged \$6/ton CO_2 reduced 2012 allowances in RGGI, which indicate the marginal cost of abatement within the capped sector, were priced at approximately \$1.95/ton, by comparison.

Reform the Usage limits of Offsets

The Business Council disagrees with the use of quantitative usage limits on offsets, as this approach unnecessarily restricts the options available for compliance and raises program costs. Furthermore, program and entity-usage limits would create uncertainty for offset project developers and investors with long-term planning horizons.

Ideally, the total supply for offsets should be decided by market participants through price signals, rather than pre-determined in the program rules. This approach would create a situation in which private actors are given the greatest amount of flexibility to achieve real emissions reductions at the lowest economic cost.

Forestry Protocols

The Draft Model Rule proposes requiring offsets from sustainably managed forests referencing using the Climate Action Reserve (CAR) as a model. This model requires all forest offsets come from land that has a minimum of a 100-year agreement before any conversion is permitted. Although New York State has more than 1.5 million acres of land certified to meet international certification standards such as FSC, SFI and PEFC, none of these lands would be eligible for participation as an offset. Simply using the FSC, SFI and PEFC as the reference would provide a much greater incentive for forest landowners to engage in sequestering carbon for forest offsets. Using the American Carbon Registry (ACR) protocol to validate forest offsets would provide a much better model that fits these recognized certification systems. The ACR protocol requires a 40-year minimum agreement that would be a very high yet attainable requirement.

Conclusion

New York's energy costs are nearly the highest energy costs in the nation. It has been said that "residential electricity rates alone were 61 percent above the national average and second highest among the 13 most comparable states. Commercial rates were the highest among the same comparable states, and 65 percent above the national average."[9] New York is not alone; many of the participating RGGI states have indisputably high energy costs.

The Business Council urges the RGGI states to evaluate further the costs associated with the potential program changes discussed to date. In particular, the difference between the 106 million ton potential scenario and the 97 million ton potential scenario is $1.4 billion, as shown by the REMI economic analysis presentation. A decision of significant economic magnitude should not be left to the last minute and then rushed for public review and comment.

Until a proposed CO_2 cap has been identified regardless of the amount of material which has been shared thus far by RGGI Inc., stakeholders have been denied the most critical information they need to participate in a meaningful way.

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9 http://www.andrewcuomo.com/system/storage/6/89/e/798/andrew_cuomo_power_ny.pdf