

**COMMENTS OF THE CONNECTICUT INDUSTRIAL
ENERGY CONSUMERS ON THE REGIONAL
GREENHOUSE GAS INITIATIVE MODEL RULE**

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PRELIMINARY STATEMENT

In accordance with the March 23, 2006 Notice “States Solicit Comments on Draft Model Rule” issued by the states participating in the Regional Greenhouse Gas Initiative (“RGGI”), the Connecticut Industrial Energy Consumers (“CIEC”) hereby files its comments on the Draft Model Rule. CIEC is an *ad hoc* coalition of industrial end-users that collectively employ over 40,000 Connecticut workers at numerous plant locations throughout the State. These industrial end-users consume a substantial part of all industrial electricity consumed in Connecticut.

For the reasons set forth below, the CIEC urges the Staff Working Group to modify the Draft Model Rule to ensure that the Final Model Rule will accommodate the diversity in policies and programs of each of the participating states. The Final Model Rule should address only *interstate* issues relating to the operation of the cap-and-trade RGGI program. *Intrastate* implementation issues must be addressed by each state individually and should not be included in the Final Model Rule.

SUMMARY OF POSITION

In December 2005, the Governors of seven Northeast states signed the RGGI Memorandum of Understanding. RGGI is a cooperative effort by the seven states to implement a regional CO₂ cap-and-trade program. The Memorandum of Understanding recognizes that the signatory states will need legislative and/or regulatory approval for the RGGI program. The Memorandum of Understanding provides that the signatories states will

collectively develop a Model Rule “... to serve as the framework for the creation of necessary statutory and/or regulatory authority to establish the Program.”¹

The RGGI website recognizes that there is a “diversity in policies and programs in individual states.”² The Legislatures and/or the regulators in each of the seven signatory states will need to determine the manner in which RGGI will be implemented in order for it to be consistent with each state’s policies. To ensure that the Final Model Rule does not conflict with any of the policies, statutes or regulations of any of the participating states, it is essential that the Final Model Rule not address intrastate implementation issues.

The CIEC urges the Staff Working Group to modify the Draft Model Rule to delete: (1) the provision that relates to the allocation of 25 percent of the trading program based budget to the consumer benefit or strategic purpose account (Draft Model Rule §XX5.3); and (2) the provision that addresses exemptions for distributed generation (Draft Model Rule, §XX-1.4(b)).

As set forth in more detail below, the State of Connecticut, its Legislature and/or its regulators must implement the RGGI program in accordance with Connecticut’s policies, laws and regulations. Energy prices in Connecticut currently are significantly higher than the national average. And, consumers have experienced dramatic increases in the past several years. Consistent with Connecticut’s goal of reducing the price of electricity, the State should mitigate the impact of RGGI on the price of electricity by auctioning all of the

¹ RGGI Memorandum of Understanding, Section 3(A).

² www.rggi.org/about.htm, “About RGGI.”

RGGI air emissions allowances, to the maximum extent possible, and utilizing all of the auction proceeds as a credit on retail electricity consumers' bills on a kilowatthour basis.

In addition, Connecticut must determine the threshold for exempting distributed generation from the RGGI program. Consistent with Connecticut state policy, which encourages distributed generation, all distributed generation units should be exempt from the RGGI program, regardless of their size or the percentage of their output sold into the grid.

POINT I

THE FINAL MODEL RULE SHOULD NOT ADDRESS GENERAL CO₂ ALLOWANCE ALLOCATIONS OR CUSTOMER BENEFIT ALLOCATIONS

The Draft Model Rule addresses CO₂ allowance allocations in Section XX-5.3.

The Draft Model Rule states:

- (a) General allocations. **[Allocation provisions will vary from state to state, provided at least 25% of the allocations will go to a consumer benefit or strategic energy purpose].**
- (b) Consumer benefit or strategic energy purpose allocation. The REGULATORY AGENCY will allocate twenty-five percent of the NAME OF RELEVANT RGGI STATE CO₂ trading program base budget to the consumer benefit or strategic energy purpose account. **[The reference to the consumer benefit or strategic energy account illustrates how this account could be labeled and does not necessarily represent what an individual RGGI State will propose.]**

CIEC urges the deletion of §XX-5.3(a) and §XX-5.3(b)³.

³ It should be noted that subsections (a) and (b) of Section XX-5.3 are inconsistent. Subsection (a) requires “at least” 25 percent of the allocations be dedicated to a consumer benefit or strategic energy purpose. However, subsection (b) states that 25 percent will be

Both subsection (a) and subsection (b) recognize that the allocation provisions will vary from state to state. Inasmuch as these issues are purely intrastate matters, they should not be addressed in the Final Model Rule. Connecticut will need to address the allocation of the allowances when it develops an implementation plan. Its plan may vary substantially from the implementation plans adopted by other signatory states.

In Connecticut, electric rates have increased dramatically in 2004 and 2005.⁴ For example, CL&P's overall rates increased from 9.34 cents/per kWh in 2003 to 16.05 cents/per kWh in 2006, an increase of 72 percent. During this time frame, CL&P's average generation services rate for all customer classes increased from 4.95 cents/per kWh in 2003 to 10.13 cents/per kWh in 2006, an increase of almost 205 percent and the Delivery FMCC increased from zero to 1.2 cents/per kWh.⁵

As a result, the price of electricity in Connecticut remains well above the national average, and is higher than prices paid in other states that compete with Connecticut in retaining and attracting business.⁶ According to the United State Department of Energy, for the period ending January 2006, electricity prices paid by Connecticut's industrial

³ (cont'd.) allocated to one of these purposes. Subsection (b) limits the allocation to no more than 25 percent. If the Final Model Rule addresses this issue, it should be made clear that the 25 percent is a floor and not a ceiling.

⁴ Conn. DPUC Docket 05-07-14PH01, *DPUC Investigation of Measures to Reduce Federally Mandated Congestion Charges*, Decision (December 28, 2005) at 2.

⁵ Conn. Docket 05-11-05, *DPUC Monitoring the State of Competition in the Electric Industry*, Decision (February 22, 2006) at 13-14.

⁶ United States Department of Energy, *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State* (released April 14, 2006).

customers exceeded both the national average and those prices paid in neighboring states.⁷ For example, the electricity prices paid by industrial customers in Connecticut were approximately 87 percent above the national average.⁸ In stark contrast, electricity prices paid by comparable customers in Pennsylvania were approximately 9 percent above the national average, while the industrial electricity prices in Maine were approximately 28 percent below the national average.⁹

Furthermore, high energy costs are a significant factor in the decline in Connecticut's manufacturing sector. Significantly, in the last ten years, the manufacturing sector in Connecticut lost 22 percent of its employment – more than 55,000 jobs.¹⁰ The State, has concluded as a matter of policy that customers “must have access to safe, *affordable* and reliable energy supply.”¹¹ Consequently, in order to ensure that the State does not lose more jobs to states or nations where the cost of doing business is lower, it is imperative that the price of electricity decrease, not increase. Thus, Connecticut should allocate 100 percent of the allowances to end-users. This will reduce the rate impact of

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* Inasmuch as Pennsylvania is not a RGGI signatory state, the increase in electric prices that will result from implementing RGGI in Connecticut will increase the price disparity vis-à-vis Pennsylvania.

¹⁰ United States Department of Labor, *Connecticut Manufacturing Employment*.

¹¹ *Energy Plan for Connecticut* (2005) at 1 (emphasis added).

RGGI to the maximum extent possible and will help Connecticut to be a more competitive state.

The Memorandum of Understanding provides that each signatory state “agrees that 25% of the allowances will be allocated for a consumer benefit or strategic energy purpose.”¹² It states that “each Signatory State may allocate allowances from its CO₂ emissions budget as determined appropriate by each Signatory State”¹³ This means that the states will each determine individually how to allocate the other 75 percent of the allowances. There may be significant differences in the percentages adopted by the signatory states.

In addition, not only may the percentage of the allowances allocated to consumer benefit or strategic energy purposes vary, but the purposes for which the allowances are used may also vary. Consumer benefit or strategic energy purposes include the use of allowances for several purposes - - to promote energy efficiency; directly mitigate electricity ratepayer impacts; promote renewable or non-carbon-emitting energy technologies; stimulate or reward investment in the development of innovative carbon emissions abatement technologies; and/or fund administration of the RGGI program. (Draft Model Rule, §XX-1.2(a)(a)). Some states may dedicate 100 percent of their allowances to energy efficiency programs. Other states may use 100 percent of their allowances to mitigate electricity ratepayer impacts. And, some other states may dedicate only part of their allowances to these purposes.

¹² RGGI Memorandum of Understanding, ¶ 2(G)(1).

When Connecticut develops its implementation plan, CIEC will urge the state to utilize all of its allowances to directly mitigate electricity ratepayer impacts. As demonstrated, *supra*, electric rates in Connecticut need to be lower, not higher. Inasmuch as electric consumers will shoulder the cost of RGGI, the price increases should be mitigated by allocating 100 percent of the allowances to them.

Because the percent of the allowances that will be allocated for a consumer benefit or strategic energy purpose and the choice of the specific strategic energy purposes is an intrastate implementation issue, it should not be addressed in the Final Model Rule. The Memorandum of Understanding states that “each of the Signatory States commits to proposed, for legislative and/or regulatory approval, the Program substantially as reflected in a Model Rule. . . .”¹⁴ Because each state will determine, based on that state’s policies, statutes, and regulations, the allocation of the allowances, the Final Model Rule should not limit a state’s ability to address these issues.

However, if, *arguendo*, the Final Model Rule does include a provision pertaining to the CO₂ allowance allocations, it should read as follows:

- (a) General Allocations. Each Signatory State shall determine, consistent with its own policies, statutes, and regulations, the allocation of its CO₂ allowances.
- (b) Consumer benefit or strategic energy purpose allocation. Each Signatory State will determine, in accordance with its policies, statutes, and regulations the allocation of CO₂ allowances provided that not less than 25% of the state’s CO₂

¹³ *Id.*, ¶ 2(G).

¹⁴ *Id.*, ¶ 2(A).

trading program base budget will be allocated to consumer benefits or strategic energy purposes.

POINT II

THE FINAL MODEL RULE SHOULD NOT ADDRESS SPECIFIC EXEMPTION LEVELS FOR DISTRIBUTED GENERATION

Section XX-1.4(b) of the Draft Model Rule states:

(a) Units. Any unit that, at any time on or after January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO₂ budget unit, and any source that includes one or more such units shall be a CO₂ budget source, subject to the requirements of this Part.

(b) Limited exemption for units with electrical output to the electric grid restricted by permit conditions. **[The text of this subdivision illustrates how a Participating State might provide for an exemption for units with electrical output to the electric grid restricted by permit conditions. Inclusion of this type of exemption is optional.]**

(1) Applicability. Notwithstanding subdivision (a) of this section, a unit under subdivision (a) of this section that has a permit containing a condition restricted the supply of the unit's annual electrical output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit, and which complies with the provision in paragraph (b)(3) of this section, shall be exempt from the requirements of this Part, except for the provisions of this section, section XX-1.2, section XX-1.3, section XX-1.6 and, if applicable because of the allocation of CO₂ allowances during the pre-exemption time period, Subparts XX-5, XX-6 and XX-7.

The Draft Model Rule clearly indicates that subsection XX-1.4(b) is illustrative. As such, it recognizes that each state will adopt different exemption thresholds based on each state's policies, statutes, and regulations. Connecticut has a policy of encouraging distributed generation. As part of its implementation plan, Connecticut should

exempt all customer-side distributed generation, regardless of size or the percentage of the annual gross generation of the unit that is supplied to the electric grid.

Each state will determine, in accordance with its policies, statutes, and regulations, the size of the distributed generation units that will be exempt from RGGI and the amount of the sales into the grid that will be allowed. The Final Model Rule should not include an illustrative example of how an exemption for customer-side distributed generation might be drafted.

CONCLUSION

For the reasons stated herein, the Connecticut Industrial Energy Consumers urge the Staff Working Group to modify the Draft Model Rule to ensure that the Final Model Rule will accommodate the diversity in policies and programs of each of the participating states. The Final Model Rule should address only *interstate* issues relating to the operation of the cap-and-trade RGGI program. *Intrastate* implementation issues must be addressed by each state individually and should not be included in the Final Model Rule.

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Respectfully submitted,

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