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DYNEGY

December 7, 2015

Regional Greenhouse Gas Initiative, Inc.
90 Church Street, 4th Floor
New York, NY 10007

RE: Regional Greenhouse Gas Initiative compliance with EPA's Clean Power Plan

Dynegy Inc. (Dynegy) submits the following comments regarding the Regional Greenhouse Gas Initiative (RGGI) compliance with the U.S. Environmental Protection Agency Clean Power Plan. We appreciate the opportunity to participate in the initial stakeholder outreach on the rule and look forward to continued engagement as RGGI and the RGGI states plan for CPP compliance.

Dynegy operates power generating facilities in eight states in the Midwest, the Northeast and the West Coast. The company's asset portfolio consists of nearly 26,000 megawatts of generating facilities, capable of generating enough electricity to power about 21 million homes nationwide. Dynegy operates seven power plants in RGGI states with a combined generating capacity of just over 5,000 MW. In addition, the company serves residential, municipal, commercial and industrial customers through its Homefield Energy and Dynegy Energy Services businesses in Illinois, Ohio and Pennsylvania.

Thank you for your consideration of our comments. If you have any questions concerning Dynegy's comments, please contact me at 713-767-5212 or Bruce.wilcoxon@dynegy.com.

Sincerely,

Bruce Wilcoxon

Bruce Wilcoxon
Environmental Affairs Director
Dynegy Inc.

Introduction

Dynegy, like most stakeholders directly impacted by the Clean Power Plan (CPP), is in the initial stages of evaluating the long term implications of the rule and of the various compliance plan options. As such our statements here reflect the current status of Dynegy's position on the rule and that position may evolve as evaluation and assessment proceeds. The comments that follow seek to contribute to the input requested in RGGI 2016 Program Review stakeholder discussion document. These comments represent Dynegy's initial views on the structure of the post-2020 RGGI program in light of federal compliance obligation under the CPP.

General

Dynegy encourages the development of CPP compliance plans that allow states to meet their requirements under the rule in the most efficient, equitable and cost-effective means possible, preserving system reliability, promoting continued economic growth and easing any impacts and necessary transitions for communities and businesses. We believe that each state should take the steps necessary to produce a federally approvable State Implementation Plans (SIP). We strongly support the RGGI plan to incorporate CPP compliance into the quantitative modeling elements of the 2016 Program Review. Further, given the importance of the rule in shaping state energy policy for decades to come, we believe states should take advantage of the two year extension of the deadline for SIP approval in order to ensure effective and efficient CPP implementation. Finally, we encourage states to follow the lead of the RGGI states and engage key stakeholders throughout compliance plan development. Dynegy is committed to active participation in such outreach in states where we operate.

RGGI State Recommendations

In general, Dynegy recommends the RGGI program be adapted as necessary to support RGGI state compliance with the CPP beginning in 2022. The following additional recommendations address specific program design elements necessary to achieve that alignment.

1. The RGGI program should be adapted to ensure that there is a single CO2 regulatory regime and a single carbon currency for the power sector in RGGI states.
2. The CPP mass-based emission standards approach that includes existing as well as new sources is the most efficient and transparent path to CPP compliance.
3. The RGGI program should only include electricity generating units (EGU) covered by the CPP starting in 2022.
4. RGGI control periods should be aligned with the CPP compliance periods; the RGGI fourth control period should be extended to include 2021.
5. RGGI states should adopt the ready-for-interstate-trading implementation approach to facilitate a broad and liquid multi-state carbon market that includes states outside the current RGGI program.
6. Current RGGI program flexibility mechanisms that have the potential to result in RGGI states exceeding their CPP emission caps (e.g. the cost containment reserve (CCR) and offset provisions) will not be available under the CPP emission standards approach and should be phased out before 2022.

7. RGGI allowances banked before 2022 will not be valid CPP compliance instruments and should be retired by the end of 2021.
8. RGGI states should use the fourth control period, expanded to include 2021, as the time to transition from the current RGGI structure to a CPP-compliant program as described above.

These recommendations are used as the basis of our response to the specific questions included in the RGGI 2016 Program Review Stakeholder discussion document.

1. EPA CPP: State Plan Approaches

RGGI: The RGGI states are seeking stakeholder comments and feedback on using the CPP mass goals and comment on the potential advantages of different state plan pathways.

DYN: CPP implementation should be based on the principles of efficiency, transparency and predictability. We believe that the mass-based approach to implementation is likely the most direct and cost effective path to CPP compliance. Further, emissions trading under a mass-based approach will likely result in a broader, more liquid, more transparent and therefore more efficient carbon market. An efficient carbon market is in the best interest of both consumers and generators.

<u>*Emission Standards State Plan*</u>*: The mass-based emission standards approach that facilitates interstate emissions trading and includes both existing and new fossil fuel generation sources represents the most direct and cost-effective path to CPP compliance. We are encouraged that RGGI states anticipate using this approach. Under this approach, RGGI states should seek trading ready status as a means of promoting development of a broad-based and efficient carbon market. Adopting the emission standards approach will entail modifications to the exiting RGGI program, which would need to come into effect starting in 2022. These modifications include eliminating the RGGI CCR and offsets provisions and addressing the issue of pre-2022 banked RGGI allowances.[1] Further, this approach will be streamlined if the sources regulated under the RGGI program match those regulated under the CPP. These program adjustments must be taken into consideration in decisions regarding the post-2020 RGGI emission cap (see item #2).*

<u>*State Measures State Plan*</u>*: In order for the RGGI program to retain the flexibility provisions of the current program, RGGI states would need to adopt the state measures approach to CPP compliance.[2] However, maintaining the CCR and offsets provisions in their current form post-2020 runs the risk that the states will exceed the CPP state CO2 emission caps (unless these provisions are modified) thereby triggering a backstop of federally enforceable emission standards for all affected EGUs. While these backstop provisions are yet to be developed by the states and approved by the EPA, we believe any such provisions will introduce unacceptable elements of compliance complexity and cost uncertainty both for generators and for consumers.*

[1] 80 FR 64891

[2] *Ibid.*

2. CO2 Emissions Reductions

RGGI: The RGGI states are seeking stakeholder comments on the RGGI states emission goals post-2020 and pursuing additional emission reductions post-2020.

DYN: Dynegy supports maintaining the projected 2020 regional base budget emission cap (~78MMT) through 2030. Since RGGI allowances banked before 2022 will not be valid CPP compliance instruments in a mass-based emission standards regime, adjusting the base-budget for banked allowances will not be necessary starting in 2022. The removal of the current RGGI program flexibility provisions (necessary under the emission standards state plan) will effectively make 2020 regional base budget emission cap more stringent by eliminating the option of RGGI states exceeding that cap. Removal of those provisions should also put upward pressure on allowance prices, thereby further advantaging zero-emission energy sources and energy efficiency investments.

RGGI: If post-2020 a bank of CO2 allowances remains in circulation, the RGGI states are seeking stakeholder comments on how to address or adjust for that bank into the future.

DYN: A RGGI allowance banked before 2022 will not be a valid CPP compliance instrument in a mass-based emission standards regime. In order to promote the development of an efficient and transparent CPP carbon market, RGGI banked allowances remaining in circulation at the start of 2022 should be automatically retired.

3. RGGI Flexibility Mechanisms

<u>Cost Containment Reserve (CCR)</u>
RGGI: The RGGI states are seeking stakeholder comments and feedback on how the CCR has worked to date and the current design of the CCR.

DYN: As per the response to item #1, Dynegy recommends RGGI states adopt a mass-based emission standards approach to CPP compliance which will eliminate the use to of the CCR starting in 2022. The RGGI program may seek to phase the CCR provision out during the RGGI program fourth control period either by reducing the size of the CCR allowance pool available or by raising the CCR trigger price threshold.

Policies that set artificial limits on the market price of a commodity inhibit the price discovery attributes of an efficiently functioning market. For instance, there is a view that the RGGI CCR, while commonly called a "soft price ceiling", in reality has worked as a "price magnet" – pulling market prices higher, first towards this year's $6, and now towards next year's $8. This has the potential to overwhelm other supply/demand drivers – in a way, turning the market into a race among price speculators to drive prices up to the CCR level. Loss of the CCR under a CPP compliance plan could contribute to a more efficient carbon market post-2022.

RGGI: The RGGI states are interested in hearing stakeholder comments on whether any of the CCR design elements should be reviewed and how the CCR and RGGI cap should work together when developing a CPP compliance pathway.

DYN: As per the response to item #1, Dynegy recommends RGGI states adopt a mass-based emission standards approach to CPP compliance which will eliminate the use to of the CCR starting in 2022. The RGGI program may seek to phase the CCR provision out during the RGGI program fourth control period either by reducing the size of the CCR allowance pool available or by raising the CCR trigger price threshold.

Offsets

RGGI: The RGGI states are seeking stakeholder comments and feedback on the RGGI offsets program including potential improvements, additional offset categories, acceptance of offsets allowances not generated from projects located in the RGGI states or listed on offset registries, and the continuation of the offsets program within the bounds of the CPP.

DYN: Dynegy generally supports the use of offsets for compliance in market-based environmental regulatory programs. However, as per the response to item #1, Dynegy recommends RGGI states adopt a mass-based emission standards approach to CPP compliance which by necessity will eliminate the use of the RGGI offsets provision starting in 2022. The RGGI program should phase out the offset provision during the program fourth control period by reducing the percentage a regulated source's compliance obligation that can be met with offsets credits. We do not recommend expanding the pool of projects generating qualified emission offset credits.

Control Periods

RGGI: The RGGI states are seeking stakeholder comments and feedback on the compliance process, including the interim control periods and possible improvements to the compliance process.

DYN: Dynegy recommends the RGGI states adopt the CPP provisions outlined in the Proposed Federal Plan for the Clean Power Plan model rule that would require generators to demonstrate compliance, i.e., allowance true-up, on May 1 of the year after the last year in the compliance period starting in 2022.[3] As such, after 2021 operators of affected units would no longer be obligated to hold allowances equal to 50 percent of their emissions during each interim year of a control period (e.g. the first two calendar years of a three-year control period). However, each covered CO2 source would still be obligated to hold allowances equal to 100 percent of its emissions at the end of each control period. Removing the interim holding obligation will add additional flexibility to the post-2021 compliance program and compensate in part for the necessary loss of the CCR and offset flexibility provisions.

[3] 80 FR 65014

RGGI: The RGGI states are interested in stakeholder comments on possibly amending the non-compliance penalty from surrendering CO2 allowances equal to three times the number of a source's excess emissions to a CO2 allowance penalty that may better align with the CPP's requirements, or other alternatives.

DYN: Dynegy supports amending the current RGGI non-compliance penalty to align with CPP requirements starting in 2022.

RGGI: Please provide comments on whether the RGGI control periods should align with the CPP interim step periods. If so, what are your suggestions for aligning with the CPP (e.g. extend the RGGI fourth control period to 2018-2021)?

DYN: Dynegy supports aligning RGGI control periods with the CPP interim and final compliance periods and extending the RGGI fourth control period to include 2021.

4. RGGI Regulated Sources

RGGI: The RGGI states are seeking stakeholder comments on how best to address the fact that the RGGI cap includes emissions from more regulated sources than the CPP for compliance.

DYN: Dynegy recommends RGGI states adopt a mass-based emissions standards approach to CPP compliance. Adoption of this approach would preclude the regulation of CO2 emission sources that do not fit the definition of an affected source under the CPP. Therefore the RGGI program would need to be amended to align the affected sources under the RGGI program emission cap with those covered by the CPP starting in 2022. In the absence of such alignment, there will effectively be two carbon currencies within the RGGI system – one that counts for compliance with both CPP and RGGI and one currency that applies to emission sources covered by RGGI only.

Such an alignment will require adjusting the RGGI 2022 emission cap to account for the elimination of these previously covered sources. The RGGI state sources not covered under the CPP, largely simple cycle combustion turbines and certain facilities that use biomass as a fuel source, do not represent a significant percentage of RGGI state EGU. Therefore, removing these sources from the RGGI program will not significantly degrade the environmental integrity of the program.

5. EPA CPP: Promoting Renewable Energy and Energy Efficiency

RGGI: Given the fact that the RGGI states auction most of the CO2 allowances, the RGGI states are seeking stakeholder comments on whether the RGGI states should participate in the CEIP program.

DYN: We believe in the ability of competitive power markets to effectively protect both consumers and the environment. We oppose government policies that distort a competitive power market through subsidies, mandates or incentives. It is more efficient to establish policies that internalize environmental and economic externalities rather than setting policies that pick fuel or technology winners and losers.

A market-based approach to CPP compliance should effectively integrate the cost of carbon into the price of electricity and will provide market-based incentives for renewable power and energy efficiency. Emissions trading under the CPP/RGGI should reduce and eventually eliminate the need for subsidies, mandates and incentives that distort a competitive power market and increase the cost of energy for consumers. Renewable energy and energy efficiency have a place in a competitive RGGI states power market under the CPP.

6. Broadening the RGGI Market /Increasing RGGI Trading Partners

RGGI: The RGGI states are seeking stakeholder comments and suggestions on the possibility of increasing the size of the current RGGI market/RGGI participating states. The RGGI states are seeking comments on possible advantages and how the RGGI states could best pursue this option.

DYN: Dynegy supports the development of a broad-based efficient carbon market as the most cost effective path to multi-state CPP compliance. The best way to facilitate the development of such a broad-based market will be for RGGI states to adopt the trading ready provisions of the CPP that will allow RGGI states to trade allowances with other states adopting similar CPP compliance plans, including those outside the RGGI program. The ready-for-interstate-trading provision of the CPP eliminates the need to formally receive additional states into the RGGI program in in order to effectively expand the RGGI market.

7. RGGI CO2 Allowance Auctions & Tracking System

RGGI: The RGGI states are seeking stakeholder comments and feedback on improvements to RGGI COATS to enhance the user experience or to help prevent user error.

DYN: Dynegy recommends that RGGI states adopt a "ready-for-interstate-trading" implementation CPP compliance plan in order to facilitate the development of a broad-based, efficient carbon market. EPA approval of such a plan requires a state to indicate in its state implementation plan that its emission budget trading program will be administered using an EPA-approved (or EPA-administered) emission and allowance tracking system.[4] RGGI states should take any steps necessary to ensure that the RGGI COATS platform becomes an EPA-approved emission and allowance tracking system.

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[4] 80 FR 64892

RGGI: The RGGI states are seeking stakeholder comments on participation in the RGGI CO_2 allowance auctions and other comments on the CO_2 allowance auction process.

DYN: In a competitive market, allocation of allowances to affected EGU based on historical emissions or the auction of allowances to affected EGU and a restricted pool of non-affected participants represents the most efficient and effective approaches to allowance distribution.