

October 25, 2013

By E-mail to Karla.McManus@des.nh.gov

Karla McManus
NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Re: Proposed Amendments to the existing Carbon Dioxide (CO₂) Budget Trading Program portion of the Regional Greenhouse Gas Initiative (RGGI) in New Hampshire (at Env-A 4600, Env-A 4700, and Env-A 4800) to implement program changes resulting from the 2012 RGGI Program Review.

Dear Ms. McManus:

Conservation Law Foundation (CLF) welcomes the opportunity to submit comments on the existing Carbon Dioxide (CO₂) Budget Trading Program portion of the Regional Greenhouse Gas Initiative (RGGI) in New Hampshire (at Env-A 4600, Env-A 4700, and Env-A 4800), implementing changes resulting from the 2012 Regional Greenhouse Gas Initiative (RGGI) Program Review as adopted through state legislation earlier this year. RGGI has demonstrated success in providing cost-effective reductions in climate pollution from the electric generation sector, in a manner that enhances the region's energy markets and economy. The new regional cap of 91 million metric tons, set forth in the Revised Model Rule, enhances the efficacy of RGGI and will enable the program to deliver meaningful reductions in greenhouse gas emissions in an economically beneficial manner.

The impacts of climate change have become more apparent in recent years, underscoring the urgent need for robust action to reduce emissions of greenhouse gases. According to the first part of the fifth assessment report of the Intergovernmental Panel on Climate Change, there is "incontrovertible evidence from in situ observations and ice core records that the atmospheric concentrations of greenhouse gases such as CO₂, CH₄, and N₂O have increased substantially over the last 200 years."¹ Instrumental observations "show that land and sea surface temperatures have increased over the last 100 years," and the upper ocean temperature has increased since at least 1950.² Furthermore, satellites and in situ measurements suggest that glaciers, Arctic sea ice and ice sheets have all reduced in size.³ As the authors of the IPCC report point out, these observations offer a wide range of evidence on the broad extent of the changing climate throughout our planet.⁴

¹ IPCC WGI Fifth Assessment Report, Section 1.2.3, at 1-8, available at http://www.climatechange2013.org/images/uploads/WGIAR5_WGI-12Doc2b_FinalDraft_Chapter01.pdf

² *Id.* at 1-9.

³ *Id.*

⁴ *Id.*

Closer to home, climate change amplified the effects of Superstorm Sandy, causing massive flooding and devastation in New Jersey and New York City.⁵ As these events demonstrate, it is imperative that we continue to tackle the problem of climate change in innovative ways.

RGGI has heralded a decline in greenhouse gas in New Hampshire: total CO₂ emissions from entities subject to RGGI CO₂ allowance compliance obligations have fallen from 5,769,880.665 tons per year in 2009 to 4,642,898.275 tons per year in 2012.⁶ While this decline in emissions undoubtedly is due in part to fuel-switching and increased energy efficiency, RGGI also has played a vital role. RGGI signals to fossil fuel-burning electric generators that the RGGI states are serious in requiring the generators to account for, and reduce, their greenhouse gas emissions. Furthermore, going forward, the lower cap should also send stronger price signals to the electric sector, which is expected to lead to further reductions in emissions.

Moreover, RGGI has been economically beneficial for New Hampshire and the RGGI states as a whole, as reflected by a recent study completed by Analysis Group.⁷ Overall, RGGI has produced \$1.6 billion in net present value (NPV) of economic value added to the ten-state region.⁸ On a state level, RGGI has added an estimated 458 job-years and \$17 million in value to the New Hampshire economy.⁹ These positive impacts are a result of multiple factors, including “the positive direct and induced impacts associated with the injection of RGGI dollars into economic goods and services; the net positive impacts associated with consumer savings on electric and non-electric energy supply expenditures; and the net negative impacts associated with a loss of power plant owner net revenues from allowance purchases and power system dispatch and price effects.”¹⁰ As the evidence demonstrates, RGGI has produced actual, measurable results, not only in terms of promoting reductions in greenhouse gas emissions, but in economic benefits to the participating states.

CLF commends the Department for adopting the lower cap and for thoughtfully implementing the changes made in the Model Rule in accordance with the Legislature’s direction. The Department’s actions demonstrate that New Hampshire is committed to meeting its greenhouse gas emissions reduction goal of 80% below 1990 levels by 2050, as set forth in the New Hampshire Climate Action Plan. For the most part, CLF supports the proposed regulations and would like to see them implemented without delay. However, there are a few issues we wish to bring to the Department’s

⁵ <http://www.technologyreview.com/view/506646/climate-change-likely-makes-storms-like-sandy-worse/>

⁶ Summary Level Emissions Report for New Hampshire, last generated October 17, 2013, available at https://rggi-coats.org/eats/rggi/index.cfm?fuseaction=search.rggi_summary_report_input&clearfuseattrs=true.

⁷ Paul J. Hibbard, Susan F. Tierney, Andrea M. Okie, Pavel G. Darling; *The Economic Impacts of the Regional Greenhouse Gas Initiative on Ten Northeast and Mid-Atlantic States: Review of the Use of RGGI Auction Proceeds from the First Three-Year Compliance Period*, November 15, 2011, at 2, available at http://www.analysisgroup.com/uploadedFiles/Publishing/Articles/Economic_Impact_RGGI_Report.pdf. This independent study was funded by the Merck Family Fund, the Barr Foundation, the Chorus Foundation, and the Henry P. Kendall Foundation.

⁸ *Id.* at 2.

⁹ *Id.* at 33.

¹⁰ *Id.*

attention. The Department should work to address these issues before or during the 2016 Program Review and then work with the General Court to make appropriate amendments to state law.

The first issue pertains to the Air Pollution Advisory Committee (APAC) and its role in determining the frequency of auctions. It is CLF's belief that this concern may be addressed in the current regulatory process. The second issue pertains to the method of calculating the cap reduction each year and is endemic to the Model Rule; accordingly, it should be a focus of Department attention during the 2016 Program Review. Two additional issues, regarding Early Reduction Allowances (ERAs) and free allowances given to compliance entities, are based on recent statutory amendments that are inconsistent with the intent of RGGI and the revised Model Rule, and the Department should work to change them between now and 2016.

First, CLF recommends a small change to proposed regulation Env-A 4803.02. Env-A 4803.02 states that “[t]he department shall consult with the APAC to determine whether to: (1) Change the frequency to other than quarterly; and (2) Hold a CO₂ allowance auction in the event that one or more participating states are unable to participate due to failure to establish and implement an auction process, whether by rule or otherwise.”¹¹ CLF would recommend that the regulation be changed to say “The Department shall, following consultation with the APAC, determine whether to: (1) Change the frequency” CLF's suggested wording would make clear that the ultimate decision on whether to change the frequency of auctions or hold them at all rests with the Department.

Second, the change to the way the cap reduction is calculated each year is of some concern. As the Department is well aware, the RGGI allowance cap is reduced by a certain amount each year. In previous years, the cap was reduced by 2.5% of the baseline year's cap; that is, each year, the cap was reduced by a fixed, flat amount. By contrast, the new regulations appear to deviate from that approach.¹² Going forward, the cap would be reduced by 2.5% of the previous year's cap—that is, in 2015, the cap will be reduced by 2.5% of the 2014 cap, rather than being reduced by 2.5% of the baseline year's cap. As time goes by, the difference between the old method and the new will become increasingly significant, as the reduction will be calculated as a percentage of an ever-declining number—leaving the region far short of the electric sector emissions reductions that are needed (i.e., on a trajectory for a potential 59% reduction across the region by 2050, rather than the 90% reduction that otherwise would be possible). CLF strongly recommends that this issue be addressed and rectified through the 2016 Program Review, and that the “plateauing” of the RGGI cap in 2020 be addressed at that time as well.

Finally, there are two significant defects in NH's RGGI program requiring legislative and regulatory changes: the continued inclusion of Early Reduction Allowances (ERAs) in the New Hampshire regulations and the granting of free allowances to Public Service New Hampshire. CLF understands

¹¹ Env-A 4800 Final Proposed Regulations, Sept. 9, 2013, p. 3 (proposed Env-A 4803.02).

¹² Env-A 4600 Final Proposed Regulations, Sept. 9, 2013, p. 20 (proposed Env-A 4606.01(a)).

that these allowances are already enshrined in legislation—specifically HB 306—and that legislative as well as regulatory action would be required to remove them. Even so, CLF wishes to call attention to the ERAs and the free allowances so that the legislature and the Department may address the issue during the 2016 Program Review.

The new RGGI Model Rule “deletes the ERA provisions as they are no longer applicable to the program.”¹³ Despite this fact, New Hampshire specifically maintains the ERAs in the proposed regulations.¹⁴ While CLF understands that no new ERAs will be issued going forward, the continued inclusion of ERAs in the regulations means banked ERAs may still be used for compliance.¹⁵ This is significant because, according to the RGGI CO₂ Allowance Tracking System (RGGI COATS), in 2009 PSNH/Schiller received 1,064,718 Early Reduction Allowances: 43.95% of the total number of ERAs granted to CO₂ budget sources.¹⁶ Given that the proposed New Hampshire CO₂ budget trading program annual base budget for 2015 is 4,630,286 tons,¹⁷ the number of ERAs received by PSNH makes up a large portion of the existing bank of allowances and will have the effect of depressing allowance prices.

With respect to the 1.5 million free allowances granted to PSNH in 2014 under proposed regulation Env-A 4606.08,¹⁸ these allowances are unwarranted and inimical to RGGI’s purposes. The granting of so many free allowances has an adverse effect on the market, and furthermore, it sets a bad precedent for other companies that might seek such allowances. CLF is encouraged by the fact that 2014 will be the last year such allowances are granted,¹⁹ and we hope the granting of bonus allowances to any compliance entity will soon be a thing of the past.

CLF commends the Department for taking action to ensure that RGGI is strengthened and continues to be a successful program. Thus far, RGGI has been a tremendous success. It has sparked investment in clean energy solutions in the region and demonstrated the effectiveness of a carbon dioxide cap-and-trade program in reducing climate pollution while providing states with resources to reinvest in energy efficiency and clean energy infrastructure development. The Department’s action in joining with other states in the region to adopt the 91 million ton cap is an important element of New Hampshire’s commitment to reduce greenhouse gas emissions while also encouraging economic growth and the expansion of clean energy in the region. With the exception of the issues delineated above, which CLF requests be addressed in the 2016 Program Review, CLF supports the changes to the regulations promulgated by the Department and their prompt adoption.

¹³ Summary of RGGI Model Rule Changes: February 2013, p. 5.

¹⁴ Env-A 4600 Final Proposed Regulations, Sept. 9, 2013, p. 5 (Proposed Env-A 4602.39).

¹⁵ Env-A 4600 Final Proposed Regulations, Sept. 9, 2013, pp. 15–16 (proposed Env-A 4605.04–4605.05).

¹⁶ http://rggi.org/docs/ERA_Awards_12_16_09.pdf

¹⁷ Env-A 4600 Final Proposed Regulations, Sept. 9, 2013, p. 20 (proposed Env-A 4606.01(a)(2)).

¹⁸ Env-A 4600 Final Proposed Regulations, Sept. 9, 2013, pp. 22–23 (proposed Env-A 4606.08)

¹⁹ Comment of Joe Fontaine, NH DES, in response to CLF Comments, at the Public Hearing on Proposed Changes to Env-A 4600, 4700, and 4800, October 18, 2013.

clf

conservation law foundation

Sincerely,



Stephanie Pan
Pro Bono Attorney
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
(617) 850-1793
span@clf.org



N. Jonathan Peress
Vice President and Director, Clean Energy and
Climate Change
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
(603) 225-3060
njperess@clf.org