

September 28, 2018

VIA ELECTRONIC MAIL

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Re: Joint Comments Regarding Delaware’s Proposed Regulations Implementing the Updated Regional Greenhouse Gas Initiative Model Rule

Dear Ms. Gray:

The Sierra Club, Natural Resources Defense Council, Environment America, Environment New Jersey, and Acadia Center are pleased to submit the following joint comments regarding Delaware’s proposed regulations incorporating updates to the model rule of the Regional Greenhouse Gas Initiative (“RGGI”). As discussed below, Delaware is highly vulnerable to the impacts of climate change and its electric sector continues to contribute significantly to the state’s greenhouse gas (“GHG”) emissions. Between November 2015 and September 2017 Delaware and RGGI Inc. helped facilitate an open and inclusive program review process to develop a path forward for the RGGI program that culminated in a model rule update that received the support of the RGGI states and was overwhelmingly endorsed by stakeholders. Independent analysis of the updated model rule shows that it will continue RGGI’s proven record of providing significant climate, public health, and economic benefits to Delaware and the broader region. We therefore encourage Delaware to expeditiously finalize its regulations adopting the changes included in the updated model rule to maximize the impact of the RGGI program.

I. Further Greenhouse Gas Emission Reductions Are Necessary to Protect Delaware from the Worst Impacts of Climate Change

Delaware’s particular vulnerability to the impacts of climate change makes timely finalization of the regulations implementing RGGI’s update model rule critical. Electric generation accounts for nearly a quarter of Delaware’s greenhouse gas (“GHG”) emissions.¹ Delaware has already experienced, and is expected to experience, a range of adverse impacts

¹ See Delaware’s EGU Emission Inventory 2000-2014 at <http://www.dnrec.delaware.gov/Air/Pages/RegionalGreenhouseGasInitiative.aspx>.

from climate change, highlighting the need to make further reductions in GHG emissions from the electric sector.

In the past century, temperatures in Delaware have already risen by two degrees Fahrenheit²—a greater increase than in many other parts of the country.³ Locally, sea levels are rising at twice the global average.⁴ Sea levels along Delaware’s 381 miles of shoreline have already risen more than a foot in the last century, and are expected to rise up to nearly five feet in the next century.⁵ Delaware’s low average elevation—the lowest of all the states at only 60 feet⁶—and Delaware’s natural sinking, create a sea level rise “hotspot” in the State.⁷ It is anticipated that eight to eleven percent of Delaware could be underwater by the end of this century.⁸

The threat of rapid sea level rise is particularly devastating for a state whose economy and quality of life are linked to its beaches, wetlands, and fertile farm fields.⁹ Tourism in Delaware generated more than \$504 million in taxes and fees for state and local governments in 2016, and the state’s beaches are vital to this revenue.¹⁰ The loss of these beaches and tidal marshes in Delaware Bay will not only impact tourism, but will also harm fish, reptiles, and bird species that rely on the habitat, and allow salt water to intrude inland ruining low-lying crop fields.¹¹ In addition, rising sea level will increase the vulnerability of communities living along the Delaware shoreline to storms and erosion, as well as increasing the cost of flood insurance and flood insurance deductibles.¹²

Further, hurricanes like Superstorm Sandy are likely to increase in frequency, wind speed, and rainfall intensities as the climate warms, destroying homes and infrastructure and

² EPA, What Climate Change Means for Delaware (Aug. 2016), available at <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-de.pdf> (hereinafter What Climate Change Means for Delaware).

³ See National Climate Assessment, Recent U.S. Temperature Trends, Fig. 2.7, available at <https://nca2014.globalchange.gov/report/our-changing-climate/recent-us-temperature-trends>.

⁴ Del. Dept. of Nat. Res. & Env’tl. Control, Preparing for Tomorrow’s High Tide: Recommendations for Adapting to Sea Level Rise in Delaware (Sept. 2013), at v, available at <http://www.dnrec.delaware.gov/coastal/Documents/SeaLevelRise/FinalAdaptationPlanasPublished.pdf> (hereinafter High Tide: Recommendations for Adapting).

⁵ Univ. of Delaware: Research, Sea Level Rise: Delaware at a Glance, available at https://www1.udel.edu/researchmagazine/issue/vol4_no1/slr_intro.html (hereinafter Sea Level Rise: Intro).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ High Tide: Recommendations at v.

¹⁰ See Study: Delaware Tourism Has Another Record-Breaking Year (Feb. 22, 2018), available at <https://www.visitdelaware.com/articles/post/value-of-tourism-2016/> (citing The Value of Tourism 2016, available at http://res.cloudinary.com/simpleview/image/upload/v1519311006/clients/delaware/The_Value_of_Tourism_2016_e0290f01-26ae-4016-a6b4-9dfdb7726ec9.pdf).

¹¹ What Climate Change Means for Delaware.

¹² *Id.*

causing billions in damages.¹³ Precipitation from extremely heavy storms has already increased in the eastern United States by more than 25 percent in the past 60 years.¹⁴

Increasing temperatures themselves further threaten public health.¹⁵ Higher temperatures can cause heat stroke and also increase the formation of ground-level ozone, a key component of smog that contributes to respiratory problems.¹⁶

Over the past decade, RGGI has been successful in lowering electric sector GHG emissions in the region, but as Delaware’s climate vulnerability highlights, further emission reductions from the electric sector remain critical to mitigating harms to the state and its residents.

II. The Updated Model Rule and Delaware’s Proposed Implementing Regulations Are the Result of a Robust and Inclusive Two-Year Stakeholder Process

Delaware and the other RGGI states engaged in an extensive, open process to develop the updated model rule. Between November 2015 and September 2017, the RGGI states hosted nine stakeholder meetings and webinars.¹⁷ These meetings, which were open to the public, were well attended and were all followed by formal public comment opportunities. During the program review, the RGGI states received over 150 comment submissions from hundreds of organizations and businesses as well as tens of thousands of comments from individuals.¹⁸ These comments overwhelmingly supported the RGGI program and called for its extension and strengthening.

In addition to being inclusive, the program review also benefited from robust technical analysis by ICF Consulting using its IPM model. ICF’s IPM modeling incorporated the most up-to-date assumptions regarding costs and energy trends and enabled the RGGI states to estimate and evaluate impacts on allowance prices and the potential for emissions leakage before committing to an updated cap trajectory and developing new program features such as the Emissions Containment Reserve (“ECR”).

Having achieved consensus among the nine RGGI states and having publicly vetted the updates to the RGGI model rule through a transparent and inclusive process for nearly two years, nothing should delay Delaware in moving forward with adopting its proposed regulations implementing the model rule updates.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See RGGI.org, Program Review, <https://rggi.org/program-overview-and-design/program-review>.

¹⁸ RGGI.org, Program Review Stakeholder Comments, available at <https://rggi.org/program-overview-and-design/stakeholder-comments>.

III. Finalization and Implementation of the Proposed Rule Will Provide Significant Economic Benefits to Delaware

Recent analyses by both the Analysis Group and ICF further confirm the continuing economic benefits of Delaware's participation in RGGI. Earlier this year, the Analysis Group released the results of its economic analysis of the most recent three-year compliance period for the RGGI program.¹⁹ The Analysis Group found that for the 2015-2017 compliance period, the RGGI program led to \$1.4 billion of net positive economic activity in the RGGI region, including 14,500 new job-years.²⁰ During this period Delaware received \$43.4 million in auction revenue.²¹

Using its share of the RGGI allowance proceeds, Delaware has been able to invest heavily in energy efficiency and renewable energy. From 2015 through 2017, Delaware spent \$61.3 million, of which \$38.1 million was invested in energy efficiency, \$13.9 million in renewable energy, and \$2.3 million in direct bill assistance for low-income communities.²² These funds support programs like Delaware's Energize Revolving Loan Fund, which provides low interest loans to school districts, non-profits, local governments and business to install solar panels, and Delaware's Weatherization Assistance Program, which provides no-cost energy efficiency upgrades to homes.²³

In addition to direct economic benefits, and reinvestment benefits, RGGI continues to provide significant public health and economic benefits to Delaware and the broader region. Emissions of sulfur dioxide and nitrogen oxides have declined in the RGGI region by 109,000 tons and 46,000 tons respectively,²⁴ reducing respiratory hospital visits and admissions, lost work days, and premature deaths, and avoiding costs of up to \$274 million in Delaware alone.²⁵

Looking forward, the proposed RGGI model rule would strengthen and extend the program through 2030, and outside analysis found that this would increase employment by 35,000 job-years, gross state product by \$2.79 billion and disposable personal income by \$1.45 billion for the years 2017 to 2031.²⁶ This analysis shows the significant economic benefits of Delaware's continued participation in RGGI.

IV. Delaware Should Expeditiously Finalize the Proposed Implementing Regulations, Incorporating All Aspects of the RGGI Model Rule

¹⁹ See Analysis Group, The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States: Review of RGGI's Third Three-Year Compliance Period (2015-2017) (Apr. 17, 2018), available at http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/analysis_group_rggi_report_april_2018.pdf (hereinafter Analysis Group Report).

²⁰ *Id.* at 4, 45.

²¹ *Id.* at 42.

²² Analysis Group Report at 33.

²³ RGGI Inc., The Investment of RGGI Proceeds in 2016 (Sept. 2018), at 18-19.

²⁴ Abt Associates, Analysis of the Public Health Impacts of the Regional Greenhouse Gas Initiative, 2009-2014 (Jan. 2017), at 24, Fig.7.

²⁵ *Id.* Appendix E: State Level Results, at 5, Tbl. 4.

²⁶ ICF, RGGI Program Review: REMI Modeling Results (Dec. 2017), at Slide 15.

In order to reap the benefits of a strengthened and extended RGGI program, we urge Delaware to expeditiously move forward with its proposed regulations adopting all elements of the updated model rule. As discussed in our May 2018 comments,²⁷ one of the important new features of the updated model rule is the establishment of an ECR. The ECR provides an important complement to the existing Cost Containment Reserve (“CCR”). Whereas the CCR triggers the release of additional allowances for auction if the auction clearing price rises above prescribed trigger levels, the ECR functions by removing allowances from the program if the auction clearing price falls below prescribed trigger levels.

Incorporation of the ECR is critical to maintaining the integrity of the regional emissions cap and the robustness of the program moving forward. Actual emission levels in the region have persistently remained below annual RGGI caps while allowance prices have, with rare exceptions, also remained very low. For example, 2017 emissions were 23 percent below the 2017 RGGI cap, while auction prices in 2017 ranged between approximately \$2/ton and \$4/ton. The ECR helps stabilize the market by preventing the release of excess emissions allowances when prices are low. This prevents the buildup of a large bank of excess allowances that could be used to substantially dilute the impact of the program and thwart the achievement of its goals in future years. Removing allowances from the market when lackluster demand results in low prices can also provide greater certainty in the allowance markets. Both of the two previous program reviews have had to address how to handle large banks of excess allowances. While the RGGI states have wisely elected both times to fully correct for these large banks in future years, the ECR can help prevent the creation of excessive allowance banks in the first place, while countering allowance price suppression in the years between program reviews.

In addition to incorporating all of the changes in the updated model rule, we urge Delaware to follow the lead of states like New York and take additional steps to protect environmental justice communities and communities most directly impacted by power plant pollution within the state. In particular, we note that New York has committed to having state agencies engage with the state’s Environmental Justice & Just Transition Working Group to ensure that environmental justice communities benefit equitably from investment of RGGI auction proceeds. We urge Delaware to take similar steps as it updates its RGGI regulations.

V. Conclusion

As consistently shown by analyses of independent economic and health experts, and as documented by the states themselves, Delaware and the other states in the RGGI region have

²⁷ Joint Comments Regarding Delaware’s Proposed Regulations Implementing the Updated Regional Greenhouse Gas Initiative Model Rule (May 21, 2018) (filed on behalf of Sierra Club, Acadia Center, Conservation Law Foundation, Environment America, and Natural Resources Defense Council).

benefited greatly from their participation in the RGGI program over the past decade. The updated model rule and Delaware's proposed implementing regulations promise to continue providing such benefits over the next decade, while continuing to cut dangerous emissions from polluting power plants and to show much-needed state and regional leadership in the fight against climate change. Accordingly, we urge Delaware to expeditiously finalize its proposed regulations adopting all elements of the updated model rule, including the ECR, as well as additional modifications to benefit environmental justice communities, in order to continue to benefit from a robust and thriving RGGI program in the future.

Thank you for your consideration.

Respectfully submitted,

Sierra Club
Natural Resources Defense Council
Environment America
Environment New Jersey
Acadia Center