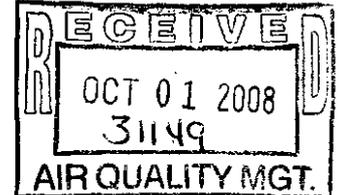




**FPL Energy**



September 30, 2008

Department of Natural Resources and Environmental Control  
State of Delaware  
89 Kings Highway  
Dover, Delaware 19901

ATTN: Comments Regulation 1147  
Valerie Gray, Planning Supervisor  
DNREC – AQM

Dear Ms. Gray:

On behalf of FPL Energy, LLC (“FPL Energy”) and its affiliates doing business in Delaware, we appreciate the opportunity to submit comments on the proposed rules for the CO2 Budget Trading Program, Regulation 1147. FPL Energy has historically supported the Regional Greenhouse Gas Initiative (“RGGI”) and commends Governor Minner, Secretary Hughes and the Administration for the continued effort to reduce the harmful impacts on public health and the environment from greenhouse gas emissions.

As always, please let us know if you have any questions.

Regards,

Sincerely,

David B. Applebaum  
Director, Regulatory Affairs  
PJM and New York

FPL Energy, LLC  
21 Pardee Place  
Ewing, New Jersey 08628  
(609) 771-0894 (ph)  
(609) 771-0895 (fax)  
[david.applebaum@fpl.com](mailto:david.applebaum@fpl.com)



**FPL Energy**

September 30, 2008

Department of Natural Resources and Environmental Control  
State of Delaware  
89 Kings Highway  
Dover, Delaware 19901

ATTN: Comments Regulation 1147  
Valerie Gray, Planning Supervisor  
DNREC – AQM

On behalf of FPL Energy, LLC (“FPL Energy”) and its affiliates doing business in Delaware and throughout the Regional Greenhouse Gas Initiative (“RGGI”) Region, we appreciate the opportunity to submit comments on the proposed Regulation 1147, the CO2 Budget Trading Program. FPL Energy has historically supported RGGI and we commend Governor Minner, Secretary Hughes and the Administration for the continued effort to reduce the harmful impacts on public health and the environment from greenhouse gas emissions.

By way of background, FPL Energy is one of the largest and cleanest power generating companies in the nation with operations in 26 states. We are the largest generator of wind power in the country and operate the largest solar facility in the world in California. Additionally, we are the largest producer of hydroelectric power in Maine and own and operate three nuclear facilities in the United States. FPL Energy also owns and operates a number of fossil-fired generating units within the region that will be subject to the proposed RGGI regulations.

FPL Group, our parent company, continues to be a corporate leader on the critical issue of reducing greenhouse gas emissions. We have participated in the U.S. Department of Energy’s voluntary reporting of Greenhouse Gas Emissions 1605(b) program since 1995. Our most recent report documents a 28% reduction in our greenhouse gas intensity over 1990 levels through efficiency gains, repowering to lower carbon-emitting fuels and increasing our portfolio with new non- and low-emitting generation. FPL Group is a charter member of the U.S. Environmental Protection Agency’s Climate Leaders Program. Additionally, FPL Group is one of fourteen original signatories of the U.S. Climate Action Partnership (USCAP), an alliance of diverse organizations such as BP America, General Electric, Environmental Defense, the Pew Center on Global Climate Change and the World Resources Institute. This alliance has called on the federal



## **FPL Energy**

government to quickly enact strong national legislation to achieve significant reductions of greenhouse gas emissions.

On a regional level, FPLE has participated in the development of the Regional Greenhouse Gas Initiative since its inception. We are pleased to provide the following comments regarding the proposed Delaware RGGI CO2 Budget Trading Program regulation:

### **General Comments**

FPL Energy strongly supports the development of a national, upstream, economy-wide program as the preferred method of addressing the global issue of climate change and reducing CO2 emissions. We continue to urge Delaware, and all RGGI states, toward that construct. In the absence of this approach, a well-designed cap-and-trade program implemented on a uniform, region-wide basis can achieve the goals of stabilizing and, ultimately, reducing CO2 emissions while minimizing the disproportionate impacts inherent in a single-state design. We strongly encourage Delaware, through the Department, to collaborate as closely as possible with the other RGGI states in developing and implementing a market-based program supported by program and auction rules that are regionally consistent so that CO2 reductions can be achieved while maintaining the reliability of the region's electric system. Consistency of the program and auction rules by RGGI member states is critical to achieving the goals that RGGI was formed to reach. Deviations by any member state in the use of set-aside accounts or auction mechanisms will create uncertainty and market disruptions resulting in inefficiencies and price volatility. Additionally, price volatility within the RGGI market will only lead to higher energy prices than what they otherwise would have been if a uniform program was implemented. FPL Energy recognizes the importance and concerns related to these issues to the citizens of Delaware.

We would note that on March 17, 2008 the RGGI states issued "Design Elements for Regional Allowance Auctions under the Regional Greenhouse Gas Initiative." Within these design elements, it was indicated that "(t)he participating states have agreed to participate in uniform regional auctions for the allowances that each state will be offering for sale. The initial auction is currently planned for September 10, 2008 with a second auction scheduled for December 17, 2008." At least several of the RGGI states, including Delaware, have indicated that they will be unable to participate in the initial (now September 25<sup>th</sup>) auction, as their regulatory and/or legislative processes may not yet be completed. The inability of the states to move together in implementing RGGI and conducting regional auctions can contribute to the inefficiency and volatility concerns noted above. Those entities regulated under RGGI, including FPL Energy, have noted throughout the legislative and regulatory processes that transparency and regulatory



## **FPL Energy**

certainty were critical in ensuring efficient, fair application of this new policy and process with a minimum of impact to ratepayers. The fact that at least several RGGI states are likely to delay their participation in regional auctions is troubling at best. All of the states had sufficient time under their rulemaking procedures to develop and implement RGGI regulations. As regulated entities, companies such as FPL Energy cannot and should not delay or defer their responsibility under RGGI; nor should individual states. While the RGGI Memorandum of Understanding provides that regulations implementing the CO<sub>2</sub> Budget Trading Program be adopted by RGGI members by December 31, 2008, we urge all RGGI states to commence their participation in the regional auction process by no later than the December 17<sup>th</sup> auction, as announced by the RGGI states on March 17, 2008.

### **Specific Comments on Proposed Regulation 1147**

**Voluntary Renewable Energy Purchase** – The proposed Rule 1147, in Section 1.3 (Definitions), specifically defines “Voluntary renewable energy purchase” as “a purchase of electricity from renewable energy generation or renewable energy attribute credits by a retail electricity customer on a voluntary basis. Renewable energy includes electricity generated from biomass, wind, solar thermal, photovoltaic, geothermal, hydroelectric facilities certified by the Low Impact Hydropower Institute, wave and tidal action, and fuel cells powered by renewable fuels. The renewable energy generation or renewable energy attribute credits related to such purchases may not be used by the generator or purchaser to meet any regulatory mandate, such as a renewable portfolio standard.”

FPL Energy, consistent with our previous comments (submitted on July 15, 2008) on a Voluntary Renewable Energy Set-Aside (“VRE”), certainly agrees with the aforementioned definition. Likewise, we reiterate our strong support for the creation of a VRE Set-Aside within Rule 1147 and Delaware’s implementation of RGGI. Unless we’ve omitted it in our review, however, we do not see any provision within the language of this proposed Regulation itself, aside from the aforementioned definition, for a VRE Set-Aside. Further discussion with DNREC staff suggests that the final rule, in fact, purposely excludes a VRE Set-Aside. A VRE Set-Aside is an option contemplated by the RGGI Model Rule. As noted by The Nature Conservancy’s Sarah Murdock in her earlier comments on VRE, nearly all of the participating RGGI states have incorporated a VRE set-aside within their RGGI legislation or regulations, typically in the range of one percent of their total allowances. From FPL Energy’s perspective, a one percent set-aside for this particular purpose as contemplated in earlier drafts would be a start, but a very modest start. Actually omitting a VRE Set-Aside would further discourage the creation of a voluntary renewables market. For a state that has been in the forefront of encouraging development of renewable generating resources and a renewables industry, failure to include a VRE Set-Aside is surprisingly inconsistent and, along with the direct



# FPL Energy

allocation of allowances to emitting resources, particularly inconsistent with the overall goals of RGGI. We once again strongly encourage Delaware to incorporate a VRE Set-Aside. In doing so, Delaware should avoid incorporating a cap, keeping in mind that renewable energy incorporated under a VRE set-aside cannot, as defined above, be included in, or credited against, any other renewable incentive program (e.g. RPS). As non-emitting sources, renewable energy resources represent among the only readily available electric generating technologies capable of supplanting CO<sub>2</sub>-emitting generation. The growth of renewable energy, then, should be readily encouraged whenever possible. Assuming that the renewable attributes from renewable resources are generated from within the RGGI region or a state with a cooperative agreement, and those attributes are from verified reputable sources, those attributes should be convertible under a designated formula to carbon allowances and eligible for retirement under the state's cap.

## **Section 1.3 Definitions**

“Cooperating Regulatory Agency” contains the requirement to have “entered into a memorandum of understanding with the *appropriate regulatory agencies of all participating states...*” The Model Rule does not indicate that all ten participating states must sign an MOU with a cooperating regulatory agency in order for the cooperating regulatory agency to be able to carry out the obligations relative to offset projects. We believe this requirement would be duplicative, cumbersome and potentially confusing without providing any additional benefit. We would suggest the language be changed to “...*entered into a memorandum of understanding with the appropriate regulatory agency of a participating state...*”

“Delaware Auction Account”. We suggest adding the phrase “*or its agent*” after “...the Department of Natural Resources and Environmental Control” to allow for delegation to a regional auction organization.

“Monitoring system”. Replace the word “*excepted*” with “*accepted*”.

## **Section 5.3.1 General allocations**

“Beginning with 2009 CO<sub>2</sub> allowances, the Department or its agent shall auction 60% of allowances available to Delaware and allocate 40% to each applicable unit as stated by Table 5-2 or 5-3 of this regulation, as applicable. The percentage of allowances auctioned by the Department or its agent shall increase by 8% per year, such that 100% of Delaware's allowances for 2014 shall be auction....”



## FPL Energy

As a general matter, FPL Energy opposes set-asides for emitting units. In setting aside 40% of Delaware's allowances for internal generating resources, Regulation 1147 effectively rewards certain generating units for continuing to emit harmful greenhouse gases, and creates an unlevel playing field for generating units located within the RGGI region that are required to purchase emissions at or near 100% of their requirement. We recognize that the set-aside "transitions out" after five years, and that this particular set-aside was crafted through a collaborative process among many parties. We further recognize that a specific basis for this particular set-aside was/is a concern regarding the competitive impacts of impact of "leakage" associated with generating units to the west of Delaware. That having been said, Delaware's generating resources, like those throughout the RGGI region, should have contemplated the onset of greenhouse gas stabilization/reduction legislation and regulation years ago; and to incorporate the true impact and cost of greenhouse gas emissions on public health and the environment, generating units should be required to purchase allowances at or near 100% of their requirement from the outset of the program.

Regarding the allocations based on "*...Table 5-2 or 5-3 of this regulation, as applicable,*" we have found no language that specifies under what circumstances each table would be used. We would request such language be included.

### **Section 5.3.4 Limited industrial exemption set-aside allocation**

"The limited industrial exemption set-aside allocation will consist if 1,207,544 tons from the State of Delaware CO2 Budget Trading Program base budget set forth in 5.1 of this regulation."

In Section 1.2.2.1, a "unit that under 1.2.1 of this regulation that is covered by a permit issued pursuant to 7 DE Admin Code 1102 or 1130 containing a practically enforceable condition restricting 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...shall be exempt from the requirements of Regulation 1147...."

As noted earlier, FPL Energy generally opposes set-asides for emitting units. Units that generate 10 percent or less of their annual electrical output to the electric grid still emit harmful greenhouse gas emissions. In order to incorporate the true impact and cost of greenhouse gas emissions on public health and the environment, generating units should be required to purchase allowances at or near 100% of their requirement from the outset of the program. In the case of those covered by the limited industrial exemption set-aside, they should be required to purchase allowances at least to the extent of their electric output to the electric grid.



## **FPL Energy**

Section 5.3.4.2 directs the Department to “*retire CO2 allowances in the limited industrial exemption set-aside general account.*” There is no indication as to how the amount of allowances to be retired will be calculated. In the section that follows (5.3.4.3) it is clear there may be a retirement of only a portion of the annual set aside and that any remaining allowances will be given to CO2 budget units that were allocated allowances under 5.3.4.1 on a pro-rated basis. We urge the Department to specify how the amount of retired allowances will be calculated.

### **Section 6.4 Recordation of CO2 allowance allocations**

Section 6.4.7 states “*By January 1, 2009, the Department or its agent will record in the CO2 budget source’s general account the CO2 allowances for allocation years of 2009, 2010, 2011, 2012 and 2013 pursuant to the amounts established by 5.3 of this regulation.*” This allocation, without restriction as to use, equates to a free cash handout to in-state generators. We strongly urge the Department to record the allowances in the compliance accounts of the budget units to which they were allocated, to restrict the use of these free allocations for compliance and to not allow them to be sold or traded in the marketplace. This is consistent with the restrictions placed on free allocations in other states, e.g. in Connecticut’s long-term contract set-aside [See Regulations of Connecticut State Agencies, Section 22a-174-31(f)(3)(M)].

### **Section 6.5 Compliance**

Section 6.5.1.4 reads “*... for excess emissions for a prior control period under 6.4 of this regulation.*” We believe the correct reference should be 6.5.4.

### **Section 10.3.1.2 Offset project locations**

Section 10.3.1.2.1.2 reads “*In any state or United States jurisdiction, other than a participating state, in which a cooperating regulatory agency has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states....*” Consistent with our comments under the definition of “cooperating regulatory agency”, the Model Rule does not indicate that all ten participating states must sign an MOU with a cooperating regulatory agency in order for the cooperating regulatory agency to be able to carry out the obligations relative to offset projects. We suggest the language be simply changed to “*In any state or United States jurisdiction, other than a participating state, in which a cooperating regulatory agency exists.*”



## **FPL Energy**

### **Section 11.0 CO2 Emissions Auctions**

Section 11.5.7 reads “*Unsold CO2 allowances may be made available for sale in subsequent auctions or after consultation with the Public Service Commission.*” We strongly urge the Department to change the language to read as follows: “*Unsold CO2 allowances **will** be made available for sale in subsequent auctions.*” There are a number of valid business and commercial reasons why generators and other market participants may not bid in any given auction. The assumption that allowances are unsold because of an over allocation is misguided, at best. Further, removing allowances from a marketplace that is regional in nature not only affects in-state generators, but out-of-state generators as well. Any removal of allowances will reduce the overall regional cap that was previously agreed upon by the governors of each of the participating states without the opportunity of the states for further input.

Section 11.7.5 reads “*Limitations: Participation in any auction may be limited to the level of financial security provided.*” We would urge the Department to change the word “may” to “will” to provide consistency with the conditions in place for the regional auction.

Section 11.8.1.3: The word “principle” should be “principal”.

Section 11.8.2 regarding the Department review of the applications for qualification lacks any timelines in which this process will be accomplished. We ask the Department to include language which is consistent with the provisions in the regional auction rules.

Section 11.8.6 appears to contain extra words. We suggest removing the words “*this regulation, and regulation*” contained at the end of the sentence.

### **Section 11.10 Auction Reporting and Transfer of CO2 Allowances**

This section does not contain a timeline in which these activities are to be completed. We strongly urge the Department to establish a timeline consistent with that set forth by the regional auction. This is particularly important since the delivery time for commodity contracts is tied to the regional auction timeline.

Section 11.13 calls for the publication of the auction results within 10 days of the transfer of allowances which, per our comments above, does not contain a specified timeline. Within ten days of an unspecified time leaves great uncertainty as to when the results will actually be published. Again, we urge the timeline for publication of results be consistent with those established for the regional auction.



## **FPL Energy**

Additionally, in Section 11.13, there is a reference to section 11.11 (Auction and Secondary Market Monitoring) of the regulation. We believe the correct citation should be 11.10. (Auction Reporting and Transfer of CO2 Allowances).

### **“Sunset” Provisions**

FPL Energy strongly urges the Department to include provisions in these regulations that, when a federal greenhouse gas reduction program is implemented, these RGGI regulations will be sunset and replaced by the federal program. It will be financially burdensome on the consumers in Delaware to be required to endure the costs of two programs, one state and one federal, which regulate the same emissions without enjoying any additional environmental or other benefit from such duplicate regulation. This request is consistent with the Memorandum of Understanding signed by the ten governors. (See Section 6 D)

### **Conclusion**

This concludes the comments of FPL Energy. Once again, FPL Energy thanks the Department for inviting this feedback, and commends the Administration for its continued support for controlling and reducing harmful greenhouse gas emissions.