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**RE: Northeast Regional Greenhouse Gas Coalition Comments on Proposed Regulation No. 1147 – Carbon Dioxide Budget Trading Program**

This letter provides the Northeast Regional Greenhouse Gas Coalition's (GHG Coalition)<sup>1</sup> comments on the Delaware Department of Natural Resources and Environmental Control Division of Air and Waste Management (DAWM) proposed regulation No. 1147 – Carbon Dioxide Budget Trading Program.

The GHG Coalition members have participated as official stakeholders to the RGGI process since its inception, participating in every RGGI meeting and workshop and submitting consensus recommendations throughout the entire process. See [www.ghgcoalition/resources.htm](http://www.ghgcoalition/resources.htm) for comments submitted during the RGGI process to date.

The GHG Coalition's comments on the DAWM's proposal focus on the following issues:

- Regional Auctions;
- Auction Structure and Format;
- Reserve Price;
- Pricing Information;
- Unsold Allowances;
- Allowance Auction;
- Market Monitoring and Enforcement; and
- Transition to a Federal Program.

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<sup>1</sup> The GHG Coalition members are Calpine Corporation; Conectiv Energy; Consolidated Edison, Inc.; Constellation Energy; Dominion Energy New England; Public Service Enterprise Group, Inc.; and Waste Management, Inc.

### ***Regional Auctions***

The GHG Coalition supports implementing joint and uniform multi-state auctions as soon as possible, as opposed to single-state auctions. To the extent that single-state auctions are deemed necessary initially, allowances purchased in those auctions should be completely fungible, i.e., they should be usable in any other participating state without restriction to increase market liquidity and transparency.

### ***Auction Structure and Format***

The GHG Coalition believes the 1,000-allowance lot size for the auction is reasonable. Furthermore, the single round, sealed bid, uniform price auction method seems reasonable as well. The GHG Coalition appreciates the signal that the RGGI States are open to alternative auction methods as the RGGI allowance market emerges and changes over time. However, it would be beneficial for the RGGI States to identify how such a decision would be made and how much input stakeholders will have in that process.

Furthermore, in light of the decision to have an open auction to all entities in all states that can financially qualify, the GHG Coalition supports the 25 percent limitation and finds it to be reasonable.

### ***Reserve Price***

The GHG Coalition agrees with the methodology utilized by the RGGI states to identify the minimum reserve price for the first RGGI auction. However, basing the reserve price for subsequent auctions on the current market price is problematic (especially at the outset of the program) for several reasons. The GHG Coalition appreciates that the Design Elements include the following sentence, “A reserve price based on the current market price will only be used if RGGI states determine that there are sufficient, reliable market data available to establish a valid current market price.” However, the methodology that will be utilized and how this determination will be made should be explained further and provided to market participants on the RGGI auction website well in advance of the December 2008 auction.

As demonstrated from previous cap and trade programs and early RGGI trading (announced trades are in the \$5-\$8/ton range), allowance prices at the outset of the program are often higher than expected. Therefore, basing the reserve price on the higher market allowance prices that occur in the first few years of the program would likely result in the price of RGGI allowances.

It is very likely that CO<sub>2</sub> Budget Sources will try to obtain as many allowances as possible in the early auctions in order to build an allowance account that will put them within reach of their compliance obligations. Therefore, there may be limited trading activity in the first few years of the program due to this dynamic. As a result, the market price will likely be set by the auction clearing price and a few transactions that may not be representative of the market.

For example, suppose allowances in the first auction clear at \$5.75/ton and that limited transactions occur in the RGGI market prior to the December 17, 2008 auction. If \$5.75 is the “current market price”, then the reserve price in the second auction would be \$4.60/ton. Suppose that the December auction clearing price is \$6.25/ton and that limited transactions occur in the RGGI market prior to the March auction. If \$6.25 is the current market price, then the reserve price in the third auction would be \$5.00/ton.

As an alternative to basing the reserve price for subsequent auctions on 80 percent of the market price, the GHG Coalition recommends that the RGGI states consider using a similar methodology as the Stage 1 trigger event, which uses a 14 month market settling period. For example, if RGGI applied the same market settling period approach to the reserve price, RGGI could escalate the \$1.86 reserve price used in the first auction (by some percentage plus CPI) for the first 14 months of the compliance period (which would span the first seven auctions). After this “settling period”, the reserve price could then transition to 80 percent of the market price.

### ***Pricing Information***

DAWM indicates in its proposal preamble that it will perform calculations of the minimum reserve price, current market price and the reserve price in consultation with the regulatory agencies in other participating states. The Department should clarify when this information will be provided and where it will be posted.

DAWM also indicates in its proposal preamble that it will perform calculations of trigger prices, and determine whether or not a stage-one (\$7/ton 2005\$) or stage two-trigger (\$10/ton 2005\$) event has occurred in consultation with the regulatory agencies in other participating states. DAWM should update these values to 2009 dollars as soon as possible and indicate when this information will be provided and where it will be posted.

### ***Unsold Allowances***

The proposal indicates that unsold allowances (those not sold at auction due to the reserve price not being met) will be offered for sale at the next auction only if a reserve price based on the current market price is used. The GHG Coalition urges the DAWM to reconsider this determination and to roll all unsold allowances forward to future auctions regardless of the reserve price method used.

### ***Allowance Auction***

The GHG Coalition continues to be concerned with the trend of several RGGI states towards adopting a 100 percent auction that would be open to both compliance and non-compliance entities at the start of the RGGI program. An alternative that the GHG Coalition views as a reasonable is the DAWM approach outlined in the proposed regulation which includes a 60 percent allowance auction and 40 percent direct allowance allocation to CO<sub>2</sub> Budget Sources. The auction quantity would transition by 8 percent annually resulting in 100 percent auction of allowances beginning in 2014. The GHG Coalition believes that a phased-in allocation such as this would have the additional

**benefit of decreasing the potential leakage of emissions due to an increase in electricity imported from non-RGGI states.**

The GHG Coalition commends the DAWM for including the flexibility to change the auction format as well as the entities that can participate in the quarterly auctions depending on how the market functions. DAWM could close auctions to compliance entities (owners and operators of CO<sub>2</sub> budget units located in Delaware and other participating states) if market conditions warrant such limitation, in order to maintain CO<sub>2</sub> allowance availability to compliance entities and ensure a well-functioning CO<sub>2</sub> allowance market. However, DAWM should identify how such a decision to change the auction format and eligible participants will be made in consultation with the regulatory agencies in other participating states and how much input stakeholders will have in that process.

### ***Market Monitoring and Enforcement***

The GHG Coalition was pleased to learn that RGGI, Inc. has contracted with Potomac Economics to provide services to the participating states in four general areas: a) auction monitoring, b) ongoing monitoring of allowance holdings and allowance transaction activity, c) general consultative services, and d) preparation of an Annual Report. The market monitoring RFP notes that the primary objective of the market monitoring function will be to ensure fair competition, efficient pricing, and protection against collusive or manipulative behavior in the RGGI CO<sub>2</sub> allowance auctions and the RGGI allowance market.

The GHG Coalition continues to be concerned with who will take enforcement measures if Potomac Economics reports abuse either in the auction or in the RGGI market. The GHG Coalition believes that oversight and enforcement powers are imperative to the success of the auctions and the functioning of the secondary market. RGGI, Inc. should release information regarding the governmental agency(ies) that will have jurisdiction to enforce regional auction rules or procedures and take action where appropriate. The market monitor will need to coordinate with the enforcement agency and develop reports and/or statistics that are relevant to that agency. The GHG Coalition prefers a governmental entity that has jurisdiction over interstate markets, such as the **Commodities Futures Trading Commission (CFTC)**. Recent statements by the CFTC indicate that it would have the authority and responsibility to oversee derivative instruments and non-derivative instruments that are traded in interstate markets, including RGGI emissions allowances. CFTC will perform the same types of oversight functions for RGGI derivatives that it currently employs to guard against fraud, abuse, and manipulation in other commodities markets. However, RGGI, Inc. should release a statement of its own to the same effect, and should specify which agency will have jurisdiction over the non-derivative markets.

### ***Transition to a Federal Program***

The GHG Coalition believes that programs to address climate change should be national in scope. The objective of the GHG Coalition throughout the RGGI process has been to

provide recommendations so that RGGI could serve as a model for a national program that would have a reasonable likelihood of adoption. Thus, it is essential that the RGGI implementing rules incorporate program elements that can be easily applied at the national scale.

In addition, the regulatory elements of the RGGI program (including implementing regulations at the state level) should either be superseded by or aligned with the national regulatory program so as not to have redundant and possibly conflicting programs. While the RGGI MOU contains the concept of transitioning to a comparable federal program, this alone is not sufficient.

The GHG Coalition applauds New Jersey P.L.2007, c.340 for addressing this issue and encourages the DAWM to include similar provisions where appropriate in Regulation No. 1147. New Jersey P.L.2007, c.340 includes the following:

- Within three months after the enactment of federal law providing for implementation of a national emissions allowance trading program, the DEP Commissioner shall render an interim decision as to whether the national program is substantially comparable to the GIG emissions allowance trading program in which the state is participating at that time.
- If the DEP Commissioner determines that the national program is substantially comparable, then DEP shall take such anticipatory administrative action in advance of the adoption of rules and regulations providing for implementation of a national emissions allowance trading program in order to minimize any delay in the State's participation in the national program.
- Within three months after the adoption of rules and regulations providing for implementation of a national emissions allowance trading program, the DEP Commissioner shall render a final decision as to whether the national program is substantially comparable to the greenhouse gas emissions allowance trading program in which the State is participating at that time.
- If the DEP commissioner determines that the national program is substantially comparable to the existing greenhouse gas emissions allowance trading program being implemented in the State, the department shall thereafter sell, exchange, retire or otherwise convey allowances only as part of the State's participation in the national program.
- The determination of the comparability of the programs shall be based upon the projected percent reductions of greenhouse gas emissions from electric generating facilities serving customers in the State under the national program as compared to the projected percent reductions of greenhouse gas emissions from electric generating facilities serving customers in the State under the national program and may consider the value of allowance auction proceeds or allowance auction proceeds directed to the State or other entity to benefit New Jersey energy consumers.
- Reductions anticipated through the implementation of other State regulated carbon reduction initiatives, including but not limited to a renewable energy

portfolio standard or any energy efficiency portfolio standard shall not be considered in determining the comparability of the programs.

We look forward to continued participation in the Delaware RGGI process and thank you for this opportunity to provide input.