MINORITY STATEMENT ON SCR 28 WORKGROUP REGIONAL GREENHOUSE GAS INITIATIVE (RGGI) FINAL REPORT
4/21/08

We, the three environmental members of the SCR 28 (RGGI) Workgroup, are writing this minority statement to make clear to other members of the workgroup, members of the legislature, and Governor Minner that the Final Report, and John Hughes' cover Memorandum to the General Assembly, both dated April 8, do not, from our point of view, accurately or fairly reflect what took place in our workgroup meetings. We wish to set the record straight and make some recommendations to the legislature.

At the outset, it must be noted that we have participated in this process with strong support for a regional carbon emission cap and trade program--even one with the modest goals of RGGI. It is our intention to see that the program is developed and implemented correctly and that revenue from the auction of emission allowances is managed carefully and applied effectively for consumer benefit or strategic energy purposes, as defined in the RGGI Memorandum of Understanding (MOU).

The statement on page 2 of the report, "The workgroup has reviewed and commented on this report and <u>has agreed to its contents</u>." (emphasis added) is not true. One of us offered substantial comments to the draft report of March 31, but the most important were not included in the Final Report. None of us three agreed to the Report's contents prior to its release. Though many aspects of the report are not problematic, it omits important information and suggestions provided on behalf of the environmental community.

While important conclusions drawn from the presentation made by ICF International to the Workgroup on November 19, 2007 were described in the Report, there was by comparison very little description of the extensive and compelling presentation made on December 7, 2007 or the subsequent related research paper submitted by one of us for the February 6, 2008 meeting. . Although a link to the paper was provided in the Report,[1] it does not yet work properly. Also, a link in no way replaces the need for a paragraph explaining the main conclusions and recommendations of the presentation and paper. Therefore, the main points are summarized here.

We provided evidence for the following conclusions: 1) Climate change is a real and growing threat; 2) Delaware is especially vulnerable because of its coastal location and low average elevation; 3) Greenhouse gas emissions need to be cut by at least 80% by 2050 to avoid serious damage; and 4) Energy

[1] See Meeting #5 Environmental and Climate Science Perspective at: http://www.awm.delaware.gov/Info/Regs/Pages/SCR.aspx

efficiency and distributed renewable energy (the main focus of the SEU) are necessary but not sufficient. Both energy efficiency and a variety of renewable energy sources are required for substantial reductions in carbon dioxide emissions. (See Figure 8, from the American Solar Energy Society.) We proposed that 100% of Delaware's annual 7.5 million emission allowances should be auctioned, as most of the nine other RGGI states plan to do--rather than giving a substantial fraction to generators at no cost. Based on the analysis presented, and the available information, we suggested the most effective way to address the problem with the resources at our disposal through the RGGI program was to direct that funds raised by the auction should be used approximately as follows: 40% for energy efficiency improvements, 35% for renewable energy development, 15% to reduce the energy cost burden for the poor, and 10% to educate the public.

Some weeks later, as the workgroup neared the end of its deliberations, a consensus had not been formed, and we three had not been able accept a DNREC-supported outcome, particularly with regard to the distribution of auction revenue. The suggestion was made that the environmentalist members provide an alternative proposal for inclusion in the report, which we submitted on March 24, 2008. We thought we offered a well-conceived plan that contained a more appropriate and fair destination for the bulk of the auction revenue, and also included safeguards for low income ratepayers against rising bills resulting from generators' passing on RGGI costs to customers. Yet, instead of including our alternative proposal with the document, the Report's authors, as with our paper, merely offered a link that was difficult to find,[2] significantly diminishing the likelihood that legislators, the public, or the press would view it. We attach the proposal, which was offered in the spirit of compromise, to the end of this statement.

Of the two major issues to be considered by the workgroup--the percentage of carbon allowances to be auctioned, and how to distribute revenue from the auction--the second issue became the most contentious. The reason for this is primarily because of the proposal to entrust most of the revenue (65% in the Report) to the Sustainable Energy Utility (SEU), an entity conceived by Senator McDowell and created by the legislature at session's end in June 2007. It became apparent during the workgroup meetings, and in other communications between us and DNREC staff, that DNREC strongly supported giving most of the RGGI revenue to the SEU. At one point, in late February, two of us met with Senator McDowell to see if a compromise could be reached that would allow some funding to go to the SEU, while providing greater accountability and environmental and public interest representation on the SEU Board. In this meeting, Senator McDowell told us that he and DNREC Secretary Hughes had

[2] Workgroup Report and Member Comments, DNREC's Workgroup Report, Email: Comments on Draft Workgroup Report from M. Fiorentino, MAELC, Attachment: Recommendations for Allowance Auction and Auction Proceed Distribution, at: http://www.awm.delaware.gov/Info/Regs/Pages/SCR.aspx

already agreed that most of the money raised by the RGGI auctions was to go to the SEU. If the Senator is to be believed, then this is extremely troubling. Many individuals donated extensively of their time in order to serve the state and participate in the workgroup process. If such a deal was made, whether before the workgroup started or later, it was improper because it broke faith with workgroup members who had been led to believe that their deliberations on the issue of revenue distribution were meaningful. DNREC staff's otherwise inexplicable support for the placement of very large sums of money into the hands of an entity existing only on paper, and with no track record, is consistent with a deal between DNREC and Senator McDowell.

We have serious concerns about the transparency, accountability, and governance of the SEU, as do a number of other organizations interested in Delaware's energy future, especially since the auctions could provide tens of millions of dollars annually to the SEU, which was established to be self-financing using bonds and the Green Energy Fund. The claim in the Report, which the undersigned did <u>not</u> agree to, is that the SEU enabling legislation defined the SEU as "the vehicle for leveraging public and private financing," with the Report's implication being that receipt of RGGI auction revenue would be within such a definition. However, a careful reading of the law establishing the SEU yields no such conclusion. First, nothing close to such language is present in the law, and second, even if it were, we disagree with the notion that hardwiring RGGI revenue constitutes the "leveraging" of financing. Thus, we do not accept the idea that the SEU was created to receive RGGI funding. SCR 28 itself suggests that auction revenue can be directed to multiple purposes consistent with RGGI goals, and the SEU is a named option. Yet that does not translate into the *fait accompli* that Senator McDowell argued for and DNREC accepted. If it were so, then the charge of SCR 28 to the workgroup would have only been to determine the percentage of allowances to auction. The fact is that the SEU was conceived on the premise that no state funds would be required, and that the SEU would rely on private marketplace revenue bonds that would be retired using the loan repayment from the energy cost savings of the users. Indeed, Senator McDowell boasted that, although he was contemplating a $30 million bond issue, he was given assurances from private lending institutions that they would feel comfortable providing as much as $50 million in bond proceeds.

In addition, the SEU as currently formed lacks adequate mechanisms for diverse board representation, conflict avoidance, and accountability. However, a number of environmental and public interest groups are working to bring more comprehensive and much needed reform to the SEU so that significant transparency, accountability, and public interest representation will be required. Senator McDowell is now championing SB 228, Amendment #1, which will not address our concerns. <u>We feel strongly that the SEU should get no money from RGGI until its governance is much better defined than at present, and that even if that is achieved, the SEU should be limited to 25% of the proceeds from RGGI auctions</u>.

Respectfully submitted,

Chad A. Tolman, Energy Chair, DE Chapter of the Sierra Club

Nicholas DiPasquale, Conservation Chair, DE Audubon

Michael D. Fiorentino, Executive Director, Mid-Atlantic Environmental Law Center

SCR 28 CARBON AUCTION WORKGROUP

RECOMMENDATION
March 24, 2008

1. 100% Auction of DE Carbon Allowances under the Regional Greenhouse Gas Initiative (RGGI) by year three. The phase-in will be: 70% of allowances to be auctioned in year one, 85% in year two, and 100% in year three and all subsequent auctions. All auction proceeds would be placed in a restricted account administered by DNREC.

2. A reserve fund would be established within the auction proceeds restricted account, which would become available in the third year of the program. The purpose of the reserve fund would be to offset the cost of substantial increases in rates should they materialize as a result of the impact of 100% auction of allowances on electric generators in Delaware. The reserve fund would be a set-aside of 25% of a given year's auction proceeds and would be allowed to accrue up to a maximum of 100% of a given year's auction proceeds. To the extent the reserve fund exceeds that amount, such monies will become available for the program purposes specified in paragraph 3. If a showing is made that rates have increased due to auction costs, then rate relief will be provided in an equitable manner to SOS customers with incomes at 200% of the federal poverty level and below. If such rate increases are not demonstrated by the year 2018, then the reserve fund will flow back into the restricted account and be disbursed for the program purposes specified in paragraph 3.

3. The balance of the auction proceeds (75%) would be used to establish and implement a Delaware Affordable Utilities (DAU) program, and other activities authorized under the RGGI MOU. The DAU program would be designed to provide assistance to low-income Delaware residents with the cost of electric, fuel oil and natural gas service. Qualifying home-owners requesting assistance would be eligible to receive contractor-provided weatherization services and materials, including insulation, energy efficient replacement windows and doors, and energy efficient heating and cooling systems, and other energy conservation and efficiency systems, at no cost. This program would be administered in conjunction with the existing Low Income Home Energy Assistance Program (LIHEAP) and the Weatherization Program.

4. As originally conceived, the Sustainable Energy Utility (SEU) would rely on private lending institutions for capitalization of the program and would not be eligible to receive carbon auction proceeds.

5. DNREC would serve as financial administrator of the RGGI Fund and be eligible to use carbon auction proceeds to administer the program. Carbon auction funds would be placed in a dedicated, interest bearing account. Interest earnings and unused funds remaining at the end of each state fiscal year shall be retained in the fund and used for the express purposes for which the fund was established.