NYSERDA

21 NYCRR Part 507, CO_2 Allowance Auction Program

Regulatory Flexibility Analysis for Small Businesses and Local Governments

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and nine Participating States[1] and is the first mandatory, market-based carbon dioxide (CO_2) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to approximately 75 million tons in 2021, declining 3.0 percent a year through 2030.[2] Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO_2 Budget Trading Programs to further reduce CO_2 emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO_2 Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The CO_2 Budget Trading Program is designed to allocate CO_2 emissions allowances ("Allowances") to an Energy Efficiency and Clean Energy Technology Account ("Account"), which has been established and is administered by the New York State Energy Research and Development Authority ("Authority") under this Part 507. The CO_2 Allowance Auction Program as set forth in Part 507 is designed to complement the provisions of the Program and the effectuate the purposes thereof.

[1] In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont. Additional states, including Pennsylvania and Virginia, have expressed interest in potentially becoming RGGI Participating States.

[2] The Participating States released the Updated Model Rule on August 23, 2017.

The Program revisions proposed by the Department include revisions that will modify the functions of the CO_2 Allowance Auction Program. In order to continue its role in complementing the Program, the Authority proposes revisions to Part 507 to incorporate the relevant proposed changes to the Program.

The only local governments affected by the proposed revisions to the Program are the Jamestown Board of Public Utilities (JBPU), a municipally owned utility which owns and operates the S. A. Carlson Generating Station (SACGS), and the Village of Freeport, which owns and operates the Freeport Power Plant No. 2. The emissions monitoring at SACGS and Freeport Power Plant No. 2 currently meet the monitoring provisions of the proposed Program revisions, 40 CFR Part 75; no additional monitoring costs will be incurred. Additionally, the costs associated with JBPU's and the Village of Freeport's compliance with the proposed Program revisions will be similar to those incurred by other privately held sources. JBPU's and the Village of Freeport's exposure to compliance costs in addition to those already incurred for compliance with the Program will depend upon each entity's need to solicit consultants or contractors for its compliance. No small businesses will be directly affected by the adoption of the proposed revisions.

The proposed Program revisions, which will cap regional CO_2 emissions at approximately 75 million tons annually beginning in 2021, represent a nearly 30 percent reduction in the regional cap for the period 2020-2030. After 2021, the cap will decline by 2.275 million tons annually. Further, to account for the existing private bank of CO_2 emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide a budget adjustment for banked allowances. The Third Adjustment for Banked Allowances will adjust the budget for 100 percent of the pre-2021 vintage allowances held by market participants as of the end of 2020, that are in excess of the total quantity of 2018, 2019 and 2020 emissions. The third adjustment will be implemented over the five-year period, 2021-2025, after the actual size of the 2020 vintage private bank is determined.

The proposed Program revisions retain the Cost Containment Reserve (CCR), which helps provide additional flexibility and cost containment for the Program. While the proposed revisions to the Program retain the CCR, the revisions would modify the CCR trigger price and the maximum amount of CCR allowances available at auction each year. In particular, the CCR allowances will be triggered and released at auctions at \$10.77 in 2020 and will increase percent to \$13.00 starting in 2021. Each year after 2021 the CCR trigger price will increase by seven percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction in 2020. Beginning in 2021, up to 10 percent of the regional cap of additional CCR allowances will be available for purchase at auction if the CCR is reached.

The proposed program revisions create an Emissions Containment Reserve (ECR), which will also help secure additional emissions reductions if prices fall below established trigger prices. The ECR will only be triggered, and allowances withheld from auctions, if CO_2 emission reduction costs are lower than projected. The states implementing the ECR will withhold up to 10 percent of their annual base budgets per year. The ECR trigger price will start at \$6.00 in 2021 and will increase by seven percent each year thereafter.

Finally, the proposed Program revisions retain the interim compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities must also demonstrate that they are holding allowances equal to at least 50 percent of their emissions at end of each of the first two years in each three-year compliance period. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

EFFECT ON SMALL BUSINESSES AND LOCAL GOVERNMENTS

No small businesses will be directly affected by the adoption of the proposed Program revisions. As noted above, however, the two local governments affected by the proposed revisions to the Program are the JBPU, a municipally owned utility which owns and operates the SACGS, and the Village of Freeport, which owns and operates Freeport Power Plant No. 2. The costs associated with the proposed revisions to the Program will be similar to those incurred by other privately held sources and will depend upon each entity's need to solicit consultants or contractors for its compliance.

COMPLIANCE REQUIREMENTS

The JBPU, as owner and operator of the SACGS, and the Village of Freeport, as owner and operator of Freeport Power Plant No. 2, will need to comply with the proposed revisions to the Program, as described below and more fully in the accompanying Regulatory Impact Statement.

New York stakeholders raised concerns during our extensive outreach effort, that the cost of RGGI might result in increased operation at units not subject to the regulatory provisions of Part 242. To address this concern, New York is also proposing to expand applicability under Part 242 to capture certain units that serve an electricity generator with a nameplate capacity equal to or greater than 15 megawatts (MW). This applicability expansion will apply to any unit 15 MW or greater that resides at an existing CO_2 budget source, and to any 15 MW unit that resides at a facility where there are two or more units with a nameplate capacity of 15 MW or larger.

Finally, the proposed Program revisions will retain the interim compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities will continue to have to demonstrate that they are holding allowances equal to at least 50 percent of their emissions at the end of each of the first two years in each three-year compliance period. The proposed Program revisions also include minor revisions and updates to all references. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

PROFESSIONAL SERVICES

There are two local governments affected by the proposed revisions to the Program, the Jamestown Board of Public Utilities (JBPU) and the Village of Freeport, and like other privately held sources, they may need to solicit professional consultants and contractors for its compliance with the proposed revisions to the Program. The Department also confirmed that no capital improvements to plant operations will be needed for JBPU's or the Village of Freeport's compliance with the proposed Program revisions.

COSTS

In addition to the costs identified for regulated parties and the public, State and local governments will incur costs. The Jamestown Board of Public Utilities (JBPU), a municipally owned utility, owns and operates the S.A. Carlson Generating Station (SACGS). The Village of Freeport owns and operates Freeport Power Plant No. 2. Emissions monitoring at SACGS and Freeport Power Plant No. 2 currently meets the monitoring provisions of the Program, and no additional monitoring costs will be incurred under the proposed revisions to the Program. Notwithstanding this, just like any other owner or operator of any source subject to the Program, the JBPU and the Village of Freeport will need to purchase CO_2 allowances equal to the number of tons of CO_2 emitted. The Department limited the analysis of control costs to the purchase of allowances to comply with the Program and assumed that the costs of allowances will be between $5.96 in 2020 and $9.77 in 2031 (in 2015 $) per ton for CO_2 under the Program Case. To estimate total costs for SACGS under the Program, the Department reviewed 2013 through 2018 emissions from Jamestown's affected unit. During that time period, Jamestown's emissions ranged from a low of 71,255 tons to a high of 135,579 tons. An estimate of compliance costs, based on these emissions values, indicates that purchasing allowances to cover emissions will result in estimated costs between a low of

$425,000 and a potential high of $1.3 million annually. To estimate total costs for Freeport Power Plant No. 2 under the Program, the Department reviewed 2013 through 2018 emissions from Freeport's affected unit. During that time period, Freeport's emissions ranged from a low of 23,662 tons to a high of 37,850 tons. An estimate of compliance costs, based on these emissions values, indicates that purchasing allowances to cover emissions will result in estimated costs between a low of $141,000 and a potential high of $369,795 annually. These costs will eventually be passed on to the consumers of electricity from the JBPU and the Village of Freeport. The estimated compliance costs in this paragraph are costs associated with compliance with the Program overall, meaning that the incremental cost of compliance associated with the revisions to the Program would be less.

The JBPU and the Village of Freeport have a range of compliance options and can utilize the flexibility inherent under the Program to comply. Since the program has a three-year control period with the compliance obligation at the end of the control period, the emission peaks associated with electricity generation will be averaged out and more long-term planning options will be available to SACGS and Freeport Power Plant No. 2. Although the proposed Program revisions retain the Interim Control Period, that will require JBPU and the Village of Freeport to cover 50 percent of their emissions in each of the first two years of a three-year control period, it is not anticipated that this interim requirement will significantly reduce the flexibility available to JBPU and the Village of Freeport. The JBPU and the Village of Freeport will also incur costs associated with the administration of the revised Program.

MINIMIZING ADVERSE IMPACTS

The promulgation of the proposed revisions to the Program and the amendments to 6 NYCRR Part 200 do not directly affect small businesses. Only two local governments are affected by the proposed revisions to the Program, the JBPU and the Village of Freeport. The proposed revisions to the Program constitute an emissions allowance-based cap-and-trade program. Cap and trade systems are the most cost-effective means for implementing emission reductions from large stationary sources. By continuing to implement the Program and proposed Program revisions, the Department will minimize any associated adverse economic impacts on the JBPU and the Village of Freeport.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Participating States initiated the most recent program review in the fall of 2015, with the announcement of the first stakeholder meeting and concluded the process in August 2017. The Participating States and RGGI Incorporated (RGGI, Inc.)[3] conducted more than a dozen stakeholder meetings and webinars during this period, during which they obtained public input on a number of program elements. Prior to each stakeholder meeting, agency staff and RGGI, Inc. distributed pertinent written material to the over 250 participants on the list serve and posted meeting documents on the RGGI, Inc. website. The stakeholder meetings were open to the public and all interested parties were encouraged to provide comment. All stakeholder comments were ultimately considered in the development of the Draft Updated Model Rule, which contained detailed model regulatory text, and was released to the stakeholders for comment on August 23, 2017. On December 19, 2017, the Participating States released the final version of the Updated Model Rule, which contained additional updates based on stakeholder feedback received on the Draft Updated Model Rule.

New York conducted an in-state stakeholder process designed to provide updates on the status of the regional process and to afford additional opportunity for New York's stakeholders to provide comment. The Department held stakeholder meetings and sent list-serve notices to New York stakeholders announcing regional meetings and webinars. The input provided by stakeholders during both the regional and in-state processes have been considered and incorporated by the Department in developing the proposed revisions to the Program. The

[3] RGGI, Inc. is a 501(c)(3) non-profit corporation created to provide technical and administrative services to the Participating States.

Department's records from those stakeholder meetings do not reflect that the JBPU attended those meetings nor is the Department otherwise aware of whether or not the JBPU attended them.

CURE PERIOD OF AMELIORATIVE ACTION

The cap reduction and other key elements of the proposed revisions to the Program will be effective beginning in 2021. The revised Program will require affected sources already subject to the Program to continue to comply, and units newly subject to the emission limitations under the expansion of the Program to certain units 15 MW beginning in 2021. No additional cure period or other additional opportunity for ameliorative action is included in the Program revisions. First, aside from the proposed applicability expansion to certain units 15 MW or larger, most sources that will be subject to the proposed Program revisions are already subject to the existing Program and have been since the regulation was initially promulgated in 2008 (or since they commenced operation). This includes the SACGS and Freeport Power Plant No. 2. Second, because of the cap-and-invest nature of the revisions to the Program which includes periodic compliance deadlines, sources have flexibility to emit any amount of CO_2 during a control period, provided such emissions are covered by an adequate amount of CO_2 allowances by the relevant CO_2 allowance transfer deadline. For example, the fourth control period under the existing Program dates from years 2018-2020, with a CO_2 allowance transfer deadline of March 1, 2021. This is unchanged under the proposed revisions to the Program, and will continue to provide sources with flexibility and time to comply with the proposed revisions to the Program. Finally, while the proposed revisions retain the interim compliance requirement, the first interim compliance period was in 2015 and subsequent interim compliance periods will continue to be each of the first two years of the three-year control period. For these reasons, no additional cure period or other additional opportunity for ameliorative action is necessary for the proposed Program revisions.