



**NEW YORK STATE  
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

**COMMENTS OF MULTIPLE INTERVENORS REGARDING  
THE DRAFT OPERATING PLAN FOR INVESTMENTS IN NEW  
YORK UNDER THE CO<sub>2</sub> BUDGET TRADING PROGRAM AND  
CO<sub>2</sub> ALLOWANCE AUCTION PROGRAM**

**Dated: March 23, 2009**

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## **PRELIMINARY STATEMENT**

Pursuant to the informal notice posted on the website of the New York State Energy Research and Development Authority (“NYSERDA”), Multiple Intervenors<sup>1</sup> hereby submits the “Comments of Multiple Intervenors Regarding the Draft Operating Plan for Investments in New York Under the CO<sub>2</sub> Budget Trading Program and CO<sub>2</sub> Allowance Auction Program.” The Draft Operating Plan issued on February 25, 2009, sets forth NYSERDA’s recommendations as to how to allocate approximately \$525 million in proceeds from the sale of CO<sub>2</sub> emissions allowances (“Allowances”) pursuant to RGGI.

Multiple Intervenors supports cost-effective energy efficiency initiatives, as well as efforts to reduce greenhouse gas emissions. In fact, Multiple Intervenors’ members have, collectively, invested tens of millions of dollars and substantial other resources in order to increase the efficiency of their individual operations, thereby reducing the “carbon footprint” of their respective facilities. However, businesses in New York also face severe economic and competitive pressures that include, but are not limited to, very high energy prices that afford other regions, and nations, a significant cost advantage. The disadvantages wrought by high energy prices are felt particularly by manufacturers and other energy-intensive businesses struggling to conduct business in New York under extremely-difficult economic conditions.

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<sup>1</sup> Multiple Intervenors is an unincorporated association of approximately 50 large industrial, commercial, and institutional energy consumers with manufacturing and facilities located throughout New York State. Multiple Intervenors has previously filed comments regarding the Regional Greenhouse Gas Initiative (“RGGI”) on May 22, 2006, March 13, 2007, November 15, 2007, December 21, 2007, and June 23, 2008.

Multiple Intervenors reiterates its concern that the proposed allocation of RGGI proceeds fails to adequately insulate New York electricity consumers from unnecessary, and potentially exorbitant, price increases that may result from implementation of RGGI. It is Multiple Intervenors' position that the Operating Plan should be designed in a manner that limits the potential price impacts on the State's electricity consumers, who already pay among the highest electricity prices in the United States. As discussed below, it is beyond dispute that the implementation of RGGI will increase electricity costs substantially for end-use electricity consumers. Given the current economic downturn, the danger simply is too great for the State to risk the possibility of imposing substantial, unfettered electricity price increases on its residents and businesses. Thus, effective, meaningful protective measures, coupled with provisions requiring the direct allocation of excess auction proceeds to customers, must be adopted.

Specifically, consistent with several other participating RGGI States, the Draft Operating Plan should be modified to include a funding cap of \$5 per ton to restrict the level of funding provided to the Energy Efficiency and Clean Energy Technology Account ("EE&CET Account"). A funding cap of \$5 per ton would establish a firm ceiling on the value of proceeds from the sale of CO<sub>2</sub> emissions Allowances that would be provided to the EE&CET Account. Amounts received as a result of auction prices in excess of \$5 per ton would be returned to consumers via a kilowatt-hour ("kWh") credit to electricity consumers. Importantly, funding cap mechanisms have been adopted by several other RGGI states (*i.e.*, Maine, Connecticut, New Jersey and New Hampshire) as a means of providing significant protection for their residents and businesses. A funding cap also provides greater budget

certainty, while ensuring more than adequate funding for the initiatives to be paid for by the EE&CET Account.

Moreover, in order to harmonize the multiple energy efficiency and carbon-reduction programs initiated by New York, and to ameliorate the detrimental financial rate impacts of these various programs on consumers, the Draft Operating Plan should be revised to ensure that the auction proceeds directed to the EE&CET Account are used to offset some of the funding requirements established for the Energy Efficiency Portfolio Standard (“EEPS”). This offset will ensure that the EEPS fund remains fully funded, while avoiding the imposition of unnecessary, duplicative and excessive costs on the State’s struggling electricity consumers. The need for such an offset is compelling given the extremely high cost of electricity in New York, as well as the current economic condition of the State.

Finally, assuming, *arguendo*, that not all of the RGGI proceeds are used to offset EEPS surcharges, additional modifications to the Draft Operating Plan are necessary to ensure an equitable result and to protect the State’s electricity consumers and economy. First, given that the RGGI Program will increase the cost of electricity for all consumers, the funds generated from the RGGI auctions should be allocated exclusively for purposes within the electricity sector and not allocated, as the Draft Operating Plan proposes, to non-electricity sectors. In addition, consistent with the majority of other RGGI states, NYSERDA should modify the Draft Operating Plan to include a firm cap on the amount of funds allocated to the EE&CET Account that may be used for reasonable and verifiable administrative and evaluation expenses related to RGGI.

## POINT I

### **THE DRAFT OPERATING PLAN SHOULD BE MODIFIED TO PROTECT NEW YORK CONSUMERS FROM POTENTIALLY EXORBITANT ELECTRICITY PRICE INCREASES RESULTING FROM RGGI**

The Draft Operating Plan proposes that approximately \$525 million derived from the sale of Allowances be invested in energy efficiency programs, renewable energy resource development, funding of non-electricity related projects and retained by NYSERDA to cover its administrative costs.<sup>2</sup> Significantly, the \$525 million budget set forth in the Draft Operating Plan assumes that Allowances are sold at \$3 per ton.<sup>3</sup> However, the two most recent RGGI auctions have produced prices of \$3.38 per ton and \$3.51 per ton, respectively.<sup>4</sup> It is likely that auction prices will continue to increase. In anticipation of those increases, the Draft Operating Plan proposes that “if New York allowances are sold in the regional auction at values above \$5 per ton, the incremental revenue would be used to support [Renewable Portfolio Standard (“RPS”) goals].”<sup>5</sup> The proposed allocation of funds set forth in the Draft Operating Plan is without merit and should be rejected.

It is Multiple Intervenors’ position that the proceeds generated from the sale of Allowances should be allocated in a manner that imposes the least possible cost on New

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<sup>2</sup> See Draft Operating Plan.

<sup>3</sup> *Id.* at ES-2.

<sup>4</sup> *RGGI State’s CO<sub>2</sub> Auction Continues Strong Performance*, December 19, 2009; *States Release Results of Third Auction for RGGI CO<sub>2</sub> Allowances* (March 20, 2009). These articles may be found at [www.rggi.org](http://www.rggi.org).

<sup>5</sup> *Id.*

York electricity consumers, who already pay substantially more for electricity than the rest of the country. However, as proposed, the Draft Operating Plan falls far short of this goal. Instead, the allocation of auction proceeds proposed in the Draft Operating Plan is likely to further increase the cost of electricity to New York consumers, and place businesses struggling to survive in the State at an even greater competitive disadvantage.

New York consumers currently pay the second highest electricity prices in the continental U.S.<sup>6</sup> In fact, in 2008, New York consumers paid nearly 69 percent more for electricity than the national average.<sup>7</sup> This growing price disparity places an undue burden on all State consumers. Significantly, the State's high energy prices, together with other factors, place New York businesses at a significant competitive disadvantage with respect to businesses in other regions and nations. Unfortunately, the allocation of Allowance auction proceeds, as proposed to be implemented by the Draft Operating Plan, would further exacerbate the already high electricity prices in New York, placing even greater strain on the State's consumers and economy. Given the worsening economic condition of the State, the potential electricity price increases resulting from RGGI could have a devastating impact on the State's economy.

Because of RGGI's potential to cause unreasonable increases to the cost of electricity in New York, the Draft Operating Plan should be modified: (a) to include a funding cap mechanism to provide protection against the impact on consumers of auction

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<sup>6</sup> Energy Information Administration ("EIA"), *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*, available at [http://www.eia.doe.gov/cneaf/electricity/epm/table5\\_6\\_b.html](http://www.eia.doe.gov/cneaf/electricity/epm/table5_6_b.html).

<sup>7</sup> *Id.*

prices that far exceed the level of funding needed to achieve reasonable energy efficiency and carbon reduction goals; and (b) to require that funding for the EE&CET account be used to offset the charges for other State-initiated programs.

**A. A Funding Cap Set at \$5 Per Ton is Needed to Protect New York Consumers From Exorbitant Electricity Costs**

New York electricity consumers cannot afford to absorb unlimited electricity price increases resulting from the implementation of the RGGI Program. Accordingly, for the reasons set forth below, Multiple Intervenors recommends that NYSERDA should implement a cap for funding the EE&CET account at \$5 per ton. Any proceeds above the \$5.00 per ton level should be refunded to New York electricity customers as a direct per kWh credit in order to minimize the detrimental financial impacts of the RGGI Program on consumers.

New York electricity consumers currently pay some of the highest electricity prices in the country.<sup>8</sup> For instance, in 2008, as the average retail electricity price in New York for all sectors during the first 11 months was 16.61 cents per kWh, 69.32% higher than the comparable national average of 9.81 cents per kWh.<sup>9</sup> This price disparity places an undue burden on all State consumers. Significantly, the State's high electricity prices,

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<sup>8</sup> See, e.g., Energy Information Administration ("EIA"), report entitled, "*Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*," available at [http://www.eia.doe.gov/cneaf/electricity/epm/table\\_5\\_6\\_b.html](http://www.eia.doe.gov/cneaf/electricity/epm/table_5_6_b.html).

<sup>9</sup> *Id.*

together with other factors, place New York businesses at a significant competitive disadvantage with respect to businesses in other states and countries.

Over 550,000 individuals in New York are directly employed in manufacturing, representing over 10.5% of all jobs in New York State.<sup>10</sup> Manufacturing also contributes \$61 billion annually to New York State's GDP. In recognition of the importance of manufacturing to New York, the Governor has stated that "New York State is committed to supporting the needs of manufacturers . . . that want to invest and grow in Upstate. At a time when our State's economy has tightened dramatically, [manufacturing] investment is critical for New York's economic development."<sup>11</sup>

However, despite these platitudes, the continued imposition of high energy costs remains a significant factor for the decline in New York's manufacturing sector. Significantly, from 1997-2007, the manufacturing sector in New York lost over 30 percent of its employment – more than 166,000 jobs.<sup>12</sup> The trend continued in October, 2008, with the loss of an additional 17,400 manufacturing jobs from New York State.<sup>13</sup> It is beyond dispute

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<sup>10</sup> Joe Russo, Principal Economic Development Representative, National Grid, *Manufacturers Compete in New York State* (May 2008); this article may be found at [http://www.shovelready.com/sr\\_2005/documents/Manufacturers%20Compete%20in%20New%20York%20State.doc](http://www.shovelready.com/sr_2005/documents/Manufacturers%20Compete%20in%20New%20York%20State.doc).

<sup>11</sup> *Governor Paterson Announces Major Economic Development for New York's Southern Tier* (August 6, 2008) may be found at the following internet address: [http://www.state.ny.us/governor/press/press\\_0806082\\_print.html](http://www.state.ny.us/governor/press/press_0806082_print.html).

<sup>12</sup> The Public Policy Institute of New York State, *Manufacturing Employment Growth, 1997-2007*.

<sup>13</sup> The Public Policy Institute of New York State, *Monthly Economic Update – Job Trends* (October 2008).

that high energy prices have contributed to the exodus.<sup>14</sup> As Andrew Liveris, chairman and chief executive of Dow Chemical Co. has stated, “even more than high labor costs, runaway energy prices are pushing manufacturing jobs overseas”<sup>15</sup> and that “energy has overwhelmed all of our issues.” As Liveris warned, high energy prices must be addressed if the United States wants to stay competitive. “If one does not have a manufacturing economy, then there is no such thing as U.S. leadership ... You can’t just be a service sector. I hope people understand that intuitively.”

The failure to implement a funding cap of \$5 per ton in the Draft Operating Plan and allocate excess auction proceeds toward a direct reduction in the cost of electricity to consumers will place additional, and potentially irreparable, financial stress on struggling New York businesses that are in the middle of an economic downturn and striving to maintain operations and jobs. The State has concluded previously as a matter of policy that it “will continue to strive to reduce energy costs for all New Yorkers with the expectation of narrowing the disparities between New York’s costs and costs in other states and regions of the country.”<sup>16</sup> Consequently, in order to ensure that the State does not lose more jobs to

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<sup>14</sup> See, e.g., Chris Isidore, *The Latest Gas Pain: More Job Losses*, CNNMoney.com, June 6, 2008 (forecasting “several more months of job losses because of high energy prices”); Rob Varnon, *Connecticut Adds 800 Jobs in July*, Conn. Post, August 19, 2005 (stating that Connecticut has lost 800 jobs in manufacturing since May 2005 and that “there’s evidence that higher energy prices are affecting the economy”); Lolita C. Baldor, *Demand for Natural Gas Fuels Business Cuts, Terrorism Fears*, March 25, 2004 (quoting Governor Don Carcieri of Rhode Island as stating, “The energy costs issue is driving businesses and jobs overseas.” Carcieri testified that major companies in Connecticut and Rhode Island “are struggling with skyrocketing gas bills.”).

<sup>15</sup> *Dow CEO Blames Energy Costs for Job Loss*, Associated Press, October 30, 2006.

<sup>16</sup> *New York State Energy Plan* (2002) at 1-38. Thus far, the State has utterly failed to

states or nations where the cost of doing business is lower, it is imperative that the price of electricity does not increase unnecessarily.

Importantly, the establishment of a \$5 per ton funding cap is consistent with the Allowance prices projected in the ICF analysis relied upon by the NYSERDA and the New York State Department of Environmental Conservation (collectively, the “Agencies”) as justification for the implementation of RGGI in New York.<sup>17</sup> In fact, determining whether to proceed with RGGI, the Agencies relied, in large part, upon the ICF analysis to determine whether RGGI would be successful if implemented in New York.<sup>18</sup>

Moreover, a \$5 per ton funding cap would provide more than adequate funds for investment in energy efficiency, while protecting consumers from unexpectedly-high allowance prices. Under a funding cap, the price of Allowances, as determined by the market, is not affected; rather, such a mechanism merely establishes a cap on the level of funding that will be provided from each Allowance sold at auction to the EE&CET Account. If the Allowance price exceeds the level of the funding cap, then any excess funds are used to provide direct rebates or credits to electricity consumers on a per kWh basis.

The Draft Operating Plan’s commitment to use revenues from auction prices in excess of \$5 per ton “to support the achievement of a 30 percent Renewable Portfolio

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reduce New York’s energy price disparity, and recent implementation of various state policies have exacerbated that disparity.

<sup>17</sup> See ICF RGGI Modeling.

<sup>18</sup> See DEC, *Regulatory Impact Statement: 6 NYCRR Part 242, CO<sub>2</sub> Budget Trading Program* at 46-52, available at [http://www.dec.ny.gov/docs/air\\_pdf/08242ris.pdf](http://www.dec.ny.gov/docs/air_pdf/08242ris.pdf).

Standard”<sup>19</sup> confirms two things: (a) revenues above \$5 per ton are not needed to fund energy efficiency or carbon-reduction efforts; and (b) that the Agencies view the auction proceeds as a fungible resource that can be directed virtually anywhere.<sup>20</sup> The goals of the RGGI program must be harmonized with the rate impacts that RGGI forces on New York consumers. The \$5 per ton funding cap would provide some semblance of balance and protection for New York electricity consumers.

Importantly, several other RGGI states already have recognized the need to provide protection for their residents by adopting funding caps.<sup>21</sup> The funding cap mechanisms adopted by Connecticut, Maine and New Hampshire establish a fixed cap on the value of each Allowance sold that can be used for funding energy efficiency and other measures, with any value above this cap used to provide direct per kWh rate relief to electricity consumers.<sup>22</sup> The protection afforded by the funding cap is critical. For example, if NYSERDA adopted a \$5 per ton funding cap, similar to that adopted by Connecticut and

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<sup>19</sup> Draft Operating Plan at ES-2.

<sup>20</sup> The State already has imposed an administratively-determined surcharge to fund efforts to achieve previously-determined RPS goals. Moreover, while NYSERDA may be responsible for administering the RPS program, it does so under the authority of the New York State Public Service Commission, which sets the goals for that program.

<sup>21</sup> *See* Conn. Agencies Regs. §§ 22a-174-31(f)(5) and 22a-174-31(j) (2008) (hereinafter “Connecticut Funding Cap”); 35-A M.R.S. § 10008(5) (2008) (hereinafter, “Maine Funding Cap”); and R.S.A. 125-O:23(IV)(a) (2008) (hereinafter, “New Hampshire Funding Cap”). In addition to the funding caps adopted by Connecticut, Maine and New Hampshire, New Jersey has adopted additional protections for consumers if the price of Allowances exceeds \$7 per ton. *See* N.J. Stat. § 26:2C-56.

<sup>22</sup> In Maine and Connecticut, the value of the funding cap is set at \$5 per ton. *See* Maine Funding Cap. In New Hampshire, the value of the funding cap is set at \$6 per ton in 2009. *See* New Hampshire Funding Cap.

Maine, and the Allowance price in the auctions for 2010 is \$20 per ton, then the EE&CET Account would receive approximately \$311 million of funding, with the remaining \$932 million being used to fund direct rebates to electricity consumers (*i.e.*, assuming the sale of all 62,110,805 Allowances the Agencies intend to sell in 2009).<sup>23</sup> Utilizing these same assumptions, absent a funding cap almost **\$1.25 billion** would be directed to the EE&CET Account in a single year.

Importantly, adoption of a \$5 per ton funding cap in New York would ensure adequate funding for the EE&CET Account. Significantly, the adoption of a \$5 per ton funding cap is equivalent to the highest Allowance price projected in the analysis relied upon by the Agencies in their promotion of RGGI. Therefore, establishing a funding cap at this level would allow the Agencies to receive their maximum anticipated funding level for the EE&CET Account but no more.<sup>24</sup>

Finally, NYSERDA previously has indicated that it is unable to adequately quantify its potential administrative costs due to the potential for significant fluctuations in

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<sup>23</sup> DEC, *Express Terms: Part 242 CO<sub>2</sub> Budget Trading Program*, p. 45, § 242-5.1(a) available at [http://www.dec.ny.gov/docs/air\\_pdf/08242revexpterm.pdf](http://www.dec.ny.gov/docs/air_pdf/08242revexpterm.pdf) (hereinafter “DEC Express Terms”).

<sup>24</sup> In fact, the potential annual funding provided to the EE&CET Account with a \$5 per ton funding cap in place (*i.e.*, approximately \$311 million) would increase the State’s per capita spending on energy efficiency by nearly 95 percent. See RGGI Emissions Leakage Multi-State Staff Working Group, *Potential Emissions Leakage and the Regional Greenhouse Gas Initiative (RGGI): Final Report* (March 2008), p. 19, available at <http://www.rggi.org/docs/20080331leakage.pdf> (hereinafter, “Final Leakage Report”). This report notes that if New York were to sell 100 percent of its available Allowances at \$3 per ton, the resulting funds available to the EE&CET Account would increase per capita spending on energy efficiency in the State by 59 percent.

the value of the EE&CET Account.<sup>25</sup> The implementation of a funding cap would provide greater funding-level certainty for the EE&CET Account, and, thus, enhance the ability of the Agencies to develop plans for the expenditure of funds, as well as quantify their administrative costs more accurately.

Based on the foregoing, it is indisputable that the implementation of a funding cap with respect to RGGI would provide: (i) significant consumer protection; (ii) an amount of annual funding to the EE&CET Account that satisfies all projected needs; and (iii) significant benefits to the Agencies regarding funding-level certainty and planning. Accordingly, Multiple Intervenors requests that NYSERDA modify the Draft Operating Plan to include such a funding cap mechanism. Given the irrefutable, significant protection that such a mechanism would provide to the State's consumers, the State must act to protect its residents and businesses in a manner similar to other RGGI states.

**B. Proceeds from the Sale of Allowances Should Be Used to Offset, Not Supplement, Existing or New Energy Efficiency Programs**

In the Draft Operating Plan, NYSERDA proposes to utilize proceeds from the sale of Allowances to augment the established -- and already substantial -- spending levels of existing energy efficiency and renewable programs (*i.e.*, System Benefits Charge ("SBC")),

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<sup>25</sup> Although NYSERDA projected that administrative and evaluation costs would not exceed 10% of auction proceeds, as set forth below, the administrative and evaluation costs set forth in the Draft Operating Plan exceed even these high initial estimates. See NYSERDA, *Regulatory Impact Statement: 21 NYCRR Part 507, CO<sub>2</sub> Allowance Auction Program* at 9, available at <http://www.nyserdera.org/RGGI/NYSERDA.Revised.RIS.Part507.pdf>.

EEPS, and RPS).<sup>26</sup> This proposal for incremental funding should be rejected. As set forth below, proceeds from the Allowance auctions should be used to offset the initial funding levels approved for electric energy efficiency pursuant to the EEPS and/or other energy efficiency and renewable programs. Current estimates are that \$220 million will become available annually as a result of the RGGI auctions. Using these funds to offset the \$330 million annual EEPS budget would ensure that the State's consumers, already struggling with some of the highest electricity prices in the continental United States, including several energy efficiency and renewable resource surcharges, are not subjected to a duplicative, unnecessary surcharge while, at the same time, ensuring that the EEPS remains fully funded.

Each year through 2014, New York will provide a total of 62,110,805 allowances from the current vintage for sale.<sup>27</sup> In addition, New York also annually will sell an additional 5% of the total allowances for the vintage year three years forward (*i.e.*, 3,105,540 "future" vintage allowances).<sup>28</sup> Based on the results of the first two RGGI auctions, it is reasonable to assume that New York will sell all of the allowances it offers into the RGGI auctions during each year. Moreover, a conservative estimate of the future clearing prices can be derived by simply holding the current clearing price (*i.e.*, \$3.51 per

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<sup>26</sup> See Draft Operating Plan at ES-2, I-2, 5-10.

<sup>27</sup> 6 N.Y.C.R.R. § 242-5.1(a).

<sup>28</sup> For example, for 2009, New York will provide 62,110,805 vintage 2009 allowances for sale in addition to 3,105,540 vintage 2012 allowances. Accordingly, a total of 65,216,345 allowances will be offered for sale by New York in 2009. See RGGI, Inc., *State CO<sub>2</sub> Allowance Submission Schedule for Regional CO<sub>2</sub> Allowance Auctions* (July 11, 2008) at 2-3, available at [http://www.rggi.org/docs/Submission\\_Schedule\\_July\\_11\\_2008.pdf](http://www.rggi.org/docs/Submission_Schedule_July_11_2008.pdf).

ton) equal for all future years.<sup>29</sup> Given these assumptions, RGGI would be expected to conservatively generate more than \$220 million each year through 2014.

As stated above, New York electricity consumers currently pay some of the highest electricity prices in the country.<sup>30</sup> Although never highlighted, it is beyond dispute that regulatory programs such as the EEPS and RGGI, regardless of the claimed benefits associated therewith, cause increases to the cost of electricity for consumers. In fact, based on the New York State Public Service Commission's prior estimates of the electricity cost increases associated with the SBC and the fact that the annual initial funding level for the EEPS is to be collected in the same manner as the SBC, the \$330 million approved annual EEPS funding will result in an incremental increase in electricity rates ranging from approximately 3% up to more than 6%, depending on the customer-type (*i.e.*, residential, commercial, or industrial), with an average electric rate increase of nearly 4.5%.<sup>31</sup> Moreover, based on the prior analysis relied upon by DEC and NYSERDA and the current RGGI allowance clearing price of \$3.51 per ton, RGGI increases the cost of electricity to

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<sup>29</sup> This represents a highly conservative assumption, especially in light of the fact that the clearing price increased 10 percent from the first auction to the second auction. Moreover, the analysis relied upon by NYSERDA and DEC projected that RGGI allowance prices would increase each year throughout the duration of the program. See ICF International, *RGGI Package Scenario* (updated October 11, 2006), available at [http://www.rggi.org/docs/packagescenario\\_10\\_11\\_06.xls](http://www.rggi.org/docs/packagescenario_10_11_06.xls).

<sup>30</sup> See, *e.g.*, Energy Information Administration ("EIA"), report entitled, "Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State," available at [http://www.eia.doe.gov/cneaf/electricity/epm/table\\_5\\_6\\_b.html](http://www.eia.doe.gov/cneaf/electricity/epm/table_5_6_b.html).

<sup>31</sup> See Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs (issued January 26, 2001) at 25 (hereinafter, "SBC Order").

consumers by approximately 1% to 2%, depending on customer-type, with an average electricity increase of approximately 1.25%.<sup>32</sup>

It also is important to note that these projected increases in electricity prices are incremental to the substantial costs that other, existing “public benefit” programs already impose on New York consumers. The currently-approved funding levels of the RPS results in an average electric rate increase of nearly 2%.<sup>33</sup> Moreover, the current annual collection of \$175 million annually from the SBC results in electric rate increases in the range of nearly 2% to 4%, depending on customer-type, with an average electric rate increase of more than 2%.<sup>34</sup> Thus, cumulatively, the current estimated cost of the State’s own programs – EEPS, RGGI, SBC and RPS – cause an average increase in electric rates of nearly 10%. Moreover, due to the use of volumetric surcharges, the impacts of the programs are even higher for New York businesses struggling to maintain operations in the State.

The Draft Operating Plan asserts, without support, that the proposed allocations will reduce disproportionate price impacts and help the economy to thrive.<sup>35</sup> Unfortunately, despite the claimed benefits, the allocation of auction proceeds proposed in

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<sup>32</sup> See DEC, *Regulatory Impact Statement: 6 NYCRR Part 242, CO<sub>2</sub> Budget Trading Program* at 51-52, available at [http://www.dec.ny.gov/docs/air\\_pdf/08242ris.pdf](http://www.dec.ny.gov/docs/air_pdf/08242ris.pdf). These impacts will increase if, as anticipated, auction prices increase.

<sup>33</sup> See Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Status Report on Implementation of the Renewable Portfolio Standard Program (August 9, 2007) at 4-5. Those electric rate impacts relate only to the currently-approved RPS funding levels, and do not account for the substantial amount of additional funding that would be necessary to achieve even more ambitious RPS goals.

<sup>34</sup> See SBC Order at 25.

<sup>35</sup> See Draft Operating Plan at ES-1.

the Draft Operating Plan would serve only to perpetuate the high level of energy costs already imposed on New York consumers. Moreover, unlimited spending on energy efficiency programs would exacerbate the cost burden without a demonstrable, corresponding benefit. In fact, between 2002 and 2006, total electricity consumption in the State was reduced by nearly 4 percent.<sup>36</sup> In contrast, the average retail price for electricity during this period increased by nearly 27 percent.<sup>37</sup> This disconnect between consumption levels and price is even more pronounced for the State's industrial consumers. From 2002 to 2006, industrial consumers reduced their electricity consumption by nearly 68 percent,<sup>38</sup> while prices increased approximately 45 percent.<sup>39</sup> Thus, claims of future reductions in price are not supportable.

Accordingly, it is imperative that the State take all reasonable actions to moderate, and reduce, the growing burden associated with the myriad of energy efficiency and environmental programs being funded on the backs of the State's electricity consumers. The need to moderate electricity costs has never been more pronounced – the State currently is in a severe economic recession, and unemployment levels are rising rapidly. Energy-intensive businesses, which comprise some of the largest employers in the State, are

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<sup>36</sup> EIA, *Retail Sales of Electricity by State by Sector by Provider* (1990-2006), available at [http://www.eia.doe.gov/cneaf/electricity/epa/sales\\_state.xls](http://www.eia.doe.gov/cneaf/electricity/epa/sales_state.xls) (“EIA Historical Electricity Consumption Data”).

<sup>37</sup> EIA, *Average Price By State By Provider* (1990-2006), available at [http://www.eia.doe.gov/cneaf/electricity/epa/average\\_price\\_state.xls](http://www.eia.doe.gov/cneaf/electricity/epa/average_price_state.xls) (“EIA Historical Electricity Price Data”).

<sup>38</sup> EIA Historical Electricity Consumption Data.

<sup>39</sup> EIA Historical Electricity Price Data.

struggling mightily. One clear action available, which can be implemented immediately, is to recognize the duplicative nature of funding provided by the EEPS, SBC, and RGGI for electric energy efficiency and carbon-reduction programs, and use the RGGI auction proceeds to offset the funding requirements for the EEPS.

Therefore, for the reasons set forth above, the anticipated annual revenue generated by the State's participation in RGGI should be used to offset the currently-approved annual funding level associated with the EEPS. Such an offset would: (a) eliminate an unnecessary, duplicative and harmful incremental increase in the price that New York consumers pay for electricity; (b) ensure that RGGI proceeds are properly utilized to provide the greatest benefit to those burdened by its costs (i.e., electricity consumers); and (c) maintain adequate funding for the EEPS.

## **POINT II**

**IF, *ARGUENDO*, THE PROCEEDS FROM THE ALLOWANCE AUCTIONS ARE NOT USED TO OFFSET THE CHARGES USED TO FUND OTHER ENERGY EFFICIENCY PROGRAMS, FAIRNESS DICTATES THAT THE PROCEEDS SHOULD BE DIRECTED ONLY TO PROJECTS WITHIN THE ELECTRICITY SECTOR**

It is beyond dispute that the auction of Allowances under the RGGI program will increase costs to electric consumers and have potentially devastating impacts on New York businesses and industry. In fact, a recent study found that electricity price increases in excess of 5 percent due to the implementation of CO<sub>2</sub> emissions controls “would pose significant regional economic concerns, impacting particularly the energy-intensive

industrial base....”<sup>40</sup> As such, if, *arguendo*, the proceeds from the Allowance auctions are not used to offset existing energy efficiency programs, such proceeds should be directed only to projects within the electricity sector.

In the Draft Operating Plan, NYSERDA proposes to utilize the proceeds from the auction of Allowances under the RGGI Program to fund, and cross-subsidize, a variety of programs well outside the scope of the electricity sector. For example, NYSERDA proposes providing funding for, among other things: oil and propane efficiency measures,<sup>41</sup> science competitions and public education,<sup>42</sup> wastewater infrastructure,<sup>43</sup> vehicle efficiency,<sup>44</sup> development of a competitive greenhouse gas reduction bidding program,<sup>45</sup> and a climate research and analysis initiative.<sup>46</sup> Although in a vacuum these programs may very well have societal value, it is unfair to direct proceeds to entities and programs far beyond the sector that is funding these proposed actions (*i.e.*, electricity consumers). These broad-based governmental projects should not be funded on the backs of already-overburdened electricity

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<sup>40</sup> Gardner and Hendrickson, Carbon Wargames: U.S. Utilities Gain Strategic Insights by Playing Out a Carbon-Constraint Scenario (December 2007), p. 51, available at [http://www.iso-ne.com/pubs/pubcomm/forums/2008/rggi\\_forum\\_jan312008/Carbon\\_wargames.pdf](http://www.iso-ne.com/pubs/pubcomm/forums/2008/rggi_forum_jan312008/Carbon_wargames.pdf).

<sup>41</sup> Draft Operating Plan at 16.

<sup>42</sup> *Id.* at 20, 23.

<sup>43</sup> *Id.* at 21.

<sup>44</sup> *Id.* at 27.

<sup>45</sup> *Id.* at 49.

<sup>46</sup> *Id.* at 55.

consumers. Further, the use of RGGI auction proceeds to fund a myriad of purposes and constituencies not related to the electricity sector that provides the funding may lead to program inefficiency and public mistrust.

More fundamentally, the proposed use of RGGI auction proceeds to fund non-electricity sector programs is contrary to the stated purpose of the EE&CET Account. In the Revised Regulatory Impact Statement supporting the establishment of the CO<sub>2</sub> Budget Trading Program, DEC clearly stated that the EE&CET Account was created to benefit electricity customers:

The EE&CET Allocation will ensure that **electricity consumers** in a deregulated market receive the maximum benefits from the program at the least possible cost.<sup>47</sup>

Indeed, DEC emphasized the virtue of using the EE&CET to stream program benefits to electricity customers in justifying the rejection of the proposed allocation of allowances to the generators for free:

Given this dynamic, allocating allowances to generators for free is neither cost effective nor good public policy. Furthermore, the cost of the Program does not increase if the generators are required to purchase the allowances, because the generator incorporates the same dollar value of the allowance in its bid to supply electricity whether the allowance was obtained at no cost or through purchase on the open market. The EE&CET Allocation recognizes this economic reality and aims to avoid the inequity that occurs when consumers are required to pay for the emissions allowance as part of the cost of electricity even though the generators were given the allowance at no charge. Instead, the EE&CET Allocation ensures that the value of the allowances is used to further the emissions reduction aims of the program through cost-effective energy efficiency and clean

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<sup>47</sup> New York State Department of Environmental Conservation, Revised Regulatory Impact Statement: 6 NYCRR Part 242, CO<sub>2</sub> Budget Trading Program at 45, emphasis added, available at [http://www.dec.ny.gov/docs/air\\_pdf/242ris.pdf](http://www.dec.ny.gov/docs/air_pdf/242ris.pdf).

energy technologies, while simultaneously reducing the cost of the Program to consumers.<sup>48</sup>

Similarly, in its Supplemental Draft Generic Environmental Impact Statement, DEC stated that “[t]he energy programs to be promoted through the use of the auction proceeds under the CO<sub>2</sub> Allowance Auction Program are expected to closely resemble those currently administered by NYSERDA...”<sup>49</sup> Thus, the redirection of all RGGI proceeds to a wide variety of programs outside the electricity sector<sup>50</sup> denies electricity consumers the offsetting benefits promised by DEC and appears to be outside the scope of the Agencies’ authority.

For the reasons set forth above, to the extent that RGGI auction proceeds are not used to offset existing and planned EEPS and SBC surcharges, it is the position of Multiple Intervenors that, consistent with the Agencies’ own underlying rationale for RGGI, as well as general principles of fairness, NYSERDA should revise the Draft Operating Plan to re-allocate auction proceeds to electricity sector projects. For the C&I sector, NYSERDA should direct adequate funds to C&I energy efficiency programs that: (a) are very flexible, and facilitate customer implementation of projects specific to their business needs and facilities; and/or (b) adopt a competitive solicitation approach that pays customers for implementing energy efficiency projects that achieve verified energy consumption reductions.

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<sup>48</sup> *Id.* at 61; footnote omitted.

<sup>49</sup> New York State Department of Environmental Conservation, Final Generic Environmental Impact Statement: 6 NYCRR Part 242, CO<sub>2</sub> Budget Trading Program at 95, available at [http://www.dec.ny.gov/docs/air\\_pdf/rggigeis.pdf](http://www.dec.ny.gov/docs/air_pdf/rggigeis.pdf).

<sup>50</sup> The Draft Operating Plan emphasizes that its goal is to “build upon NYSERDA’s electric-focused programs” and “fill critical gaps by targeting fuels not adequately addressed through [SBC, EEPS and RPS] activities.” (Draft Operating Plan at ES-3.)

### **POINT III**

#### **NYSERDA SHOULD BE LIMITED TO RECOVERING ONLY VERIFIED AND REASONABLE ADMINISTRATIVE AND EVALUATION COSTS NOT TO EXCEED 3.5 PERCENT OF TOTAL AUCTION PROCEEDS**

In the Draft Operating Plan, NYSERDA proposes to utilize approximately 13% of auction proceeds – approximately \$29.5 million – to cover the unsubstantiated administrative and evaluation costs associated with the implementation and on-going administration of RGGI, as well as a state cost recovery fee.<sup>51</sup> These unsupported and unconstrained administrative and evaluation costs would unnecessarily deplete the funds available from the EE&CET Account to promote energy efficiency and other initiatives. Moreover, the proposed costs significantly exceed the projected 10% level set forth in NYSERDA’s Revised Regulatory Impact Statement.<sup>52</sup> Consistent with other RGGI States the administrative and evaluation expenses incurred by NYSERDA should be explicitly capped at 3.5% of auction proceeds to ensure that the proceeds realized by the sale of Allowances are not eroded unnecessarily by excessive and unsubstantiated administrative and evaluation costs. If the actual verified administrative and evaluation costs are below

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<sup>51</sup> Draft Operating Plan at 8.

<sup>52</sup> In its Revised Regulatory Impact Statement, NYSERDA reiterated that “the Authority expects that administration and evaluation costs under the CO<sub>2</sub> Allowance Auction Program will approximate 10% of the funds available to the Authority through the auction proceeds.” New York State Energy Research and Development Authority, Revised Regulatory Impact Statement: 21 NYCRR Par 507, CO<sub>2</sub> Allowance Auction Program at 8, available at <http://www.nyserdera.org/RGGI/NYSERDA.Revised.RIS.Part507.pdf>. *Id.*

3.5% of auction proceeds, such costs should be returned to consumers via a per-kilowatt-hour rebate or credit.

The implementation of a cap on administrative costs is not alien to the Agencies. In fact, NYSERDA currently operates under a capped structure in its administration of the SBC fund.<sup>53</sup> Furthermore, the ability of the Agencies to operate within the limits of such a cap would be enhanced by the adoption of a funding cap mechanism, as recommended above, because such mechanisms will provide the Agencies with greater certainty as to the value of the EE&CET Account, and, thus, a better ability to plan activities within clear budgetary guidelines.

In addition, adoption of a cap on administrative expenses would be consistent with the actions of the overwhelming majority of the other RGGI states that have adopted explicit caps on administrative expenses.<sup>54</sup> The level of the caps implemented by the other RGGI states range from 1 percent to 8 percent of the proceeds realized from the sale of Allowances, with a 5 percent cap being the most common cap value among these states.<sup>55</sup>

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<sup>53</sup> See NYSERDA RIS at 8; and Agencies Response Document at 201.

<sup>54</sup> In fact, six of the other nine RGGI states, excluding New York, expressly cap the level of administrative expenses that may be charged against the proceeds realized from the sale of Allowances. These states are Connecticut, Maine, Massachusetts, New Jersey, Rhode Island and Vermont. See Public Act 07-242, *An Act Concerning Electricity and Energy Efficiency*, § 93(c) (hereinafter “Connecticut Cost Cap”); 35-A M.R.S. § 10008(6)(G) (2008) (hereinafter, “Maine Cost Cap”); 225 CMR 13.06(8) (2008) (hereinafter, “Massachusetts Cost Cap”); N.J. Stat. § 26:2C-51(c) (2008) (hereinafter, “New Jersey Cost Cap”); R.I. Gen. Laws § 23-82-6(a)(6) (2008) (hereinafter, “Rhode Island Cost Cap”); and 30 V.S.A. § 203a(d) (2008) (hereinafter, “Vermont Cost Cap”).

<sup>55</sup> See Connecticut Cost Cap (*i.e.*, 7.5 percent); Maine Cost Cap (*i.e.*, 5 percent); Massachusetts Cost Cap (*i.e.*, 1 percent); New Jersey Cost Cap (*i.e.*, 8 percent); Rhode Island Cost Cap (*i.e.*, 5 percent); and Vermont Cost Cap (*i.e.*, 5 percent).

Given the relatively large amount of funding that will be provided to the EE&CET Account, the New York cap should be at the lower end of the range of administrative cost caps adopted by other RGGI states (*i.e.*, 3.5 percent).

Moreover, the implementation of a limit in administrative and evaluation costs must be coupled with the requirement that all such costs are reasonable and verified. The absence of these requirements could easily produce absurd results. For example, if the Allowance price is \$6.00 per ton in 2010, and all of the Allowances allocated to New York are sold, the resulting fund would be approximately nearly \$440 million annually, of which NYSERDA would retain \$57.2 million in 2010 alone for its “administrative and evaluation costs.” Such an amount far exceeds any reasonable expectation of what NYSERDA’s administrative costs should be for the Program for a single year.

To ensure that New York consumers receive the greatest possible benefit from the funds allocated to the EE&CET Account, the Draft Operating Plan should be modified, consistent with the majority of other RGGI states, to limit the administrative costs incurred by the Agencies to reasonable and verified amounts not to exceed 3.5% of total auction proceeds.

## CONCLUSION

For all the foregoing reasons, Multiple Intervenors respectfully submits that the Operating Plan should be modified as described herein in order to ensure adequate protection for New York electricity consumers, and the State's economy, against significant increases in the cost of electricity due to the implementation of RGGI. NYSERDA cannot continue to ignore what other RGGI States are doing to protect their residents and businesses, particularly where the goals of RGGI are not compromised in any way by the establishment of these simple consumer safeguards.

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Respectfully submitted,

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