

NYSERDA

Express Terms - Adopted Version; Effective October 8, 2008

21 NYCRR Part 507 CO₂ Allowance Auction Program

A new Part 507 is added to read as follows:

507.1: Purpose

The purpose of this part is to provide for the administration and implementation by the New York State Energy Research and Development Authority (“Authority”) of CO₂ Allowance Auctions and programs to promote the purposes of the Energy Efficiency and Clean Energy Technology Account (“the Account”) as provided by the CO₂ Budget Trading Program at 6 New York Codes, Rules and Regulations (“NYCRR”) Part 242. This part complements the provisions of the CO₂ Budget Trading Program, which was established by the New York State Department of Environmental Conservation to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in an economically efficient manner.

507.2: Definitions

Part 507 incorporates by reference the definitions established by the Department at 6 NYCRR Part 242. In addition, the following definitions apply:

(a) Ascending Price, Multiple Round Auction: A multiple round auction starting with an opening price with increases each round by predetermined increments. In each round, bidders offer the quantity they are willing to purchase at the posted price. Rounds continue so long as demand exceeds the quantity offered for sale. At the completion of the final round, allowances may be allocated, subject to Section 507.6:

- (i) at the final price to remaining bidders and withhold unsold allowances for a future auction, or
- (ii) at the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining allowances, or
- (iii) according to an alternative mechanism designed to effectuate the objectives of this Part.

(b) Auction Advisory Committee: A committee comprised of the Commissioner of the Department, the President and Chief Executive Officer of the Authority, and the Chairperson of the New York State Public Service Commission, or their respective designees (“the Committee”). The Committee shall advise the Authority on procedures relevant to conducting the CO₂ Allowance Auctions provided for in this Part.

(c) Authority: the New York State Energy Research and Development Authority.

(d) Authority Contact Person: An employee of the Authority designated to communicate with the public regarding CO₂ Allowance Auctions, as identified on the CO₂ Allowance Auction Website.

(e) CO₂ Allowance Auction Website: The website containing information regarding the auctions to be conducted pursuant to this Part and 6 NYCRR Part 242. The website shall be available through a link from the Authority's main website at www.nyserda.org.

(f) Control Period: The time periods established by the Department under 6 NYCRR Part 242.

(g) Department: The New York State Department of Environmental Conservation.

(h) Energy Efficiency and Clean Energy Technology Account: A general account to be established by the Authority, into which the Department shall allocate CO₂ Allowances.

(i) Environmental Notice Bulletin: An official Department publication pursuant to Environmental Conservation Law Section 3-0306(4).

(j) Participating State: A state that has established a corresponding regulation or statute as part of the CO₂ Budget Trading Program.

(k) Single Round Sealed-Bid Uniform Price Auction: A single round sealed-bid uniform price auction format, under which bidders may submit multiple bids at different prices; the price paid by all awarded bidders will be uniform and equal to the highest rejected bid price.

Part 507.3: Multi-State Auctions

(a) The Authority shall participate in a multi-state CO₂ Allowance Auction or Auctions if the Authority determines, in consultation with the Committee, that:

- (1) a multi-state auction capability and process is in place for the Participating States;
- (2) the multi-state auction can provide benefits that meet or exceed the objectives of the auction and purposes of the Account, as described in this Part, and;
- (3) the multi-state auction process would be consistent with the process described in this Part.

(b) Should the Authority, in consultation with the Committee, find that these conditions have not been satisfied, the Authority may conduct a New York State auction or auctions pursuant to this Part.

(c) The Authority shall retain control over the proceeds associated with the sale of all of New York's CO₂ Allowances, whether sold in a multi-state or a New York State CO₂ Allowance Auction.

Part 507.4: The Energy Efficiency and Clean Energy Technology Account

(a) The Authority will establish and administer the Account in accordance with the provisions of 6 NYCRR Part 242-1.2(35) and 242-5.3(a).

(b) The Authority will administer the Account in such a manner that allowances allocated to the Account by the Department from the CO₂ Budget Trading Program base budget will be made available for sale in CO₂ Allowance Auctions as described in this Part.

(c) The proceeds of the CO₂ Allowance Auctions will be placed into a segregated Authority funding account, and shall not be commingled with other Authority funds.

(d) The proceeds of the CO₂ Allowance Auctions will be used by the Authority to promote and implement programs for energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon reduction potential, and for reasonable administrative costs incurred by the Authority in undertaking the activities described in Part 507 and for administrative costs, auction design and support costs, and program design and support costs associated with the CO₂ Budget Trading Program, whenever incurred.

(e) At least annually, the Authority shall convene an advisory group of stakeholders representing a broad array of energy and environmental interests to advise it on how to best utilize said funds to achieve the goals of the Account.

Part 507.5: Implementation of CO₂ Allowance Auctions

(a) The Authority will design, implement and administer CO₂ Allowance Auctions in accordance with the objectives identified in 6 NYCRR Part 242.

(b) Implementation and administrative support functions for any auction conducted pursuant to this Part and with respect to the administration of the Account may be delegated by the Authority to a

designee deemed qualified by the Authority to perform such functions, provided that such designee shall perform all such functions under the direction and oversight of the Authority.

507.6: Commencement, Frequency and Quantity of CO₂ Allowance Auctions

(a) Commencement: Upon notification from the Department that it has allocated CO₂ Allowances into the Account, the Authority shall participate in or conduct CO₂ Allowance Auctions to sell such allowances pursuant to this Part. The initial auction shall be conducted at such time and manner as determined by the Authority in consultation with the Committee.

(b) Frequency: CO₂ Allowance Auctions will be held quarterly, or as often as practical and necessary to effectuate the objectives of the CO₂ Budget Trading Program, in consultation with the Committee.

(c) Calendar: The Authority shall maintain a calendar of anticipated auction dates on the CO₂ Allowance Auction Website. The calendar shall indicate the auction format and the number of allowances and allocation years of allowances to be auctioned at each auction. The Authority may periodically revise the calendar, provided that the information relevant to the next scheduled CO₂ Allowance Auction shall be fixed no later than 45 calendar days prior to such auction. The calendar shall include the dates of at least the next four (4) CO₂ Allowance Auctions and may also include the anticipated number of allowances to be auctioned at each Auction. The Authority may periodically modify the anticipated dates of Auctions listed on such calendar.

(d) Quantity: Prior to the end of each Control Period, CO₂ Allowances in a quantity equal to the number of CO₂ Allowances allocated to the Account for such Control Period will be made available for sale. CO₂ Allowances will be made available for sale by allocation year. Up to 50% of the allowances from an allocation year may be made available for sale in advance of the respective allocation year; such allowances may be made available for sale up to four (4) years in advance of such allocation year. Specific quantities of CO₂ Allowances that will be offered for sale will be included in each Notice of CO₂ Allowance Auction.

(e) Lot Sizes: The Authority shall make CO₂ Allowances available for sale in lot sizes of 1,000 allowances, except where available supply requires a smaller lot size.

(f) Reserve Price: In administering Auctions, the Authority will employ the use of a Reserve Price in a manner and form as provided for in Part 242. The Authority shall publish or announce such reserve price prior to each CO₂ Allowance Auction.

(g) Unsold Allowances: Unsold CO₂ Allowances will be made available for sale in a form and manner provided under 6 NYCRR Part 242.

507.7 Auction Format:

The initial auction shall be conducted as a Single Round Sealed-Bid Uniform Price Auction. The Authority, in consultation with the Committee, may employ a Single Round Sealed-Bid Uniform Price Auction or an Ascending Price, Multiple Round Auction in subsequent auctions.

507.8: Participant Eligibility and Limitations

(a) The owners of CO₂ Budget Units located in New York shall be eligible to participate in all auctions.

(b) Categories of bidders that may be eligible to participate in auctions include:

- (1) owners of CO₂ Budget Units located outside of New York but within those states that have final CO₂ Budget Trading regulatory provisions in place at the time of the CO₂ Allowance Auction and are Participating States;
- (2) owners of fossil fuel-fired generation units located outside of the Participating States,
- (3) brokers,
- (4) environmental groups,
- (5) financial and investment institutions, and
- (6) other market participants.

(c) For the initial CO₂ Allowance Auction, all categories of bidders will be eligible to participate. For each subsequent auction, the Authority, in consultation with the Committee, may preclude or limit the participation of any one or all of the categories of bidders. Notification of eligible categories of bidders will be included in each Notice of CO₂ Allowance Auction.

(d) Any bidder wishing to participate in a CO₂ Allowance Auction will be required to open and maintain a compliance or general account pursuant to the provisions in 6 NYCRR 242-6.2.

(e) Limitations: Participation in any auction may be limited to the level of financial security provided.

(f) The Authority shall institute a purchasing and/or bidding limitation in each auction. In no instance shall this limitation be greater than 25% of the allowances available in an auction. Any such limitations shall be included in the Notice of CO₂ Allowance Auction.

(g) Any applicant or bidder that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be denied eligibility or precluded from participation in CO₂ Allowance Auctions.

507.9: Participation Requirements

(a) Qualification: Any party wishing to participate in a CO₂ Allowance Auction or Auctions shall submit an application for qualification in the form and manner provided in the Notice of CO₂ Allowance Auction to the Authority on or before the application deadline date specified in the Notice of CO₂ Allowance Auction, which date shall be no sooner than 15 days following the date of publication of the Notice. Application information and forms shall be made available electronically on the CO₂ Allowance Auction Website. As a part of their application, applicants will be required to provide information and documentation relating to their ability and authority to execute bids and honor contractual obligations. Such documentation may include but may not be limited to:

- (1) Information and documentation regarding the corporate identity, ownership, affiliations, and capital structure of the applicant;
- (2) Declarations as to the beneficial ownership of any allowance that may be acquired through the auction;
- (3) The identification of any indictment or felony conviction of the bidder, or any member, director, principle, partner or officer of the applicant or any affiliate or related entity;
- (4) A statement by the applicant as to prior findings of non-responsibility with regard to any New York State procurement including findings under Section 139-j of the New York State Finance Law;
- (5) The identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity market or exchange.
- (6) Evidence demonstrating that such applicant has opened a general or compliance account as provided for in the provisions in 6 NYCRR 242-6.2 and identification of relationships with any other account holder.

(7) Applicants may be denied qualification based on the information provided or upon information as to such applicant obtained independent of the application process.

(b) The Authority will review each application for qualification and make determinations as to qualification to participate or otherwise submit bids in CO₂ Allowance Auctions. Failure to provide any information required by the Notice of CO₂ Allowance Auction may result in the application being declared incomplete or otherwise deficient. If an application for qualification is determined to be incomplete or otherwise deficient, the Authority shall notify the Applicant and state the reason therefore. Applicants whose applications for qualification have been determined to be incomplete or deficient will be given a reasonable opportunity, and in no event less than 5 business days to provide additional information and to cure such deficiencies.

(c) Parties found qualified for participation under subsection (b) will be qualified for subsequent CO₂ Allowance Auctions, and will be qualified to participate in such auctions within the financial security limitations of section 507.9(h); provided that there has been no material change to the information provided in the previously submitted application, that the party is within one of the categories of eligible bidders described in the Notice of CO₂ Allowance Auction for such auction, and such party meets all other requirements for participation. Any party found qualified shall notify the Authority of any material change in the information provided in the application for qualification no later than the date on which qualification applications for the next auction are due. Such notification shall state the date the change occurred and describe the change in sufficient detail to enable the Authority to determine if a change in the qualification status to participate in future auctions is warranted.

(d) The Authority may require parties previously found qualified to up-date and re-file applications for qualification on an annual basis.

(e) The Authority may suspend or revoke qualification of any party if such party fails to comply with this Part 507 and/or the provisions of 6 NYCRR Part 242.

(f) Bid Submittal Instructions. All bids shall be in a form prescribed by the Authority, which shall be made available electronically on the CO₂ Allowance Auction Website, as appropriate. All bids submitted will be considered binding offers for the purchase of allowances under the rules of the auction, this Part, and 6 NYCRR 242.

(g) If the Authority determines that a bidder has provided false or misleading information, or has withheld pertinent information in its application, or has otherwise failed to comply with any material provision of Part 507 or has violated any part of the auctions rules, the bidder may be prohibited from participating in any future CO₂ Allowance Auctions.

(h) To receive approval to participate in any specific auction, otherwise qualified bidders will be required to provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Authority. Financial security shall be provided in a form and manner as described in the Notice of CO₂ Allowance Auction.

(1) Parties who have posted financial security may request return of their financial security at any time prior to or following any CO₂ Allowance Auction, and the Authority

shall return said financial security provided that the Authority has no current or pending claim to such security as a result of a failure of the party to comply with these regulations or to pay the full amount of its accepted bid when due.

(2) Financial security may be forfeited to and retained by the Authority in the event the bidder's offer is accepted in a CO₂ Allowance Auction and the bidder fails to tender payment of the full amount when due.

507.10: Notice of Auctions

(a) A Notice of CO₂ Allowance Auction ("Notice") shall be published on the CO₂ Allowance Auction Website and the Environmental Notice Bulletin ("ENB") no later than 45 days prior to the date upon which each auction may be conducted. Such Notices may be transmitted electronically to parties requesting such notification provided they have submitted an electronic-mail address to the Authority Contact Person.

(b) Each Notice will provide a specific description of all auction participation requirements, and shall include but not be limited to information including the date, time and location of the CO₂ Allowance Auction, the categories of bidders who will be eligible to bid, the quantity of CO₂ Allowances to be auctioned (by allocation year), the auction format, amount and type of security required, any participation limitations, information regarding settling and clearing of allowance payments, instructions as to qualification applications, the terms and conditions that will govern auction transactions, other pertinent rules of the auction, and identification of an Authority Contact Person for further information.

507.11: Auction Reporting and Transfer of CO₂ Allowances

A professional independent monitor such as a certified public accounting firm or similar entity shall observe the conduct and outcome of each auction and issue a report to the Committee in accordance with professional auditing standards addressing whether the auction was conducted in accordance with the rules and procedures in the respective Notice of CO₂ Allowance Auction. Upon receipt and approval by the Committee of the report and upon payment in full by successful bidders, the Authority shall transfer or have transferred the corresponding CO₂ Allowances to each successful bidder's applicable compliance or general account.

507.12: Auction and Secondary Market Monitoring

(a) In advising the Committee, the professional independent auction monitor will monitor each CO₂ Allowance Auction and develop and apply data collection methods, metrics, and analytic techniques, and thresholds for identifying any bidding behavior or activity that may have a significant impact on the efficiency and performance of such auctions, including, but not limited to:

- (1) Collusion,
- (2) Market power, and/or
- (3) Price manipulation.

(b) The professional independent auction monitor shall also monitor allowance market data and information known to the Department and the Authority including allowance transactions and associated pricing reported in the CO₂ Allowance Tracking System, and other relevant data and information to ensure fair competition, efficient pricing, and protection against

collusive or manipulative behavior in the CO₂ Allowance Auctions and the CO₂ Budget Trading Program.

507.13: Publication of Results

Within 10 days of the Transfer of CO₂ Allowances provided for under Subpart 507.11, the Authority shall publish on the CO₂ Allowance Auction Website the auction clearing price and the total amount of Allowances sold in such Auction.