

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Proposal to Adopt Sections 22a-174-31 and
22a-174-31a of the Regulations of Connecticut
State Agencies to Implement the Regional
Greenhouse Gas Initiative**

**COMMENTS OF THE CONNECTICUT INDUSTRIAL
ENERGY CONSUMERS ON THE PROPOSED REGIONAL
GREENHOUSE GAS INITIATIVE REGULATIONS**

Dated: February 8, 2008

**COUCH WHITE, LLP
540 BROADWAY
P.O. BOX 22222
ALBANY, NEW YORK 12203**

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
POINT I.....	4
THE PROPOSED REGULATIONS SHOULD BE MODIFIED TO PROTECT CONNECTICUT CONSUMERS FROM POTENTIALLY EXORBITANT ELECTRICITY PRICE INCREASES	4
A. The Proposed Regulations Would Exacerbate the Electricity Prices Imposed on Connecticut Consumers; Thus Proceeds From the Sale of Allowances Should Be Used to Provide Direct Rate Relief to Connecticut Electricity Consumers.....	6
B. An Auction Price Cap Should Be Implemented	13
C. Customer-Side Distributed Resources, Including Combined Heat and Power Units, Should Be Exempt From Compliance Rather Than Receiving Allocations From Set-Aside Accounts	19
1. State Policy Dictates that CDR and CHP units Be Exempt From the Regulations	19
2. The Allocation of Allowances to CDR and CHP Units Is Without Merit and Should Be Rejected	23
3. If, <i>Arguendo</i>, CDR AND CHP Units Are Not Exempt From The Final Regulations, Which They Should Be, The Allocation Methodology For Allowances From Both The CHP And CDR Set-Aside Accounts Must Be Modified.....	27
D. The Proposed Regulations Should Minimize Windfall Financial Gains to Non-Emitting Electricity Generation Facilities	31
POINT II	33
THE PROPOSED REGULATIONS SHOULD BE MODIFIED TO ENSURE THE DEVELOPMENT OF A PROPERLY-FUNCTIONING ALLOWANCE MARKET	33

A.	The Proposed Regulations Should Be Modified to Include Specific Auction Design Details	33
B.	The Proposed Regulations Should Be Modified to Restrict DEP to Recovering Only Verified and Reasonable Administrative Costs	35
C.	The Proposed Regulations Should Be Modified to Allow Only Emitting Generators to Participate in the Auctions	38
E.	The Proposed Treble Damage Penalty for Excess Emissions Creates an Unnecessary Risk for A Shortage of Allowances	42
F.	The Proposed Regulations Should Be Modified to Include Trigger Events Consistent With the RGGI Memorandum of Understanding	44
G.	The Proposed Regulations Should Be Modified to Provide the Ability to Include Additional Categories of Offsets	45
H.	Emissions Leakage Is a Serious Concern That Should Be Addressed.....	47
I.	Implementation of a National Cap-and-Trade Program Should Terminate the Program Automatically.....	49
	CONCLUSION	51

PRELIMINARY STATEMENT

Pursuant to the Notice of Intent to Amend Regulations, issued in the January 8, 2008 edition of the *Connecticut Law Journal* (“Notice”), the Connecticut Industrial Energy Consumers (“CIEC”), an *ad hoc* coalition of industrial and commercial energy consumers with facilities throughout Connecticut, hereby submits its comments on Connecticut’s proposed regulations to implement the Regional Greenhouse Gas Initiative (“RGGI”).

CIEC supports energy efficiency measures and the greenhouse gas emission reduction goals of RGGI. However, CIEC has concerns regarding the potential of RGGI to increase electricity costs significantly. Large employers in Connecticut face severe competitive pressures that include, but are not limited to, very high energy prices that afford other regions, and nations, a significant competitive cost advantage. The competitive disadvantages wrought by high energy prices are felt particularly by manufacturers and other energy-intensive businesses struggling to conduct business in Connecticut. Accordingly, any measure, such as RGGI, that could further impair the State’s competitive position by increasing energy prices must be scrutinized carefully.

In the Notice, the Connecticut Department of Environmental Protection (“DEP”) solicited comments on the proposed adoption of Sections 22a-174-31 and 22a-174-31a of the Regulations of Connecticut State Agencies (collectively the “Proposed Regulations”). The Proposed Regulations seek to authorize DEP to implement a CO₂ Budget Trading Program (“Program”) established as part of RGGI.

As demonstrated herein, the Proposed Regulations should not be adopted as proposed because they fail to adequately insulate Connecticut electricity consumers from unnecessary, and potentially exorbitant, price increases that may result from implementation of the Program. It is CIEC's position that the Program should be designed in a manner that limits the potential price impacts on the State's electricity consumers, who already pay the second highest electricity prices in the United States.

Specifically, the Proposed Regulations must be modified to ensure that consumers are not exposed to potentially unlimited electricity price increases. For the reasons set forth below, the Program, as currently proposed, would increase electricity costs substantially for end-use electricity consumers without providing commensurate reductions in the levels of CO₂ emissions in Connecticut. In order to adequately protect consumers, a price cap must be included in the Proposed Regulations. A price cap would ensure that the detrimental, financial impacts of RGGI are minimized so that Connecticut electricity consumers are not subjected to unpredictable, and potentially unlimited, electricity price increases.

In addition, all or substantially all of the proceeds from the sale of CO₂ emissions allowances ("Allowances") should be refunded to Connecticut electricity customers as a direct per kilowatt-hour ("kWh") credit. If the State truly wants to minimize the detrimental financial impacts of the Program on consumers, the Proposed Regulations should be modified to ensure that the auction proceeds are used to reduce prices via a per kWh credit on retail electricity consumers' bills.

The Proposed Regulations also should be modified to exempt all Customer-Side Distributed Resources ("CDRs") as defined in Section 16-1(a)(40) of the Connecticut

General Statutes, from compliance with the Proposed Regulations. Furthermore, the Proposed Regulations should be modified to exempt all other on-site distributed generation resources, including such resources that are combined heat and power (“CHP”) units, that supply 10 percent or less of their net annual output into the grid. These modifications will benefit Connecticut electric consumers by providing additional, much-needed capacity while providing end-users with an option to reduce their energy prices. It would be contrary to state policy if these efficient on-site generators are required to meet the economic demands of the Proposed Regulations.

Other modifications to the Proposed Regulations are also necessary to ensure the development of a properly-functioning Allowance market. In particular, the Proposed Regulations should be modified to include clear and fixed auction rules that have been subject to public comment. Moreover, the Proposed Regulations should restrict DEP to collecting only its proven, reasonable, administrative costs associated with implementation and on-going administration of the Program. In addition, provisions that have the potential to restrict the supply of Allowances should be modified to ensure that generation facilities subject to the Proposed Regulations have a reasonable opportunity to obtain the Allowances necessary for compliance. The threat of emissions leakage also needs to be addressed comprehensively in the Proposed Regulations to ensure that the Program achieves the desired reductions in CO₂ emissions.¹ Lastly, the United States Congress is preparing to introduce a

¹ As discussed below, emissions leakage from non-RGGI states could offset, if not negate entirely, the projected reduction in CO₂ emissions.

national program aimed at reducing CO₂ emissions in the very near future.² Accordingly, the Proposed Regulations should contain a sunset provision to ensure that the Program would not compete with such a national program.

POINT I

THE PROPOSED REGULATIONS SHOULD BE MODIFIED TO PROTECT CONNECTICUT CONSUMERS FROM POTENTIALLY EXORBITANT ELECTRICITY PRICE INCREASES

The Proposed Regulations provide that Allowances shall be allocated to the Connecticut Auction Account or various set-aside accounts and funds derived from the sale of Allowances will be invested in energy efficiency programs, Class I renewable energy resource development, and retained by DEP to cover its administrative costs.³

It is CIEC's position that the Program should be designed to impose the least possible cost on Connecticut electricity consumers, who already pay substantially more for electricity than the rest of the country. However, as proposed, the Program falls far short of this goal. Instead, the Program is likely to further increase the cost of electricity to

² On December 5, 2007, the U.S. Senate Environment and Public Works Committee passed Senate Bill 1291, America's Climate Security Act (also known as the "Lieberman-Warner Bill"), and forwarded it for full consideration by the Senate in the near future. The Lieberman-Warner Bill would create a national cap-and-trade program for greenhouse gas emissions. The approval by the Senate Environment and Public Works Committee means that the Lieberman-Warner Bill will be the first climate change bill in U.S. history to be considered by the full Senate. For additional information, see <http://lieberman.senate.gov/issues/globalwarming.cfm>.

³ Regulations of Connecticut State Agencies § 22a-174-31(f), p. 31-21, available at http://www.ct.gov/dep/lib/dep/public_notice_attachments/draft_regulations/sec31draft122707.pdf [hereafter "Proposed Section 31"].

Connecticut consumers, placing businesses in the State at an even greater competitive disadvantage.

Specifically, direct mitigation of electricity ratepayer impacts attributable to the implementation of the Program should be undertaken. It is CIEC's position that the most reasonable use for the funds generated by the sale of Allowances would be to provide direct rate relief for those who will be burdened with the costs of implementing the Program – Connecticut electricity consumers. A direct refund of the proceeds derived from the sale of Allowances to electricity consumers would help offset the projected price increases that the Program will impose. Accordingly, CIEC urges that a direct per kWh refund for all or substantially all of the proceeds from the sale of Allowances be adopted to ensure that the State's electricity consumers receive the maximum benefits of the Program at the least possible cost.

The implementation of a price cap is also necessary. The Allowance auction represents a novel concept with unpredictable outcomes. To provide the Program a reasonable opportunity to reduce CO₂ emissions, without wreaking havoc on electricity prices, prudence dictates the adoption of a price cap. Beyond simply providing protection to Connecticut electricity consumers, the inclusion of a price cap would help ensure the continued reliability of the State's electricity system by maintaining a reasonable cost for Allowances that generators will need to purchase in order to operate.

Lastly, to ensure minimal cost impacts to Connecticut electricity consumers, the Proposed Regulations must encourage, rather than stifle, the deployment of innovative solutions by businesses to meet their own energy demands. Accordingly, and consistent with the State's energy policy, CIEC submits that all CDRs should be exempt from compliance

with the Proposed Regulations. These units, which have been proposed and constructed pursuant to Section 16-243 of the Connecticut General Statutes, already improve the carbon footprint of the State and should not be burdened with additional regulations and monetary requirements. Moreover, consistent with the RGGI Model Rule designed pursuant to the RGGI MOU executed by Governor Rell, all other customer-side distributed generation resources should be exempt from compliance if such resources limit their supply of electricity into the grid to 10 percent or less of their net annual output.

A. The Proposed Regulations Would Exacerbate the Electricity Prices Imposed on Connecticut Consumers; Thus Proceeds from the Sale of Allowances Should Be Used to Provide Direct Rate Relief to Connecticut Electricity Consumers

It has been recognized that “because the supply of CO₂ allowances in the RGGI region is fixed, the price of allowances will be more volatile than would the price for a good for which the supply could respond to changes in price.”⁴ Thus, price spikes are very likely to occur with the implementation of the Program. Because the value of emissions allowances will be passed on as operating costs by electric generators in their market bids, the result of the Program will be electricity price increases for Connecticut consumers.

Proponents of the Program project that the cost increases to Connecticut electricity consumers related to the implementation of the Proposed Regulations will be modest. The current retail electricity supply rate structure in Connecticut charges

⁴ Holt, Shobe, Burtraw, Palmer, and Goeree, Auction Design for Selling CO₂ Emission Allowances Under the Regional Greenhouse Gas Initiative – Final Report, p. 54, available at http://www.rggi.org/docs_rggi_auction_final.pdf [hereafter “Final Auction Design Report”].

commercial and industrial customers a market-derived rate; therefore, to the extent that the Program increases the wholesale cost of electricity, it is likely to cause an equivalent increase in the retail electricity supply rates charged to Connecticut's commercial and industrial consumers. Based on the modeling conducted by ICF Consulting to study the impacts of RGGI, Connecticut commercial and industrial electricity consumers could experience an average increase of 2 percent per month to the cost of electricity resulting solely from the implementation of RGGI.⁵ However, these projected price impacts are unrealistic because they are driven by assumed prices for Allowances ranging from approximately \$2 to \$5 per ton, which are unrealistically low. Experience in other greenhouse gas cap-and-trade markets reveals that the price for Allowances may be orders of magnitude greater than that projected by ICF Consulting.

In January 2005, the European Union ("EU") launched its Emissions Trading Scheme ("EU ETS"), the largest cap-and-trade program on CO₂ emissions in the world. Given the similarities between the EU ETS and the Program, CIEC submits that the actual market experience of the EU ETS provides a realistic proxy of the Allowance prices that can be expected in Connecticut. The average price for EU ETS allowances is substantially greater than the prices projected by ICF Consulting. In fact, the average price for EU ETS

⁵ ICF Consulting, Reference Case (Updated 10/11/06), available at http://www.rggi.org/docs/referencecase_10_11_06.xls [hereafter "RGGI Modeling Results"].

allowances was \$24.70 per ton in 2005 and \$22.10 per ton in 2006,⁶ or approximately 7 times greater than ICF Consulting's average projected Allowance prices.⁷

The EU ETS allowance price levels are not unrealistic for the Program. In fact, a recent study found that it may be likely for Allowances in RGGI to exceed \$20 per ton during the first control period.⁸ Adjusting ICF Consulting's calculations to utilize more realistic Allowance prices, based on the experience of the EU ETS allowance market, average monthly retail electricity bill increases of approximately 14 percent, on average, would result for industrial and commercial electricity consumers solely due to the implementation of RGGI in Connecticut. The effects of such a significant increase could be devastating on the economy in Connecticut. In fact, a recent study found that electricity price increases in excess of 5 percent due to the implementation of CO₂ emissions controls "would pose significant regional economic concerns, impacting particularly the energy-intensive industrial base...."⁹ Logically, an increase nearly three times this amount could be disastrous for commercial and electricity consumers in Connecticut.

⁶ The World Bank, State and Trends of the Carbon Market 2007 (May 2007), p. 11, available at http://carbonfinance.org/docs/Carbon_Trends_2007- FINAL - May_2.pdf [hereafter "EU ETS Allowance Price Data"].

⁷ RGGI Modeling Results.

⁸ New Carbon Finance, Regional Greenhouse Gas Allowances: Going, Going, Gone? (North America Research Note – November 2007), p. 8, available at <http://www.newcarbonfinance.com> [hereafter "NCF November 2007 Report"].

⁹ 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.

Moreover, CIEC submits that even an EU ETS-based estimate of the retail price impacts may be understated. The cost of EU ETS allowances derive from a market where at least 95 percent of the available allowances are allocated at no cost to entities subject to the EU ETS.¹⁰ Therefore, logic dictates that in a market where nearly 100 percent of the available Allowances will be auctioned, such as that proposed by DEP, the cost of Allowances may be significantly higher, with concomitant higher price impacts on Connecticut electricity consumers.

Connecticut electricity consumers cannot afford to absorb additional electricity price increases resulting from the implementation of the Program. The State's consumers already pay the highest electricity prices in the contiguous United States and the second highest prices in the entire country.¹¹ In fact, the State's electricity consumers paid between approximately 58 percent and 99 percent more than the U.S. average through October 2007.¹² Moreover, industrial customers in Connecticut paid in excess of 6 cents per kWh more than the national average through October 2007.¹³ Unfortunately, this disparity has only grown since 2006, when Connecticut consumers paid between approximately 46 percent

¹⁰ Ecofys, Auctioning of CO₂ Emission Allowances in the EU ETS (October 2006), p. 2, available at http://ec.europa.eu/environment/climat/emission/pdf/etsreview/ets_co2_emission_auctioning.pdf.

¹¹ 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/epmxmlfile5_6_a.xls [hereafter "EIA Price Data"].

¹² Id.

¹³ Id.

and 87 percent more for electricity than the U.S. average.¹⁴ For industrial consumers, the gap grew over 12 percent in the last year alone, from approximately 87 percent more in 2006 to over 99% more though October 2007.¹⁵

These already-high energy costs are a significant factor in the decline in Connecticut's manufacturing sector. Significantly, in the last ten years, the manufacturing sector in Connecticut lost 16 percent of its employment – more than 37,600 jobs.¹⁶ Consequently, to ensure that the State does not lose more jobs to states or nations where the cost of doing business is lower, it is imperative that the price of electricity decrease, not increase. The additional rate increases resulting from implementation of the Program will create new hardship for Connecticut electricity consumers and impact the decisions of businesses to locate or remain in Connecticut. Thus, Connecticut should allocate a substantial percentage of the Allowance proceeds directly to end-users in the form of a per kilowatt-hour credit. This will reduce the rate impact of the Program to the maximum extent possible and help Connecticut to become more competitive.

CIEC members support the dual goals of RGGI to increase energy efficiency and reduce greenhouse gas emission. Such goals are consistent with other existing and prior initiatives in Connecticut. In fact, electricity consumers in Connecticut already fund numerous energy efficiency and environmental benefit programs. For example, Connecticut electricity consumers contributed approximately \$71 million to the Connecticut Energy

¹⁴ Id.

¹⁵ Id.

¹⁶ Connecticut Labor Department, Labor Market Information, available at <http://www1.ctdol.state.ct.us/lmi/>.

Efficiency Fund in 2006 to support energy efficiency and renewable energy.¹⁷ In addition, many other energy efficiency and environmental initiatives exist, or are pending, as a result of separate state and federal programs. In fact, the Energy Conservation Management Board (“ECMB”) has been recognized nationally for its electric energy efficiency programs.¹⁸

However, despite the demand reductions achieved investments in energy efficiency and renewable energy, in Connecticut’s flawed energy markets, reduced demand does not lead to reduced electricity prices. For example, in 1998 the industrial demand for electricity was 5,837,521 MWh¹⁹ and the average annual price was 7.70 cents/kWh²⁰. In 2006, the industrial demand was 4,925,981 MWh (or nearly 16 percent lower than 1998),²¹ yet the average annual price was 11.71 cents/kWh (or more than 52 percent higher than 1998).²² Thus, this historical experience demonstrates that increased spending on energy efficiency programs will not necessarily offset the impact of RGGI by reducing electricity prices.

¹⁷ Energy Conservation Management Board, Energy Efficiency Investing in Connecticut’s Future: Report of the Energy Conservation Management Board Year 2006 Programs and Operations (March 1, 2007), p. 26, available at http://www.clp.com/clpcommon/pdfs/companyinfo/publications/ECMB_Rpt.pdf [hereafter “ECMB 2006 Report”].

¹⁸ ECMB 2006 Report at 6.

¹⁹ 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 [hereafter “EIA Historical Consumption Data”]

²⁰ EIA, Average Price by State by Provider (1990-2006), available at http://www.eia.doe.gov/cneaf/electricity/epa/average_price_state.xls [hereafter “EIA Historical Price Data”].

²¹ EIA Historical Consumption Data.

²² EIA Historical Price Data.

By diverting all of the proceeds that may be realized from auctioning Allowances to fund additional spending on energy efficiency and renewable energy programs, the RGGI program in Connecticut would deprive consumers of an effective offset to the increased costs of RGGI implementation. Because end-use electric consumers in Connecticut must bear the costs to implement RGGI, all or a significant portion of the proceeds that result from the sale of Allowances should be used to provide a direct per kWh refund to Connecticut electricity consumers.

Such a refund mechanism will provide an effective offset to the increased costs resulting from Program implementation. CIEC estimates that providing a direct per kWh refund of the funds generated by the sale of Allowances would reduce the projected impacts, whether those projected by ICF Consulting or the more realistic projection based on the experience of the EU ETS market, by nearly 40 percent, on average, with reductions ranging between 32 percent and 43 percent depending on the projected value of Allowances.²³

²³ In determining the potential benefit of a direct per kWh credit, CIEC utilized (i) retail load data from 2006; (ii) the projected Allowance prices determined by ICF Consulting as well as the Allowance prices resulting from the EU ETS experience; (iii) the number of Allowances allocated to the Connecticut Auction Account (assuming sale of 100 percent of such Allowances); and (iv) the administrative cost allocation proposed by DEP. It is important to note that the estimated benefits may be understated because in its calculations, CIEC deducted 7.5 percent from the auction proceeds for DEP's administrative costs; however, as argued in Section II(B) below such allocation exceeds the amount the legislature authorized DEP to collect for its administrative costs associated with the Program. Therefore, to the extent that DEP's reasonable, verifiable, administrative costs are less than 7.5 percent of the auction proceeds, Connecticut electricity consumers will receive additional benefit from the direct per kWh credit. *See* EIA Historical Electricity Consumption Data; RGGI Modeling Results; EU ETS Allowance Price Data; Proposed Section 31 §§ 22a-174-31(f) at 31-21 and 22a-174-31(f)(4)(D) at 31-24.

Furthermore, providing direct rate relief is consistent with the RGGI Memorandum of Understanding executed by Governor Rell on December 20, 2005, which provided that funds from the sale of Allowances could be used to “directly mitigate electricity ratepayer impacts.”²⁴ Finally, such a mechanism would be consistent with the requirements implemented in other RGGI States. For example, Rhode Island’s RGGI enabling legislation requires funds from the sale of Allowances to be used, in part, for “cost-effective direct rate relief for consumers.”²⁵

For the reasons set forth above, a direct per kWh credit of all, or substantially all, of the funds generated by the sale of Allowances should be used to mitigate the electricity price impacts resulting from the implementation of the Program.

B. An Auction Price Cap Should Be Implemented

As set forth above, the Proposed Regulations have the potential to significantly increase electricity prices paid by Connecticut consumers. To protect these consumers, the Proposed Regulations should incorporate a price cap that does not exceed the projected cost of Allowances, as determined by ICF Consulting, that proponents of the Program have relied on in concluding that the resulting cost impacts to consumers would be negligible. Accordingly, the Proposed Regulations should be modified to include a price cap the value of

²⁴ Regional Greenhouse Gas Initiative, Memorandum of Understanding (December 20, 2005), § 2(G)(1), p. 6, available at http://www.rggi.org/docs/mou_final_12_20_05.pdf [hereafter “RGGI MOU”].

²⁵ Public Law 07-206 (July 2, 2007), §23-82-6(a)(3), p. 2, available at <http://www.rilin.state.ri.us/PublicLaws/law07/law07206.htm> [hereafter “Rhode Island RGGI Legislation”].

which is consistent with the range of Allowance prices projected by ICF Consulting (*i.e.* ranging between approximately \$2.00 to \$5.00 per ton).²⁶

Given the current economic conditions that challenge the ability of Connecticut businesses to maintain operations in the State, Connecticut should not implement a program with significant energy cost uncertainties and unquantifiable risks, such as those inherent in the Proposed Regulations, without providing reasonable protection for the State's electricity consumers. In the absence of a price cap, the Proposed Regulations would create too great a cost risk to electricity consumers because, even with the Proposed Regulations' offset provisions (*e.g.*, "price triggers" and "safety valves"), potential increases to the auction prices for Allowances are unrestricted.

In addition, the uncertainty inherent in the Program's proposed Allowance auction warrants the adoption of a price cap. One of the goals of RGGI is to implement the "first cap-and-trade program for greenhouse gas emissions within the United States."²⁷ However, implementation of the Program brings tremendous uncertainty. Such uncertainty in a marketplace often manifests itself in unexpected behavior by market participants that

²⁶ ICF Consulting's projections include Allowance prices of \$2.00 per ton in 2009; \$2.45 per ton in 2012; \$2.99 per ton in 2015; \$3.65 per ton in 2018; \$4.45 per ton in 2021; and \$5.43 per ton in 2024, *see* RGGI Modeling Results. However, in no event should the determined value of the price cap exceed the \$7.00 per ton cap concept adopted by New Jersey. *See* Public Law 2007, Chapter 340, § 14, p. 19, available at http://www.njleg.state.nj.us/2006/Bills/A5000/4559_U2.PDF [hereafter "New Jersey RGGI Legislation"]. Furthermore, the Proposed Regulations should require that DEP periodically review the value of the price cap based on the actual experienced impacts of the Program on electricity prices paid by Connecticut consumers to ensure that the value of the price cap does not cause significant increases in such prices.

²⁷ Final Auction Design Report at 5.

results in higher prices. Accordingly, a price cap is critical to ensure that the risks associated with the implementation of the Program are reduced.

For example, the uncertainty associated with the Program may lead fossil-fuel fired generators subject to the Proposed Regulations to place an inflated value on Allowances to ensure that they obtain their needed number of Allowances in the near term, rather than relying on a nascent secondary market or subsequent auctions that may produce uncertain price outcomes. Such actions by emitting generators could significantly increase the auction clearing price for Allowances, resulting in prices well above what has been projected by ICF Consulting.

In addition, the available supply of Allowances to emitting generators is already tight, resulting in a significant risk for price spikes to the cost of Allowances. According to the EIA data, Connecticut generators emitted approximately 10,030,553 tons of CO₂ in 2006.²⁸ With a CO₂ emissions budget of only 10,695,036 tons in 2009, the ratio of available Allowances to historic CO₂ emissions levels is approximately 94 percent.²⁹ Accordingly, based on this data, Connecticut generators may need 94 percent of the Allowances available to operate in 2009. This already constrained supply is further exacerbated by DEP's proposals to remove 106,950 Allowances from the market annually during the first control period, and one percent of the annual State emissions budget

²⁸ EIA, U.S. Electric Power Industry Estimated Emissions by State, available at http://www.eia.doe.gov/cneaf/electricity/epa/emission_state.xls [hereafter "EIA Historical Emissions Data"]. It is important to note that the emissions data provided by the EIA is listed in metric tons; therefore, such value must be multiplied by 0.9072 to obtain the corresponding short ton values utilized in the Proposed Regulations.

²⁹ Proposed Section 31 § 22a-174-31(f)(1)(A) at 31-21.

thereafter, placing them in a voluntary clean energy purchase set-aside account (“VCEP Account”).³⁰ Moreover, the potential participation in the auctions by entities other than emitting generators effectively may result in some unknown percentage of Allowances being “retired” from the market, further shrinking supplies. Overall, the potential risks are too great to implement such an auction without a price cap to protect Connecticut electricity consumers from significant increases to electricity prices.

Importantly, New Jersey, one of the RGGI member states, has recognized the value of a cap concept.³¹ The New Jersey RGGI Legislation provides that if the price of Allowances exceeds \$7.00 per ton in two consecutive auctions that the Board of Public Utilities and Department of Environmental Protection must hold a hearing to provide immediate rate relief to New Jersey electricity consumers effectively placing an upper limit, or cap, on the price of Allowances that New Jersey is willing to tolerate before additional mitigation is implemented for its electricity consumers.

Given the potential for unanticipated and unacceptable auction results, CIEC strongly recommends that a price cap be included in the Proposed Regulations to provide critical protection for Connecticut electricity consumers. Without a price cap, all of the considerable risk inherent in the new Allowance market would be borne by Connecticut electricity consumers that can ill afford to assume the risk of additional, unpredictable and potentially excessive increases to electricity prices.

³⁰ Id. § 22a-174-31(f)(3)(A) at 31-21.

³¹ New Jersey RGGI Legislation § 14 at 19.

If, *arguendo*, DEP does not implement a price cap as recommended herein, then, DEP should place a cap on the value of funds retained in the Connecticut auction account equal to the Allowance prices projected by ICF Consulting. Any funds in excess of such projected auction clearing prices should be returned to Connecticut electricity consumers through a direct per kWh credit. Such a funding cap would help ensure reliability and price certainty without interfering in the allocation of proceeds resulting from the sale of Allowances.³²

The projections utilized by Program advocates to demonstrate a negligible price impact to Connecticut electricity consumers are based on Allowance prices of approximately \$2.00 in 2009, \$2.45 in 2012, \$2.99 in 2015, \$3.65 in 2018, \$4.45 in 2021 and \$5.43 in 2024.³³ CIEC recommends that these projected Allowance prices be used to set the cap on the funds retained for distribution in the Connecticut Auction Account. For example, in 2009, if the resulting auction clearing price were \$20.00 per Allowance, then \$2.00 per Allowance would be retained in the Connecticut Auction Account for distribution in accordance with the Proposed Regulations and the remaining \$18.00 per Allowance would be returned to Connecticut electricity consumers through a direct per kWh credit. Under this example, if Connecticut sold all of the available Allowances in 2009 through the auction

³² CIEC further submits that DEP should conduct an independent analysis of the electricity price impacts of the Program, as proposed, and release such information to the public prior to implementation of the Proposed Regulations. Given the significant differences between the cap-and-trade program envisioned by RGGI and the Program proposed by DEP, reliance on projected impacts determined by ICF Consulting for RGGI are unjustifiable. In order for the public to be fully informed of the likely impacts of the Program, DEP should develop and provide a revised impact analysis consistent with the Program design as contemplated by the Proposed Regulations.

³³ RGGI Modeling Results.

(*i.e.*, 10,695,036), then approximately \$21.4 million would be retained in the Connecticut Auction Account, while the remaining balance of approximately \$192.5 million would be provided to Connecticut electricity consumers through a direct per kWh credit.

Such an approach would satisfy DEP's anticipated funding levels for the Connecticut Auction Account while, at the same time, provide some measure of much-needed price relief for electricity consumers if Allowance prices exceed ICF Consulting's projected levels. Significantly, this approach is already required by Maine, one of the member states of RGGI.³⁴ The Maine RGGI Legislation places a cap of \$5 per ton on the amount per Allowance that can be retained for spending on energy efficiency. Any amount in excess of \$5 per ton is provided to Maine electricity consumers through a per kWh credit.

Given that the funds generated by ICF Consulting's projected Allowance prices (*i.e.*, ranging between approximately \$2.00 to \$5.00 per ton) were deemed to meet the projected needs for new energy efficiency and renewable energy funding, there is absolutely no reason to subject Connecticut electricity consumers to the risk of auction clearing prices in excess of the Allowance prices projected by ICF Consulting. Accordingly, if, *arguendo*, DEP rejects CIEC's recommendation to include a price cap, then a funding cap, as described above, should be included in the Proposed Regulations to protect Connecticut electricity consumers while simultaneously maintaining the funding levels anticipated by DEP.

³⁴ Public Law, Chapter 317, 123rd Legislature, First Regular Session, § 10008(5), p. 9, available at <http://janus.state.me.us/legis/ros/lom/LOM123rd/PUBLIC317.asp> [hereafter "Maine RGGI Legislation"].

C. Customer-Side Distributed Resources, Including Combined Heat and Power Units, Should Be Exempt From Compliance Rather Than Receiving Allocations from Set-Aside Accounts

The Proposed Regulations should include provisions that encourage, rather than discourage, the ability of electricity consumers in Connecticut to pursue creative solutions to meet their energy needs. Specifically, the Proposed Regulations should be consistent with Connecticut’s strong state policy of encouraging customer-side investment in distributed generation resources. Accordingly, as discussed below, the DEP should modify the Proposed Regulations to exempt all CDRs as defined in Section 16-1(a)(40) of the Connecticut General Statutes from compliance. In addition, all other customer-side distributed generation resources, including such resources that are CHP units, that supply 10 percent or less of their net annual output into the grid should also be exempt from compliance with the Proposed Regulations.

1. State Policy Dictates That CDR and CHP Units Be Exempt from the Regulations

Public Act No. 05-01, *An Act Concerning Energy Independent* (the “Act”), established a goal “to provide Connecticut with additional means of addressing rising electric prices faced by the state’s citizens and businesses.”³⁵ In furtherance of this objective, the Act required that Connecticut develop a program to encourage the use of customer-side

³⁵ Docket 05-07-17, DPUC Review of the Development of a Program to Provide Monetary Grants for Capital Costs of Customer-Side Distributed Resources, Decision (March 27, 2006), p. 2.

distributed generators to reduce peak system usage in Connecticut.³⁶ Specifically, pursuant to Section 8(a) of the Act, the Connecticut Department of Public Utility Control (“DPUC”) was required to, “no later than January 1, 2006, establish a program to grant awards to retail end use customers of electric distribution companies to fund the capital costs of obtaining projects of customer-side distributed resources....”³⁷ Moreover, Section 8(b) of the Act allowed the DPUC to provide awards to electric distribution companies for education, assistance and promotion of investments in customer-side distributed generators.³⁸ The DPUC has conducted several proceedings to implement the requirements of the Act with respect to the encouragement of customer-side distributed generators.³⁹ In addition, the electric distribution companies have developed and implemented plans to facilitate the installation of such resources.

Moreover, in reliance upon this state policy encouraging the growth customer-side distributed generators and its accompanying incentives, many Connecticut electricity consumers have devoted considerable time and economic resources, collectively incurring millions of dollars in expenses, to evaluate the practicality of such resources for their respective operations. To date, over 400 MW of new customer-side distributed resources

³⁶ Id. at 10.

³⁷ Public Act 05-01, An Act Concerning Energy Independence § 8(a).

³⁸ Id. § 8(b).

³⁹ *See, e.g.*, Docket 05-07-17, *supra*, Decision (March 27, 2006) (developing a program to provide monetary grants for investments in customer-side DG resources); Docket 05-07-16, DPUC Review of the Development of a Program to Provide Various Incentives for Customer-Side Distributed Generation Resources, Decision (March 27, 2006); Docket 05-07-21, Development of Program to Provide Long-Term Financing for Customer-Side Distribution Resources, Decision (April 7, 2006).

have been proposed, with over 320 MW receiving financial grants from the DPUC pursuant to Section 16-243 of the Connecticut General Statutes.⁴⁰ These resources, which efficiently utilize thermal waste, are particularly effective at assisting Connecticut electricity consumers in meeting conservation goals. In fact, CIEC members have found that utilizing customer-side distributed generation has the potential to reduce the overall carbon footprint of an industrial site.

In order to remain consistent with Connecticut's policy of encouraging distributed generation resources, the State should exempt all CDR units up to 65 MW from compliance with the Proposed Regulations. Importantly, in approving the RGGI enabling statute, the State Senate made it clear that it was the legislative intent that "distributive generation plants 65 megawatts or under will be exempt or receive [full] pollution set aside credits."⁴¹ Such a modification would conform with the strong public policy and laws favoring such distributed generation resources in Connecticut. Moreover, the exemption of such resources will help promote continued growth of distributed generation and reduce the strain on the bulk power system by providing increased energy, capacity or ancillary services to the grid.

In addition, an exemption for certain sized CDRs would produce significant environmental benefits through the reduction of emissions and the potential displacement of older, less efficient generation facilities. Conversely, if a full exemption is not granted for

⁴⁰ DPUC, Summary of Applications and Grants, available at [http://www.dpuc.state.ct.us/Electric.nsf/3736282216ef464085256b3c00755c3f/9c577f06cf96ca8d85257268005a456f/\\$FILE/121407%20DG%20Grants%20Summary-Public%20\(version%201\).xls](http://www.dpuc.state.ct.us/Electric.nsf/3736282216ef464085256b3c00755c3f/9c577f06cf96ca8d85257268005a456f/$FILE/121407%20DG%20Grants%20Summary-Public%20(version%201).xls).

⁴¹ Connecticut Senate, Session Transcript (June 2, 2007), p. 18.

CDR resources up to 65 MW, the Proposed Regulations will have the unintended effect of stifling the growth and implementation of distributed generation resources by imposing potentially hundreds of thousands of dollars in additional operating costs.

In addition, all other customer-side distributed generating units that supply 10 percent or less of their net annual output to the grid should be exempt from compliance with the Proposed Regulations.⁴² The RGGI Model Rule recognizes the importance of customer-side distributed generation both environmentally and economically by allowing on-site generators that supply 10 percent or less of their annual output to the grid to exclude themselves from participation in RGGI by applying for a binding permit restriction.⁴³ Therefore, Connecticut should remain consistent with the RGGI Model Rule and provide a similar exemption for customer-side distributed generators.

As stated above, supply of energy generated by on-site distributed generation resources will provide critical energy, capacity or ancillary services to the grid while potentially displacing less efficient generating units. Thus, the Proposed Regulations should be modified to perpetually exclude on-site distributed generators that supply 10 percent or less of their net annual output to the grid. In the event an on-site distributed generator wishes to contract to supply more than 10 percent of its net output into the grid, the Proposed Regulations may contain a provision that automatically brings such a resource into the

⁴² Net output should include an offset for utility provided electricity.

⁴³ Regional Greenhouse Gas Initiative, Final Model Rule § XX-1.4(b)(1) (January 5, 2007), available at http://www.rggi.org/docs/model_rule_corrected_1_5_07.pdf [hereafter “RGGI Model Rule”].

Program for the emissions associated with the supply over the 10 percent threshold.⁴⁴ Significantly, such an exemption is also consistent with the requirements, or proposals, of New York, New Jersey, and Maine (all RGGI member states) that exempt customer-side distributed resources from compliance if such facilities supply 10 percent or less of their net annual output to the grid.⁴⁵ If, *arguendo*, DEP does not accept the recommendation to exempt CDRs under 65 MW completely, then such resources should be exempt under the same 10 percent supply restriction as discussed above.

2. The Allocation of Allowances to CDR and CHP Units Is Without Merit and Should Be Rejected

The Proposed Regulations would provide certain allocations of Allowances to CDR and CHP generation facilities through designated set-aside accounts.⁴⁶ These set-aside accounts would provide allocations of Allowances free-of-charge to qualifying emitting generators, thus, lowering the number of Allowances such generators must purchase in the auction or secondary market. Specifically, the Proposed Regulations provide that 3 percent

⁴⁴ Such an exemption would be consistent with other federal and state programs. For example, under the Federal Acid Rain regulations, certain cogeneration units that supply on an annual basis an amount equal to or less than one-third its Potential Electrical Output Capacity or equal to or less than 219,000 MWh are exempt from regulation. 40 C.F.R. 72.6(b)(4)(ii).

⁴⁵ See New York Department of Environmental Conservation, Express Terms – Part 242: CO₂ Budget Trading Program, § 242-1.4(b), p. 21, available at http://www.dec.ny.gov/docs/air_pdf/00242xpterm.pdf [hereafter “New York RGGI Regulations”]; New Jersey RGGI Legislation §§ 2-3 at 3-4; and Maine RGGI Legislation § 580-B(1) at 15.

⁴⁶ Proposed Section 31 § 22a-174-31(f)(3) at 31-21.

of the annual State emissions budget be allocated to a set-aside account for CDR.⁴⁷ Furthermore, 5 percent of the annual State emissions budget would be allocated to a set-aside account for CHP resources. However, the proposed use of set-aside accounts is fraught with uncertainty. Accordingly, the use of set-asides should be rejected, in favor of exemptions, because set-asides: (i) do not encourage continued growth of customer-side distributed resources; and (ii) may erode the economic viability of continuing to operate customer-side distributed resources in Connecticut.

First, the number of Allowances allocated to the CDR and CHP set-aside accounts is derived as a percentage of the total annual CO₂ emissions budget for Connecticut. Therefore, as the budget decreases over time, the number of Allowances allocated to the CDR and CHP set-aside accounts will decrease accordingly. For example, in 2009, the CDR set-aside account would include 320,851 Allowances; however, this number would decrease annually each year after 2014, down to 288,766 Allowances in 2018 (or approximately 10 percent less than the 2009 allocation). Such a decreasing allocation will discourage further development of customer-side distributed generators because, assuming that currently existing CDRs and other on-site distributed generators, including such resources that are CHP units, require 100 percent on the Allowances available through the set-aside accounts each year during the first control period, such resources will not receive the necessary Allowances after 2014 when the value of the set-aside account begins to decline without accounting for the addition of any new CDRs or other on-site distributed generators. To the extent that customer-side distributed resources do not receive allocations of Allowances from the CDR and CHP set-aside accounts in an amount equal their actual emissions, the owners

⁴⁷ Id. § 22a-174-31(f)(3)(A) at 31-21.

of such resources will be required to purchase Allowances, potentially at great expense, in either the auctions or in the secondary Allowance market, and this will discourage new investment.

Furthermore, the allocation methodologies provide that to the extent the calculated allocations from the CDR and CHP set-aside account exceed the budgeted allocations for such accounts, customer-side distributed resources will only receive a proportion of their entitlement⁴⁸, thus, requiring the purchase of Allowances from either the auction or the secondary market. Such purchases alone, depending on the price of Allowances, may be burdensome enough to erode the entire economic value associated with utilizing customer-side distributed generators and force the shut-down of such facilities.

In addition, the cost of monitoring and reporting required under the Proposed Regulations may render continued operation of such resources uneconomical, forcing them to close. Providing allocations through a set-aside account, as opposed to an exemption, requires that customer-side distributed generation resources comply with other applicable provisions of the Proposed Regulations, including the monitoring requirements.⁴⁹ The cost of such compliance (for example, installing and maintaining a continuous emissions monitoring system, which not all customer-side distributed generators currently have in place) may reduce the economic viability of continued operation of such resources.

In contrast, the exemption of CDR and other on-site distributed generation resources, including such resources that are CHP units, would benefit the State both

⁴⁸ Id. § 22a-174-31(f)(3)(C) at 31-22 and § 22a-174-31(f)(3)(G) at 31-23.

⁴⁹ Id. § 22a-174-31(i) at 31-38.

monetarily and environmentally. The implementation of an exemption for CDRs and other on-site distributed generation resources, including such resources that are CHP units, would reduce the amount of load needed from the market thereby reducing the amount of capacity required from larger, dirtier, generators either within the State or elsewhere in the ISO New England, Inc. control area. Moreover, if such resources are permitted to supply up to 10% of their net annual output into the markets, then benefits would be provided to all electric end-users by making critical energy, capacity or ancillary services available to the grid.⁵⁰

For the reasons set forth herein, set-asides are not a reasonable substitute for exemptions for CDR and other on-site distributed generation resources, including such resources that are CHP units. Accordingly, in order to promote the benefits of customer-side distributed generation, the Proposed Regulations should: (i) exempt CDRs under 65 MW from compliance with the Proposed Regulations; (ii) exempt all other customer-side distributed generation resources, including such resources that are CHP units, in a similar fashion to the exemption provided in the RGGI Model Rule and the requirements, or proposed requirements, of three other RGGI member states.

⁵⁰ The U.S. Department of Energy (“DOE”) recently published a comprehensive study which examines in detail the many benefits that distributed generation offers. *See*, DOE, [The Potential Benefits of Distributed Generation and the Rate-Related Issues That May Impeded Its Expansion](http://www.oe.energy.gov/DocumentsandMedia/1817_Study_Sep_07.pdf) (June 2007), available at http://www.oe.energy.gov/DocumentsandMedia/1817_Study_Sep_07.pdf.

3. If, *Arguendo*, CDR and CHP Units Are Not Exempt from the Final Regulations, Which They Should Be, the Allocation Methodology For Allowances from Both the CHP and CDR Set-Aside Accounts Must Be Modified

As has been demonstrated herein, the use of exemptions is the superior method of encouraging the continued operation and future growth of on-site distributed generation by end-use electricity consumers in Connecticut. If, however, *arguendo*, DEP rejects the recommendation to provide exemptions as described above, then, modifications to the current set-asides for CHP and CDR are necessary to ensure the continued economic viability of such resources. First, the allocations to such set-asides should be modified to provide fixed allocations rather than allocations determined as a percentage of the State's annual emissions budget. Moreover, the allocation methodology for the CHP set-aside account should be modified to (i) clarify that it is only available to customer-side distributed cogeneration facilities; and (ii) ensure that development of new customer-side distributed cogeneration facilities is encouraged rather than penalized.

With respect to the budgets for both the CDR and CHP set-aside accounts, the proposal to establish the budget based on a percentage of the overall annual Connecticut emissions budget should be rejected. As previously noted, such a determination leads to a declining budget for such set-aside accounts over time as the overall Connecticut emissions budget decreases. This decrease over time may lead to more entitlements than available Allowances, thus requiring customer-side distributed resources to purchase Allowances in the auction or secondary market. This methodology fails to recognize the emission reduction and other benefits associated with the operation of customer-side distributed resources.

Accordingly, if the requested exemptions are not granted, CIEC recommends that DEP modify the proposed regulations to provide fixed allocations to the CDR and CHP set-aside accounts. Such fixed allocations should be based on historical emissions associated with customer-side distributed resources grossed up annually to include a buffer for reasonably expected future growth and addition of new customer-side distributed resources in Connecticut. However, in no event should such fixed annual allocation be less than the annual amounts currently provided in the Proposed Regulations for the first control period (*i.e.* 534,752 and 320,851 Allowances annually for the CHP and CDR set-aside accounts, respectively).⁵¹

In addition, the Proposed Regulations should be modified to require DEP to review the allocations to such set-aside accounts in the event that during any allocation year the calculated entitlements exceed the budget. Such a requirement has been adopted in Massachusetts.⁵² The Massachusetts RGGI Regulations require periodic review of certain set-aside accounts to, in part, ensure that the budget for such set-aside accounts is appropriate.⁵³ Such review, includes a requirement to adjust the budget for a set-aside account accordingly for the following allocation year to ensure that a sufficient number of

⁵¹ Proposed Section 31 § 22a-174-31(f) at 31-21.

⁵² Massachusetts Department of Environmental Protection, 310 CMR 7.70 – Final Regulations for the Massachusetts CO₂ Budget Trading Program, § 7.70(5)(1)(b)(iv), p. 27, available at <http://www.mass.gov/dep/service/regulations/co2btreg.pdf> [hereafter “Massachusetts RGGI Regulations”].

⁵³ Massachusetts Department of Environmental Protection, Responses to Public Comments (December 2007), p. 16, available at <http://www.mass.gov/dep/service/regulations/proposed/co2btrtc.pdf>.

Allowances will exist to meet the requirements of customer-side distributed generation resources.

The Proposed Regulations provide that 5 percent of the State's annual emissions budget would be allocated to the CHP set-aside account and provided to "each CO₂ budget source generating useful net thermal energy from its CO₂ budget units".⁵⁴ Thus, during the first control period, the annual allocation to the CHP set-aside account would equal 534,752 Allowances. As proposed, allocations from the CHP set-aside account appear to be available to any electricity generation facility subject to the Proposed Regulations that produces useful thermal energy in addition to electricity including units other than customer-side distributed cogeneration resources. According to EIA emissions data, cogeneration facilities in Connecticut (*i.e.* those that produce both electricity and useful thermal energy) emitted more than 1.9 million tons of CO₂ in 2006 – nearly four times the annual allocation of Allowances to the CHP set-aside account during the first control period.⁵⁵ Importantly, customer-side distributed cogeneration resources accounts for less than 20 percent of the total emissions from cogeneration facilities in Connecticut.⁵⁶

Given that the annual budget for the CHP set-aside account during the first control period is only 534,752 Allowances,⁵⁷ it is logical to assume that DEP intended that only customer-side distributed cogeneration facilities would qualify for allocations from the

⁵⁴ Proposed Section 31 § 22a-174-31(f)(3)(A) at 31-21.

⁵⁵ EIA Historical Emissions Data.

⁵⁶ Id.

⁵⁷ Proposed Section 31 § 22a-174-31(f)(3)(A) at 31-21.

CHP set-aside account. Accordingly, CIEC recommends that the Proposed Regulations be modified to clarify that only customer-side distributed cogeneration facilities subject to the Proposed Regulations are eligible to receive allocations from the CHP set-aside account.

Finally, it is CIEC's position that allocation methodology for the CHP set-aside account should be revised to ensure that newly installed customer-side distributed cogeneration facilities receive allocations promptly after commencing operations. As proposed, the allocation methodology uses the net thermal energy data from the second and third years prior to the allocation year in determining allocations.⁵⁸ This allocation methodology is unclear with respect to treatment of new customer-side distributed cogeneration facilities. Therefore, it is imperative that DEP clarify the treatment of new customer-side distributed cogeneration facilities by providing express provisions in the Proposed Regulations relating to the allocation of Allowances to such facilities.

The Proposed Regulations, as currently drafted, may be interpreted so as to penalize the installation of new customer-side distributed cogeneration facilities. For example, a customer-side distributed cogeneration facilities that is subject to the Proposed Regulations and commences operation in 2009 would not be eligible to receive allocations from the CHP set-aside account until 2011. Thus, such a resource would be required to purchase all the Allowances necessary to operate during 2009 and 2010. Such required purchases may be prohibitively costly and erode the entire economic value of such a resource, which could lead to either closure or foregoing the development of such a resource. As a remedial measure, CIEC recommends that the methodology for allocating Allowances

⁵⁸ Id. § 22a-174-31(f)(3)(B) at 31-22.

from the CHP set-aside account be modified so as to be similar to that utilized by the CDR set-aside account.⁵⁹ As such, allocations from the CHP set-aside account would occur on a year lag (*i.e.* by February 28th of each year beginning in 2010) and be based on the actual thermal net energy produced by a customer-side distributed cogeneration resource during the prior year (*i.e.* the allocation on February 28, 2010 would be based on the thermal net energy output of the facility during calendar year 2009).

D. The Proposed Regulations Should Minimize Windfall Financial Gains to Non-Emitting Electricity Generation Facilities

As previously noted, emitting generators will include the cost of complying with the Proposed Regulations (*i.e.* the cost of Allowances) within their operating costs and thus pass them along to Connecticut electricity consumers within the bids submitted into the energy markets. In the ISO New England energy markets, generators subject to the Proposed Regulations most often serve as marginal units that determine the final price of energy paid by all electricity consumers (and paid to all generators). In other words, with implementation of the Program, the bids of marginal units will increase to include the cost of Allowances, thus, increasing the overall wholesale energy prices, or locational marginal prices (“LMP”). The LMP is paid to all generators whose bids clear in the market, regardless of their actual bid price. Therefore, non-emitting generators (*e.g.* nuclear facilities) that are not subject to

⁵⁹ *Id.* § 22a-174-31(f)(3)(F) at 31-23.

the Proposed Regulations will be paid for energy on the basis of a price that includes the cost of Allowances.⁶⁰

The dynamics of the ISO New England energy markets thus create the potential for windfall profits to non-emitting generators. The cost of such windfall profits would be fully borne by Connecticut electricity consumers. Accordingly, CIEC recommends that the Proposed Regulations be modified to specifically require DEP, in consultation with DPUC, to monitor and provide regular reports on any windfall financial gains to non-emitting generators as a result of implementing the Program. Furthermore, the Proposed Regulations should provide DEP and DPUC, as appropriate, the authority to take necessary action to protect the State's electricity consumers against any excessive windfall financial gains by non-emitting generators resulting from implementation of the Program. The inclusion of such a provision in the Proposed Regulations would not be novel. In fact, the RGGI-enabling legislation in Vermont expressly requires the Vermont Public Service to

⁶⁰ As described herein, the potential for windfall profits to non-emitting generators is a serious concern that warrants appropriate action. Accordingly, DEP together with the other RGGI member states should collectively discuss mechanisms by which the collection of RGGI costs will be more transparent and avoid providing windfall profits to non-emitting generators. For example, DEP could discuss with the other RGGI member states the feasibility of implementing a separate distribution rate surcharge to collect the cost of RGGI from electricity consumers rather than simply flowing the cost of RGGI through to electricity consumers by way of increases to the wholesale electricity prices. Such a mechanism, if implemented by all RGGI states, could avoid the problem of windfall profits to non-emitting generators while simultaneously allowing RGGI states to ensure that generation facilities subject to compliance with RGGI are limited to collecting only their actual costs incurred in connection with compliance.

adopt regulations implementing RGGI that “minimize windfall financial gains to power generators” that result from implementation of RGGI in Vermont.⁶¹

POINT II

THE PROPOSED REGULATIONS SHOULD BE MODIFIED TO ENSURE THE DEVELOPMENT OF A PROPERLY-FUNCTIONING ALLOWANCE MARKET

To realize the RGGI goal of implementing a cap-and-trade program that will serve as a model for the development of a national program, DEP must ensure that the Program is designed to create an effective Allowance market. Consequently, the Program must eliminate unnecessary restrictions on the supply of Allowances. Moreover, the Program must be able to deliver its intended benefits – reductions in CO₂ emissions from emitting generators. As proposed, the Program fails on both of these grounds. Accordingly, CIEC recommends that the Proposed Regulations be modified as set forth below to ensure that Connecticut electricity consumers will stand at least a reasonable chance of obtaining the benefits for which they will be paying.

A. The Proposed Regulations Should Be Modified to Include Specific Auction Design Details

The Proposed Regulations require the Allowance auction to be an “open and transparent process.”⁶² However, the Proposed Regulations fall far short of achieving this

⁶¹ 30 V.S.A. § 255(c)(2)(A), available at <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=30&Chapter=005&Section=00255> [hereafter “Vermont RGGI Legislation”].

⁶² Proposed Section 31 § 22a-174-31(f)(4)(A) at 31-24.

requirement. The Proposed Regulations would result in a highly uncertain auction design. This uncertainty would significantly increase the risk of unreasonably high prices for Allowances and increase the price of electricity paid by Connecticut consumers. Accordingly, CIEC recommends that the Proposed Regulations be modified so that the sale of Allowances occurs through a transparent, predictable auction process.

The Proposed Regulations provide DEP, in consultation with DPUC, with an unreasonable degree of discretion in determining the manner in which Allowance auctions will occur.⁶³ In fact, the Proposed Regulations provide no information about the Allowance auction design. Such a broad and unreasonable delegation of authority is without support. In order to ensure a properly-functioning auction that is designed to insulate Connecticut electricity consumers from substantial increases in electricity prices, the Proposed Regulations should remove the discretion regarding auction design. Instead, the Proposed Regulations should provide clear, detailed and fixed auction rules that are established prior to the first Allowance auction.

In developing the auction rules, DEP and DPUC should review the Final Auction Design Report along with the comments submitted by parties pertaining thereto.⁶⁴ After a thorough review of such documents, DEP should issue revised Proposed Regulations that include fixed auction rules. Such revised Proposed Regulations should, at a minimum, address the following auction design elements: (i) the auction format to be used; (ii) auction frequency; (iii) the quantity of Allowances to be sold in each auction; (iv) whether future

⁶³ Id.

⁶⁴ *See* Final Auction Design Report. The comments of parties with respect to the Final Auction Design Report are available at http://www.rggi.org/auction_comments.htm.

Allowances will be sold; (v) whether a multi-state or Connecticut-only Allowance auction will be utilized; and (vi) whether auction design features such as reserve prices and contingency reserve banks will be utilized.

Only through an open and thoroughly vetted process will DEP ensure that it meets the objectives of creating an “open and transparent process”⁶⁵ while “maintaining energy affordability and reliability.”⁶⁶ CIEC recognizes the desire of DEP to have regulations in place in order to begin conducting Allowance auctions in 2008. However, poorly-considered and hastily-implemented regulations would serve only to undermine the credibility of the Program. Therefore, the Program should be revised to include fixed auction rules even if it means a delay in implementation. Such auction rules should be adopted in accordance with formal rulemaking procedures, providing the opportunity for public review and comment.

B. The Proposed Regulations Should Be Modified to Restrict DEP to Recovering Only Verified and Reasonable Administrative Costs

The administrative costs incurred by DEP should be constrained to the minimum amount necessary to effectively implement and continue the proper operation of the Program. This constraint is necessary to ensure that Connecticut consumers receive the greatest benefit from the proceeds of the sale of Allowances without having such proceeds eroded unnecessarily by extensive administrative costs. Unfortunately, the Proposed

⁶⁵ Proposed Section 31 § 22a-174-31(f)(4)(A) at 31-24.

⁶⁶ Regional Greenhouse Gas Initiative, Goals & Guiding Principles, available at <http://www.rggi.org/goals.htm>.

Regulations provide DEP the right to retain a fixed allocation of 7.5 percent of the funds generated by the sale of Allowances, regardless of the Allowance price or the actual administrative costs incurred by DEP.⁶⁷

The Proposed Regulations are in direct conflict with Public Act No. 07-242, *An Act Concerning Electricity and Energy Efficiency*, which specifically limited DEP to collecting its “reasonable administrative costs associated with implementation of the Regional Greenhouse Gas Initiative in Connecticut...”⁶⁸ The fact that Public Act 07-242 provided that “such costs shall not exceed seven and one-half percent of the total projected allowance value”⁶⁹ did not provide DEP carte blanche to simply allocate 7.5 percent of the funds to itself. Rather, Public Act 07-242 established a cap on what DEP’s reasonable administrative costs associated with the Program could be. Thus, it is clear that the Legislature intended DEP to only receive its reasonable, verifiable administrative costs connected with the administration of the Program, not a guaranteed 7.5 percent of the Allowance auction proceeds regardless of the Allowance price or the actual administrative costs incurred by DEP.

Moreover, allowing the blanket retention of 7.5 percent of the auction proceeds by DEP could easily produce absurd results. For example, if the Allowance price is \$20 per ton in 2009, a price that is arguably likely based on the experience of the EU ETS and analysts predictions, and DEP sold all of the Allowances allocated to the Connecticut

⁶⁷ Proposed Section 31 § 22a-174-31(f)(4)(D)(i) at 31-24.

⁶⁸ Public Act 07-242, *An Act Concerning Electricity and Energy Efficiency*, § 93(c) [hereafter “Public Act 07-242”].

⁶⁹ Id.

Auction Account (*i.e.* 9,732,483), the resulting fund would be approximately \$195 million, of which DEP would retain \$14.6 million in 2009 alone for its “administrative costs” should be for implementation and on-going administration of the Program. Such an amount far exceeds any reasonable expectation of what DEP’s administrative costs should be for the Program for a single year. In fact, such amount exceeds 10 percent of Governor Rell’s total recommended budget for the entire cost of all DEP’s operations for fiscal year 2007-2008.⁷⁰

Accordingly, CIEC recommends that the Proposed Regulations be modified, consistent with Public Act 07-242, to provide that DEP is limited to collecting its reasonable, verifiable administrative expenses associated with the implementation and on-going administration of the Program. Furthermore, the Proposed Regulations should be modified to clarify that the total value of such reasonable, verifiable, administrative expenses shall not exceed 7.5 percent of the total funds retained in the Connecticut Auction Account from the sale of Allowances. This modification is necessary to ensure that the funds derived from the sale of Allowances that are intended to be used for the benefit of Connecticut consumers are not eroded unreasonably by excessive administrative costs.

⁷⁰ Connecticut Office of Policy and Management (Budget and Financial Management Division), Fiscal Year 2008 – Fiscal Year 2009 Biennium Governor’s Budget Summary, Section B – Budget Summary (Conservation and Development), p. B-84, available at http://www.ct.gov/opm/LIB/opm/Budget/20082009BudgetBooks/Summary/BudSumm_Con_sDev.pdf.

C. The Proposed Regulations Should Be Modified to Allow Only Emitting Generators to Participate in the Auctions

The Proposed Regulations do not specify whether entities other than emitting generators will be permitted to participate in the Allowance auctions. Rather, the Proposed Regulations merely provide that the auction will be an “open and transparent process”.⁷¹ As set forth below, participation by entities other than emitting generators could remove Allowances needed by emitting generators from the otherwise available supply pool, thereby potentially increasing Allowance prices. In order to ensure the availability of Allowances at reasonable prices, CIEC recommends that the Proposed Regulations be modified to preclude the participation of non-emitting entities in the Allowance auctions.

It has been acknowledged that “the likely source of demand for RGGI allowances will be the voluntary compliance market.”⁷² In the voluntary compliance market, non-emitting entities would be able to purchase Allowances and “retire” them from the market. Thus, voluntary compliance could result in the reduction of the otherwise available supply pool, which would result in higher Allowance and electricity prices for Connecticut consumers. Given that EIA data shows that emitting generators may require more than 94 percent of the available Allowances in 2009 to operate, there is very little excess supply to meet the unpredictable and potentially-large demands of the voluntary compliance market.⁷³

⁷¹ Proposed Section 31 § 22a-174-31(f)(4)(A) at 31-24.

⁷² Final Auction Design Report at 73.

⁷³ EIA Historical Emissions Data.

In fact, a recent study found that the total demand for Allowances from the voluntary compliance market for 2007 was approximately 34 million tons.⁷⁴ This demand equates to more than 18 percent of the entire emissions budget for the RGGI region in 2009 and far exceeds the potential excess supply in Connecticut.⁷⁵ Accordingly, the purchase of Allowances in the auctions by non-emitting entities should be precluded.

In addition, given the already-constrained gap between available supply and potential demand, the participation of non-emitting entities in the Allowance auctions may threaten the reliability of power supply in Connecticut. Purchases by non-emitting entities may cause an actual shortage of Allowances, thus forcing emitting generators to shut-down operations or reduce output. Such reductions may in turn undermine the reliability of the electricity system operated by ISO New England, Inc. Therefore, CIEC recommends that the Proposed Regulations be modified to allow only emitting generators to participate in the Allowance auctions. Under this approach, non-emitting entities still would be permitted to acquire desired Allowances in the secondary market without triggering potential price spikes and reliability concerns.⁷⁶

⁷⁴ NCF November 2007 Report at 8.

⁷⁵ The 2009 budget for the entire RGGI region is 188,076,976 tons.

⁷⁶ If, *arguendo*, DEP rejects CIEC's recommendation to restrict participation in the auction to only emitting generators, then DEP should develop a revised auction format that would ensure emitting generators have the right of first refusal to acquire the Allowances necessary to support operations.

D. The Set-Aside For Voluntary Clean Energy Purchases Restricts the Supply of Allowances Unnecessarily and Should Be Eliminated

In order to avoid potentially significant price increases to Connecticut electricity consumers, the Proposed Regulations must be designed to eliminate unnecessary restrictions on the supply of available Allowances to emitting generators. The available supply of Allowances in Connecticut is already constrained. As discussed above, based upon EIA emissions data and the Allowance budget for 2009, Emitting Generators would require over 94 percent of the available Allowances in order to operate.⁷⁷ This constrained supply is further exacerbated by DEP's proposal to remove 106,950 Allowances from the market annually during the first control period, and one percent of the State emissions budget each year thereafter, placing them in the VCEP Account.⁷⁸ Thus, the VCEP Account creates an unnecessary restriction on the supply of Allowances and should be eliminated.⁷⁹

The purpose of the VCEP Account is to encourage purchases of renewable energy and, thus, the continued development new renewable resources. However, the Proposed Regulations, as drafted, would provide significant additional funding for Class I

⁷⁷ EIA Historical Emissions Data.

⁷⁸ Proposed Section 31 § 22a-174-31(f)(3)(A) at 31-21.

⁷⁹ It is important to note that the set-aside proposed by DEP for CDR and CHP does not suffer from the same infirmities as the VCEP Account. *See* Proposed Section 31 § 22a-174-31(f)(3)(A) at 31-21. In contrast to the VCEP Account, the CDR and CHP set-aside accounts provide Allowances to certain emitting generators and does not permanently remove such Allowances from the available supply pool. Due to the significant differences between such set-aside accounts and VCEP Account, CIEC does not oppose the proposed CDR and CHP set-aside accounts if, *arguendo*, DEP does not accept CIEC's recommendation to exempt customer-side distributed resources as detailed further in Section I(C) above.

renewable resource development.⁸⁰ In fact, if the Allowance prices cleared at ICF Consulting's projected price for 2009, the Program would provide over \$4.5 million in 2009 alone to support Class I renewable resource development.⁸¹ In addition, Public Act 07-242 required utilities to enter into long-term contracts with Class I renewable resources to acquire a total of 150 MW of new Class I renewable generating capacity by 2010.⁸²

Given that the substantial incentives for the development of Class I renewable resources already exist, the potential harm associated with the VCEP Account far outweighs its benefits. The supply of Allowances for emitting generators already is constrained, and the VCEP Account may exacerbate that situation. As discussed above, the potential retirement of 106,950 Allowances each year during the first control period, and one percent of the total emissions budget each year thereafter, through the VCEP Account creates an unnecessarily risky restriction on the supply of Allowances. Under the Program, as proposed, emitting generators would be required to purchase Allowances for each ton of CO₂ they emit (and thus would need to purchase Allowances for every MWh they produce). Under this market design, and given an already tight supply of Allowances, the VCEP Account further reduces the supply of Allowances, with a resulting increase in the price of Allowances and thus the

⁸⁰ Proposed Section 31 § 22a-174-31(f)(4)(D)(ii) at 31-24.

⁸¹ RGGI Modeling Results.

⁸² Public Act 07-242 § 124.

cost electricity to Connecticut consumers.⁸³ Accordingly, CIEC recommends that the VCEP Account be eliminated and that the annual allocation of Allowances associated therewith be reallocated to the Connecticut Auction Account for sale in the auctions.

E. The Proposed Treble Damage Penalty For Excess Emissions Creates an Unnecessary Risk For a Shortage of Allowances

The Proposed Regulations provide for a deduction in an amount equal to three times an emitting generator's excess emissions in the case that it is short Allowances.⁸⁴ Thus, if an emitting generator is short Allowances for a compliance period, the penalty proposed is that they must forfeit three Allowances for every one Allowance they are short. Further increasing the potentially disastrous consequences of this treble damage penalty is the fact that in assessing the penalty, DEP can: (i) reduce any unused Allowances (except for offset allowances) held in the account of the violating generator, including any Allowances for future compliance periods, and/or (ii) require the violating generator to purchase Allowances necessary to cover the treble damage assessed.⁸⁵

The potential impact of this treble damage penalty on the available supply pool of Allowances is patently obvious, and the penalty could drive the cost of Allowances to

⁸³ To the extent the Allowances proposed to be allocated to the VCEP Account are needed by emitting generators, this set-aside, although perhaps perceived by some as relatively small in magnitude, may in fact have a huge impact on the clearing price for Allowances. Thus, under certain scenarios, the actual costs of the VCEP Account may exceed the anticipated benefits by orders of magnitude.

⁸⁴ Proposed Section 31 § 22a-174-31(g)(5)(G) at 31-35.

⁸⁵ Id.

unlimited levels, with potentially dramatic impacts to the electricity prices paid by Connecticut consumers. More importantly, such treble damages are not necessary because the Proposed Regulations already provide the ability to assess, potentially substantial, fines for non-compliance.⁸⁶

Moreover, although similar treble damages provisions exist in other emission control programs in Connecticut (*e.g.* Post-2002 NO_x Budget Program⁸⁷), the differences between the NO_x Budget Program and the Program are material. First, unlike NO_x, there currently is no commercially-available control technology that can be implemented to remove CO₂ from the flue gas of emitting generators. Therefore, the available options for compliance are substantially more limited under the Program. In addition, the availability of back-end control technology to reduce NO_x emissions makes the available supply pool of allowances less critical under the NO_x Budget Program.

Furthermore, the NO_x Budget Program provides for an allocation of NO_x allowances to units subject to the program.⁸⁸ In stark contrast, the Program, as proposed, requires emitting generators to purchase Allowances for every ton of CO₂ emissions produced. Lastly, emission reduction programs for NO_x already were in existence at the time the NO_x Budget Program was implemented, whereas the CO₂ emissions cap-and-trade program is a novel concept in the U.S. Given the substantial differences between the NO_x

⁸⁶ *Id.*

⁸⁷ Regulations of Connecticut State Agencies § 22a-174-22b(t) [hereafter “NO_x Budget Program”].

⁸⁸ NO_x Budget Program § 22a-174-22b(g).

Budget Program and the Program, the proposed use of similar treble damage provisions is inappropriate and unduly risky.

Because the treble damage penalty provision is unnecessary and could result in dramatic price increases, CIEC urges DEP to remove this proposed penalty from the Proposed Regulations.

F. The Proposed Regulations Should Be Modified to Include Trigger Events Consistent With the RGGI Memorandum of Understanding

The Proposed Regulations' use of trigger events is inconsistent with the RGGI MOU. Specifically, the ramifications of a stage two trigger event provided in the Proposed Regulations are inconsistent with the first amendment to the RGGI MOU executed by DEP Commissioner McCarthy on August 8, 2006.⁸⁹ The Proposed Regulations require the occurrence of two consecutive stage two trigger events before increasing the percentage of offsets that may be utilized by emitting generators for compliance.⁹⁰ This language is consistent with the original RGGI MOU.⁹¹ However, the First Amendment modified this language to provide that upon occurrence of a single stage two trigger event the percentage of offsets that may be utilized increases to 10 percent including the ability to use credits from

⁸⁹ Regional Greenhouse Gas Initiative, Amendment to Memorandum of Understanding, available at http://www.rggi.org/docs/mou_amendment_8_31_06.pdf [hereafter "First Amendment"].

⁹⁰ Proposed Section 31 § 22a-174-31(g)(5)(B)(iii) at 31-34.

⁹¹ RGGI MOU § 2(F)(4)(a) at 5.

international trading programs as offsets.⁹² Given that Connecticut executed the First Amendment, CIEC requests that DEP revise the Proposed Regulations to be consistent with the ramifications of a stage two trigger event as provided for in the First Amendment.

G. The Proposed Regulations Should Be Modified to Provide the Ability to Include Additional Categories of Offsets

Offsets are integral to the success of the Program because they provide flexibility to emitting generators in meeting their compliance obligations while simultaneously providing environmental and economical co-benefits. The offsets are of particular importance for emitting generators because currently there are no commercially-available control technology that can be implemented to remove CO₂ from the flue gas of emitting generators; therefore, offsets provide another method for reducing greenhouse gas emissions.

Each offset allowance is the equivalent of reducing one ton of CO₂ emissions. Therefore, the use of one offset allowance by an emitting generator for compliance provides the citizens of Connecticut the same environmental benefits as reducing the CO₂ emissions from such generator by one ton. Given the equivalent value of offset allowances to actual reductions in CO₂ emissions, CIEC supports greater flexibility in utilizing offsets to meet the compliance obligations of emitting generators subject to the Proposed Regulations. However, the Proposed Regulations unnecessarily restrict the types of offsets that may be

⁹² First Amendment § 5(a) at 3.

utilized to five defined categories without the ability to include additional categories in the future.⁹³ This restriction is inconsistent with the provisions of the RGGI MOU.

The RGGI MOU provides that “the Signatory States agree to continue to cooperate on the development of additional offset categories”⁹⁴ and that “additional offset types will be added to the Program....”⁹⁵ Therefore, it is clear that there was no intent to freeze the categories of eligible offsets to the five listed in the Proposed Regulations. Rather, in executing the RGGI MOU, the member states sought to encourage continued technological development and innovative solutions to address the issue of CO₂ emissions. To ensure that the Proposed Regulations engender the same sentiment, CIEC recommends that DEP revise the Proposed Regulations to provide DEP flexibility to include additional categories of offsets that provide “CO₂ or CO₂ equivalent reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent.”⁹⁶

In addition to the categories of eligible offsets, CIEC recommends a slight modification to the Proposed Regulations to recognize the value of fuel cell technology in reducing CO₂ emissions. Fuel cell technology has the capability to reduce CO₂ emissions in existing and/or new residential, commercial, and industrial buildings by displacing reliance on generation from facilities that may burn fossil fuels in order to meet the electricity

⁹³ Regulations of Connecticut State Agencies § 22a-174-31a(c)(2), p. 31a-6, available at http://www.ct.gov/dep/lib/dep/public_notice_attachments/draft_regulations/sec31adraft122107.pdf [hereafter “Proposed Section 31a”].

⁹⁴ RGGI MOU § 2(F)(1)(c) at 4.

⁹⁵ Id.

⁹⁶ Proposed Section 31a § 22a-174-31a(c)(1) at 31a-5.

demands associated with such buildings. Accordingly, CIEC recommends that DEP modify Proposed Section 31a § 22a-174-31a(g)(1)(A) to include reductions in fossil fuel consumption through the use of fuel cell technology.⁹⁷

The success of the Program hinges on its ability to reduce greenhouse gas emissions. The limitation on categories of eligible offsets provided in the Proposed Regulations will impede the Program's capability for success. Therefore, the Proposed Regulations should be modified to provide DEP the capability to include additional types and categories of offsets, as described herein, that will provide the citizens of Connecticut the same benefits as those currently specified – a healthier, cleaner environment.

H. Emissions Leakage Is a Serious Concern That Should Be Addressed

Emissions leakage refers to an increase in CO₂ emissions outside the RGGI region that may partially eliminate a portion, or all, of the emissions reductions made available within the RGGI region under the Program. Emission leakage is a significant concern because:

the implementation of a carbon cap on in-region power plants is expected to increase the cost of electricity generation in the RGGI region. In a competitive power market, this may have the effect of shifting generation in the larger region to uncontrolled and presumably cheaper fossil fuel-fired generation not subject to a carbon cap.⁹⁸

⁹⁷ *Id.* § 22a-174-31a(g)(1)(A) at 31a-23.

⁹⁸ RGGI Emissions Leakage Multi-State Staff Working Group, Potential Emissions Leakage and the Regional Greenhouse Gas Initiative (RGGI): Evaluating Market Dynamics, Monitoring Options, and Possible Mitigation Mechanisms (March 14, 2007), p. 3, available at http://www.rggi.org/docs/il_report_final_3_14_07.pdf. [hereafter “Initial Leakage Report”].

Increased imports from cheaper, potentially dirtier, generators that are not subject to the Program, emission leakage causes the erosion of the benefits otherwise anticipated from implementation of the Program (*i.e.* reduction in CO₂ emissions). Emissions leakage could result in Connecticut electricity consumers paying higher electricity prices while receiving little, if any, actual reduction in CO₂ emissions.

Preliminary modeling reveals that emissions leakage is a critical issue with the potential for annual emissions leakage ranging from approximately 27 percent to nearly 55 percent.⁹⁹ It is important to note that “currently there is insufficient information to make precise estimates as to the potential amount of emissions leakage that may occur.”¹⁰⁰ Therefore, actual emissions leakage may exceed even these significant projected levels. Given the significant potential for leakage, it is essential that DEP modify the Proposed Regulations to explicitly require monitoring and reporting of emissions leakage data to ensure that Connecticut consumers are in fact receiving the benefits intended by the Program (*i.e.*, CO₂ emissions reductions). Accordingly, CIEC recommends that DEP modify the Proposed Regulations to require the monitoring of emissions leakage and the provision of leakage data consistent with the RGGI MOU.¹⁰¹

Although CIEC recommends monitoring of emissions leakage, it is opposed to the implementation of leakage control policies such as emissions rate mechanisms, emissions

⁹⁹ RGGI Modeling Results.

¹⁰⁰ Initial Leakage Report at 4.

¹⁰¹ RGGI MOU § 6(A) at 9-10 (requiring monitoring and the reporting of emission leakage data beginning in 2010 and a determination after the first compliance period of the extent of emissions leakage).

portfolio standards, and load-based emissions cap-and-trade programs referred to in the Initial Leakage Report as potential mitigation measures.¹⁰² The implementation of such measures would only amplify the negative impacts on Connecticut electricity consumers. Similar to the Program, Connecticut electricity consumers ultimately would bear the cost of any load-based emissions control program because load serving entities, like emitting generators, simply would pass along the cost of such programs in the price of electricity charged to Connecticut electricity consumers. Thus, such programs would only serve to ensure that Connecticut electricity consumers pay twice for the implementation of CO₂ emissions control in Connecticut.

As is well recognized, “the implementation of a national CO₂ cap-and-trade program for the electric power sector...or a scenario where RGGI sunsets once a national program is implemented, would remove any potential for emissions leakage.”¹⁰³ Therefore, as described further below, CIEC recommends that DEP continue to work with federal officials to assist in the development of a national cap-and-trade program for CO₂ emissions from power plants.

I. Implementation of a National Cap-and-Trade Program Should Terminate the Program Automatically

As recognized by the Initial Leakage Report, “the implementation of a national CO₂ cap-and-trade program for the electric power sector...or a scenario where RGGI sunsets

¹⁰² Initial Leakage Report at 31-42.

¹⁰³ Initial Leakage Report at 3.

once a national program is implemented, would remove any potential for emissions leakage.”¹⁰⁴ Therefore, in the event national standards are implemented, the Proposed Regulations should contain a provision whereby it sunsets automatically. The adoption of a sunset provision would help ensure that Connecticut is not disadvantaged vis-à-vis other states under a national program. Furthermore, including such a sunset provision in the Proposed Regulations would not be out-of-step with other RGGI member states. In fact, the New Jersey RGGI Legislation expressly requires termination of RGGI in New Jersey upon determination that a comparable national program has been implemented.¹⁰⁵

Moreover, DEP must ensure that any national program include mechanisms that allow for the use of Allowances purchased under the Program to be utilized in complying with such a national program. Such a design element is necessary to allow for a termination of the Program without additional harm to Connecticut electricity consumers.

The possible existence of duplicative national and regional/state cap-and-trade programs only would further escalate the price of electricity paid by Connecticut electricity consumers and render the State even less competitive. Accordingly, CIEC recommends that the Proposed Regulations be modified to include an explicit sunset provision in the event that a national cap-and-trade program for CO₂ emissions is implemented.

¹⁰⁴ Id.

¹⁰⁵ New Jersey RGGI Legislation § 10 at 11.

CONCLUSION

For all the foregoing reasons, the Connecticut Industrial Energy Consumers respectfully submit that the Proposed Regulations should not be adopted unless modified as described herein in order to ensure adequate protection against significant increases in the cost of electricity to Connecticut consumers.

Dated: February 8, 2008
Albany, New York

Respectfully submitted,

s/James S. King

COUCH WHITE, LLP
Representatives of Connecticut Industrial
Energy Consumers
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
Telephone: (518) 426-4600
Telecopier: (518) 426-0376

Of Counsel:

James S. King, Esq.

Garrett E. Bissell, Esq.

J:\DATA\Client4 11825-12199\12074\Pleadings\CIEC Comments 02-08-08.doc