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COMMENTS OF THE OFFICE OF CONSUMER COUNSEL ON THE DEP'S PROPOSED RGGI REGULATIONS MAY 31, 2007

The State of Connecticut, Office of Consumer Counsel ("OCC"), the statutory advocate for utility customers, respectfully urges the State of Connecticut, Department of Environmental Protection ("DEP"), to revise the proposed Regional Greenhouse Gas Initiative ("RGGI") Regulations, proposed Regulations of Connecticut State Agencies ("R.C.S.A.") §§ 22a-174-31.

In particular, for the reasons discussed below, the OCC respectfully urges the DEP to revise proposed R.C.S.A. § 22a-174-31 so that it mandates that all or substantially all of the carbon dioxide emission allowances are auctioned, with the proceeds going first to cost-effective energy efficiency programs and any remainder going to a credit on consumer electric bills.

OCC is the statutory advocate for electricity customers and other utility customers under Connecticut General Statutes § 16-2a. In accomplishing this mission, OCC seeks to represent and advocate for the long-term interests of customers with regard to electricity, including reliability of the grid, reducing the cost of electricity and minimizing the environmental consequences of electricity usage in the State. Although balancing these goals can be difficult, the promotion of some policies can improve reliability, reduce cost *and* help the environment.

Perhaps the most prominent such policy is the adoption of cost-effective energy efficiency measures. OCC has sought to promote this policy for several years, including through active participation in and leadership of the Energy Conservation Management Board (“ECMB”). Connecticut is not yet spending nearly enough on energy efficiency -- we have not yet come close to taking advantage of all cost-effective efficiency measures.¹

Given the above, OC is concerned that the proposed R.C.S.A. § 22a-174-31 does not mandate that all or substantially all of the carbon dioxide emission allowances be used for energy efficiency or other programs that directly benefit ratepayers. Specifically, proposed R.C.S.A. § 22a-174-31(f)(3)(C) states that “by no later than the end of the second compliance period, allocate *up to* one hundred percent of the remaining Connecticut CO₂ trading program base budget to the consumer benefit account.” (Emphasis added). It is OCC’s understanding that this would permit the DEP Commissioner to allocate anywhere from 25% to 100% of the CO₂ allowances to the consumer benefit account, with the lower number deriving from the Memorandum of Understanding among the RGGI States.

OCC respectfully maintains that proposed R.C.S.A. § 22a-174(f)(3)(C) should be changed to mandate that, either immediately or within a short time frame, all or substantially all of the allowances be auctioned for the benefit of ratepayers. The proceeds should either be placed in the Conservation and Load Management Fund or a separate account overseen by ECMB for cost-effective energy efficiency measures.

¹ See Independent Assessment of Conservation and Energy Efficiency Potential for Connecticut and the Southwest Connecticut Region—Final Report, prepared for the ECMB, dated February 2004, with particular attention to Section 1.2, Key Findings, which discusses the maximum achievable cost effective potential that Connecticut can achieve. This report is available at <http://www.ctsavesenergy.org/files/CT%20FINAL%20MAP%20REPORT-02-09-2004-H.pdf>.

In the event that cost-effective energy efficiency measures are fully funded at some point in time, then any excess funds from the auctioning of CO₂ emission allowances could be used as a direct credit for ratepayer bills. Adopting this policy would do much to ensure that the public policy benefits of Connecticut's participation in RGGI are maximized. Indeed, OCC anticipates that the effects of RGGI on the environment, when combined with the auctioning of allowances for efficiency and the ECMB's current programs to reduce peak and non-peak usage, will "complete the loop" of benefits and have a robust effect on the environment, electric demand, and ultimately electric prices.

OCC agrees with the many other publicly-oriented parties, including Clean Water Action, Pace University—Pace Law School Energy Project, Environment Northeast and others, that have filed public comments on RGGI stating that 100% auctioning of allowances (or something close to it) is the right approach for customers, and OCC notes that New York, Maine, Vermont and Massachusetts have already taken this approach. OCC does not believe that the effects on power prices will differ greatly in the short run between (i) auctioning of 100% of allowances and (ii) auctioning of 25% of allowances, with the remaining 75% given to generators. Since natural gas sets the clearing price for energy in Connecticut in the ISO-New England market all or most of the time, OCC does not expect that providing power plants using coal or oil with "free" allowances will affect the clearing price even if their bids rise due to the allowance program. While bilateral contract prices may be impacted in the short run, those prices reflect the ISO-New England energy market in the medium-term and the long-term.

OCC does expect that the bids from natural gas generators may increase after the creation of the CO₂ emission allowance program. However, as has been discussed by other commenters, OCC expects that the bids will rise in similar ways regardless of whether emissions are given to generators for free. This is because generators will add the opportunity cost of using the allowance to their energy bids whether they receive some free allowances or not. In other words, whether or not a generator receives a free allowance, such generator is, by virtue of operating, foregoing the revenue that would accrue from the sale of the allowance, and this foregone revenue will likely be added to the generator's energy bid as a cost (the cost of foregone revenue) regardless of whether the allowance was received by the generator for free or bought in an auction.

To give a numerical example, if a generator holds allowances that have a market value of \$500 and has a choice on a given day of either operating and using the allowances or selling the allowances, the generator will, roughly speaking, likely include the \$500 in its cost of operation for a given day, because it is losing the potential for a \$500 sale of its allowances. Regardless of whether the generator received the allowances for free or for their market value at the time of receipt, OCC believes that the generator will still, roughly speaking, seek to incorporate the value of the allowances into its bids.

Consequently, on the cost side, OCC does not expect significant difference between one scenario, allocating as little as 25% of allowances to customers and 75% to generators, and the other, allocating 100% of allowances for public benefit. However, on the benefit side, allocating 100% of allowances to efficiency is the far

superior approach. With four times more allowances for energy efficiency than under a 25% approach, Connecticut will be able to fund energy efficiency initiatives that will reduce the rate of increase of Connecticut's peak electric usage or, if all goes well, eliminate or even reduce the annual increases in peak use. Such a reduction in peak usage would put downward pressure on electricity prices. Moreover, energy efficiency that is used on and off-peak will help the environment by reducing fossil fuel emissions 365 days a year; for example, it will stop the dirtiest plants with poor start times from being kept on spinning reserve.

OCC does not anticipate that assigning 100% of allowances to customers will create electric reliability problems. If a power plant is needed for reliability and can no longer afford to run after implementation of a CO₂ emissions program, it can apply to the Federal Energy Regulatory Commission for a Reliability Must Run ("RMR") contract, with the terms of such contract being the subject of the ISO New England tariffs. Reliability problems have been avoided through this mechanism to date, for units that are not earning a reasonable rate of return in the relevant markets but are needed for reliability, and OCC expects that this will likely continue if necessary after implementation of new RGGI regulations. Eventually, units that are needed for reliability but cannot meet the standards of RGGI in an economic way because of the age or inefficiency of the unit will be replaced by new generation.

OCC also maintains that the approach of assigning 100% of allowances to customers, with energy efficiency being the primary use of such dollars, is a fair approach. All or substantially all of the present owners of power plants purchased or built such plants no earlier than about eight years ago. The regulatory risk of

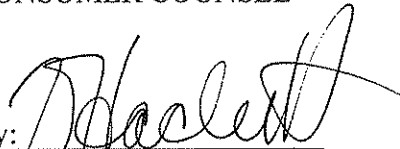
Connecticut's adoption of heightened restrictions over air emissions was well known in that recent time frame and presumably reflected in the purchase price for each plant.

OCC acknowledges that plants running on coal or oil may earn less under a 100% allowance program than under other alternatives. However, this is the right result; we should not be rewarding operators who continue to use those dirtier fossil fuels with greater profits. Also, as discussed above, if the profits of an oil or coal unit (or any other unit for that matter) get to be so low that further operation is jeopardized, then the unit can receive an RMR contract that ensures reasonable compensation for as long as the unit is needed for reliability.

For the foregoing reasons, OCC respectfully urges the DEP to revise proposed R.C.S.A. § 22-174-31 in order to mandate that all or substantially all of the carbon dioxide emission allowances are auctioned, with the proceeds going to cost-effective, environment-friendly, energy efficiency programs and any remainder to a consumer credit.

Very truly yours,

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