



Agenda Date: 2/27/08
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.bpu.gov

CLEAN ENERGY

IN THE MATTER OF A GREENHOUSE GAS)
EMISSIONS PORTFOLIO STANDARD AND OTHER)
REGULATORY MECHANISMS TO MITIGATE)
LEAKAGE)
)

ORDER

DOCKET NO. EO08030150

BY THE BOARD:

On January 13, 2008, Governor Corzine signed into law an act (P.L. 2007, c.340, the "Act") concerning the reduction of greenhouse gas emissions, supplementing Title 26 of the Revised Statutes, and amending the Electric Discount and Energy Competition Act, P.L.1999, c.23, N.J.S.A. 48:3-49 *et seq.* The Act requires the Board to adopt, by July 1, 2009, rules establishing a greenhouse gas emissions portfolio standard to mitigate "leakage" or another regulatory mechanism to mitigate leakage applicable to all electric power suppliers and basic generation service providers that provide electricity to customers within the State.

The Act defines "leakage" to mean "an increase in greenhouse gas emissions related to [electric] generation sources located outside of the State that are not subject to a state, interstate or regional greenhouse gas emissions cap or standard that applies to generation sources located within the State." N.J.S.A. 48:3-87(i).

Such a regional greenhouse gas emissions cap is expected to be implemented beginning January 1, 2009. In December 2005, former Governor Codey joined the Governors of six other states to sign a Memorandum of Understanding concerning the design and implementation of a regional program (the "Regional Greenhouse Gas Initiative," or "RGGI") capping emissions of carbon dioxide from power plants in the region. Since then, a total of ten states have joined RGGI. The states include

Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

The Act's requirement to mitigate leakage arose from concern by some stakeholders that leakage could undermine the environmental benefits of the RGGI program and place generation assets subject to RGGI at a competitive disadvantage. The concern about competitive disadvantage is particularly acute in the PJM system. Of all of the regions represented in RGGI, only PJM has a mix of RGGI and non-RGGI states. PJM includes three RGGI states (New Jersey, Delaware, and Maryland), ten non-RGGI states (Pennsylvania, Virginia, West Virginia, and portions of Indiana, Illinois, Kentucky, and Michigan, North Carolina, Ohio, and Tennessee), and the non-RGGI District of Columbia.

A greenhouse gas emissions portfolio standard ("GHG EPS") offers one type of approach to mitigating leakage. A GHG EPS might correspond to the environmental disclosure requirements already set forth in the Electric Discount and Energy Competition Act, which require each electric power supplier and each basic generation service provider to disclose on a customer's bill or on customer contracts or marketing materials, a uniform, common set of information about the environmental characteristics of the energy purchased by the customer. One item of information that must already be disclosed is the carbon dioxide emissions rate, in pounds per megawatt hour, associated with that energy. N.J.S.A. 48:3-87(a)(2). A GHG EPS might require the average carbon dioxide emissions rate for all electricity delivered by an electric power supplier or basic generation service provider to be at or below a specified standard, expressed in pounds per megawatt-hour.

Stakeholders from New Jersey and elsewhere have already begun debating the merits of an EPS and of other measures to mitigate potential leakage, through stakeholder processes conducted by a working group of staff members in the RGGI states. That working group issued a report on leakage, which is available at <http://www.rggi.org/emisleak.htm>. Comments on this report are available at http://www.rggi.org/emisleak_comments.htm, and other stakeholder documents concerning leakage are available at <http://www.rggi.org/documents.htm>, under the heading "Electric Imports and 'Emissions Leakage' Workshop Presentations."

To gather relevant information about a GHG EPS and other possible measures to mitigate leakage, the Board **FINDS** that it will be valuable to establish a proceeding to conduct a public stakeholder process, to be followed by a public hearing, on the selection of appropriate measures to mitigate leakage. Specifically, the Board seeks to determine possible answers to the following questions:

- 1 Is RGGI expected to cause an increase in imports of electricity into New Jersey from electric generating units located outside the RGGI region? If so, to what extent?
- 2 How would such an increase in imports of electricity affect "statewide greenhouse gas emissions," as defined in the Global Warming Response Act, P.L. 2007, c.112, to include not only in-state greenhouse gas emissions but

also greenhouse gas emissions associated with electricity generated outside the State but consumed in the State?

- 3 To what extent is RGGI expected to cause a difference in the cost of producing electricity between electric generating units located in New Jersey and hypothetical identical units located in PJM outside the RGGI region? This information should be developed for coal-fired electric generating units, oil-fired units, combined-cycle units fueled by natural gas or oil, and simple-cycle units fueled by natural gas or oil.
4. What measures, besides a GHG EPS, are available to mitigate leakage? Should the Board consider alternatives such as:
 - a. A carbon procurement adder, which would require electric power suppliers and basic generation service providers to incorporate into their evaluation of different electricity procurement options a “shadow price” reflecting a cost of carbon emissions that power plants outside the RGGI region would incur if they were subject to RGGI;
 - b. A requirement that, for service to New Jersey customers, long-term power purchases by an electric power supplier or basic generation service provider meet a specific carbon dioxide emission rate;
 - c. An overall cap on emissions associated with electricity provided at retail by each electric power supplier or basic generation service provider;
 - d. The creation of certificates to be issued for each megawatt-hour generated by an electric generating unit that uses one RGGI allowance for each ton of carbon dioxide it emits, coupled with a requirement for all electric power suppliers and basic generation service providers to hold a specified number of such certificates.
5. What is the experience of other states in implementing a GHG EPS, or other measures to mitigate leakage?
6. For each measure proposed to mitigate leakage:
 - a To what extent would the measure be expected to affect the retail price of electricity in New Jersey?
 - b. To what extent would the measure be expected to mitigate leakage?
 - c. What work is involved in developing and implementing the measure, and what is the estimated cost of the development and implementation?
7. How can a New Jersey GHG EPS, or other measure to mitigate leakage, be designed so that it does not merely shift cleaner megawatt-hours to the portfolios of New Jersey electric power suppliers and basic generation service providers, without actually affecting electric generation or the emissions associated with it? Will this result in a cost to New Jersey ratepayers without a corresponding environmental benefit?

8. How can New Jersey best track emissions associated with in-state consumption of electricity generated inside or outside the State, and effectively monitor compliance with a GHG EPS or other regulatory mechanism?
9. For any effective measure to mitigate leakage, how can regulations to implement that measure best be designed in a way that does not conflict with the Interstate Commerce Clause of the United States Constitution, Art. 1, sec 8?

Although measures to enhance energy efficiency have been recommended as a strategy to reduce leakage, the Act states that such measures “shall not be considered sufficient to fulfill the requirement of this subsection” for the adoption of a “regulatory mechanism to mitigate leakage,” unless the Attorney General or the Attorney General’s designee determines that a greenhouse gas emissions portfolio standard would unconstitutionally burden interstate commerce or would be preempted by federal law. Accordingly, using energy efficiency measures to mitigate leakage is outside the scope of this proceeding.

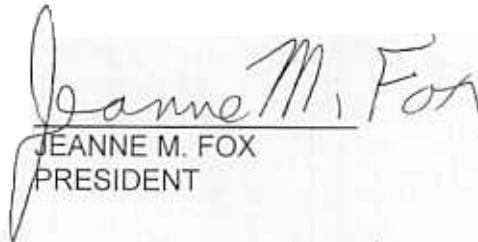
The Board hereby **ORDERS** that a proceeding be convened to begin the public stakeholder process in developing answers to the questions above, along with other questions that may arise which Staff determines are relevant to the Board’s eventual decision on measures to mitigate GHG leakage. The Board hereby **DESIGNATES** President Jeanne M. Fox as the presiding commissioner in this proceeding, and to preside over a legislative-type hearing to be held no later than July 1, 2008, and **DESIGNATES** Commissioner Joseph L. Fiordaliso to serve as presiding commissioner if President Fox is unavailable. The Board further **DIRECTS** Staff to hold up to three informal stakeholder meetings, to be completed by June 1, 2008, and to solicit written comments from interested parties to be submitted by June 30, 2008. The Board further **DIRECTS** Staff to cause a copy of this Order, along with the date, time, and location of the first stakeholder meeting, to be published in the New Jersey Register and posted on the Board’s website, and to establish an electronic mailing list for service of documents in this proceeding, with instructions for subscribing to the mailing to be posted on the Board’s website. The Board further **DIRECTS** Staff to provide notice to the following parties of the opportunity to participate in the informal stakeholder meetings, and provide them with an electronic copy of this Order:


- Rate Counsel;
- All electric power suppliers and basic generation service providers selling electricity to New Jersey retail customers;
- All parties on the service list for the Board’s most recent Basic Generation Service proceeding;
- The New Jersey Department of Environmental Protection;
- A list of environmental advocates, to be obtained from the New Jersey Department of Environmental Protection; and
- Any other parties who register for the electronic mailing list described above or otherwise request notice.

The Board retains the right to modify this schedule as necessary and appropriate in the interests of economy and justice. The Board further authorizes the presiding Commissioner to make reasonable adjustments to the schedule, provided that the adjustments do not postpone the date for filing written comments by more than two months.

DATED: 3/18/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

