SIERRA CLUB
NEW JERSEY CHAPTER

September 17, 2020

Via electronic mail

Catherine R. McCabe
Commissioner
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton, NJ 08625-0420

Re: Reducing CO2 Emissions from Stationary Sources, NJ PACT Stakeholder Meeting, September 3, 2020

Dear Commissioner McCabe,

On September 3, the DEP hosted a stakeholder meeting concerning the regulation of CO2 emissions from stationary sources in New Jersey as part of the NJ Protecting Against Climate Threats (PACT) process. On behalf of its members, New Jersey Sierra Club hereby submits additional feedback on the DEP's proposed approach to the regulation of CO2 emissions from electric generating units (EGUs). We plan to submit additional, and more detailed, comments on the DEP's upcoming proposed rule on this matter.

1. Emission limits on fossil fuel-fired EGUs must drive their reduced utilization

A. The DEP has broad authority to require sources to reduce their utilization

New Jersey Sierra Club supports the DEP's proposal to set EGU-specific emission limits in Title V permits. In our view, the key driver for this regulation should be to set older and less efficient fossil fuel-fired power plants on a path to retirement and to replace that generation with new renewable energy instead of new fossil fuel-fired generation. Setting emission limits that result in reduced generation from fossil fuel-fired plants constitutes a crucial component of NJ-PACT that is also necessary to help meet the Global Warming Response Act goal to reduce state greenhouse gas emissions 80 percent below 2006 levels by 2050, the Energy Master Plan goal of achieving 100 percent clean energy by 2050, and the Intergovernmental Panel on Climate Change's recommendations for reductions of 45 percent by 2030.

This regulation is especially important in light of the fact that: (i) the New Jersey component of the CO2 Budget Trading Program, N.J.A.C. T. 7, Ch. 27C, is not ambitious enough to drive substantial CO2 emissions reductions, (ii) the Global Warming Solutions Fund Rules, N.J.A.C. T. 7, Ch. 27D, authorize the distribution of RGGI allowance auction revenues for "state of the art" EGUs that combust fossil fuel, thus providing an incentive for increases in conventional air pollution from new gas plants, and (iii) none of these RGGI regulations provide guardrails to prevent any potential exacerbation of hotspots in communities of color and low-income communities or guarantee that the sources of most concern to overburdened communities directly reduce their pollution, as the DEP did not build these protections into the regulations. It is therefore crucial for the DEP to enact a new CO2 regulation that results in the retirement or reduced utilization of these sources. This CO2 regulation would work in tandem with the CO2 Budget Trading Program and these declining emissions limits would be used to meet and even exceed the NJ RGGI cap, which will also need to be strengthened in the near term in order to meet our state's stringent targets.

New Jersey law provides the DEP with broad authority to issue emissions limitations that result in the reduced utilization of stationary sources. The New Jersey Air Pollution Control Act provides the DEP with broad authority to promulgate "rules and regulations preventing, controlling and prohibiting air pollution throughout the State." N.J.S.A. 26:2C-8. New Jersey regulations expressly authorize the DEP to regulate CO2 as an "air contaminant." N.J.A.C. 7:27–21; 36 N.J. Reg. 4607(a) (Oct. 18, 2004). Further, the Global Warming Response Act expressly provides that nothing in this statute "shall impose any limit on the existing authority of the department, the Board of Public Utilities, or any other State department or agency to limit or regulate greenhouse gas emissions pursuant to law." N.J.S.A. 26:2C-42(e).

B. Form of the targets; suggested emission limits

New Jersey Sierra Club suggests that the DEP consider interim targets, expressed in lb/MWh (as the DEP is now proposing) beginning in the short term. For existing sources, these targets would decline throughout the duration of the program, and sources would be required to meet final targets over the next decade. We reserve the right to comment on different emission limits once the DEP issues a proposed rule on the matter, in particular if the DEP adopts an approach based on renewable energy deployment, as discussed below.

We suggest the DEP propose declining limits for existing sources that require Title V operating permits. These declining limits should be based on the emissions' inventory of fossil fuel-fired sources in the state. Whatever limits the DEP proposes, the regulation must drive the reduced utilization of covered EGUs, especially the dirtiest ones, and set emission limits accordingly. These limits must not simply mirror the RGGI cap, which is not stringent enough to drive significant reductions. However, such limits must also not allow simple cycle "peaking" units to operate as load following or base load units, which might necessitate consideration of more lenient limits for these plants under certain thresholds (i.e., plants that operate less than a certain number of hours per year and per day).

Stringent emission limits that decline over time will also help transition New Jersey's electricity sector to renewable generation. The plants themselves need to meet new emission limits set under Title V and the New Jersey Air Pollution Control Act.

New sources should be subject to different emissions limitations effective as soon as the DEP finalizes the regulation. At the very least, those limits must substantially exceed the stringency levels set forth under the Carbon Pollution Standards for New Power Plants issued by the Obama EPA and must be based on best available technologies at the plant, including consideration of Best Available Control Technology (BACT) and Lowest Achievable Emissions Rate (LAER) standards. New Jersey Sierra Club is still evaluating this issue and will provide detailed comments on the DEP's proposed rule.

C. Timing for implementation

In addition to stringency, the DEP is requesting comment on the timing for implementation of these emission limits. As explained above, New Jersey Sierra Club suggests that emission limits for existing sources begin as soon as possible and gradually decrease until the program reaches final targets in a decade or so, after which the DEP would need to enact new regulations. For new sources, emission limits could enter into effect immediately after the DEP finalizes the regulation. This model would follow the compliance provisions under the Obama Administration's Clean Power Plan (existing power plants) and Carbon Pollution Standards (new power plants). Those emission limits, however, would be incorporated into Title V permits next time those permits need to be renewed. The DEP needs to develop a timetable with step by step reductions of CO2 and CO2 limits that meet increasingly more protective standards. The plants themselves would have to update their Title V permits to meet different requirements in the form of declining emission limits.

However, to the extent that such stringent emission limits are based on renewable energy deployment, that renewable energy must be additional to any other requirements under state law. We discuss this issue in the next section.

2. Role of renewable energy in emission limits for covered EGUs

A. Quantifying renewable energy as part of standard-setting

The DEP is specifically requesting comment on emission limitations on EGUs that are designed to help drive renewable energy and distributed generation in the state, specifically citing references in the Energy Master Plan to modeling done under the Integrated Energy Plan that showed that the state can cost-effectively meet growing electricity demand by building 32 GW of in-state solar, 11 GW of offshore wind, and 9 GW of storage by 2050 while maintaining existing gas generation (which today represents the largest share of generation in the state).

New Jersey Sierra Club supports renewable energy as a measure to quantify the reduced utilization of the *existing* EGUs that will be covered under this regulation. (Emission limitations for new sources should be based on best available technologies). This, however, would be in addition to other measures, such as efficiency improvements at each plant (while addressing the rebound effect) and expected plant retirements, beginning with the oldest and highest emitting plants. Again, the CO2 regulation as a whole must prioritize the reduced generation of fossil fuel-fired plants rather than be designed primarily as a mechanism to provide incentives for renewable energy without requiring existing sources (primarily gas plants) to reduce their emissions.

Thus, if the DEP is to consider renewable energy as part of this framework, then *new* renewable deployment in-state, coupled with an assessment of how much eligible renewable energy could actually get credited under the program, should be factored into the stringency of the emission limits set forth in Title V permits for existing EGUs. Renewable energy should not only be allowed for compliance through a crediting mechanism, which in itself may not drive reduced generation from the most highly-polluting and least efficient power plants. Factoring renewable energy generation into the emission limits can be done by calculating the avoided CO2 emissions attributable to the renewable energy.

B. Qualifying renewable resources

New Jersey Sierra Club supports the development of new utility-scale solar and distributed generation, on-shore and off-shore wind, and energy storage. We agree with the DEP that nuclear energy and their associated Zero Emission Credits should not be part of the program, as nuclear power is not affordable energy and waste disposal continues to raise serious concerns about safety.

Although not mentioned in the DEP's presentation, we also caution against factoring and crediting any new biomass, biogas, and waste-to-energy generation toward compliance with emission limits for covered EGUs, as these resources are associated with significant CO2 emissions at the stack as well as other emissions of harmful toxic and conventional air pollutants. The program should only incorporate resources that help our state to meet 100 percent of the state's energy demand with clean energy by 2050, as required under Executive Order No. 28 and envisioned under the Energy Master Plan.

C. Additionality of renewable generation

We reiterate the DEP's proposal that, to the extent that renewable energy is part of the framework for CO2 reductions from existing EGUs subject to Title V permits, the emission limitations and the compliance framework should contemplate only *new* renewable energy generation. More specifically, the renewable generation contemplated under the program *must consist of incremental new generation, over and above business-as-usual (BAU), and additional to generation needed to meet applicable requirements under other state policies*.

Depending on the timeframe for development of new renewable capacity, generation that is already planned to be built, and that will be built in order to meet the state's Renewable Portfolio Standard and mandates under the Clean Energy Act of 2018 should not qualify for credit under the CO2 regulation. Further, if New Jersey considers a new regulatory framework such as a Clean Energy Standard to achieve 100 percent clean energy by 2050 (which would likely necessitate the passage of legislation), as the Energy Master Plan suggests in order to provide incentives for in-state generation, the CO2 regulation for EGUs might need to be adjusted with respect to targets and compliance down the line. All of these state policies designed to provide incentives for renewable energy deployment and bring down costs must drive additional, not BAU generation.

D. Renewable energy as a compliance mechanism

New Jersey Sierra Club supports renewable energy as a compliance measure to meet stringent emission limits for existing fossil fuel-fired power plants. Renewable energy should be allowed for compliance in addition to a range of other compliance measures that would include retirements, increased efficiency at the plant (such as heat rate improvements), demand side-energy efficiency, and other measures that reduce emissions from EGUs. We note, however, that power plants that are of concern to overburdened communities should be required to curtail their generation. Further, as we have pointed out in prior comments, we reiterate that an in-state trading program such as the shadow allowance trading program in Massachusetts should not be allowed for compliance with the regulation that the DEP is now envisioning. Such a regulation would affect the efficiency of the RGGI program and would not properly drive reduced generation of fossil fuel-fired sources and substantial emissions reductions.

As explained above with respect to target-setting, the DEP should allow crediting only new renewable energy resources that are affordable and drive emissions reductions, for example solar and wind generation, and should only credit renewable energy generation that is additional to generation that is constructed to comply with other state policies such as the RPS. Whatever the compliance system that the DEP chooses to implement, the regulation should include guardrails to ensure that the emissions reductions from each MW of new generation are not double-counted under other programs. We suggest the DEP to limit crediting of eligible renewable generation to locations that are deliverable to the same local transmission and distribution deliverability areas that the regulated power plant serves.

Existing REC trading systems could be an appropriate mechanism to avoid double-counting of renewable energy generation. These systems assign unique identifiers to each MWh of generation and have well-established protocols for verification. Because the nature of REC tracking systems is to ensure that each MWh is claimed only once, RECs are a natural tool to be adapted for compliance under this regulation. For each compliance demonstration period, a covered EGU owner would have to submit a list of REC serial numbers that it holds for the

compliance year in question, and verify that to its knowledge, no other entity is claiming credit for that same REC.

3. Reduced utilization at power plants that adversely affect overburdened communities

The New Jersey Environmental Justice Alliance and other environmental justice groups in the state have for a long time asked the DEP to require emissions reductions in environmental justice communities. They asked the DEP to incorporate these provisions in the RGGI regulation, which the DEP failed to do. New Jersey Sierra Club supports this request and requests the agency to proactively enable robust engagement with the New Jersey Environmental Justice Alliance and its allies on this issue as it develops a proposal and throughout the process of finalizing the regulation.

As we have indicated in prior comments in the context of this and other stakeholder processes in New Jersey, this regulation provides a real opportunity to actually target reductions for CO2 and co-pollutants in the communities of color and low-income communities most affected by power plant pollution. The DEP has broad authority to set emission limits that drive the retirement and reduced generation of all sources in the state. Regardless of whether it proposes a regulation designed to provide incentives for renewable energy, the DEP should require EGUs that adversely affect overburdened communities to curtail their generation.

The New Jersey Legislature also recently passed a bill (S232) to require permits for a new facility or the expansion of an existing facility that is located in an overburdened community to meet certain additional requirements, including preparing an environmental justice impact statement. The DEP may deny or modify the permit upon a finding that it would cause adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities.

In Executive Order 23, Governor Murphy recognized that low income communities and communities of color have been exposed to disproportionately high levels of air pollution and adverse public health and economic impacts, and committed the administration to ensure “that residents of all communities receive fair and equitable treatment in decision-making that affects their environment, communities, homes, and health.” N.J. Exec. Order 23, Preamble. In addition to the DEP’s broad authority to set emission limits for sources and its mandate to reduce statewide GHG emissions, the DEP is required to ensure that “all New Jersey residents, regardless of race, ethnicity, color, national origin, or income, receive equal protection under the laws of this State, are able to live and work in a healthy and clean environment, ...” N.J. Exec. Order No. 23. Thus, the DEP must ensure that its regulation guarantees direct emission reductions in overburdened communities.

In sum, New Jersey Sierra Club urges the DEP to establish emission limits that drive the retirement or reduced generation of existing EGUs that are located in, or that adversely affect

environmental justice communities, limits that should be informed by the concerns expressed by EJ organizations in New Jersey as part of the public engagement process. While we strongly support renewable energy deployment that results in reduced emissions and improved public health in frontline communities, when it comes to fossil fuel-fired sources that affect these communities, the DEP should first prioritize curtailments in generation. Both elements of the program can go hand in hand--the regulation can provide incentives for renewable energy while ensuring emissions reductions from the highest polluting sources that affect these communities.

Thank you for your consideration.

Sincerely,

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