STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1550

In the Matter

- of the -

PROPOSED ADOPTION OF NEW PART 242 (CO_2 Budget Trading Program), AND PROPOSED REVISIONS TO PART 200 (General Provisions) OF TITLE 6 OF THE OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK, AND PROPOSED ADOPTION OF NEW PART 507 (CO_2 Allowance Auction Program) OF TITLE 21 OF THE OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK, AND ACCEPTANCE OF THE DRAFT GENERIC ENVIRONMENTAL IMPACT STATEMENT.

Hearing Report

- by -

/s/
P. Nicholas Garlick
Administrative Law Judge

/s/
Maria E. Villa
Administrative Law Judge

/s/
Helene G. Goldberger
Administrative Law Judge

/s/
Mark D. Sanza
Administrative Law Judge

December 24, 2007

PROCEEDINGS

Background

The New York State Department of Environmental Conservation (Department or DEC) and the New York State Energy Research and Development Authority (NYSERDA or Authority) scheduled public comment hearings on the proposed new Part 242 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), carbon dioxide (CO_2) Budget Trading Program; revisions to 6 NYCRR Part 200, General Provisions; proposed new 21 NYCRR Part 507, CO_2 Allowance Auction Program; and Acceptance of the Draft Generic Environmental Impact Statement (DGEIS).

On December 20, 2005, New York State entered into a regional agreement to reduce greenhouse gas (GHG) emissions from power plants in order to address climate change. The Governors of ten northeast and mid-Atlantic states have committed to propose the Regional Greenhouse Gas Initiative (RGGI). In order to carry out New York's commitment to this program, this joint rulemaking has been proposed.

The proposed Part 242 establishes a market-based program designed to cap and reduce CO_2 emissions from power plants by 10 percent by 2019. Certain revisions to Table 1 of 6 NYCRR 200.9, Referenced Material, are necessary in order to implement these programs and are included as part of the rulemaking package. Proposed Part 507 of 21 NYCRR establishes the rules for conducting auctions of CO_2 allowances to be administered by the Authority or its designee, as part of the New York CO_2 Budget Trading Program, and for the administration of the Energy Efficiency and Clean Energy Technology Account.

DEC's Division of Air (DAR) requested that the Department's Office of Hearings and Mediation Services assign Administrative Law Judges (ALJs) to conduct the legislative hearing sessions and to provide a report summarizing the comments.

On November 20, 2007, ALJ Nicholas Garlick was assigned to conduct the December 10, 2007 hearing in Albany, ALJ Maria Villa was assigned to the December 11, 2007 hearing in Ray Brook, ALJ Helene Goldberger was assigned to the December 12, 2007 hearing in New York City, and ALJ Mark Sanza was assigned to the December 13, 2007 hearing in Avon.

Prior to the hearings, the DAR staff provided each ALJ with a copy of the Department's notice of proposed rulemaking and proof of publication of this notice. This notice appeared in the October 24, 2007 editions of the *State Register*, *Environmental Notice Bulletin*, Albany *Times Union*, *Buffalo Evening News*, Glens

Falls *Post Star*, *New York Post*, *Newsday*, Rochester *Democrat & Chronicle*, and the Syracuse *Post-Standard*.

The Department is accepting written comments on this rulemaking and the DGEIS until 5:00 p.m. on Monday, December 24, 2007.

Public Hearings

Albany Hearing

At the Albany hearing, held at the DEC's offices at 625 Broadway, ALJ Garlick called the hearing to order at 10:00 a.m. There were approximately 25 people in attendance and a total of 8 people gave oral statements.

The first two speakers, Kevin P. McGarry from DEC and John G. Williams from NYSERDA, read statements explaining the proposed regulations (for a description of these statements see the discussion of the statements of Doug Mitarotonda and Kevin Hale, below).

Following this introduction, the third speaker was called, Radmila Miletich, the Legislative and Environmental Policy Director of the Independent Power Producers of New York (IPPNY). As a representative of a trade organization, Ms. Miletich stated that IPPNY's views were not necessarily the views of each of the member companies. Ms. Miletich stated that IPPNY would support a properly designed RGGI program and expressed an interest in improving the proposed rules so they would be more workable. Among IPPNY's suggestions were: (1) conducting the allowance auction in two phases: the first phase would ensure that owners of facilities located in each state would have an adequate opportunity to purchase allowances to run their facilities and the second would be open to other interested facilities; (2) including an allowance auction price cap, to limit the impact on consumer rates and development; and (3) revising the regulations so that the development of carbon captor and sequestration technologies could be explicitly eligible to receive funding. In addition, IPPNY suggested that should a federal program be developed, that New York's rule transition smoothly into the federal program and not survive in an inconsistent manner. IPPNY urged the quick release of the study being conducted by the emissions and leakage working group for RGGI.

The next speaker, William Batt, the Executive Director of the Central Research Group, Common Ground, spoke about the philosophical underpinnings of the regulations. Specifically, Mr. Batt argued that the RGGI program would give control over a large portion of the air to private interests and that there may be a better way to allocate resources.

The fifth speaker, Alanah Keddell, Legislative Associate with The Adirondack Council, spoke of the urgent need for action on the issue of greenhouse gases. The impact of climate change, she stated, would drastically affect the communities and the ecosystem within the Adirondack Park. Ms. Keddell made several suggestions to improve the regulations. First, she argued that the set-asides for power plants with long-term contracts should be eliminated. Second, she argued that the region-wide cap for carbon dioxide emissions is too high and needs to be lowered.

The sixth speaker, David Gahl, the Air and Energy Program Director for Environmental Advocates of New York, spoke in favor of the proposed regulations, but made several comments aimed at improving the regulations. Mr. Gahl also criticized the set-aside provisions for plants with long-term contracts and suggested eliminating the "inside the fence" exemption. Mr. Gahl also expressed concern that the region-wide cap was too high. He concluded by commending DEC for enacting this rule as one step toward controlling pollution that contributes to climate change.

The seventh speaker, Jason Babbie, a Senior Environmental Policy Analyst for the New York Public Interest Research Group (NYPIRG), expressed strong support for the proposed regulations. New York, he said, was a leader in this area. Mr. Babbie expressed concern with three aspects of the regulations: (1) the cap level may be too high; (2) the behind the meter exemption; and (3) ensuring that offsets be real, verifiable, enforceable and additional. With changes in these areas, Mr. Babbie concluded, the environmental benefits of the program could be maximized.

The eighth and final speaker, Luis Martinez, Staff Attorney for the Natural Resources Defense Council (NRDC), also spoke in favor of the regulations, but also discussed improvements that could be made to the regulation. Mr. Martinez stated his belief that the cap is too high, that generators with long-term contracts should not receive free allowances, and that leakage is a serious problem that needs to be addressed in the regulations.

Written comments were also received at the hearing from Larry DeWitt of the Pace Energy Project and these comments are included with other written comments received by the Department.

New York City Hearing

At the NYC hearing, held at the Public Service Commission offices at 90 Church Street, Manhattan, ALJ Goldberger called the hearing to order at 10:00 a.m. There were approximately 35 people in attendance and 13 people gave oral comments.

To start, Doug Mitarotonda, an economist with DEC 's Climate Change Office, provided a summary of the proposed CO_2 Budget Trading Program, Part 242 - also known as RGGI. Mr. Mitarotonda explained that the purpose of RGGI is to reduce anthropogenic emissions of CO_2, a greenhouse gas, from power plants in an economically efficient manner. He stated that the goal of the agreement reached with the 10 northeastern and mid-Atlantic states that committed to RGGI is to reduce CO_2 emissions from power plants in the region by 10 percent by 2019. Mr. Mitarotonda provided a brief explanation of the greenhouse effect that has been enhanced as a result of the large amount of greenhouse gases that enter the atmosphere - particularly CO_2 that results from the burning of fossil fuels. He provided the State's position that the resulting warming of the climate threatens the environmental resources and public health of New York. Mr. Mitarotonda explained that RGGI will help counter the threat of a warming climate and will also result in improved local air quality, forest preservation, improved agricultural manure handling practices leading to better water and air quality in rural areas of the State, and a more robust, diverse and clean energy supply in the State.

Mr. Mitarotonda stated that in 2005, New York power plants emitted approximately 61 million tons of CO_2 into the atmosphere. He explained that RGGI's cap-and-trade program will result in action that will preserve and protect the State's environment and maintain a reliable supply of electricity.

Mr. Mitarotonda described a process leading up to this proposed rulemaking that provided an opportunity for the energy industry, environmental groups, consumers, and other interested parties to provide input on this proposal.

He explained that DEC will allocate the CO_2 Budget Trading Program budget to achieve the emissions goals of the program by promoting or rewarding investments in energy efficiency, renewable or non-carbon-emitting technologies, and/or innovative carbon emissions abatement technologies with significant carbon reduction potential. Mr. Mitarotonda said that NYSERDA will establish and administer an energy efficiency and clean energy technology account pursuant to 21 NYCRR Part 507. He stated that DEC will allocate most of the CO_2 Budget Trading Program base budget to this account and NYSERDA will administer the account so that allowances will be sold in transparent CO_2 allowance auctions. He explained that the proceeds of these auctions will be used to promote the purposes of the energy efficiency and clean technology account and for administrative costs associated with the program. Mr. Mitarotonda stated that the proposal includes a voluntary renewable energy market and long term contract set-aside allocation. He said that this will mean that the Department will allocate 700,000 and 1.5 million tons to the voluntary renewable energy market and long term contract set-aside accounts.

Mr. Mitarotonda concluded with an explanation of the environmental review process pursuant to the State Environmental Quality Review Act (SEQRA) and the preparation of the DGEIS. He stated that DEC determined that the program will have a positive effect on the environment and that no significant adverse environmental impacts will result from its implementation. Nonetheless, Mr. Mitarotonda explained that DEC decided to prepare the DGEIS so that there would be additional public input into this process.

Kevin Hale, a project manager at NYSERDA, explained that the Authority was working in cooperation and in conjunction with DEC’s efforts to promulgate 6 NYCRR Part 242 to establish the CO_2 Budget Trading Program by promulgating Part 507 of 21 NYCRR. This regulation will guide the administration and implementation to sell the CO_2 allowances pursuant to the RGGI goal of reducing and stabilizing greenhouse gas emissions in an economical and efficient manner.

Mr. Hale explained that the vehicle for which allowances will be introduced into the market is the energy and efficiency and clean energy technology account. All allowances placed into the account will be made available for sale in one or a series of periodic auctions. He stated that the intent of the program is to provide for fully transparent and efficient pricing of allowances; promote a liquid allowance market by making entry and trading as easy and low-cost as possible; be open to participation by the categories of bidders determined to be eligible by the Authority, in consultation with the Auction Advisory Committee; monitor for and guard against the exercise of market power and market manipulation; avoid interference with existing allowance markets; align well with wholesale energy and capacity markets; and to not act as a barrier to efficient investment in new electric generating sources. Mr. Hale stated that NYSERDA may delegate the auction function to another entity determined capable of performing these duties but that the Authority would maintain oversight.

Mr. Hale stated the Authority’s intent to fully consider the input of a newly-created Auction Advisory Committee on procedures relevant to conducting the auctions. After the promulgation of Part 507 and beginning in 2008, the Auction Advisory Committee will advise the Authority on various auction issues and procedures. He also noted that every auction will be preceded by the issuance of a Notice of CO_2 Allowance Auction that will be published on a CO_2 Allowance Auction website and in the *Environmental Notice Bulletin*. Mr. Hale reiterated that the proceeds of all auctions will be deposited into a designated energy efficiency and clean energy technology account and will be used to promote or reward investments in energy efficiency, renewable energy or non-carbon-emitting technologies, innovative carbon emissions abatement technologies with significant carbon reduction potential, and for administration of the program. The Authority will consult with an advisory group of stakeholders representing energy and environmental interests to advise on the best means to use these proceeds so that the goals of the program are achieved.

Alison Schumacher represented the Business Council for Sustainable Energy, a coalition of power developers, equipment manufacturers, individual generators, green power marketers, gas and electric utilities and retailers as well as primary trade associations in these sectors. Ms. Schumacher stated that the Council and its members have been working with RGGI leaders for several years and have held industry issues forums in RGGI states including New York. She provided that the Council supports RGGI as an important vehicle to reduce greenhouse gas emissions and create a national model. Ms. Schumacher stated the Council’s support for New York’s decision to allocate auction proceeds to promote or reward investments in energy efficiency, renewable or non-carbon-emitting technologies, and innovative carbon emission abatement technologies with significant carbon reduction potential.

Ms. Schumacher provided the following recommendations on behalf of the Council that this organization believes are vital to the success of RGGI:

1) Consistency and transparency in auction design. NYSERDA and the Auction Advisory Committee should send clear signals to RGGI stakeholders by establishing a common pattern for auctions in terms of frequency, quantity of CO_2 allowance auctions, and participant eligibility;

2) Clarity on how the CO_2 Allowance Auction Program will harmonize with an eventual federal greenhouse gas program;

3) Broader use of offsets because they serve to promote project finance and allow for flexibility, resulting in lower-cost reductions;

4) Increase funding to existing renewable and efficiency programs in New York such as: Customer-Sited tier of New York’s renewable portfolio standards; stability for incentives for renewable energy generation, such as the federal renewable energy Production Tax Credit; review and enhance complimentary energy policies such as New York’s net metering rules, RPS, renewable credit discrepancies, and ISO policies that support integration of renewable energy; increase funding for NYSERDA’s Energy $mart Programs and expand them to include a variety of combined heat and power (CHP) technologies; implement an energy efficiency portfolio standard (EPS); increase funding for the State’s building code training and enforcement program; provide more funding for general outreach and education regarding energy efficiency and renewables; adopt a "beyond code" standard for state funded buildings, including schools; increase funding for distributed generation CHP; create a technology verification program aimed at private investors; pursue "decoupling" policies and measures; and create clean generation production incentives.

In closing, Ms. Schumacher stated that RGGI provides New York with an opportunity to significantly boost clean energy investment through targeted use of auction revenues. She asked that the Council be included in future decisionmaking on the best means to utilize auction revenue funds as part of the advisory group of stakeholders.

Gerald F. DeNotto, President of Indeck - Corinth Limited Partnership (Indeck Corinth) addressed the effect of RGGI on the Indeck Corinth power plant - a 131 megawatt (MW)natural gas-fired facility in Corinth, New York. Mr. DeNotto stated that the Indeck Corinth plant is among the 15% cleanest fossil fuel plants in New York. He maintained that RGGI, as proposed, would cause an extreme financial hardship to Indeck Corinth. He explained that because Indeck Corinth cannot pass the cost of RGGI onto the ultimate consumer like other gas fired generators, it has caused Indeck to turn away from other business development plans for New York’s energy sector. Mr. DeNotto concluded by stating the RGGI sounds good in theory but in practice will hurt the kind of plant that should be protected and those owners who should be encouraged to build similar facilities.

Ken Gale is a radio show host of Ecologic on WBAI and also works with several local environmental groups. He suggested that the Department and NYSERDA do more to publicize these hearings in more papers in order to reach more people. Mr. Gale criticized the use of the term "climate change" as too mild and suggested that "climate destruction" is more appropriate. He stated his hope that strategies other than RGGI are ready if the trading program does not work to curb greenhouse gas emissions. He specifically identified net metering as a strategy that should be pursued. In addition, Mr. Gale stressed that solar power was a wonderful energy source because when energy demand was at its greatest during hot and sunny summers, solar was most available. He stated that commercial entities will pay to increase the amount of renewable energy. Mr. Gale explained that Western Europe has already figured this out and that U.S. business will not be able to compete with companies that get "free" electricity. He stated that the benefits to air quality here and downwind of New York will result in a win-win situation. Mr. Gale also asked that airplane emissions be addressed. He called for New York’s leadership on these issues.

Robert Jereski, a member of the New York Climate Action Group (he was not speaking on this organization’s behalf), maintained that the European cap and trade experience was disastrous and that under this program emissions rose. He claimed that major polluters were rewarded as a result of this system. Mr. Jereski called for more education and more discussion of other options such as cap and tax. He asked that this rulemaking proceeding be adjourned and that more outreach be undertaken to consider more information. Mr. Jereski stated his belief that the model chosen has not been proven effective.

Christopher Trabold, P.E., Executive Director of Brooklyn Navy Yard Cogeneration Partners (BNYCP) - a 286 MW natural gas-fired facility in the Brooklyn Navy Yard. He delivered remarks on behalf of BNYCP and Indeck - Corinth Limited Partnership. M. Trabold stated that BNYCP and Indeck support the principles of RGGI and recognize that this proposal is a significant step in its implementation. Mr. Trabold stated that he wishes to respond to criticism of the long term contract set aside provision in the rule.

Mr. Trabold explained that BNYCP and Indeck’s facilities are combined cycle cogeneration power plants primarily fueled by natural gas. He characterized these plants as the among the least polluting plants in the State that are not part of the problem but rather part of the solution for power generation in New York. Mr. Trabold stated that both of these plants supply electricity to Con Ed customers pursuant to long term contracts. He described their business as one to provide the energy needs of the public - hospitals, homes, businesses, or technology parks. Mr. Trabold stated that we cannot live carbon free, but we can live carbon smart and that these plants use the least amount of fossil fuel for unit of energy produced.

Mr. Trabold explained that at the time these plants were licensed they were required to install stringent air pollution control technology and that they are operated with state of the art control technology for NO_X and SO_2. He maintained that at the time of permitting there was no economically feasible control technology for CO_2 and that there is none today. Mr. Trabold stressed that long term contracts are good for consumers because they assure electricity availability at a predictable cost. He stated that Governor Spitzer has endorsed long term contracts for this reason. Mr. Trabold stated that BNYCP and Indeck support the long term contract set-aside account because otherwise their contracts have no means to recover the expense associated with the purchase of CO_2 allowances. Without this set-aside, Mr. Trabold maintained that the program would be unfair and punitive, thus contrary to the RGGI principle of avoidance of significant economic impacts to participants. Mr. Trabold answered critics of the set-aside by stating that without the set-aside account, the cost of allowances will be passed onto the consumer through higher electric rates. He claimed that without the set-aside account, these projects will have no recourse to recover the expense of the allowances and would be disproportionately harmed compared to other participants.

Mr. Trabold concluded his remarks by explaining that the purpose of the long term contract set-aside account is to allow eligible applicants who demonstrate financial hardship to avoid economic harm. He maintained that this set-aside would not enrich owners or investors and that environmental critics were singling out these least polluting power plants in their criticism of this provision. He stated that once the long term contracts expired, the set-aside will cease to exist and the set-aside allowances will go back to the energy efficiency and clean technology account.

Luis Martinez, a staff attorney NRDC, stated that global warming was NRDC's top priority. He explained that NRDC - whose membership is approximately 50,000 in New York and 1.5 million nationally - has been involved in RGGI since its inception. NRDC maintains that the program needs improvement that will serve as a model for federal and international regulators.

Mr. Martinez provided that the cap has too many allowances for generators. He stated that with the proposed system, RGGI may not achieve reductions. He asked that DEC be permitted flexibility to set the cap to reflect actual emission levels. Mr. Martinez stated that NRDC was fully supportive of auctioning off 100% of the allowances and that all revenues be directed to energy efficiency programs. With respect to long term contracts, Mr. Martinez provided that at the time they were negotiated the power generators were aware of the possibility of CO_2 regulations. He claimed that the contract prices were set at a level that took this into account. Mr. Martinez stressed that it was essential that auction process was clear and transparent. He also stated that it was necessary to do an accurate accounting of 2005/2006 emissions. Mr. Martinez asked that the State move forward to regulate other sectors of greenhouse gas emitters and to address the leakage problem - the situation when unregulated generators in neighboring states sell additional power into a greenhouse gas regulated market.

Jason Babbie, the Senior Environmental Policy Analyst of NYPIRG, introduced his remarks by stating that he had already provided comments at the Albany hearing session in support of the program. He explained that he came to the New York City hearing to provide comments on the NYSERDA component of the RGGI proposal. Mr. Babbie agreed with NRDC that the long term contracts were either calculated or poor decisions regarding pricing and that giving allowances away for free would mean that large amounts of funds will be lost for energy efficiency. He asked that this provision be stricken or that New York looked to New Jersey’s provision that provides a minimum price.

Mr. Babbie supported the selection of NYSERDA as the depository for the RGGI-generated funds. He applauded NYSERDA’s good track record on behalf of consumers and the environment. However, Mr. Babbie remarked that New York can do more and better. He stated that New York was only realizing one of seven kilowatt hours of the cost effective potential energy savings. He maintained that if only a third of those cost effective energy savings were realized, New York would generate almost $3 billion in net benefits within five years. He commended the development of the energy portfolio standard to address this gap.

Mr. Babbie stressed that there was a lack of definition in how the auction proceeds will be spent. He explained that the terms were not defined giving examples of renewables (can be interpreted as incinerators)and non-carbon emitting technology (could be nuclear). NYPIRG opposes both of these. Mr. Babbie asked for better criteria and prioritization within the regulations and a mechanism for public input. He concluded by recommending that New York reserve its right to have its own program in the event that a future federal program is less effective.

Mr. Babbie also presented a letter in support of RGGI addressed to Commissioner Grannis on behalf of Alliance for Clean Energy New York, American Lung Association of New York State, Catskill Center for Conservation and Development, Citizen's Campaign for the Environment, Citizens' Environmental Coalition, Environmental Advocates of New York, Environment Northeast, Global Warming Action Network of Syracuse, Great Lakes United, Hudson River Sloop Clearwater, NRDC, Network for New Energy Choices, New York Interfaith Power and Light, NYPIRG, New York State League of Conservation Voters, Pace Law School Energy Project, Reform Jewish Voice of New York State, Renewable Energy Long Island, Roman Catholic Diocese of Rochester, Public Policy Committee, Roman Catholic Diocese of Albany, Commission on Peace & Justice, Sustainable Energy Alliance of Long Island, Scenic Hudson and Trout Unlimited.

Don Pollock is a science educator and curriculum writer who spoke on behalf of his students who are concerned about environmental health. He emphasized that the decisions the state makes will impact his students for the rest of their lives as well as the lives of their children. Mr. Pollock stated that his students have basic questions about RGGI such as whether carbon trading controls pollution or shifts it around; has it been proven; if so, where; have better alternatives to CO_2 trading been considered such as taxing and controls; if so, why rejected? Mr. Pollock concluded his remarks by stating that his students want serious and courageous actions.

Frank Eadie is a member of Community Board 4 (he was not speaking on its behalf) and also a Sierra Club member. Mr. Eadie stated that he woke up to an American On-Line story that declared that all of the science about global warming was wrong and that by 2012 the Arctic Sea would be ice-free. He commented that the implications were staggering.

He stated that RGGI is what New York has to offer and that it was inadequate. He pointed to the projected extinction of marine mammals; Greenland's loss of 23% of its ice - more than in any prior year; the rise of sea waters including those surrounding New York City. He remarked that the NASA scientist, Dr. James Hansen, has announced the need to reevaluate his tipping points.

Mr. Eadie explained that he started out as a "RGGI fan" but that now finds that it is a "20th century" answer for the realities of the 21st century. Mr. Eadie continued that RGGI does not do the job and that no one who knows believes it will. He emphasized that rather than addressing 15% of New York's emissions, 80%-90% of emissions must be addressed. He argued that New York needs to catch up with California and that RGGI needs to be re-conceptualized. Mr. Eadie pointed to Europe and Kyoto as examples of the failure of cap and trade. Rather, Mr. Eadie maintained that a cap and tax program applicable to every emitter would be preferable. He asked that the State go back to ground zero - forget RGGI - get a real model for the country and the world. Mr. Eadie said that there were few years left to go beyond which there would be devastating impacts resulting in global conflicts. He called for society-wide programs, public education, and a rethinking of our society. Mr. Eadie concluded that we need a war-time mentality - comparing this period to that of World War II - or we'll lose everything.

Emmett Pepper, the Hudson Valley/Connecticut Program Director for Citizens Campaign for the Environment (CCE) stated CCE's appreciation for New York initiative on the RGGI program. Particularly, Mr. Pepper noted CCE's support for the voluntary renewable energy purchases program. He stated that these were effective ways for individuals to take action and reduce their carbon footprint and wants more done to encourage individuals to purchase renewable energy.

CCE opposes the $1.5 million set-aside for power plants with long term contracts. He stated that this provision violates the spirit of RGGI and the goals of New York State. Rather, Mr. Pepper stated that all generators should be required to participate by purchasing credits. He stated support for NYSERDA's responsibility for the process but was concerned about exemptions for power generator's own usage. Mr. Pepper also criticized a loophole for liquid synthetic gas that he said would allow CO_2 to be returned as a gas. He stated CCE's hope that the funds from this program would be used to support energy efficiency and renewable energy programs only. CCE wants to see RGGI apply to all industrial carbon polluters and not be limited to the electricity generator sector.

Annie Wilson, chair of the Sierra Club Energy Committee, Atlantic Chapter, stated that the Sierra Club does not support pollution trading and that carbon trading was a failure worldwide. Ms. Wilson stated Sierra Club's support for an aggressive increase in the cap but not for trading even though allowances were to be auctioned and money generated to be used for energy conservation. She criticized RGGI as instilling a trading market. She stated that she had been a participant in a conference call with DEC representatives and learned that the cap was flexible and that projections for what were the 2009 levels will not come into existence until 2101, 2014 approximately. She criticized DEC for relying upon industry figures and she wanted the State to extend the comment period while it identified an accurate accounting of emissions.

Ms. Wilson presented the ALJ with a book entitled *Carbon Trading: A Critical Conversation on Climate Change, Privitisation and Power.* This book is available for download at ="http://www.dhf.uu.se."MACROBUTTONHtmlResAnchorhttp://www.dhf.uu.se.

After the conclusion of Ms. Wilson's remarks, the ALJ inquired if there were additional individuals who wished to make a statement. Hearing none, the proceeding was adjourned at approximately 11:15 a.m.

Ray Brook Hearing

At the hearing in Ray Brook, Kevin McGarry of Department Staff and Peter Keane, Esq., Senior Counsel, NYSERDA, offered an overview of the proposal. Two persons offered comments.

The first speaker, Brian Houseal, Executive Director of The Adirondack Council, emphasized the urgent need for action to protect the environment and ecology of the Adirondack Park from the effects of carbon dioxide emissions. Mr. Houseal observed that dramatic changes in the Adirondack Park would result from greenhouse gas emissions, both environmentally and economically. Mr. Houseal noted that changes in the environment are projected to threaten the current status and composition of the Park' s wildlife, temperate and boreal forest, wetlands and alpine tundra. In addition, he said that terrestrial and aquatic ecosystems will be impacted by invasive species to the detriment of those species that are native to the Park. According to Mr. Houseal, these changes would have profound effects on the Park 's tourism, forestry, farming and other natural resource based businesses. He stated that the RGGI would protect the Park, and commended the Department for its efforts to coordinate the process.

Nevertheless, Mr. Houseal stated that he believed the regulations need improvement. Specifically, he noted that under the current proposal, set-asides for power plants would require the public to underwrite the costs of purchasing credits. The draft regulation sets aside 1.5 million tons of carbon dioxide annually for power plants with long term contracts which meet certain conditions. This speaker stated that while this is a small percentage of the overall emissions, power producers should not be rewarded for injuring the health of the citizenry. Mr. Houseal pointed out that it is not the consumer's fault that purchasing credits will cut into the profits of power plants, and moreover, at the estimated price of allowances, it does not seem likely that these companies will suffer significant economic harm. According to Mr. Houseal, the set-asides should be eliminated.

Mr. Houseal went on to state that the carbon dioxide cap is too high, and is in fact higher than the current level of emissions in New York State. Although Mr. Houseal acknowledged that a binding carbon dioxide cap is crucial to the program, he contended that the cap is overallocated and must be lowered before the year 2012, when the cap is scheduled to be revisited. According to Mr. Houseal, having a realistic cap gives the program credibility and ensures that the desired reductions are, in fact, achieved.

Larry Master, the second speaker, stated that he is a retired conservation biologist. He commended the Department, and characterized the proposal as a tremendous step forward. He echoed Mr. Houseal’s concern that the proposed regional carbon dioxide cap is set too high, and urged that the cap be revisited and set lower.

Avon Hearing

At the Avon hearing, one member of Department staff and one member of NYSERDA staff read separate statements describing the proposed rulemaking and acceptance of the draft generic environmental impact statement. These individuals were Kevin McGarry, an Environmental Engineer with the Department’s Division of Air Resources, and John Saintcross, a Senior Project Manager with NYSERDA. In addition, approximately ten members of the public attended the Avon hearing, five of whom offered oral comments on the record.

Todd Dobmeier spoke on behalf of Indeck Corinth, which owns and operates a 131 MW power facility in Corinth, New York, and BNYCP, which owns and operates a 286 MW natural gas-fired power facility at the Brooklyn Navy Yards. Mr. Dobmeier expressed Indeck Corinth and BNYCP’s support of the rulemaking’s long-term contract set-aside account for CO_2 allowances. According to Mr. Dobmeier, the long-term contract set-aside account will not enrich power plant owners and investors, as some environmental critics have pointed out. Mr. Dobmeier maintained that Indeck Corinth and BNYCP’s current power contracts have no means to recover the expenses associated with the purchase of CO_2 allowances. As such, any CO_2 program without a set-aside contract would be punitive and unfair which is contrary to the RGGI principle of avoiding significant economic impact on participants.

Gerry Gacioch spoke on behalf of himself and his family, concerned residents of Fairport, New York. Mr. Gacioch expressed support for former Governor Pataki and the other Northeast state governors for creating RGGI in the first instance and thanked the Department and NYSERDA for their very hard work over the past years in developing the proposed regulations. Mr. Gacioch then made three requests of the agencies in finalizing the regulations: (1) 100% of the allowances should be auctioned; no set-asides; (2) ensure that all new revenue from the auctions go towards the funding of energy conservation efforts and renewable energy sources, as well as assisting poor and low income New Yorkers with payment of their energy costs; and (3) revisit the CO_2 cap numbers; the proposed cap is too high and not aggressive enough.

Peter Debes spoke on behalf of himself as a concerned citizen although he is a member of the Sierra Club. Mr. Debes initially thanked the legislators and the Department in working to produce legislation to meet the problems associated with global warming. While Mr. Debes believes the proposed regulations is a step in the right direction, he nevertheless thinks they are not serious enough. For example, Mr. Debes noted that he was totally against the proposed set-asides and the CO_2 cap was too high, particularly since the State was not producing that much CO_2 at present.

Eli Yewdall spoke on behalf of himself, a concerned resident of Rochester, New York. Mr. Yewdall commended New York and the other states for taking action to regulate and reduce greenhouse gas emissions, and encouraged the State to devise more aggressive reduction targets to reduce emissions beyond the current proposal. For example, Mr. Yewdall noted that both the State of California and the City of New York have more aggressive emission reduction targets that could be incorporated in the regulations being proposed.

Lastly, Sarah Eckel-Dalrymple, Central New York Program CCE, spoke on behalf of CCE. Ms. Eckel-Dalrymple noted that CCE, an active stakeholder in the RGGI process, continues to strongly support auctioning nearly 100% of the RGGI credits and the voluntary set-aside for renewable energy. CCE supports the auctioning of all other credits and is strongly opposed to the 1.5 million ton set-aside for power plants with long-term contracts, and requests that New York ensure that all carbon polluters be required to purchase credits at auction. CCE supports designating NYSERDA as the agent responsible for managing the RGGI auction funds and strongly supports using these funds to support energy efficiency and renewable energy programs. CCE is concerned with several vague terms throughout the draft regulations including "innovative carbon emission abatement." CCE is also concerned with the provisions allowing generators to deduct the emissions they create for their own power usage. CCE does not support exempting carbon polluters; these emissions must be included in the auction process in order to encourage power generators to make their facilities more energy efficient. Furthermore, CCE believes that RGGI should include all industrial carbon polluters and should not be limited to the electricity-generating sector. For example, CCE is concerned with greenhouse gas intensive energy production such as coal to liquid fuel or synthetic gas.

Following Ms. Eckel-Dalrymple's statement, and there being no one else who wished to comment, the Avon hearing was concluded.