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May 16, 2008

Via Hand Delivery

Honorable Kristi Izzo
Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Re: I/M/O A Greenhouse Gas Emissions Portfolio Standard and Other
Regulatory Mechanisms to Mitigate Leakage
BPU Docket No. EO08030150
Stakeholder Meeting Observations

Dear Secretary Izzo:

The New Jersey Department of the Public Advocate, Division of Rate Counsel (“Rate Counsel”) submits the following observations regarding the process of stakeholder meetings in the referenced matter regarding emission leakage. We anticipate having the opportunity to file additional comments as the process moves forward and the proposals and their associated effects on ratepayers are identified. Rate Counsel appreciates the New Jersey Board of Public Utilities’ (“Board”) efforts at addressing the statutory requirements of P.L. 2007, c. 340 (the “Act”), *N.J.S.A. 48:3-49 et seq.* by adopting its March 18, 2008 Order in this matter (“Leakage Mitigation Order”). Rate Counsel understands the desire of the Governor and Legislature to reduce greenhouse gas

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emissions (“GHG”) beyond those anticipated reductions to be achieved through energy efficiency (“EE”) programs. However Rate Counsel urges the Board to be cautious so that any new effort avoids unnecessary additional rate increases and can be demonstrated to be cost effective.

The stakeholder meeting that was convened on April 29, 2008 to discuss the implementation of the Leakage Mitigation Order was helpful in outlining the issues faced by the Board as it moves forward to comply with the requirements of the Act. Our observations from that meeting and suggestions as to where the Board should be focusing future discussions include five areas:

- 1) Consistent with the Order and the Act, the Board should secure an opinion from the Attorney General regarding Commerce Clause issues before proceeding further. Without that guidance at the outset of this process it is impossible to focus the efforts of the Board on meaningful, cost-effective solutions. If the Attorney General’s opinion is not available for the next working group meeting, Rate Counsel recommends that working group focus first on the issue of data transparency (item 2 below) and on fact gathering and generalized discussions of the issues described in items 3 and 4 below. Specific proposals should not be addressed until the Attorney General’s opinion is available.
- 2) Rate Counsel fully supports the prime recommendation in the Regional Greenhouse Gas Initiative (“RGGI”) Leakage Report to make changes in the generation attributes tracking systems

("GATS") in use within the RGGI region that will allow the RGGI states to track the level of electricity imports and exports from units subject, and not subject to the RGGI usage caps. These changes would allow the monitoring of emissions leakage, which is necessary for determining cost effectiveness of any potential leakage mitigation program. This issue could be discussed prior to the receipt of the Attorney General's opinion, as the recommended GATS changes should be pursued in any event.

- 3) Rate Counsel suggests that this working group look into leakage mitigation measures considered by other RGGI states located in PJM to determine if they are facing the same or similar leakage issues and what process they may be considering to mitigate the problem.
- 4) The working group should address the causality issue, that is, whether or not the implementation of RGGI will actually have a significant impact on power imports into New Jersey. Causality should be established before any mitigation policies are implemented. Understanding the extent of the problem and the workings of the marketplace is central to addressing the issues in a cost-effective manner.
- 5) Specific proposals to mitigate leakage should only be considered following receipt and consideration of the Attorney General's opinion. However, once the working group discussions move to

consideration of specific proposals, Rate Counsel views the “cap and count” proposal presented on behalf of the Regulatory Assistance Project (“RAP”) as the most promising vehicle for discussion. Of the proposals presented at the April 29 stakeholder meeting the RAP proposal appears the most likely to mitigate leakage without directly impacting consumer pricing. Rate Counsel believes that PSE&G’s “Carbon Abatement Program” proposal is premature and unacceptable in its present form. Any eventual solution must spread the risk of investment loss to both the utility and the ratepayer to insure a cost-effective result. Further, if mitigation measures other than EE are deemed permissible, any such measures considered by the Board should be harmonized with New Jersey’s existing, successful, EE measures.

Rate Counsel has addressed each of the five areas in the remainder of this letter.

1. Attorney General Opinion

During the development of RGGI by the seven Northeastern and Mid-Atlantic States, extensive modeling was completed to evaluate GHG reduction goals, their economic and environmental effects, and complementary measures that could help to achieve whatever reduction goals were established. The modeling results concluded that continued and strengthened investments in state EE programs were the most cost-effective means to achieve RGGI’s GHG reduction target. Analytical efforts and real-world experience since the multi-state RGGI Memorandum of Understanding was signed amplify the strength of EE’s role in helping to reduce GHG emissions. Successful EE

programs today are saving 1% or better as a percentage of sales at costs of 3-3.5 cents per kWh, much less than the cost of new generation. The EE solution benefits both the ratepayer and the environment as lower energy usage reduces the cost to the consumer and the need for additional carbon-emitting generation.

The Act required the Board to evaluate potential leakage mitigation strategies besides EE and to recommend their implementation, so the amount of imported electricity could be reduced or monitored to avoid dilution of New Jersey's RGGI goals. This evaluation, however, should be harmonized with the EE efforts in New Jersey and the efforts of other RGGI states.

At the stakeholder meeting on April 29, 2008 there were three presentations that covered a number of possible means to mitigate leakage into New Jersey. Each is new, lacks details and may raise Commerce Clause issues that would preclude adoption. Rate Counsel recommends that the Board request that an Attorney General opinion be issued consistent with the Act and Leakage Mitigation Order, to help define leakage mitigation measures that may be considered as part of this docket.

The Attorney General's opinion would address questions 5 and 9 posed in the Leakage Mitigation Order, and will impact the analysis of the other questions posed by the Board in the Order. Without understanding the limits of any proposal under consideration or guidance from the Attorney General, as set forth in the Act, discussion of possible resolutions is of limited value.

Because the Attorney General's opinion is pivotal to the working group going forward, Rate Counsel recommends that an opinion be obtained prior to the next working group meeting, or, at the latest, at the next meeting thereafter. If the opinion can not be

made available before the next meeting, then Rate Counsel recommends that the working group focus initially on data transparency (item 2 below). The working group could also engage in fact-finding and generalized discussions concerning the leakage mitigation measures utilized in other states and on the causality issue (items 3 and 4 below) prior to the receipt of the Attorney General's opinion. There should be no discussion of specific leakage mitigation proposals (item 5 below) until the Attorney General's opinion is received.

2. Support improved data transparency

Data collection and transparency are central to GHG reductions and the questions raised in the Leakage Mitigation Order whether or not the Attorney General determines that the Board may constitutionally pursue non-EE mitigation strategies. This is an issue the working group can address immediately if more time is needed to finalize the Attorney General's opinion. Improved data collection and transparency will further efforts to meet the legislative intent of the Act in any event.

Currently, the generation attribute tracking systems ("GATS") in use by PJM and two other independent system operators ("ISOs") serving the RGGI states, NY-ISO and ISO-New England, do not permit the tracking of the GHG emissions characteristics and other environmental attributes associated with all of the power being generated to serve load within the RGGI states. One of the primary recommendations of the May, 2008 Final Report of the RGGI Emissions Leakage Multi-State Staff Working Group was to explore modifications to the existing GATS that would permit each of the RGGI states to monitor the amount of imported power generated by generating units located in non-RGGI states, and by units within RGGI states that are not subject to the RGGI emissions

caps. These changes would allow each RGGI state to establish a baseline level of imports from non-RGGI units, along with the associated level of carbon emissions, and then monitor changes from the baseline. The enhanced tracking systems would allow the RGGI states to collect the necessary data to monitor the level of emissions leakage that may result from the implementation of RGGI initiatives.

Rate Counsel strongly supports the efforts taken by the ISOs within RGGI to improve the transparency of data associated with power imports and exports. While these efforts may appear to be modest, they are important, and having the three ISOs in RGGI tracking this data will also have other benefits, such as facilitating efforts to reduce air pollutant emissions. The Board may wish to invite a representative of PJM to discuss how they will track the data and consider why that will be useful in meeting the goals of the Act and Leakage Mitigation Order. This will directly address questions 7 and 8 of the Leakage Mitigation Order.

3. Reach out to other RGGI states, especially those in PJM

The stakeholder meeting was well attended suggesting interest in the emissions portfolio issue. Several New Jersey organizations were represented that addressed the leakage problem. However, many of the recommendations to reduce leakage potentially will require discussion, coordination and even adoption by neighboring states, or will require federal action in order to assure the leakage issues are effectively addressed. Rate Counsel recommends that the Board invite representatives from other RGGI states to attend and participate in the discussions so that their input and comments can be received and considered. New Jersey's position as a leader in this process will insure robust discussion and the ideas from other states may also lead to consideration of policies on a

regional scale that could further improve the ability of RGGI policies to meet its environmental and energy goals.

An effort to include other states is specifically anticipated in the Order in question 5, seeking the “experience of other states.” Overall, the legislative intent is to address GHG and protect the reductions achieved by New Jersey’s efforts from dilution. Recognition of the impact that actions by other states and the federal government will have on these efforts is consistent with the Act.

4. The Board should consider causality between RGGI and increased observed leakage before adopting non-EE leakage mitigation policies.

Leakage has been a concern since 1998 when the NOx budget program that was implemented in the ozone transport region which includes New Jersey did not initially include Maryland. At that time, concerns were raised about electricity wheeled into the newly constrained area from areas without environmental constraints, and the degree to which these imports diluted the program goals. These same concerns exist today with respect to efforts in the RGGI states to limit the impact of electricity imported from non-RGGI states on efforts to reduce GHG.

As the Legislature recognized in the Act, leakage is occurring today, as it has been occurring for several years. There are, however, several factors that contribute to leakage. Different environmental standards is just one of them. Other economic factors may play a more important role. Even in the absence of GHG standards, electricity prices vary significantly between New Jersey and other PJM states. Many factors cause generators to take advantage of price differences. Generators in lower priced areas seek greater access to areas with higher prices, and need for electricity in New Jersey pushes it to seek the lowest cost, consistent with regulations. Based on recent studies, it is not clear

that RGGI implementation will be a significant factor driving power imports into New Jersey.¹

Establishing causality, that is, that the implementation of RGGI in and of itself may contribute to increased power imports into New Jersey, will be difficult. Rate Counsel believes that it is premature to adopt policies to mitigate leakage, which may have significant cost impacts to consumers and ultimately be frustrated by Commerce Clause concerns, without fully appreciating the complexity of the underlying factors that cause the power imports to occur. In the alternative, Rate Counsel strongly supports measures to increase the transparency of electricity sales data (as noted below) and to focus attention on demand side programs that have more of a known relationship between cause and effect, i.e., reducing New Jersey's electricity demand will reduce the need to import power from PJM, and will therefore reduce reliance on sources that emit air pollutants.

Also, there are other legal means for New Jersey to redress the effects of power imports should it wish to do so. Section 126 of the Clean Air Act permits states to petition the Federal Government in cases where air pollution from upwind states is causing or contributing to the ability of a state to achieve compliance with applicable Federal air quality standards. The steps taken by the various power pools to improve data transparency (discussed above) can help New Jersey to determine whether the operation of power plants upwind is causing or contributing to unhealthy air quality. Armed with this evidence, the state can then assess the appropriate means to remedy this effect

¹ / Recent modeling completed by EPRI, and data being analyzed as part of California's evaluation of its GHG goals, suggest that it will require a carbon allowance price of \$50 or higher as measured in 2008 dollars to displace coal in the dispatch order, a significant factor in curtailing leakage. Neither RGGI nor any national program is contemplating prices anywhere near this level at the start of the program. In fact, RGGI MOU provides for two safety valves that are triggered at allowance prices of \$7 and \$10.

through already proven mechanisms. Developing more information, as suggested here, will serve to address questions 4 and 7, posed in the Board Order as well as assisting in addressing other included questions.

5. The RAP “Cap and Count” Proposal and PSEG “Carbon Abatement Program.”

Of the proposals presented at the April 29 stakeholder meetings, Rate Counsel believes that the most promising is the “cap and count” proposal presented by Richard Cowart on behalf of the RAP. Rate Counsel would welcome the opportunity for further discussion on it, to better understand and appreciate how it, or some variation of it, might be considered. It appears to be a proposal that has no direct cost to the ratepayer and shifts the burden for production of GHG reduced power to the only parties in the process that are capable of affecting how the power is generated, that is load serving entities.

Rate Counsel appreciates the efforts by PSE&G to discuss and attempt to explain its proposal presented at the stakeholder meeting. It is unfortunate more detail could not have been provided during the presentation. However, the premise of this program appears flawed and its adoption would lead to transfers of funds from New Jersey ratepayers to generators without any apparent environmental or energy benefits. As Rate Counsel understands the PSE&G proposal, the New Jersey non-coal generators would receive a ratepayer-funded subsidy of approximately \$5 per ton of carbon emissions that would be avoided by use of their non-coal units, compared to the emissions created by coal-fired units. The generators receiving the payments presumably would lower their bid prices into PJM, thus making them more competitive with imported coal-generated power, thus increasing the likelihood that generation from lower-carbon sources would be dispatched.

As proposed, it appears that the utility does not share the risk of the cost of the program, and there are no demonstrable benefits. The PSE&G proposal would effectively set a carbon price of approximately \$5 per ton. It is estimated that in order to affect the dispatch order and displace coal, an effective carbon price of \$50/ton would be required (as noted in footnote 1 above). In other words, the PSE&G proposal would likely be effective in reducing leakage only if the payment to generators were approximately ten times the amount being proposed by PSE&G. At the \$5-per-ton price assumed in PSE&G's proposal, the coal plants in Pennsylvania and Ohio would continue to operate at the same output, and the same amount of GHG and pollutants would be emitted. In addition, new plant proposals and upgrades to transmission lines would continue to be considered at any amount below the \$50/ton carbon price. Thus, the PSE&G proposal would result in payments to generators, at ratepayer expense, with no effect on leakage.

Rate Counsel believes that to be successful, utilities must have an incentive to achieve GHG reductions and share in the costs and benefits with consumers. The PSE&G proposal provides no incentive or penalty for a utility that fails to meet the goals established under the legislation.

PSE&G's proposal is too vague with much of the necessary detail missing. To move this working group forward, Rate Counsel suggests that future discussions focus on the "cap and count" proposal submitted by the RAP, through Richard Cowart. That proposal provides many more details, and appears to hold more promise as a means to address leakage without unnecessary costs to ratepayers. Of the proposals submitted so far, the "cap and count" proposal provides the best starting point for the working group to attempt to build a consensus.

Finally, Rate Counsel believes that the Board must consider and include EE measures among those that can address both the spirit and intent of the Act. In doing so Board staff should interact with their counterparts in other states to align EE program measures and take further advantage of regional scale implementation - which could make the EE programs even more cost effective. EE programs are already successfully implemented in New Jersey. RGGI modeling results reflected how valuable EE measures are to reducing demand that contributes to and could exacerbate further leakage.

Agenda for the next meeting

Rate Counsel suggests that the Board solicit and circulate the Attorney General opinion prior to the next meeting. If the Attorney General's opinion is not available for the next meeting, Rate Counsel suggests that data transparency be discussed at that meeting.

Very truly yours,

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY

Stefanie A. Brand
DIRECTOR, DIVISION OF RATE COUNSEL

By: *s/ Sarah H. Steindel*
Sarah H. Steindel
Assistant Deputy Public Advocate

cc: Service List (via electronic list server)

May 16, 2008

To: NJ RGGI Work Group
via e-mail (rggiadmin@njcleanenergy.com)

Re: Comments of Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc. On Proposals to Mitigate “Leakage” – Docket No EO08030150

In response to the proposals circulated by the Regulatory Assistance Project (“RAP”) and Public Service Enterprise Group (“PSEG”) at the April 30, 2008 RGGI Work Group meeting, Consolidated Edison Solutions, Inc. (“CES”) and Consolidated Edison Energy, Inc. (“CEE”) offer the following comments:

CORPORATE BACKGROUND

CES is a retail energy provider serving more than 200,000 residential, commercial and industrial customers throughout the Mid-Atlantic, Northeast and Texas. In addition to retail energy supply, CES offers its customers a number of energy related services, including demand response and energy conservation services, renewable energy and other distributed energy products. CEE is an energy trading company, supplying electricity to utilities and competitive retail energy providers in the New York ISO, ISO New England, and PJM and is an active participant in New Jersey’s BGS auction process.

GENERAL COMMENTS

CES and CEE support the Regional Greenhouse Gas Initiative (“RGGI”) and share the concern that border states such as New Jersey may experience some “leakage” if, as anticipated, the cost of CO₂ allowances increases the price of electricity within the RGGI region and results in increased electricity imports from non-RGGI states. However, both the PSEG and RAP proposals would create a “downstream” compliance burden on retail and wholesale Load Serving Entities (“LSEs”) that CES and CEE believe would conflict with the “upstream” regulation that the RGGI allowance program will impose on generators within the RGGI states. Instead of committing to the RAP or PSEG proposals or any other “downstream” mitigation plan at this time, New Jersey, along with the other RGGI states, should monitor both the level of imports from non-RGGI states, while aggressively pursuing energy efficiency programs to reduce electricity usage. This

approach is consistent with the Category-1 recommendations made in the March 2008 Final Report of the RGGI Emissions Leakage Multi-State Staff Working Group to the RGGI Agency Heads (“March 2008 Leakage Report”) and is most prudent given the potential for a national GHG program to obviate the concerns of leakage into the RGGI states.

THE RAP AND PSEG PROPOSALS WILL INCREASE CUSTOMER COSTS AND LIKELY CONFLICT WITH THE DISPATCH OF THE POWER SYSTEM

Both the RAP and PSEG proposals would impose an additional level of compliance costs on both retail and wholesale LSEs and thereby increase costs to consumers. In the case of the RAP proposal, there would likely be incremental costs to ensure that the CO₂ associated with each LSE’s electricity imports had offsetting allowances. In the case of the PSEG proposal, LSEs could offset the CO₂ from imports with an additional carbon abatement certificate purchased from generators within the RGGI region, with the cleaner RGGI generators being awarded the most abatement certificates. Either way, there would be an incremental compliance cost over and above the price of electricity, which would already include the cost of CO₂ allowances.

Another concern with the additional “downstream” compliance mechanism is that it would likely distort the efficient dispatch of the PJM system as retail and wholesale LSEs bilaterally contract for more expensive local generation in order to meet their compliance obligations, effectively bypassing the PJM administered markets. Initially, a sub-optimal dispatch would not only increase the cost of running the bulk power system but, in times of high load, could also lead to reliability concerns.

IMPORTS ARE NATURAL AND COULD BE “CLEANER” THAN LOCAL GENERATION

The RGGI states have historically been net importers of power, from Canada, Pennsylvania and Virginia, and the CO₂ allowance budgets were determined based on historical plant emissions to meet in-state load net of imports. Furthermore, the ability of additional non-RGGI generation to leak into New Jersey and the other RGGI states is limited by the physical transmission limits from Pennsylvania, Virginia and Canada

which will remain fairly static for several years¹. Artificial limits on the amount of imported power could actually result in greater GHG emissions if it led to the increased dispatch of smaller peaking units within the RGGI states that are under the 25 MW compliance threshold of the current RGGI rules.

CONCLUSION

CES and CEE recommend that New Jersey's efforts to address leakage initially focus on measuring actual leakage after RGGI is implemented while promoting the use of energy-efficiency programs to reduce electricity usage, thereby indirectly addressing leakage concerns by reducing the need to import power. This approach is consistent with the Category 1 recommendations identified in March 2008 Leakage Report. For the reasons explained above, CEE and CES do not believe New Jersey should implement either the RAP or PSEG proposals, which fall into the Category 2 and Category 3 options evaluated in the March 2008 Leakage Report. That report also concluded that "the policy options identified in Categories 2 and 3 – *i.e.*, a carbon procurement adder, carbon procurement emissions rate, emissions portfolio standard, and load-based cap – should not be prioritized for implementation at this time, absent compelling evidence based on leakage monitoring that emissions leakage has become a significant issue."²

Respectfully Submitted,

/s/ Stephen Wemple

Stephen Wemple

Vice President, Regulatory Affairs

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¹ Although PJM has approved several large, high voltage transmission projects that, when completed, will increase the import transmission capability into the RGGI states, these projects are not expected to be completed before 2011 (for the 500 KV 502 Junction – Mt Storm – Meadowbrook - Loudoun Line), 2012 (for the 500 KV Susquehanna – Roseland line and for the 765/500 KV Amos – Bedington – Kempton line) and 2013 (for the 500 KV Possom Point – Calvert Cliffs – Salem line). See RTEP Construction Status at <http://www.pjm.com/planning/project-queues/upgrade-projects.html>

² See pages 41-42 of March 2008 Leakage Report.

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May 16, 2008

VIA E-MAIL

New Jersey Regional Greenhouse
Gas Working Group**RE: Comments of Hess Corporation on Proposals To
Mitigate "Leakage" – BPU Docket No. EO08030150**

Hess Corporation ("Hess") submits this letter to offer comments on the proposals of the Regulatory Assistance Project ("RAP") and Public Service Enterprise Group ("PSEG") circulated at the April 30, 2008 Regional Greenhouse Gas Initiative ("RGGI") working group meeting.

By way of background, Hess is a retail energy provider serving over 50,000 commercial and industrial customer locations in the 14-state market area in which it operates. This market area includes, with respect to retail electric service, the entire Mid-Atlantic, New York, and New England regions inclusive of New Jersey's four electric distribution company service territories. In addition, Hess is an energy trading company that has supplied electricity to utilities and has been an active participant in New Jersey's BGS auction process.

Hess advises against implementation of either the RAP or PSEG proposals to mitigate anticipated "leakage" at this time. To be clear, Hess is supportive of RGGI as an initiative and understands the concern that New Jersey may experience "leakage" if the cost of carbon dioxide allowances results in upward pressure on electricity prices, thereby risking increased electricity imports from non-RGGI states. However, both the RAP and PSEG proposals will create a "downstream" compliance burden on retail and wholesale load serving entities ("LSEs") that will impose an additional layer of compliance costs on the LSEs and thereby increase consumer costs. In addition, there is a strong potential that a federal Greenhouse Gas ("GHG") program will be proposed and considered during the first year of the next Presidential Administration in 2009 that may obviate the "leakage" concerns in the RGGI states that include New Jersey. Thus, it is at best premature and worst detrimental for consideration and implementation of the RAP and PSEG proposals.

Given these two factors plus a lack at this very early stage of any firm measurement or estimate of actual leakage once RGGI is implemented, Hess recommends that New Jersey's initial efforts to address leakage initially focus on: (1) measuring actual leakage after RGGI is implemented; and (2) promoting energy efficiency programs to reduce usage (and thereby potential leakage risks), whether such promotion is facilitated through the upcoming State Energy Master Plan or other appropriate mechanism. These policy options should take priority over the RAP and PSEG proposals, which clearly fall within the lower priority Category 2 and category 3 options of the March 2008 Leakage Report.

Respectfully submitted,



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