May 7, 2021

Kathleen Theoharides, Secretary
Massachusetts Executive Office or Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

RE: TCI Draft Model Rule Comments

INTRODUCTION:

The Energy Marketers of America (EMA), formerly known as the Petroleum Marketers Association of America (PMAA), is a federation of 47 state and regional trade associations representing energy marketers throughout the United States. Energy marketers represent a vital link in the motor and heating fuels distribution chain. EMA members supply 80 percent of all finished motor and heating fuel products sold nationwide including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. Moreover, energy marketers represented by EMA own and operate approximately 60,000 retail motor fuel stations nationwide and supply heating fuel to more than 5 million homes and businesses. Our organization represents thousands of small business stakeholders throughout the TCI region. Energy marketers are largely family owned, multigenerational "mom-and-pop" operations that deliver fuel to towns from Caribou, Maine to Crockett, Virginia and everywhere in between.

SUMMARY:

EMA is very concerned that the regulatory framework established in the Draft Model Rule to implement the Transportation Climate initiative is seriously flawed. First, the Draft Model Rule lacks clarity. It fails to clearly identify those parties along the petroleum distribution chain it intends to regulate. Terminal operators may have the resources to unravel and comply with the array of regulatory responsibilities under TCI regulatory framework. However, downstream energy marketers, who are nearly all classified as small business entities, most certainly do not. The Draft Model Rule also assumes an overly simplistic view of the petroleum distribution chain. Fuel distribution from the terminal rack down to the retail outlet is not linear in nature. Often, fuel supply will change hands and title multiple times before it reaches the retail consumer. The compliance consequences imposed by TCI will therefore be far greater than the language of the draft model rule assumes. Lack of clarity in the Draft Model Rule adds to the complexity of the regulatory framework it creates. Uncertainty and confusion among regulated parties as to their obligations under TCI will reduce efficiency along the distribution chain and undoubtably lead to supply disruptions.

The Draft Model rule lacks consistency precisely because it is a "draft". It is inevitable that the Draft Model Rule will undergo multiple changes as it moves through the adoption process in each of the 13 TCI jurisdictions. As a result, TCI will become a patchwork of differing regulatory requirements that will be impossible to comply with and enforce. EMA also believes the TCI program will generate huge compliance costs that will inevitably be passed along to the consumer. Add to these costs, shrinking allowances designed to force gasoline and diesel prices increasingly higher and you end up with a market disruption that will cause a significant drag on state and local economies and create a political firestorm. EMA is also concerned that TCI provides no guarantee that the billions of dollars it will bring into state coffers will actually go to low carbon transportation initiatives. It is not at all implausible that lawmakers will use TCI revenue as a deep pocket rainy-day fund for projects unrelated to low carbon transportation alternatives. Finally, TCI is in fact a regressive gas tax that will be felt most acutely by poor and working-class families in the northeast region's low-income communities. TCI is essentially taxing poor people in order to subsidize rich people's electric cars.

DISCUSSION:

Ever since the November 2017 UN Climate Change Conference (COP23) when governors representing seven states in the Northeast announced their intent to create a regional program addressing GHG emissions in the transportation sector, the EMA has been monitoring and participating in the TCI process. As we learned from the 2018 listening sessions convened by GCC, the participating states were considering a variety of policy strategies aimed at reducing emissions including: reducing traffic congestion; developing new state and local land use strategies to include transit-friendly design; and promoting mixed-use and higher density development in both residential and commercial areas. We were eager to participate in such worthwhile discussions.

Unfortunately, as the Draft Model Rule makes clear, the participating states opted for a more onerous cap-and-trade framework for the transportation sector, based on the existing Regional Greenhouse Gas Initiative (RGGI) program for the electric power sector in the region. EMA believes RGGI is a poor example to draw from and will ultimately result in the failure of the TCI program itself. The complexity of the liquid fuels supply chain in the TCI region has little in common with the fossil fuel fired electric plants subject to the RGGI. Cap-and-trade only makes sense when participants in the program;

- make the key decisions affecting GHG emission,
- are few in number to efficiently regulate,
- are sophisticated entities with significant technical, legal and financial resources necessary to participate.

All of these are true for electric utility sector but, the same isn't true for the transportation sector. Cap-and-trade requires the creation of an expensive bureaucracy and assumes the participants engage in complex business decisions that make the system work to their advantage. This is how cap-and-trade affects decisions that lead to reductions in greenhouse gas emissions. However, the decisions that affect emissions in the transportation sector are not made by the participating fuel distributors. Instead, they are made every day by millions of individual consumers. If customers are willing to pay five cents more at the pump under a cap-and-trade program, fuel suppliers will pass that cost along and change nothing. Any "price signal" small enough to be tolerable is too small to affect consumer behavior. Recent studies have shown that only a major increase in the cost of motor fuels will generate a noticeable change in consumer behavior of the kind the TCI program envisions. Before that happens, consumers will very likely resist higher prices and opt for a political solution to solve the problem.

Currently, both consumers and businesses across the TCI region enjoy historically low fuel prices. Low fuel process help stimulate regional economic activity, lower the cost of goods and services and create jobs. However, implementing a cap-and-trade framework that intentionally drives up the cost of producing and distributing transportation fuels would erase all these economic benefits and stifle growth throughout the region. Ultimately, consumers will pay the price for a cap-and trade program as costs for purchasing allowances will be passed down as higher prices at the pump. We believe the TCI cap and trade program amounts to a de facto gasoline and diesel fuel tax that will disproportionately impact middle and lower-income workers.

The administrative costs associated with creating a new cap and trade program involving multiple jurisdictions and several thousand regulated entities will likely require millions of dollars in annual administrative overhead. Without a fully funded administrative structure supporting TCI, the liquid fuel distribution network would experience ongoing disruptions due to regulatory log jams. Further questions remain concerning the reporting requirements under the cap-and-trade program, not just for the regulated state fuel suppliers identified in the Draft Model Rule, but also for the thousands of downstream entities that may be pulled into the reporting framework. These companies are largely small business entities who remain uncertain as to whether they must report under the Draft Model Rule. In a region where fuel moves from a single terminal across multiple state lines every day, the lack of clarity regarding reporting requirements will creating unnecessary levels of regulatory uncertainty for businesses across the TCI region that will undoubtedly lead to negative impact on fuel supplies

According to GCC's modeling, GHG emissions in the transportation sector will decline by 19 percent by 2032 without the creation of any new programs. The modeling further estimates that TCI would need to impose what would effectively be a

$1.4 billion annual carbon tax on the region to achieve a one percent marginal reduction (20 percent overall) in GHG emissions. Achieving a six percent marginal reduction (25 percent overall) would cost $7 billion annually. This is simply too high of a price to achieve such relatively small emissions reductions. In other words, the most stringent scenario GCC modeled would achieve an incremental reduction of 14 million tons of GHGs per year over the baseline case, at a cost of $6.9 billion. This equals roughly $492 per ton of avoided GHG emissions – more than ten times the Obama-era social cost of carbon (SCC) and more than seventy times the latest price per ton for an allowance in the RGGI program of $6.82. In fact, it seems that much of the justification for TCI lies not on the marginal environmental or public health benefits, but on the anticipated government revenue to fund new state programs. GCC does not attempt to make a case that such a cap-and-trade program would represent the most cost-effective way to reduce GHG emissions in the region's transportation sector, much less in the region economy-wide.

EMA believes the best way to reduce GHG emissions is though the private market place with appropriate government incentives. As the name implies, energy marketers sell energy, not just gasoline and diesel fuel. We sell both alternative and renewable fuels and more recently, EV charging stations all designed to reduce the carbon footprint of the products we offer. Energy marketers have been able to begin this transition while keeping our fuels affordable and providing products that consumers want to buy. A top-down solution designed to punish not reward is not going to work in a market place where consumers consider affordable fuel prices an inherent right.

For all these reasons we urge GCC and the participating jurisdictions to work with the regulated community to achieve our common goal of a low carbon fuel future, based on free market principles rather than a top-down solution.

Please feel free to contact me should you have questions or need additional information.

Sincerely,

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