November 22nd, 2019

Joint Public Comments on Regional Transportation Climate Initiative Draft Framework

On behalf of the Climate Justice Alliance and allies, we would like to express our concerns and strong opposition of the Transportation Climate Initiative (TCI) policy proposition of "Cap and Invest". Though the goals of this proposed regional framework addresses emissions reductions in the transportation sector, the "cap and invest" model, and its regional implications will not result in adequate emission reductions and will continue to exacerbate environmental justice issues in frontline communities.

The climate crisis is undeniable. Every year, we see more record-breaking climate events, more devastation, and more death. In the United States, transportation is the leading cause of greenhouse gas emissions. The American economy is addicted to single passenger cars and fossil fuels, which has exacerbated environmental justice issues and created many transportation equity problems across the country. But transportation is only one sector in our economy, and transportation issues must be addressed comprehensively and holistically, rather than through piecemeal or siloed initiatives. Policies that aim to mitigate climate change must be informed by input from frontline communities that have historically suffered from the disproportionate siting of polluting infrastructure such as highways, power plants, and solid waste transfer stations to name a few.

For almost a decade, TCI has developed in a vacuum by state conveners, Georgetown Climate Center, and Acadia Center with extremely limited public engagement, which only just started in 2018. Limited public listening sessions were hosted through the region. But these listening sessions were often announced last minute without adequate time for people to register, were hosted in spaces with very limited capacity, and in most cases did not include environmental justice leadership in the planning process.

At every TCI public meeting, the "cap and invest" model was sold to the public as a re-invented cap and trade model that is distinctly "different", but TCI conveners fail to prove how cap and invest is innovative and different from the traditional cap and trade model that has not only proven to be ineffective, but also results in inequitable pollution in frontline communities. Conveners have also said many times that they are not set on the "cap and invest" model and are open to alternatives; yet at every following meeting “cap and invest” was re-introduced as the framework for TCI and no other singular or suite of alternatives have been deeply analyzed or modelled. TCI’s public engagement process has proven to have been opaque, rushed, and insincere to environmental justice concerns.

Cap-and-Trade Is Inequitable and Ineffective Climate Policy

We oppose the use of carbon trading to achieve climate policy goals, and we have particularly strong concerns about the framework’s fundamental reliance on a cap-and-trade system to reduce transportation emissions. What this means is that - between RGGI and the proposed regional transportation framework - roughly half of the region’s GHG footprint is covered by a cap-and-trade system, paving the way for even further expansion of cap-and-trade’s pollution markets under economy-wide emissions standards. We believe that such an expansion of carbon trading poses significant risks for communities already disproportionately exposed to fossil fuel pollution, while promising little progress on GHG reductions without a highly stringent policy that will exacerbate already highly unequal energy burdens of low-income communities.

In principle, we reject the premise that polluters should be able to purchase the right to pollute and then engage in a market for buying and selling of pollution allowances. This is defined as creating flexibility for the timing, location, and sources of emissions reductions, which is precisely the problem. As the pro-market Environmental Defense Fund explains, “The **trade** part [of cap-and-trade] is a market for companies to buy and sell allowances that let them emit only a certain amount, as supply and demand set the price. Trading gives companies an incentive to save money by cutting emissions in the most cost-effective ways.” Thus, by its own definition, it should be clear why cap-and-trade poses risks particularly for low-income, pollution-exposed communities: market flexibility favors the cheapest emissions reductions, whereas pollution abatement in poor communities, typically involving older, dirtier facilities, with co-located pollution sources and resulting complexity of public health harms, is much more likely to be less “cost-effective” for polluters. Just as poor communities have been first in line to bear the brunt of fossil fuel pollution, cap-and-trade puts them last in line for pollution reductions.

This is particularly concerning when it comes to transportation emissions because the sources are mobile rather than stationary. The proposed TCI framework proposes to cap the emissions embedded in upstream fuel supplies, not actual emissions in the localities where fuels are combusted by vehicles. Creating a trading system for transportation pollution, structured in this way, is likely to be highly prone to perpetuating or even increasing actual downstream transportation emissions in low-income communities, where solving transportation pollution is likely to be less cost-effective for the polluters. In particular, diesel fuel supplies for freight trucking—a known carcinogen and the most harmful source of pollution in low-income urban communities—are likely to be less responsive to cap-and-trade incentives because the relative abatement costs are likely to be higher compared to other transportation emissions, and the political price of passing on diesel fuel/freight trucking allowance costs to consumers is lower than is likely to be the case for rising gas prices at the pump.

Comparable California Model Provides Evidence of Major Equity Problems: *Local Emissions are Increasing and Inequitably Distributed*

Research shows that, after implementation of cap-and trade, California's in-state emissions actually increased between 2011-2015. More than half of regulated facilities reported higher in-state emissions under cap-and-trade, and the communities subjected to increasing emissions were home to higher proportions of people of color and low-income households compared to communities that enjoyed emissions reductions.

Transportation fuels were added under California's carbon cap starting in 2015. Covered sources are "upstream" prime fuel suppliers, as is likely to be the case in the TCI framework. Compliance is limited to prime suppliers responsible for at least 25,000 metric tons of emissions annually.

One year of data on transportation sector emissions under cap-and-trade in California also showed increasing emissions (2015-2016). The increase in transportation emissions is consistent with the 2.6% growth in Vehicle Miles Traveled (VMT) in California from 2015 to 2016, which clearly more than offset any reductions in emissions attributable to fuel efficiency regulations, the cap-and-trade program, or any other policy driver of reduced emissions.

The transportation data from California and other places should be telling for transportation cap-and-trade advocates because they point to underlying trends in our economy that cannot be addressed, let alone rectified, by carbon trading. If increasing VMT threatens to offset cap-and trade benefits, as is likely the case in California, a much more effective climate policy would focus on housing justice in proximity to job centers—by controlling rents, eliminating single family zoning laws, investing in mass transit, and other policies that prevent gentrification, displacement, and resulting carbon-intensive and vehicle-dependent sprawl. Instead of using inequitable and ineffective pollution trading, reducing transportation emissions should be a focus of bold structural policy change to address and remedy the root causes of the region's massive transportation climate footprint.

Further, the promise of using cap-and-trade to generate substantial revenues for related programmatic investment is highly doubtful in many states because such revenue cannot be legally "lock-boxed" by state governments. In California, for example, the state has borrowed or diverted hundreds of millions of dollars of cap-and-trade revenues for non-climate needs of the state. New York has periodically raided RGGI revenues for other needs. The doubtfulness of substantial lock-boxed revenues for transportation investments only underscores the proposed policy framework's risks for environmentally, vulnerable low-income communities. The result is a failure of policy imagination that puts communities at risk and defers the real solutions we need for equitable, carbon-free mobility in the region.

The draft framework points to complementary policies and potential investments as the two main (and only) things that will help environmental justice communities, but neither of those strategies are guaranteed or clearly developed at this point. Furthermore, other policies and investments can be made without TCI, so there are many reasons and implications for why TCI itself is not beneficial to low-income communities and communities of color. Even if TCI is successful in lowering emissions overall, which is a questionable assumption, it overlooks the disparities in emissions and environmental burdens based on race and class.

The draft framework lacks any concrete projections of the revenue that has been promised to be generated through this proposed cap and invest program. Therefore, it fails in establishing any real confidence that funds will actually materialize for investments in overburdened communities. Furthermore, the added complexity of a regional revenue scheme raises concerns about how any money generated will be safeguarded for guaranteed investments in prioritized environmental justice communities. Each State will determine how the funds are allocated, so what assurances do regional participants have that their neighboring states will operate equitably even if others aim to utilize the funding to do as promised? Moreover, how will jurisdictional boundaries impact which states be entitled to what portion of the revenue? It is fair to assume that if a particular state has most of the regulated facilities in its geographic area, then that state may demand to receive the majority of the funds raised, leaving other states to deal with the downstream impacts of trucks driving in to unload fuels and pollute the air in their communities without adequate recompense.

We would also add that the extant reference-case modeling of the framework does not inspire confidence that the policy design and implementation of the regional agreement, and variations thereof in different states, will be equitable. For example, it does not consider health impacts or core drives of transportation emissions such as affordable housing crises in the states. These factors are highly racialized and their exclusion from the reference case can lead to corresponding exclusion of racial equity factors in a final policy design where reducing aggregate GHG emissions is the primary goal.

A Top-Down Regional Policy is Harmful for Democracy and Strong Policy in the States

With the largest economy in the region by far, and the nation’s third largest economy, New York State has a responsibility for leading on bold climate solutions. The 2019 passage of the Climate Leadership and Community Protection Act in New York (CLCPA) - considered the strongest statewide climate policy in the country (if not the world) - sets an example for the region that other states should follow. But this important legislation also exposes fundamental flaws of the proposed regional framework for the transportation sector. Both in substance and process, the CLCPA exemplifies a stronger and more sustainable approach to climate policy - in contrast with a regional policy developed by unelected technocrats and ultimately dependent on the whims of state Administrations and the electoral cycles that determine a given state’s involvement in such agreements.

The climate law passed by the New York State legislature in 2019 includes the transportation sector under a legally enforceable economy-wide cap of reducing GHG emissions by 85 percent before 2050. Almost certainly, the proposed regional framework will be much weaker overall and subject to inconsistent design and application from one state to the next, as is the case with the

RGGI agreement for power plants. The result will be only marginal emissions reductions, and highly discretionary, unstable, and inequitable programmatic investments, at the expense of stronger state-wide policies, including enforceable emissions and investment mandates for which elected officials can be held accountable by stakeholders and ultimately voters.

More specifically, it is important to understand that the climate policy framework established by the CLCPA is also a model for democratic planning led by stakeholders. First of all, the legislation was developed by advocacy stakeholders with deep roots in the most pollution-challenged communities, in stark contrast with the opaque technocratic process behind the proposed framework (as noted above in these comments). Consistent with its grassroots origins, the New York legislation includes a stakeholder-driven decision-making structure for policy design of emissions reductions, which empowers advocates and communities in demanding accountability for the codified goals of the legislation. The proposed regional framework is essentially silent on accountability to communities, stakeholders, and voters, which is threatening not only to good policy but to democracy itself. Further, the CLCPA also underscores the challenges of inconsistent policy, whereby a given state with its own legislated climate standards and requirements, as is the case with New York, will also be subject to a regional agreement with different standards. How regional and statewide policies with inconsistent standards and other policy requirements can be reconciled is a question that threatens the integrity of likely stronger state-wide policies.

The New York law in particular also highlights significant challenges on core policy principles. Policy implementation of emissions goals in New York is now governed by equity and environment justice standards that are only vaguely noted in the proposed framework and almost certain to be inconsistently applied, if not simply ignored, by participating states. A voluntary regional climate agreement, which cannot bind states with their own legislated climate policies, necessarily defaults to weaker standards, inconsistent and inequitable implementation, and political instability—all of which will prove to be detrimental to climate policymaking and to the robust democratic process we need for effective action on climate change.

TCI has been in development for almost a decade, but its exclusive process has not integrated environmental justice stakeholder concerns or input. A “cap and invest” model will not support the equitable transition to a green and just economy, and only exacerbate existing issues of disparity. Effective climate legislation must come from and be informed by frontline communities in order to ensure an equitable climate resilient and sustainable future. It must focus on structural drivers of fossil fuel dependency and climate change such as affordable housing, resource-intensive real estate and economic development, mass transit disinvestment, investor-owned monopoly utilities, and private financial profitability of natural resource extraction, power generation, and externalized pollution and waste, especially in poor communities assaulted by the political power and reckless disregard of polluters.

Sincerely,

Climate Justice Alliance

UPROSE, New York

New York City Environmental Justice Alliance, New York

Demos, New York

Institute for Policy Studies - Climate Justice Program, Washington D.C.

The Point CDC, New York

Carroll Gardens Association, New York

Just Community Energy Transition Project, Pennsylvania

Soil Generation, Pennsylvania

Ironbound Community Corporation, New Jersey

GreenRoots, Massachusetts

PUSH Buffalo, New York

New York Lawyers for the Public Interest, New York

Nos Quedamos, New York

El Puente, New York