Comments in Response to Proposed Commitments Presented on the "TCI Webinar on Ensuring Environmental Justice and Equity in a Regional Low-Carbon Transportation Program"

October 23, 2020

To:

TCI Leadership Team:
- Kathleen Theoharides, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs
- R. Earl Lewis, Jr., Deputy Secretary, Maryland Department of Transportation

TCI Executive Policy Committee:
- Marty Suuberg, Commissioner, Massachusetts Department of Environmental Protection
- Roger Cohen, Senior Advisor to the Secretary, Pennsylvania Department of Transportation

TCI Technical Analysis Workgroup:
- Christine Kirby, Assistant Commissioner, Massachusetts Department of Environmental Protection
- Chris Hoagland, Economist, Climate Change Division, Maryland Department of the Environment

TCI Investment and Equity Workgroup:
- James Flynn, Staff Attorney, Office of Legal Counsel, Connecticut Department of Energy and Environmental Protection
- Kate Fichter, Assistant Secretary, Massachusetts Department of Transportation

TCI Outreach and Communications Workgroup:
- Chris Bast, Chief Deputy, Virginia Department of Environmental Quality
- Elle O'Casey, Director of Communications and Outreach, Vermont Agency of Natural Resources

Governors and other state officials:
- Connecticut, Delaware, New Jersey, New York, Maine, Maryland, Massachusetts, Pennsylvania, Rhode Island, Vermont, Virginia

Mayor and other city officials:
- District of Columbia

Dear Governors and Transportation and Climate Initiative (TCI) Leaders:

We write to offer our comments in response to the proposed equity commitments that you announced during the "TCI Webinar on Ensuring Environmental Justice and Equity in a Regional Low-Carbon Transportation Program" on September 29, 2020. We appreciate that these equity commitments expand upon the original "Investments and Equity" provision outlined in the draft Memorandum of Understanding (MOU) that you released on December 17, 2019 and incorporates some of the recommendations you have received from us over the past year.

As you know, Green For All, along with other community-based groups, signed the "Policy

Design Principles for an Equitable Clean Transportation Program" letter, delivered to the TCI comment portal on July 26, 2019. Additionally, we released an Equity Toolkit for the Transportation and Climate Initiative "Designing an Equitable Cap-and-Invest Policy for Transportation" in December 2019. Green For All also helped draft, finalize, and sign, along with over 40 other organizations, a joint "Equity and Investments" comment letter submitted to the Georgetown Transportation and Climate Initiative comment portal on March 20, 2020. In all of these correspondences over the past year, Green For All has urged TCI decision-makers to incorporate equity provisions that include dedicated investments, communities at the table, and complementary policies.

Thank you for making initial commitments towards our recommendations. We are encouraged by your announcement that you are considering including equity provisions into the regional MOU and subsequent policy design process. We appreciate that you are considering a minimum percentage of dedicated investments and a requirement to form equity advisory committees for state implementation. We also acknowledge that you understand the need for any market-based approach to be paired with complementary policies to protect the most vulnerable communities.

However, we view these proposed commitments to be the bare minimum required to make this program equitable. More robust commitments and more clarity in the implementation of these commitments must be made in order to ensure equitable outcomes for all communities across the region. In addition to sharing our feedback regarding these proposed commitments, we would also like to uplift other key equity concerns that we strongly urge you to consider when drafting the final MOU and the forthcoming model rule language.

I. Dedicated Investments

While we acknowledge TCI leaders for proposing a minimum 35% investment requirement to benefit underserved and overburdened communities, we urge you to **allocate no less than 50% of program proceeds** toward these communities. Furthermore, you must ensure that **this dedicated percentage is *at least two to three times higher than* the proportion of populations** in each TCI jurisdiction that are determined to be "underserved and overburdened." California, for instance, regularly invests 50% of their cap and trade proceeds into "disadvantaged communities" and defines disadvantaged communities as those census tracts in the lowest quarter (a factor of one half) of CalEnviroScreen's ranking for pollution burden and socioeconomic vulnerability. Dedicating less than 50% of funds should require TCI jurisdictions to even more narrowly target the populations to receive those benefits. If, for instance, states retain the minimum of a 35% dedicated investment, states should specifically limit the disproportionately affected communities and populations to be equal to or less than 11.6% of the state's population (a factor of one third). In order to achieve equitable outcomes, those with the most vulnerabilities must receive the highest portion of investments. The smaller the dedicated funds, the more targeted of a population should receive them.

Furthermore, we urge you to change the language used in the MOU to define communities from "underserved and overburdened communities" to reflect Title VI civil rights legal definitions. The language “underserved and overburdened communities” should be replaced with “communities and populations that face disproportionately high and adverse health, environmental, social, and economic burdens, including minority populations and low-income populations.” This language should be reflected throughout the MOU.

These communities should be designated based on a range of socioeconomic, environmental, and health factors that are determined through an inclusive process involving the direct input of these impacted stakeholders. Specific geographic neighborhoods that have historically and currently experienced disproportionate impacts, such as over exposure to toxic air pollution or lack of adequate transit access and mobility options, should be designated. For these areas, data should be at the zip code or census tract level. The definition for disproportionately affected communities may also include other vulnerable populations that are not confined to a geographic boundary, such as children, seniors, and people with disabilities.

If TCI jurisdictions are to ensure that these funds lead to “direct and meaningful benefits for [disproportionately impacted] communities,” the MOU must specify that the dedicated investment proceeds will not only benefit these communities but also, when targeting communities at the census tract level, fund projects directly *located in* these communities. Furthermore, any project that is located only partially in a community, or a program that serves a disproportionately impacted population but also benefits many other people, should not have 100% of the project or program costs count towards this minimum investment. For example, if an electric transit bus makes one or two stops in a disproportionately pollution burdened community but also runs through more privileged communities, only a relative portion of the vehicle procurement funds should count towards the dedicated investments requirement.

II. Equitable Processes

We commend TCI leaders for including equity advisory bodies in the proposed equity commitments. We hope that the MOU includes more concrete details about how these bodies will be selected, who will comprise them, and how jurisdictions will support the capacity of community members to participate. In other words, the TCI process cannot be equitable if the equity advisory bodies themselves lack robust representation from disproportionately affected communities and lack decision-making power to meaningfully shape the allocation of TCI funds.

A. Create Bodies with Majority Diverse, Representative Membership and Decision-making Authority

The MOU language which states that equity advisory bodies are “composed of diverse stakeholder groups, including residents of underserved and overburdened communities,” should be revised to specify that the ***majority* of seats be filled with representative residents from disproportionately affected communities or who are part of a disproportionately affected population**. In other words, community residents should both live directly in these communities and represent the demographics that qualify those communities as disproportionately affected. Additionally, these bodies should include **at least 2-3 seats that represent each of the following categories: environmental health, access and mobility, low-income, and workers/labor**. These bodies should develop specific guidance to ensure transparency and accountability to the communities they represent.

States must establish equity advisory bodies that reflect disproportionately impacted communities and peoples, not committees that are politically appointed with each new administration. Equity advisory body membership should be determined through an independent selection process. **Community-based organizations and groups that serve these disproportionately impacted communities and populations should help nominate or appoint who sits on equity advisory committees.** These steps are necessary in order to limit the influence that governors' political whims may have on the process and ensure that these bodies represent the voices of communities who will be most heavily affected by the TCI program.

In order to promote equitable processes, these bodies must be able to do more than just make recommendations that could be put on a shelf. They must also have significant *agency* to influence the TCI program. That means **these bodies should have the power to define disproportionately affected communities, develop metrics that measure whether the TCI program directly leads to equitable community outcomes, and shape the request for proposal (RFP) process and accompanying proposal evaluation criteria**. The MOU should explicitly name improved air quality or reduction in air pollution as one of the "direct and meaningful benefits" that equity advisory bodies are charged with developing evaluation metrics for. Including defining air quality metrics as part of the advisory body's charge will give that body agency to oversee the installation of air quality monitors before the program begins.

These details regarding the membership, selection, and decision-making authority of the equity advisory committees should be described in the MOU and not wait to be decided at the state level.

B. Build Capacity For Community Based Organizations and Community Members to Actively Participate

The TCI process should also engage and promote the leadership of community based organizations that either are directly based in or work most closely with disproportionately affected communities. A percentage of TCI investments should either be distributed by or to community organizations directly. Community organizations should receive capacity grants to develop their own proposals for TCI funds and for community outreach and education on the TCI program. Therefore, TCI should fund technical assistance to help community based organizations apply for program funds. California has established the Transformative Climate Communities program (AB 2722) which gives community-based organizations direct grants and capacity to conduct meaningful community engagement, develop their own community-led proposals, and receive technical assistance.

III. Complementary Policies

To address the concerns we have heard from environmental justice communities, the MOU must include language that commits TCI jurisdictions to enacting, during the adoption of the TCI program and not at a later date, a strong complementary policy that would guarantee significant localized emission reductions and net positive environmental and economic benefit in disproportionately polluted communities. California's Community Air Protection Program (AB 617) serves as an example. AB 617 requires states to install fenceline air quality monitors and provide data transparency, requires industry to adopt cost-effective best available technologies, and work with communities to establish comprehensive air quality mitigation targets and plans.

IV. Workforce Development

We also encourage TCI decision-makers to incorporate language in the MOU that requires jurisdictions to commit to strong labor and workforce development standards. The TCI program must promote high road, domestic jobs with fair pay, good benefits, and union neutrality. The program should also support workforce development and job training, especially for workers affected by the transition to cleaner vehicles, under-employed communities, and other vulnerable communities, including people with disabilities and formerly incarcerated individuals. Additionally, the program should include supplier diversity goals to encourage proposals from businesses owned by women, minorities, and veterans.

V. Structuring the Carbon Market to Protect Families and Communities

We urge you to set a strong cap at 25% emissions reductions by 2032. Your modeling projections show that this would mean a 35% dedicated investment fund would generate up to $2 billion a year for the region, and a 50% dedicated investment would lead to over $3 billion a year. A lower cap level will generate significantly fewer funds for re-investment.

We applaud you for setting an allowance floor price to ensure program funds are generated at predictable levels. However, we believe the compliance period should be shortened to one year and the credit banking should be time-limited to the following compliance period. Banking credits over long periods of time is a way for polluters to profit off of allowance trading or avoid paying higher costs as the program accelerates.

The program should also strictly limit offsets, including prohibiting any offsets from being awarded to projects located outside of the region. Offsets are difficult to measure and enforce. They can perpetuate unequal concentrations of pollution. In other cap-and-trade programs, the prevalence of offsets has led to the majority of benefits going to areas outside the region[1].

The MOU should require participating jurisdictions to place all TCI proceeds in a "lock box" in order to prevent diversion into general funds. If TCI jurisdictions misappropriate program funds toward other uses, they should be subject to penalties to be specified in the MOU language.

Crucially, in order to ensure that the TCI program leads to net positive economic benefits for low-income families, the MOU must commit TCI jurisdictions to protecting low-income drivers

[1] https://news.berkeley.edu/2018/07/10/californias-cap-and-trade-air-quality-benefits-go-mostly-out-of-state/

from the potential burden of increased fuel prices if fuel distributors pass on allowance costs. To achieve this goal, the TCI program can apply funds toward social services for low-income families, such as the Low-Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP), free transit fare passes or free toll passes, or direct rebates or prebates for increased transportation fuel costs.

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In conclusion, TCI jurisdictions have a responsibility to develop a MOU that puts strong equity provisions in place. The proposed commitments that TCI leaders announced recently need greater strength and specificity in order to inspire greater confidence in the TCI program amongst advocates, community members, and the public alike. These commitments are fundamental if participating jurisdictions aim to begin addressing the decades of systemic racism, disinvestment, and toxic pollution exposure that disproportionately affected communities have faced historically.

The time is now to demonstrate your commitment to communities that have been hit worst by COVID-19, racial injustice, and the economic downturn and who will only continue to suffer disproportionately from the impacts of climate change and air pollution.

Sincerely,

Eleanor Fort

Eleanor Fort, Deputy Director at Green For All Dream Corps

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