necsema
New England Convenience Store & Energy Marketers Association

February 28, 2020

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

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

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

TCI Investment and Equity Workgroup: 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

RE: NECSEMA Comments on the Transportation Climate Initiative (TCI) Memorandum of Understanding (MOU)

The New England Convenience Store & Energy Marketers Association (NECSEMA) represents single site convenience store and gasoline retailers, chain convenience store and gasoline retailers, independent transportation fuel marketers, and the businesses which supply them. NECSEMA members own, operate and/or supply most of the fuel at over 8,500 convenience stores and stations in New England, which employ approximately 120,000 people, and account for over $32 billion in sales annually. NECSEMA greatly appreciates the opportunity to review and comment on the Draft Memorandum of Understanding dated December 17, 2019.

There isn't any question carbon reduction is important. Nor are there any questions certain states, including Massachusetts, are statutorily bound to make greenhouse gas (GHG) emission reductions by dates certain. But reducing GHG emissions does not occur in a vacuum and will drastically alter how people conduct daily life and dramatically impact personal finances. Therefore, it is imperative we (a) determine this is indeed the best course of action and (b) it is perfectly designed. Too many people and businesses are at stake to proceed unless "yes" is the answer to both these questions.

Pressure on state legislatures from laws like the Massachusetts Global Warming Solutions Act of 2008 (GWSA) to *get something done* to meet statutory targets is truly unfortunate. Rather than taking ample time to get it right, we must now get something done – whether all the details have been worked out or not. Make no mistake, if TCI is to be implemented it is absolutely critical it be done correctly immediately out of the gate as there isn't any room for error.

NECSEMA represents wholesale motor fuels distributors which is the regulated community under TCI. Therefore, we have been focused on the mechanics and the regional nature of TCI while most headlines have focused on the cost to motorists. We have met with the Massachusetts Department of Environmental Protection representing TCI numerous times and have collaborated with our counterparts in other states who are meeting with the respective jurisdictional agencies. It is clear all agencies are working hard to create TCI's architecture. It is also clear they don't have the answers to fundamental and significant questions, and we have little confidence they will have them by the Memorandum of Understanding (MOU) deadline. Because of the seriousness of these unanswered questions, we have serious problems with TCI. This is not a program to only have partially figured out prior to adoption, yet that is where we are with only a few months remaining.

Please accept our comments and consider NECSEMA a unique and valuable resource. It is more important to our members that this be done correctly, if it is to be done at all, than to be marginalized as an outright opponent.

1) The Policy Framework and MOU released by TCI officials **<u>lack fundamental programmatic details</u>**. TCI has not provided adequate details on many fundamental components described under the program that will allow for thoughtful analysis of the how this program will impact the supply flows, wholesale purchases, the distribution and sale of motor fuels to retail outlets across the TCI region. Only conceptual details are provided in the in the policy framework and the draft MOU released for public comment. More hard work by TCI officials is needed on its modeling assumptions, variables, and parameters used to generate the emission reduction scenarios; its Model Rule; regulated entity definitions; auction procedures; auction price setting parameters; 3rd party auction administration costs; consumer and regulated entity compliance costs; and impacts on state fuel supplies and marketplace transactions.

For example, what will happen when a fuel supplier cannot obtain enough allowances either due to tightening caps on emissions or their unavailability during a compliance period? Will stations be forced to ration gasoline, or worse turn away customers and stop selling fuel until new cap space is created under the next compliance period? This is one example of many concerning the lack of programmatic details the MOU doesn't answer. Waiting until the model rule gets drafted to start exploring and answering these types of programmatic and implementation issues is far too late in the process and must be addressed upfront prior to finalizing the MOU.

A proposed program with this remarkable magnitude and significant consequence needs to transparently demonstrate its efficacy in its totality as a matter of sound public policy, but most importantly it will be needed to compel and persuade the individual, business, and government commitments that will be needed for its successful implementation. More hard work is needed by TCI officials to further flesh-out and release an updated proposal in order to determine whether this approach is truly worthwhile from a marketplace, emission reduction, and cost perspective.

2) In the public debate surrounding this program, especially in the media, confusion exists over whether regulated entities will pass the costs of purchasing allowances onto consumers who buy motor fuels. **<u>To be 100% clear, and eliminate any confusion, these costs, and the costs necessary to comply with this program by regulated entities will be reflected in retail motor fuel prices that consumers pay.</u>**

3) Only Massachusetts appears ready and willing to sign the TCI MOU. However, NECSEMA cannot support an approach to reduce GHG emissions that **<u>no longer resembles a regional approach</u>**. It is unclear whether delaying this program implementation will attract more states, even if more time would allow TCI officials to further develop and share publicly a more detailed plan. One state, or even several non-contiguous states, will not yield meaningful reductions in GHG emissions from the transportation sector. Rather this will only exacerbate the inequities that consumers will experience between participating and non-participating states, and disrupt the marketplace relating to how fuels are purchased by wholesalers, where they become stored, and where they become sold within the region.

4) Without a regional approach, **participating states will be at a significant competitive disadvantage to bordering states that are not participating**. For example, New Hampshire Governor Sununu's position is clear that he will not support NH joining the TCI program. Presently, NH enjoys a 3-cent gas tax advantage over MA. *(Note – the Massachusetts House of Representatives on 2/26/20 proposed a 5-cent and a 9-cent excise tax increase on gasoline and diesel, respectively)*. Once the TCI CO2 allowance fee starting at 17-cents per gallon gets added and rises annually, Massachusetts drivers living in border towns, perhaps two or three deep from the border, will likely fill up in NH to save at least 20-cents per gallon in year one, and while they visit they will also make other purchases too, further contributing to the loss of goods and services by Massachusetts businesses and lost tax revenue collections. Truckers seeking similar cost-savings will also fill-up on diesel across the border to save on fuel costs. This expected behavior will also distort the combustion and GHG emission profiles for both states.

5) **<u>Unelected officials representing participating states</u>** will set GHG emission budgets for every year of the program until 2032, and in the Model Rule set fee increases, set auction prices, and operate the program. These fee increases will operate like an automatic annually increasing gas tax that will have the same regressive nature and effect on people who can least afford to pay them. As a public policy matter, we believe any revenue raising programs based on consumption of motor fuels should not be set by unelected officials nor should they automatically increase annually without legislative and executive branch participation and concurrence. Motor fuel prices are set by open commodity markets and transparent competitive retail landscapes. They rise and fall based on international, national, and local market drivers. TCI officials, very likely without any knowledge of these markets, will influence these healthy markets unencumbered. How will personal or programmatic bias play a role, and what consequences will we be subject to as a result?

6) Despite numerous efforts to educate TCI officials on the complexity of the petroleum fuel supply marketplace, TCI officials appear intent on discounting our recommendation to **use state licensed distributors instead of "position holders" and "enterers" as regulated entities**. This is unfortunate in that the entities chosen by TCI officials will not be able to easily and accurately track where every gallon eventually gets sold, transported, or combusted. There remains considerable uncertainty over who will be obligated to purchase and hold allowances. Currently state licensed fuel suppliers for decades have been required to pay excise tax on every gallon of motor fuel sold in their respective state. The reporting and collection of these excise taxes have been seamlessly implemented for decades and all reporting and payments are performed electronically on a monthly basis.

TCI's position appears to be driven by a desire to minimize the number of regulated entities and achieve administrative efficiencies for the future 3rd party entity responsible for overseeing auction allowances, auction accounts, and receiving payments from regulated entities. NECSEMA believes this approach is short-sighted and it will place a significant burden on position holders and enterers to recreate a reporting and gallonage tracking system that will accurately reflect the gallons combusted in a state. It will also preclude state licensed distributors who may advert disadvantage by being excluded from the auction process and holding allowances. Most of the regulated community will not be *position holders* but will have the price of the fuel they buy and resell subject to market speculators. Sure, they could participate in the paper-market as a hedge strategy, but it is far fairer to allow them to participate in the markets driving their daily prices. By using position holder and enterer definitions it will require extensive changes to standard contractual documents concerning the sale of motor fuels including the use of exchange agreements between wholesalers. These standard practices and agreements have been relied on routinely across the country to keep the fuel supply marketplace stable and fungible. Why fix what isn't broken especially when the existing system is superior.

7) Lastly, TCI's regional cap and invest program included three scenarios chosen to reduce greenhouse gas emissions by 20%, 22.5%, and 25% of 1990 levels, with a corresponding surcharge on motor fuels of $.05, $.09, and $.17 cents per gallon. TCI officials stated that GHG emissions, without implementing a regional approach and relying on national fuel economy standards alone will achieve emission reductions up to 19%, and by contrast only an additional 1% to 6% reduction will be gained by implementing the program. **The lack of meaningful reductions, especially given the costs (i.e., $5.8 billion collected over ten years in MA alone) may be one of the reasons for the breakdown in interest from all states for TCI's regional approach.** Based on the proposed emission reductions scenarios to be achieved during the first ten years its implementation appears more focused on revenue generation and investment rather than on achieving meaningful GHG reductions at least cost.

Thank you for your thoughtful consideration of our comments on this important matter.

Respectfully submitted,

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