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February 28, 2020

Transportation & Climate Initiative of the Northeast and Mid-Atlantic States

Dear Chair Kathleen Theoharides and Vice-Chair R. Earl Lewis, Jr.:

Thank you for the opportunity to comment on the Transportation & Climate Initiative (TCI) Draft Memorandum of Understanding (MOU), which was released on December 17, 2019. The National Consumer Law Center (NCLC) and undersigned organizations submit these comments as part of the public input process to develop a final MOU and Model Rule for states that will participate in TCI. These comments will focus on the need to prominently incorporate equity principles, opportunities for stakeholder involvement, and mitigation of financial hardship into the MOU and ultimately into the statutes and regulations that implement TCI.

We urge states to commit to prioritizing the needs of their low-income residents and residents of environmental justice communities by basing program design on stakeholder input, taking measures to hold low-income households harmless from financial impacts of TCI programs, and dedicating at least half of TCI revenues to low-income, environmental justice and vulnerable households and communities. Equitable investment and program design principles should be described with the same level of specificity as the other, more technical aspects of the TCI program. To this end, the final MOU and Model Rule should more fully incorporate the states' commitments to equitable implementation and specific measures to fairly allocate benefits to low-income, moderate-income, and other vulnerable consumers.

Equity Baseline

This shared commitment to equity by the TCI states could be expressed by including an "Equity Baseline" in the MOU. States signing on to the MOU would commit to these minimum equity goals, with the option of tailoring investment programs to meet the needs of residents and communities in the different states, and developing programs that reach beyond the minimum Equity Baseline goals.

During the development of the TCI proposals, stakeholders and the TCI participants have emphasized the importance of equity and a concern for the economic well-being of struggling families. Including these commitments in the MOU in a clear, bright-line manner, would publicly confirm that states are committing to address financial impacts at the outset. Much of the public debate about TCI has focused on possible financial impacts – clearly this is an issue that the public cares about, and therefore needs to be proactively addressed.

While many parties agree that the benefits of reduced transportation emissions would broadly help residents in the region, low-income, environmental justice and moderate-income households will realize their fair share of these benefits only if TCI programs are implemented fairly. Further, the TCI investments must be designed with the intent to mitigate regressive impacts that could stem from adding costs that will ultimately be reflected in the price of gasoline and diesel fuel. Equity for low-income households and environmental justice communities is particularly important since these households already struggle with energy affordability and would be disproportionately affected by unmitigated financial burdens, and these households also face the present reality and future risk of disproportionately harmful impacts from air pollution and climate change.

An Equity Baseline would simply provide a clear commitment to take certain measures to protect low-income and moderate-income households and communities. Measures should include:

- Establishing a minimum percent of TCI revenues to be allocated specifically to serve low-income and moderate income households and communities.[1] We recommend that at least 50% of total net benefits are dedicated specifically for these purposes, with at least 40% of total net benefits dedicated solely to low-income households (including low-income residents of environmental justice communities and other disadvantaged communities).
- Protecting those dedicated TCI revenues from being allocated for other purposes.
- A commitment to working with low-income and moderate income stakeholders, to develop programs and monitor implementation. The communities that will be impacted the most by TCI should guide the development of programs designed to mitigate impacts and address the existing needs of these communities.
- Resources should be distributed in proportion to economic burden – low-income households and communities should be prioritized.
- Resources should be delivered in a timely manner, to address financial impacts as they arise.
- Efficient distribution of resources will preserve revenues, and where appropriate should be done by leveraging existing program mechanisms and public benefit programs.

<u>Further Suggested Changes to MOU</u>

Additional changes to the text should be made to reinforce the states' shared commitment to equity. For instance, in the sections of the MOU resolutions that discuss the use of resources from the cap-and-invest program, the MOU should clarify that funds for programs to benefit low-income households should be protected from being reallocated in state budgets for other

[1] For example, California Climate Investments under the California Cap-and-Trade program allocates a percentage of revenues for programs to benefit low-income and disadvantaged communities.

purposes. The resolutions should also address the importance of developing these programs in consultation with members of the affected communities, and ensuring participation of community members and stakeholders in ongoing evaluation and governance of these programs. If benefits are to "flow equitably to communities that are underserved …," states should commit from the outset to program design that will facilitate equity.

In the Appendix to the Draft MOU, there is an opportunity to better incorporate equity into the very definition of the TCI program. In this definition, we recommend adding the following language (italicized and underlined):

(1) "TCI Program" shall mean the regional cap-and-invest program to reduce carbon dioxide ("CO_2") emissions from transportation and to invest proceeds from the program in measures designed to further reduce CO_2 emissions and provide incentives for low-carbon and more resilient transportation, <u>*while equitably allocating benefits and costs for low-income and disadvantaged communities*</u>.

In part 3 of the Appendix, titled "Investments and Equity," several additions could further emphasize the central role of equity concerns in the design of the TCI program. For instance, please consider the following language (italicized and underlined):

A. Investment of Proceeds from Auction of Allowances. Each Participating Jurisdiction shall invest the proceeds from the auction of allowances as determined appropriate by each Participating Jurisdiction to achieve TCI Program goals<u>*, in a way that is consistent with the Equity Baseline*</u>. Participating Jurisdictions may identify shared or common priorities for investment of proceeds <u>*in partnership with affected communities*</u>, including to maximize the efficiency of the regional program and to ensure greater benefits, and to achieve CO2 emission reductions and other related TCI Program goals, such as improved air quality, public health, resilience, <u>*improved economic and transportation security for low- and moderate-income households and environmental justice communities*</u>, and more affordable access to clean transportation alternatives.

Further, these commitments should be included in the Model Rule itself, as well as the MOU.

<u>Program Design Considerations</u>

Although the draft MOU is a broad statement that does not contain details about revenue-funded programs, the following factors must be considered as programs are designed, if TCI is to be implemented equitably.

Financial impacts must be mitigated for low-income and moderate income households. Mitigation should be accomplished by creating a mix of programs and measures that reflect the needs of diverse communities and regions within each state. Such measures should also be designed to address individual or household financial impacts, as well as community-wide and statewide impacts.

Financial mitigation measures for individuals and households should include some or all of the following:

- Direct cash rebates and/or refundable tax credits for low-income households.

  Direct rebates would particularly help to address concerns about financial impacts on low-income rural residents who currently must rely on gasoline-fueled vehicles for transportation and do not have access to public transit. To create a rebate program, a state could allocate a significant percentage of TCI revenues for this purpose, dividing that amount among low-income households in the state (identifying these households using LIHEAP eligibility or some other eligibility standard that is already in place in that state), and provide checks directly to low-income households on an annual basis or more frequently. These rebates must not be counted as income for these households, to avoid disrupting access to other needed services and benefits such as Medicaid or the Supplemental Nutrition Assistance Program (SNAP).
- EV ownership incentives

  Rebates or refundable tax credits for the purchase of used EVs could help low-income and moderate-income drivers who seek to buy battery electric vehicles or plug-in hybrid EVs, if structured in a way that addresses the concerns and needs of these drivers. Consumers should have access to incentives to buy used EVs, within a moderate price range. The rebates must be large enough to be useful for low-income drivers. Incentives should be structured as a point-of-sale rebate or refundable tax credit, and should not be counted as income for benefit eligibility determinations. California and Oregon have both adopted enhanced EV rebate programs for low-income residents, and these programs could provide a model for the development of similar programs to be funded with TCI revenues.
- Zero-interest or low-interest EV financing

  States could opt to uses revenues to provide zero interest auto financing to low-income purchasers, and low-interest financing for moderate income purchasers. Nonprofit car ownership programs, such as those described in NCLC's report *Shifting into Gear: A Revised Guide to Creating or Improving a Car Ownership Program*, may provide a model for state programs.
- Transit passes

  A portion of revenues could be used to provide free or deeply discounted bus passes and other transit passes for low-income households.
- EV infrastructure

  Some low-income communities may be interested in expanding access to EV charging within their communities. States could work with these communities, as well as utilities and companies that install charging stations, to offer options such as free or low-cost charging in these communities, or monthly credits for the cost of charging.

Community-wide and statewide measures to mitigate financial impacts could include the following:

- Electrification of public transit

  Public transit is available to large numbers of low-income and moderate income residents of the TCI states. While public transportation does not reach all areas of every state, urban, suburban, and even some rural regions are served by some form of public transportation. The benefits of electrifying public transportation have been described elsewhere, but include the potential for reduced air pollution, improved public health, reduced noise, greater transportation reliability, and lower costs over the life of the vehicle. Cost-benefit analyses of electrification of public transit and expansion of existing transit should be considered and additionally analyzed through consideration of the burdens and benefits distributed between and among a state's urban, suburban and rural communities.

- Electrification of school buses

  School buses are used across nearly all rural, urban and suburban regions of the TCI states. Electrification of school buses would likely benefit communities throughout each state. TCI jurisdictions should prioritize low income communities for replacement of diesel buses with electric buses.
- Electrification of other transit used by low-income and moderate-income communities

  Electrification should extend to other types of shared transportation used by low-income and moderate-income communities. These could include services such as paratransit services for people with disabilities, transit services for older adults, transportation for children in Head Start programs, and similar services.
- Affordable electric vehicle sharing programs located in disadvantaged communities

Other program design considerations should include the following:

- Ongoing statewide monitoring of the financial impacts of TCI should be included as part of an annual assessment process, as should an ongoing assessment of the benefits conferred upon low- and moderate-income and environmental justice communities.
- Flexibility should be built into the suite of programs, so that changes can be made based on ongoing assessments and community input.

Governance

TCI participating states and the Regional Organization should adopt governance mechanisms that are informed by the experience of affected communities, and that have sufficient flexibility to allow for adjustments and policy changes.

The TCI Regional Organization should regularly solicit input from low-income stakeholders. State oversight commissions or other governing entities must include representation from urban and rural low income communities. All entities established to administer resources to implement TCI programs and policies should follow clearly defined procedures for thorough and transparent public reporting of all transactions and uses of funds. Evaluations of program outcomes should be conducted regularly and reported to the public annually.

Equity must be central to the adoption and implementation of TCI. Therefore, the commitment to address the needs of low- and moderate-income households and communities, and environmental justice communities, and to avoid worsening financial and environmental hardships already experienced within these communities, must be a prominent part of the commitment made by states in the Memorandum of Understanding and the Model Rule.

If you have questions regarding these comments or need additional information, please contact Jenifer Bosco, National Consumer Law Center, at jbosco@nclc.org.

Respectfully submitted,

National Consumer Law Center, on behalf of our low income clients

Pennsylvania Utility Law Project, on behalf of our low income clients

Public Citizen

Public Utility Law Project of New York