Climate Change Statutes

STATE OF NEW HAMPSHIRE

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Current through the 2009 Legislative Session of the New Hampshire General Assembly.

§ 125-O:19. Statement of Purpose and Findings.

The general court finds that global climate change is a significant environmental problem which could already be contributing to changes in New Hampshire average temperatures, frequency of extreme storm events, number of days with snow cover, timing of spring river flows, and date of spring blooms. Recent studies and scientific evidence indicate that global climate change is caused by a buildup of natural and manmade greenhouse gases in the atmosphere. Carbon dioxide (CO_2) is a significant greenhouse gas that contributes to global climate change. Therefore, the purpose of this subdivision is to reduce greenhouse gas emissions resulting from energy use in New Hampshire.

§ 125-O:20. Definitions

In this subdivision:

I. "Affected CO_2 source" means any source with one or more fossil fuel-fired electricity generating units having a nameplate rated capacity equal to or greater than 25 megawatts.

II. "Budget allowances" means those RGGI allowances comprising the state annual budget for CO_2 emissions specified in RSA 125-O:21, II.

III. "Commission" means the public utilities commission.

IV. "Compliance period" means a 3 calendar year time period, unless extended one calendar year by a stage-2 trigger event. The first compliance period is from January 1, 2009 to December 31, 2011, unless a stage-2 trigger event extends the first compliance period to December 31, 2012. Each subsequent sequential 3 calendar year period is a separate compliance period subject to a one-year extension if a stage-2 trigger event occurs during the compliance period. The compliance period shall never be longer than 4 calendar years.

V. "Consumer price index" or "CPI" means the United States Department of Labor, Bureau of Labor Statistics unadjusted consumer price index for all urban consumers for the United States city average, for all items on the latest reference base, or if such index is no longer published, such other index as the department determines is appropriate. The CPI for any calendar year is the 12-month average of the CPI published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

VI. "Department" means the department of environmental services.

VII. “Early reduction allowances” means allowances provided to affected CO_2 sources for eligible projects undertaken which have the effect of reducing emissions at the affected CO_2 source by an absolute reduction of emissions during calendar years 2006, 2007, and 2008, from a baseline approved by the department, through emission rate improvements or permanently reducing utilization of one or more units at a source.

VIII. “International trading programs” means international programs approved by the department such as the European Emission Trading Scheme (ETS) and offset credits established under the Clean Development Mechanism (CDM) to be used to obtain equivalent RGGI offset allowances pursuant to RSA 125-O:22, II(b).

IX. “Market settling period” means the first 14 months of any compliance period.

X. “Offset allowances” means allowances issued to projects determined to be eligible by the department undertaken outside of the electric power sector to reduce CO_2 or CO_2 equivalent emissions.

XI. “PSNH” means Public Service Company of New Hampshire or any successor to the company's public utility franchise.

XII. “Regional greenhouse gas initiative” or “RGGI” or “RGGI program” means the program to implement the memorandum of understanding (MOU) between signatory states, dated December 20, 2005, as amended on August 8, 2006 and April 20, 2007, and the corresponding model rule to establish a regional CO_2 emissions budget and allowance trading program for emissions from fossil fuel-fired electricity generating units.

XIII. “Regional organization” means a non-profit organization formed by the signatory states to RGGI to provide technical and administrative assistance for such things as: emissions and allowance tracking, offsets development and implementation, allowance market monitoring, and data collection. The organization shall have no regulatory or enforcement authority.

XIV. “Retire” means submitting a RGGI allowance to the department for compliance or other purpose or retaining a RGGI allowance by the department such that the allowance may never be sold or otherwise used again.

XV. “RGGI allowance” means a limited authorization to emit one ton of CO_2 issued by the department or other RGGI signatory state in accordance with this subdivision or the RGGI program and shall include budget allowances, offset allowances, and early reduction allowances.

XVI. “Stage-one trigger event” means a 12-month rolling average CO_2 allowance price that is equal to or greater than $7 in 2005 dollars, such figure adjusted annually on January 1 of each calendar year according to the consumer price index, but only when such a rolling average price occurs in any 12-month period beginning after the end of the market settling period.

XVII. “Stage-2 trigger event” means a 12-month rolling average CO_2 allowance price that is equal or greater than $10 in 2005 dollars, such figure adjusted annually on January 1 of each calendar year according to the consumer price index plus 2 percentage points, but only when such a rolling average price occurs in any 12-month period beginning after the end of the market settling period.

§ 125-O:21. Carbon Dioxide Emissions Budget Trading Program.

I. The department shall establish and enforce a CO_2 emissions budget trading program consistent with this subdivision that shall be in substantial accordance with the RGGI program.

II. The program shall include a statewide annual budget allowance of 8,620,460 tons during the years 2009 through 2014. Beginning January 1, 2015 and ending December 31, 2018, the budget shall decline by 215,512 tons per year, resulting in a 10 percent total reduction from the initial budget, after which it shall remain unchanged until further legislative action.

III. The department shall make available for sale at one or more auctions all of the budget allowances for a given year, except for those granted or reserved under RSA 125-O:22, VI, 125-O:24, and 125-O:25. The department may also make available for sale at one or more auctions a portion of future year budget allowances. Such auctions may be conducted in coordination with other states. Revenues from the sale of allowances shall be deposited in the greenhouse gas emissions reduction fund established under RSA 125-O:23.

IV. The department shall grant to affected CO_2 sources early reduction allowances, at no cost, for projects eligible to receive such allowances.

V. The department shall grant offset allowances to owners of eligible offset projects located in New Hampshire.

VI. The department and the commission shall report on an annual basis to the air pollution advisory committee under RSA 125-J:11 and the legislative oversight committee on electric utility restructuring under RSA 374-F:5, on the status of the implementation of RGGI in New Hampshire, with emphasis on the prices and availability of RGGI allowances to affected CO_2 sources and the trends in electric rates for New Hampshire businesses and ratepayers. The report shall include but not be limited to:

(a) The number of allowances sold in the RGGI program and the type of entities purchasing allowances;

(b) The number of unsold allowances in the RGGI program;

(c) The available price data of allowances from the regional auction and secondary markets;

(d) Market monitoring reports;

(e) The CO_2 emissions by affected source, state, and RGGI region;

(f) The spending of revenues from auction allowances by each RGGI state; and

(g) The allocation and spending of the greenhouse gas emissions reduction fund, including associated energy savings and emissions reductions.

(h) The status of any proposed or adopted federal CO_2 cap and trade program, the impact on New Hampshire's RGGI program, and recommendations for any proposed legislation necessary to accommodate the federal program.

VII. The department may establish and enforce the CO_2 emissions budget trading program in cooperation and coordination with other states or countries that are participating in regional, national or international CO_2 emissions trading programs with the same or similar purpose including:

(a) Entering into any agreement or arrangement with the representatives of other states, including the formation of a for-profit or non-profit corporation, any form of association or any other form of organization, in this or another state; and

(b) Participating in any such corporation, association, or organization, and in any activity in furtherance of the purposes of this subdivision, in any capacity including, but not limited to, as directors or officers.

VIII. Any actions taken under this subdivision by the department or the commission shall not constitute a waiver of sovereign immunity and shall not be deemed consent to suit outside of New Hampshire.

§ 125-O:22. Compliance; Permit Required.

I. Each affected CO_2 source shall obtain and retire a quantity of RGGI allowances equivalent to its CO_2 emissions from fossil-fuel fired generation for each compliance period.

II. An affected CO_2 source may use offset allowances for up to 3.3 percent of its compliance obligation, except that in a given compliance period:

(a) If a stage-one trigger event occurs, an affected CO_2 source may use offset allowances for up to 5 percent of its compliance obligation; and

(b) If a stage-2 trigger event occurs, the compliance period shall be extended to 4 years and an affected CO_2 source may use offset allowances for up to 10 percent of its compliance obligation, including offset allowances or credits permanently retired from eligible international trading programs, as approved by the department.

III. Purchasers or acquirers of RGGI allowances may retain unused RGGI allowances without limit. Affected CO_2 sources may use retained RGGI allowances in future compliance periods.

IV. No person shall operate an affected CO_2 source without a temporary or operating permit issued by the department in accordance with this chapter and RSA 125-C. An affected CO_2 source that is in operation upon the effective date of this subdivision, shall submit a complete application for a permit modification to the department no later than January 1, 2009. Applications for permits shall be upon such forms, and shall include such information as the commissioner requires under rules adopted pursuant to RSA 541-A. The commissioner shall act upon a permit application within a reasonable period of time.

V. In addition to the provisions set forth in RSA 125-O:7, an affected CO_2 source that fails to obtain and retire sufficient RGGI allowances during a compliance period, in accordance with RSA 125-O:22, I, shall obtain and surrender 3 RGGI budget or early reduction allowances in the next compliance period for each RGGI allowance that the affected CO_2 source was short in obtaining compliance.

VI. Budget allowances shall be provided to affected CO_2 sources as needed and upon request for CO_2 emissions in periods of operation during which an Operating Procedure 4 capacity deficiency alert is in force as established by the ISO New England Inc. The department shall reserve from auction for such emergency conditions a quantity of allowances equal to one percent of the annual budget allowances which shall be the maximum made available in a given year under this paragraph. The department shall directly sell these allowances to the affected CO_2 sources at the last regional auction clearing price. Those allowances reserved but not sold in a given year as provided in this paragraph shall be auctioned the following calendar year.

VII. Upon recommendation of the commission, the governor with consent of the executive council may declare an emergency supply crisis, and the governor and council may allow affected CO_2 sources to forgo strict compliance with paragraph I for a given compliance period and be given reprieve from any associated penalties, provided that those affected CO_2 sources obtain and retire an additional number of allowances during the next compliance period equivalent to any shortfall in allowances that may have occurred for the compliance period during which the declared emergency was made.

VIII. A distribution company may recover the actual, prudent and reasonable costs of investments in carbon emissions reduction or capture technologies through its default service charge pursuant to RSA 369-B:3, IV(b)(1)(A), provided that the commission first determines that the investment is in the public interest.

§ 125-O:23. Greenhouse Gas Emissions Reduction Fund.

I. There is hereby established a greenhouse gas emissions reduction fund. This nonlapsing, special fund shall be continually appropriated to the commission to be expended in accordance with this section. The state treasurer shall invest the moneys deposited therein, as provided by law. Income received on investments made by the state treasurer shall also be credited to the fund. All programs supported by these funds shall be subject to audit by the commission as deemed necessary. A portion of the fund moneys shall be used to pay for commission and department costs to administer this subdivision, including contributions for the state's share of the costs of the RGGI regional organization. Any new employee positions to be paid for using fund moneys shall be approved by the fiscal committee of the general court pursuant to RSA 124:15. The commission shall transfer from the fund to the department such costs as may be budgeted and expended, or otherwise approved by the fiscal committee and the governor and council, for the department's cost of administering this subdivision.

II. Fund moneys shall be used to support energy efficiency, conservation, and demand response programs to reduce greenhouse gas emissions generated within the state, which may include programs proposed and administered by private entities, as well as by the department, the commission, and other state and local governmental agencies. Such programs may include, but not be limited to, improving the electrical and thermal energy efficiency of New Hampshire's residential housing and commercial building stock via weatherization, energy auditing, energy efficiency related work force training and development, revolving loan funds for efficiency related investment, related industrial process and control systems, integration of passive solar heating and ventilation systems, and efforts to increase adherence to energy related building and electrical codes. These funds shall not be transferred or used for any other purpose.

III. At least 10 percent of the moneys shall be used to assist low-income residential customers, as defined by the commission and in a manner compatible with other low-income programs administered by the commission, to reduce total energy use including heating fuels and to foster the development and retrofitting of highly efficient and affordable housing.

IV. Notwithstanding paragraphs I, II, and III, all amounts in excess of the threshold prices listed below for any allowance sale made prior to January 1, 2016 that are deposited in the fund shall be rebated to all electric ratepayers in the state on a per-kilowatt-hour basis, in a timely manner, to be determined by the commission. For the following years listed, the threshold price shall be:

(a) 2009, $6/ton.

(b) 2010, $8/ton.

(c) 2011 and 2012, $9/ton.

(d) 2013 and 2014, $12/ton.

(e) 2015, $15/ton.

(f) After 2015, no threshold price.

V. In the event that the commission finds that a significant amount of unencumbered dollars have accumulated in the greenhouse gas emissions reduction fund, and are not needed for program purposes, the commission shall refund such unencumbered dollars to ratepayers in a timely manner.

VI. All penalties collected pursuant to this subdivision shall be deposited in the greenhouse gas emissions reduction fund.

VII. In selecting programs to be funded under this section the commission shall consider, at a minimum, the extent to which the proposed program can be expected to:

(a) Reduce greenhouse gas emissions from all fuels used to provide electricity, heating, and cooling in New Hampshire;

(b) Be cost-effective;

(c) Reduce New Hampshire's peak electric load;

(d) Promote market transformation, innovative technology and economic development, and energy cost savings; and

(e) Otherwise be consistent with the public interest and the purposes of this subdivision.

VIII. The commission may enter into agreements for the implementation of programs under this section that are contingent, in whole or in part, on future proceeds from budget allowance auctions held within 12 months of the date such agreements become effective.

§ 125-O:24. Conversion of Allowances.

I. PSNH shall receive credit for allowances received prior to the inception of the RGGI program in the manner described in this section.

II. PSNH shall submit all necessary documentation to the department by January 30, 2009 relative to compliance with RSA 125-O:3, III(d).

III. PSNH shall submit all necessary documentation to the department within 90 days of the effective date of this paragraph relative to RSA 125-O:5, III.

IV. As soon as practicable after the start of the program, the department shall determine the number of allowances previously allocated to PSNH under RSA 125-O:3, II or awarded to PSNH under RSA 125-O:5, III, that remain in PSNH's account of CO_2 allowances held by the department as banked allowances, after the company has completed compliance with the emissions cap of RSA 125-O:3, III (d) for the 2007 and 2008 calendar years.

V. At the distribution rate specified in paragraph VI, the department shall grant to PSNH budget allowances, at no cost, equivalent to the total of the banked allowances pursuant to paragraph IV minus the early reduction allowances granted to PSNH under RSA 125-O:21, IV. PSNH shall be obligated to apply for early reduction allowances for any eligible projects it has undertaken.

VI. The department shall grant budget allowances pursuant to this section as expeditiously as possible, but in no event shall the amount of budget allowances granted pursuant to this section total more than

2.5 million allowances per year in years 2009, 2010, and 2011, and 1.5 million allowances in each year thereafter. For each budget allowance granted, one banked allowance shall be retired.

VII. In the event the state no longer participates in the RGGI program due to legislative action or the RGGI program becomes invalid or unenforceable as determined by the department and certified to the secretary of state, the department shall cease granting budget allowances pursuant to paragraphs V and VI. Notwithstanding the other provisions of this section, PSNH shall have no right or claim to receive any additional budget allowances under this section beyond those already granted to it up to that point in time when participation in the program has ceased or the program has become invalid or unenforceable. If this point in time occurs part way through a year, the number of budget allowances given to PSNH for that year shall be pro-rated based on the distribution rate in effect for that year, provided the total amount of allowances calculated pursuant to paragraph IV has not already been granted to PSNH.

VIII. The department shall not grant budget allowances after December 31, 2014 pursuant to this section without legislative authorization to continue the granting of allowances. Notwithstanding the other provisions of this section, PSNH shall have no right or claim to receive any additional budget allowances under this section beyond those already granted by December 31, 2014, should the legislature not authorize continuation of the allowance granting.

IX. No remaining banked allowances held by the department originating from the calculation performed under paragraph IV, shall be used for RGGI compliance purposes after the department ceases to grant budget allowances in accordance with paragraph VII or VIII. These remaining banked allowances shall not be used for compliance or exchanged for value in any existing or future federal program. When developing future state programs, the legislature may recognize the existence of these remaining banked allowances when determining the future compliance obligations of PSNH.

§ 125-O:25. Set Aside for Voluntary Purchase of Renewable Energy Certificates.

I. The department shall reserve from auction, for retirement purposes, a quantity of budget allowances, not to exceed one percent of the annual budget, equivalent to the CO_2 emissions reductions associated with renewable energy certificates recognized under RSA 362-F and purchased voluntarily by electricity customers and not resold.

II. Budgeted allowances reserved under paragraph I not retired at the end of each year shall be auctioned the following calendar year.

§ 125-O:26. Auction of Budget Allowances.

Any rules adopted by the department relative to auctions, pursuant to RSA 125-O:8, I(d), shall provide that they:

I. Shall be conducted based on the schedule and frequency adopted by the department in consultation with other entities participating in the RGGI program;

II. Shall include the sale of allowances for current and future years to promote transparency and price stability in a manner to be determined by the department in coordination with the regional organization;

III. Shall include auction design elements that minimize allowance price volatility, guard against bidder collusion, and mitigate the potential for market manipulation;

IV. Shall include provisions to address, and to the extent practicable minimize, the potential for allowance market price volatility during the initial control period of the RGGI program;

V. Shall include provisions to ensure the continued market availability of allowances to entities regulated under a greenhouse gas emissions allowance trading program, taking into account the outcomes of auctions and monitoring of the allowance market, which may include the adoption of a flexible process that allows for ongoing modification of auction design and procedures in response to allowance market conditions and allowance market monitoring data, provided that the process allows for public comment and input; and

VI. May be open to all qualified participants, and all qualified participants may sell or otherwise agree to transfer any or all allowances to any eligible entity.

§ 125-O:27. Review of the New Hampshire RGGI Program.

At the time of the 2012 comprehensive review by the signatory states as required in the MOU, the commission and the department shall concurrently review New Hampshire specific elements of the RGGI program, in particular 125-O:23, IV and 125-O:25, and include the results of such review in the agencies' annual report under RSA 125-O:21, VI.

§ 125-O:28. Cost Recovery

If the owner of an affected CO_2 source is a public utility pursuant to RSA 362:2 that provides electric distribution service pursuant to RSA 374-F, the owner may recover through the utility's default service charge all prudently incurred costs of complying with the requirements of this subdivision in a manner approved by the commission. In the event PSNH sells an affected CO_2 source, any cost recovery associated with this chapter shall be governed by RSA 369-B:3-a.