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New York State Department of Environmental Conservation (NYDEC)
New York State Energy Research and Development Authority (NYSERDA)
Albany, New York

Via Online Submission
www.commentmanagement.com/comment/Cap-and-Invest

RE: New York Cap-and-Invest (NYCI) Program Development

With a dynamic portfolio of energy options – from oil, natural gas, electricity, and petrochemicals, to environmental products and hydrogen – Shell Energy North America (US), L.P. ("Shell Energy") and its affiliates (together "Shell") proudly supply energy to customers in New York State and across the globe. Shell holds commercial interests in fuels, electricity, and environmental products, including carbon instruments and renewable energy credits in the various North American compliance markets. As a result, Shell touches almost every sector of the energy supply complex.

In the State of New York ("New York"), Shell supplies fuel for transportation and industrial and commercial uses and owns and operates a fuel terminal on Long Island. For decades, Shell has been a supplier of natural gas and electricity to wholesale and retail customers in New York. Shell applauds and supports New York's, the New York Department of Environmental Conservation's ("NYDEC"), and the New York State Energy Research and Development Authority's ("NYSERDA") (collectively, the Agencies) efforts to develop a robust, economy-wide emissions trading program (the New York Cap-and-Invest Program ("NYCI" or "Program")) and moreover, supports setting a price on carbon. Shell appreciates the opportunity to share the following comments on Program design, and the various facets of the Program affecting the energy and fuels industry.

I. NYCI PROGRAM GENERAL CONSIDERATIONS

Shell Supports a Market-based Mechanism for Carbon Pricing

Shell supports the use of a market-based mechanism in the setting of a price associated with emissions across New York's economy. To encourage participation and stakeholder acceptance, Shell encourages the Agencies to hold as their lodestars: (1) the development of a robust, liquid market to support affordability of the Program, and (2) ensuring certainty and transparency for participants through clear

rulemaking. Below, Shell details its perspective on the overarching design of the Program and core design elements, including those that would impact linkage with other carbon compliance markets.

Shell Supports Continued Electricity Sector Participation in RGGI

The electricity sector should participate both in the Regional Greenhouse Gas Initiative ("RGGI") and the NYCI. It is important that New York continues to participate in and support RGGI as New York looks to implement its economy-wide Program. These two programs could co-exist whereby the NYCI program could include a process to credit obligated parties who also participate in RGGI the costs they incur for participation in that program in order to support liquidity in both.

Shell Supports Linkage with Economy-Wide Cap-and-Trade Programs

The goal of NYCI should be to participate with other economy-wide cap and trade programs to enhance liquidity and affordability. This can be achieved through linkage with the Western Climate Initiative ("WCI"). Linkage across jurisdictions with emissions trading schemes has proven successful in reducing emissions and keeping costs down for both covered entities and importantly, end-users, as is evident in the California and Quebec program. Indeed, linkage would result in two major benefits: first, it would lower overall costs to end-users by enabling price discovery across a wider swath of participants, and second, it would eliminate the potential for emissions leakage due to consistent carbon pricing across jurisdictions. Shell encourages New York and the Agencies to pursue linkage with WCI and to the extent possible, mirror the California approach to facilitate this.

Shell Recommends Allowance Budgets Only Include Obligated Sources' Emissions

Shell also recommends that the Agencies carefully consider the interaction between non-obligated and obligated sources in budget setting. Shell recommends that the Agencies model the California approach to setting allowance budgets, which does not tie the allowance budget to non-obligated sources' greenhouse gas emissions. Inclusion of non-obligated emissions in the allowance budget creates uncertainty in the form of a moving target for obligated entities, in the very possible event that non-obligated sources exceed expected emissions. If emissions of non-obligated sources are ultimately included in the allowance budget, the Agencies should avoid any process that would adjust or reconcile allowance budgets for non-obligated sectors once the program has commenced, as that would subject obligated sources to potentially large variability in the volume of allowances available. At a minimum, if adjustments are made, they must be transparent to the market and made far enough in advance so as not to disrupt the market.

Shell Recommends Allowance Budget and Trajectory be Well Supported and Realistic

With respect to overarching program design, the Agencies ask stakeholders to weigh in on the setting of the emissions cap, the cap reduction trajectory, and allowance budgets. Consistent with the discussion below for the electricity sector, Shell recommends that the cap and allowance budgets be based on well informed assumptions about the economic, operational and the technical ability of obligated parties to comply and at what pace be established prior to the start of the Program to give participants regulatory certainty. Understanding this baseline will be important to the ultimate success of the Program. If the Program does not reflect accurate assumptions about the pace at which the electricity sector can meet its goals, it will create affordability issues and may make it more challenging to link with WCI as WCI participants will be concerned about the impacts NYCI will have on their program.

Shell strongly recommends that the Agencies gradually ease obligated entities into the Program with a graduated glidepath. The Agencies could create a buffer between recent emissions values and the cap. In addition, the Agencies should seek to host a pre-compliance auction one quarter in advance of the start of compliance obligations. Consideration should also be given to the timing of submission of greenhouse gas emissions reports and when compliance obligations begin to accrue for obligated entities. As was done in California upon adoption of Assembly Bill 32 in 2012, the Agencies should consider providing a year for reporting and testing, prior to the commencement of compliance, so that obligated entities can assess their obligation, develop, and establish internal implementation plans and engage in price discovery.

II. NYCI DISCRETE PROGRAM DESIGN CONSIDERATIONS

With respect to discrete design considerations, to meet the lodestars of: (1) the development of a robust, liquid market to support affordability of the Program, and (2) ensuring certainty and transparency for participants through clear rulemaking, Shell encourages the Agencies to consider and adopt certain features that promote trade, enable unlimited banking, and set clear rules around participant entry to and exit from the Program. Such features are prevalent in other jurisdictions with carbon compliance markets that have been proven to be successful at reducing emissions, such as WCI. Among these design features, Shell encourages the Agencies to consider the following:

Recommend Obligated Entity Emissions Threshold of 25,000 MT CO2e. The obligated entity threshold should be set at 25,000 MT CO2e, the same as California, Washington, and the EPA's Greenhouse Gas Reporting Program. Entities with emissions lower than this threshold are unlikely to have a meaningful impact on the Program, and anything above this threshold could exclude entities that are key emitters from the Program.

Include an Offsets Program. Shell recommends incorporating an offsets program, or another similar program that targets cost containment and aligns with the requirements of the Climate Leadership and Community Protection Act ("CLCPA").[1] Offsets offer a cost-effective means for compliance, are a critical tool that allows market participants to respond to volatility, often support decarbonization of sectors not subject to compliance obligations, spur technological innovation in those sectors, and bring co-benefits to communities. A robust offsets program, such as those adopted under California's offset protocols, demonstrates broad environmental leadership, and can encourage additional voluntary retirements.

Allow Unlimited Allowance Banking. Allowance banking should be unlimited. Obligated entities should be subject to holding limits, and the Agencies should align the holding limit calculation with California's. Large emitters should also receive a limited exemption.

Limit Auction Purchase Of Allowances to 25%. Auction purchase limits should be set at 25%. Any amount lower than this threshold may hamper large compliance entities from purchasing sufficient volume for compliance at auctions.

Establish Annual and Triennial Surrender Deadlines. Compliance periods should be three years in length with annual interim surrender deadlines, where covered entities surrender 30% of their annual obligation to demonstrate progress towards achieving compliance for the period.

Establish Price Stability Mechanisms. As a general matter, programs that include commonly used price stability mechanisms have been shown to support cost-effective compliance for obligated entities, which translates to affordability for end-users. Shell shares its perspective on the design of a few of these common mechanisms in more detail in **Attachment A - Price Stability Mechanisms**.

III. FUELS INDUSTRY PROGRAM CONSIDERATIONS

Recommend Fuel Distributors as Point of Obligation

Under the current Cap-and-Trade programs in the United States, the point of obligation falls upon the liquid fuel supplier ("Fuel Supplier"). For example, in California, Oregon and Washington, a fuel supplier is obligated for the carbon pollution under the Cap-and Trade Program if it either holds an inventory position of fuel in the bulk transfer/terminal system or imports fuel into the state outside the bulk

[1] NY ENVIR CONSER § 75-0101 et seq.

transfer/terminal system. In these states the fuel supplier, also known as the position holder, sells the fuel out of the bulk transfer/terminal system to a fuel distributor.

A different approach is warranted for the NYCI program due to the unique geography and complexity of New York's State's liquid fuel distribution network. New York is unique in that the "New York Harbor" region covers multiple states from both an origin and sourcing aspect, as well as a distribution aspect. New York is served and serviced both directly and indirectly from other states. For example, fuels can be loaded at a terminal rack in New Jersey and delivered to New York for use in New York. But fuels can also be blended in New Jersey, for example, and transported (via barge or pipe) to New York. That same fuel is then loaded at the terminal rack in New York for delivery in both New York and other states like Pennsylvania or Connecticut. Moreover, a fuel distributor can load a truck at a terminal for deliveries that will occur in more than one state. All of this will make it very difficult for a fuel supplier that holds an inventory position of fuel in the bulk transfer/terminal system to know whether the fuel is intended for use in New York or outside of New York. Shell recommends that the point of obligation for the proposed NYCI Program lie with the Liquid Fuel Distributor ("Fuel Distributor"). A Fuel Distributor is defined in Washington, under RCW 82.28.020(8) as: "a person who acquires fuel outside the bulk transfer-terminal system for importation into Washington, from a terminal or refinery rack located within Washington for distribution within Washington, or for immediate export outside the state of Washington." Because the fuel distributor is the entity that moves fuel for distribution, it is in the best position to report where the fuel is ultimately consumed.

If the Agencies prefer the point of obligation to reside with the Fuel Supplier, the Fuel Distributor should also be included within the reporting chain to ensure accurate reporting.

Renewable Fuel Should be Non-Obligated

Since the goal of the Program is to reduce greenhouse gas emissions and drive emission reductions, Shell recommends that New York follow the lead of California, Oregon and Washington and exempt renewable fuel from the Program. Renewable fuel is a bridge fuel that can replace the bulk of today's fossil-fuel-dependent energy sources during the transition to a cleaner energy economy. To that end, Shell recommends that emissions from "biomass-derived fuels" be non-obligated. "Biomass-derived fuels" is defined by Oregon in OAR 340-214-0020 as fuel derived from biomass where biomass means "non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including products, byproducts, residues, and waste from agriculture, forestry, and related industries, as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic matter." Consistency across programs will also help enable prospects for linkage.

IV. ELECTRICITY SECTOR

As a threshold matter, Shell urges the Agencies to establish a deliberate and transparent process for the development and implementation of the Program. The Agencies must be careful in the way information about specific proposals that set limits on carbon emissions from qualified sources is disseminated. Participants in the wholesale electricity markets will be monitoring the proposals that emanate from this process and since the markets in which they participate trade on a forward-basis, take positions that reflect the potential for the price of carbon being incorporated into the price of electricity. Ultimately, these prices are reflected in the energy bills of consumers. A process that sets dates when critical information about Program proposals will be released is important. In addition, making sure that market sensitive information is shared equally with all market participants is important. This will avoid unnecessary disruptions to electricity markets and adverse customer impacts.

Shell recognizes that New York currently participates in RGGI, the carbon compliance program covering electric generation emissions in many states in the northeast United States, and that the Agencies are carefully considering the interaction between the Program and RGGI, and if RGGI should even serve as the compliance mechanism for the electric sector under the Program. Fortunately for New York, many programs have already been established to reduce carbon emissions in the electric generation sector. In addition to RGGI, DEC rules, such as the "Peaker Rule"[2] and programs administered by NYSERDA providing renewable energy credits as incentives for the development of renewable energy resources have been underway for years and are ramping up to meet goals under the CLCPA. With respect to the electric generation sector, it is critical that the Agencies understand and account for interaction with these programs. Shell recommends the budget for carbon emissions for the electricity sector and the compliance trajectory, to be established by the Agencies, reflect a projection for carbon emissions based on an analysis of the pace at which the sector can transition the electric generation fleet from fossil fuels to emission free resources. A significant part of this challenge will rely on addressing the transition of the electric generation fleet in New York City that is predominately fossil fuel-based and will require the interconnection of offshore wind resources and electric transmission lines from Upstate New York to have a meaningful impact.

The timing of the availability of these investments in terms of achieving commercial operation will have a significant impact on the budget setting parameters. Because of the size of some of these resources, such as offshore wind projects, they will have material impacts on the carbon emission profile of New York

[2] NYDEC, Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines, 6 NYCRR Subpart 227-3 (2019).

and in turn the carbon emission credit prices that participants in New York will need to operate the electric grid in a reliable manner.

The pace of this activity is being tracked. As established in the NYPSC's CES Program Proceeding, New York States' trajectory for completing construction and bringing adequate renewable resources into commercial operation in the CLCPA-mandated time frames has lagged.[3] In accordance with the CLCPA, the next program review will be conducted in 2024 and will be completed biennially thereafter. Meanwhile, the NYPSC has established that meeting CLCPA renewable mandates both in terms of the construction of resources and the delivery of renewable energy to New York consumers requires siting the 9 GW of offshore wind facilities in New York City and Long Island.[4] To support the efficient completion and energy deliverability of these projects, the NYPSC has designated public policy requirements driving public policy transmission needs and the associated development of a substantial amount of bulk transmission system infrastructure in New York City and Long Island.[5] While awards have been made for four offshore wind projects to date, project development is at risk for timely completion due to a number of factors, including Post-COVID inflation and interest rate effects, supply chain disruptions and increased renewable facility demand.[6]

The Agencies should develop a forecast for the entry of these resources and use this information as an assumption for budget and trajectory setting process with NYISO and the Department of Public Service.[7] The Program must be built around realistic assumptions of the transition of the electric generating fleet. Failure to do so will create uncertainty for Program participants, and likely require significant interventions via a cost containment mechanism.

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[3] *See* "Renewable Energy Standard Program Impact Evaluation and Clean Energy Standard Triennial Review," Final Report, prepared for NYSERDA, Sustainable Energy Advantage, LLC (July 2020) at 23 – 24.

[4] *See* NYPSC Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order On Power Grid Study Recommendations (issued and effective January 20,2022) at 2, 17-21.

[5] Shell notes that New York State has been a leader in addressing the transmission and interconnection issue facing offshore wind. *See e.g.,* NYPSC Case 22-E-0633, "*In the Matter of New York Independent System Operator, Inc. Proposed Public Policy Transmission Needs for Consideration for 2022,"* Order Addressing Public Policy Requirements For Transmission Planning, issued and effective June 22, 2023).

[6] *See e.g.,* NYPSC Case 18-E-0071, *In the Matter of Offshore Wind Energy* and Case 15-E-0302, *Proceeding on Motion of the Commission To Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Verified Petition For Expedited Approval of Enhanced Offshore Renewable Energy Credits, filed by Empire Offshore Wind LLC and Beacon Wind LLC, June 7, 2023 at 2-3, 16-17.

[7] *See* NYISO 2023 Power Trends Report, "A Balanced Approach to a Clean and Reliable Grid," available at https://www.nyiso.com/documents/20142/2223020/2023-Power-Trends.pdf/7f7111e6-8883-7b10-f313-d11418f12fbf?t=1686132123808, at 37, where NYISO shows the 2023 installed capacity for New York State by fuel source. For down-state, covering Lower Hudson Valley, New York City and Long Island, NYISO shows that 92% of the capacity is fueled by fossil fuels.

As NYDEC shows in its presentation, electricity generation represents a significant slice of overall emissions in New York. Investment in these resources has been driven by a combination of market revenues from the NYISO-administered markets and Renewable Energy Credit ("REC") programs administered by NYSERDA. It is Shell's understanding that most the developers with Tier 1 – 4 RECs have indexed-based pricing mechanisms, including offshore wind RECs. This should allow for the transition to a more robust carbon pricing program under NYCI without imposing incremental costs on consumers. The concern being a fixed price REC will not adjust to reflect increased compensation to a resource that also obtains revenues from an energy market that has meaningful carbon pricing reflected in it. However, there should be an analysis done to confirm that a potential double payment problem is minimal.

Affordability and reliability will improve over time as more renewables come online with Distributed Energy Resources ("DERs") filling in the gaps to displace fossil fuel sources. Shell encourages NYSERDA to work with the NYPSC and NYISO to consider these standards.

In previous years, the NYISO worked closely with stakeholders to develop a comprehensive carbon pricing market mechanism. Shell supported this design because it was structured for markets to produce efficient and cost-effective signals evidencing the value of climate change. The NYISO has reported that aspects of its proposal will be useful as New York delineates the structure for the electric system components of the NYCI. Shell urges the Agencies to engage with the NYISO and build from the extensive work already done on the NYISO's carbon pricing proposal.

Shell understands that the NYISO will submit comments offering its extensive data base, system knowledge and expertise to resolve the issues that must be addressed to set the NYCI parameters for the electric sector, including an assessment of the scope and scale of leakage considerations and potential market mechanisms to ameliorate them. In past efforts, e.g., development of the NYDEC's set of regulations known as the Peaker Rule, the State has effectively utilized NYISO resources and obtained their objective, expert input early in the process. This outreach was instrumental to devise a set of rules that ensured system reliability and produced more efficient outcomes. Shell respectfully urges the Agencies to avail themselves of these resources and take comparable steps to develop the electric sector components of the NYCI.

Finally, transmission and interconnection issues impose significant challenges to the deployment of renewable resources. These challenges are being experienced nation-wide and were recently identified by offshore wind developers as adding significant costs to their projects.[8] Shell recommends that a significant portion of NYCI auction proceeds be expressly designated to fund the development of critical

infrastructure that supports achievement of CLCPA mandates. As an example, funding could be used to build out the transmission capability necessary to ensure the energy deliverability of the system with renewable resources and as mandated by the CLCPA. The need for this support is amplified in light of the CLCPA's economy-wide electrification mandates.

In comments submitted to the PSC in NYPSC Case 22-E-0633 addressing transmission needs driven by the State's public policy initiatives, the NYISO noted that the offshore wind development off the coast of New York in the Bureau of Ocean Energy Management Lease Areas will drive the need for transmission facilities offshore and in New York City and Long Island to facilitate distribution of offshore wind resources to the grid. Several other parties demonstrated the need to continue to build out the Upstate systems for land-based renewable resources. It is well-recognized that these transmission upgrades will require billions of dollars in investment and the CLCPA does not designate a funding source or mechanism to satisfy these mandates. Shell believes that NYCI revenue would be best utilized to fund transmission investments, and other projects that address constraints that limit the energy deliverability of renewable resources to New York consumers.

V. CONCLUSION

Shell supports a thorough and comprehensive roll-out of the NYCI Program that provides participants certainty and stability through clear rules and guidance. Obligated entities should be given adequate notice and time to assess their obligations and develop internal plans to respond to the new regulation. Shell appreciates the opportunity to share its deep experience across the energy supply chain and the North American carbon compliance markets with the Agencies and looks forward to further engagement.

Respectfully submitted,

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Attachment A – Price Stability Mechanism Design

	Price Stability Mechanisms		
	Price Ceiling	**Allowance Reserve**	**Auction Reserve Price**
Distribution	• Available to covered entities only • Accessible by request of a covered entity at any time, and if not specifically requested by a covered entity, a sale notice is still issued each quarter after the reserve is depleted, and immediately prior to a compliance deadline	• Available for sale to covered entities only • Make immediately available all allowances that are placed into the reserve • Sold in a sale separate from auctions • Upon sale, allowances are placed into an entity's compliance account, rather than a general account • Accessible by request of a covered entity at any time, and if not specifically requested by a covered entity, a sale notice is triggered when current auction settlement price is 60% of the lowest reserve tier price, and immediately prior to a compliance deadline	Price to align with California and Washingtons' at onset of program and similarly, increase by five percent plus the rate of inflation as measure by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December
Volume	Unlimited volume available	• A reasonable portion of allowances from annual allowances budgets for all years of the program is withheld and placed into a reserve • Reserve has two tiers and volume is split evenly between the two tiers	

Price	Price to align with California and Washington's at onset of program and similarly, increase by five percent plus the rate of inflation as measure by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December	Price to align with California and Washingtons' at onset of program and similarly, increase by five percent plus the rate of inflation as measure by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December	
Other		On Transparency: A notice is available immediately upon commencement of compliance obligations stating how many allowances are available in the reserve, in which tier they will be available, the price trigger for those tiers, and the quantity that would be for sale at the first reserve sale	On Allowances Unsold at Auction: A rule-based mechanism that puts allowances that are not sold as the result of the auction clearing price back into the market by reentry in auctions after a specified period of time of fully subscribed auctions (24-month rule in California)