



RGGI is Europe's 'Back-Door-Man'

How Europe Relies on the Northeast Greenhouse Gas Initiative To Influence U.S. Climate Change Policy©

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Singing the Blues

It is not often that the ITSSD is inspired to prepare a white paper that invokes the name of a famous American blues song authored by a famous American blues composer (Willie Dixon) for a famous American blues singer (Howlin' Wolf), which is then later rewritten and reinterpreted by two members (vocalist Jim Morrison and guitarist Robbie Krieger) of a famous American rock and roll band (The Doors). However, we have made an exception in this case for the purpose of alerting the American public about a controversial and very costly interstate, and perhaps, international, commerce agreement known as the Regional Greenhouse Gas Initiative (RGGI).²

The RGGI will soon be entered into by nine northeastern states spanning the New England, New York metro and Delaware Valley areas, five adjacent Canadian provinces, and an unknown number of European nations. It will cap, through strict regulations, the greenhouse gases (simple carbon dioxide) emitted by northeastern regional businesses which are believed to be associated with global warming.³ Although it will first target electricity-producing power plants, the RGGI will later cover other industry sectors as well. The RGGI, which is essentially another hidden tax, was conceived of in New York and designed primarily by the governors of New York, New Jersey and Massachusetts in other than a transparent and inclusive manner. And it will soon be foisted upon an unsuspecting public, to its detriment. A similar initiative is currently being crafted on the west coast between California, Oregon and Washington. Europe is anxiously awaiting the enactment of the RGGI.

Determination of Energy-Mix by Regional Regulators Based on Flawed Assessments

A recent website blog entitled, "Enviros Caught Between RGGI and a Hard Place"⁴ cites a September 2005 New York Times article discussing the emerging controversy surrounding the choice of energy sources made by RGGI state regulators.

“A proposed agreement among nine Northeast states to cap greenhouse gas emissions from power plants casts a new light on arguments in New Jersey and Vermont about whether the licenses of two aging nuclear plants should be extended. Community groups in both states are opposing extensions of the licenses beyond their 40-year terms....Shutting down the two reactors would mean immediate, substantial increases in the emissions in Vermont and doubling them in New Jersey...”⁵

As support, it refers to a recent Nuclear Energy Institute report that concludes the following:

“Even the most modest goal, [of] holding CO₂ emissions constant at the 2005 level while preserving fuel diversity for electricity production requires renewal of the operating licenses for the region’s nuclear plants...Without nuclear energy, the only way to reduce CO₂ emissions in the Northeast involves relying on natural gas generation for more than half of the region’s power. Moving above this threshold will likely create *economic and security risks*” (emphasis added).⁶

This assessment is quite accurate, save for its failure to recognize the positive impact on regional energy reliability, energy security (independence from foreign sources) *and* environmental protection that could be realized by the construction of new state-of-the-art ‘clean-coal’ facilities, if permitted. Clearly, this report emphasizes the need for a market-driven diverse fuel strategy that utilizes a blend of *existing and available* energy sources to meet these three concerns. Northeastern governors, however, have expressly rejected the use of an incentives-based market approach that would bring about the needed industry changes *without* costly regulation. Believing that they are better equipped than the federal government to solve the perceived market failure alleged to have given rise to the problem of *global warming*, these *regional* politicians who, like their European counterparts possess *national* ambitions⁷, advocate use of high-cost micro-regulatory devices such as RGGI that cherry-pick among politically favored energy sources, but which will have only a symbolic effect on stemming this problem – these sources can provide little, if any, regional, national or international environmental benefit.

This result obtains because “It’s difficult to measure the local effects of greenhouse gases. Unlike the black clouds of pollutants that billow from smokestacks and cause smog and acid rain, or mercury, which seeps into rivers and poisons local waterways, the environmental consequences of carbon emissions are practically invisible...”⁸ For that reason, a prior ITSSD article had argued that RGGI focuses on the wrong mark: reducing actual GHG emissions, which is far more difficult and costly than reducing GHG intensity (GHGs emitted per \$ million of economic output).⁹

It is also clear that such a regional initiative, by itself, will have *no* measurable effect on global warming, especially within the northeast. Environmental groups such as Greenpeace and Friends of the Earth have publicly admitted that even the more burdensome emissions limitations called for by the Kyoto Protocol, an *international* environmental treaty, would have only a negligible impact on planetary global warming. “The groups themselves concede that the Protocol will only have ‘symbolic’ effect on climate because they believe it is too weak.”¹⁰ And, as noted recently by one European commentator, “No matter how clear it becomes that the Kyoto Protocol will not work, the

European Union will not admit that its climate policies will do nothing to affect global climate but will have a hugely negative effect on the global economy.”¹¹

In fact, just as has occurred in Europe, the RGGI may cause industry to generate even more GHG emissions if less costly old coal-fired plants in the northeast are ordered back on line to meet the energy demand that existing natural gas facilities will be unable to satisfy. In addition, “...if there were a shift in electricity production from fossil fuels to wind power, some environmental degradation could follow -- wind farms need much more land to generate the same output, but also have negative environmental impact.”¹² In each of these cases, a greater environmental risk may arise than that which the RGGI was intended to prevent.

Accounting for the High Costs of the RGGI’s Hot Air

The RGGI will, without doubt, significantly *raise* standard of living *costs* for consumers, *increase* business overhead and production *costs* and result in *higher* consumer goods and services *prices* for the residents of the nine Northeastern and Atlantic states. These price increases will be above and beyond the price increases already expected from endemic regional energy supply shortages and infrastructure limitations, continued supply bottlenecks in the southern U.S. due to recent hurricane damage, and seasonally higher international oil and natural gas prices.

As noted in recent Boston Globe article,

“Heating oil costs are projected to rise by 30 percent over last winter, and by up to 50 percent for natural gas. The increases are driven by the relentless growth in international energy demand and by the Gulf hurricane disruptions to energy supplies. Massachusetts homeowners who heat with oil are expected to pay, on average, \$400 more this winter than last year, while homeowners using natural gas are expected to spend \$800 or more, state officials say” (emphasis added).¹³

Indeed, New England businesses are very concerned. In a recent hand delivered letter (dated 9/22/05) sent to the governors of each of the nine RGGI states, including Massachusetts Governor Romney, a group of large regional industry associations, including the Associated Industries of Massachusetts and the New England Council, argued that:

““The RGGI Proposal in its current form [if adopted,] poses a significant risk of *higher electric power prices by driving generators increasingly toward natural gas, imposing additional costs for the acquisition of carbon dioxide allowances, and driving additional capital costs for the upgrade of combustion units*. . .Reliable and reasonably-priced energy is key to the region's economic success and our ability to attract business and remain competitive. The RGGI region already has the highest average electric prices in the U.S., with New England at 52 percent above the national average and the mid-Atlantic region at 31 percent’ . . .[T]he letter. . .cited a 2004 study by Charles River Associates which found that a carbon dioxide control program with a cap as little as 10 percent below 1990 levels would lead to a 23 percent increase in electricity prices in the northeast by 2010” (emphasis added).¹⁴

Despite such opposition, however, the Boston Globe recently reported how Governor Romney “signaled his support... for [the] regional agreement... Romney said the first-of-its-kind agreement will *not* hurt the economy, as some have charged. He argued that it would spur businesses to develop clean- and renewable-energy technology to market worldwide” (emphasis added).¹⁵

A similar letter of protest was sent to Governor Pataki’s offices by the Business Council of New York State. It emphasized the following important points:

“In New York, *the RGGI proposal would be the latest in a series of actions by the Public Service commission and Department of Environmental Conservation that are inflating electric prices by hundreds of millions of dollars.* The state Energy Plan calls for policies that would reduce New York’s high energy costs... The proposal poses a ‘significant risk’ of increasing electric power prices in the region by driving generators toward natural gas, imposing additional costs for the acquisition of carbon dioxide allowances or offsets, and requiring upgrading of combustion units... [T]he proposal would affect power supply and the reliability of the power grid. ‘[It] will pose another impediment to the siting of new generating capacity in the RGGI region...It may also impact the financial viability of some existing generating units...[The]...power plants in the RGGI region are already among the ‘cleanest’ and most energy efficient in the nation...Because of these very real concerns, *we call on the RGGI governors to clearly demonstrate how RGGI will impact energy prices, energy supplies and suppliers, and economic growth in the Northeast before our states make a final commitment to the RGGI process...*” (emphasis added).¹⁶

Approximately one month earlier, during August 2005, New York State Assemblyman Paul Tonko had sent his own letter to New York State Governor Pataki. It expressed his deep concerns about the RGGI’s impact on the New York State economy, including jobs. Mr. Tonko, who is Chairman of the Energy Committee of the New York State Assembly, wrote that,

“...New York State still has the highest electric prices in the nation. This cap and trade initiative has the potential to drive up prices even further, *putting the State’s manufacturing, industrial and energy intensive jobs at-risk and placing undue burdens on New York State’s working families...*our economy – especially in the Upstate region – cannot absorb a significant upward pressure on electric prices. Next year, we will face even greater challenges as more low-cost energy programs expire. The economic impact to New York State cannot be dismissed in the face of the excitement of creating the nation’s first carbon dioxide emissions control program” (emphasis added).¹⁷

However, as noted above, it is not only New York and Massachusetts residents who are in the ‘hot seat’. New Jersey residents, as well, should be concerned about the higher energy costs and goods and services prices that they will likely face, given Governor-elect Corzine’s gubernatorial campaign pledge to ensure that the RGGI is enacted:

“Our over-reliance on fossil fuels represents the biggest challenge of our lifetime, and New Jersey must take the lead in addressing it. The first step is to begin to treat carbon dioxide as a serious pollutant under the state Clean Air Act – even though Bush’s EPA won’t. Luckily, New Jersey is not the only one taking global warming seriously. New York, Delaware and the New England states have joined New Jersey to develop an innovative strategy – the “Regional Greenhouse Gas Initiative – to



limit greenhouse gas emissions across the northeast. *I support this effort, and I will work to get this interstate compact up and running...*" (emphasis added).¹⁸

"[During my five years in the U.S. Senate...I fought to reduce greenhouse gas emissions and to make polluters pay for environmental cleanups...*Jon Corzine will...Lead an effort to develop a strong Regional Greenhouse Gas Initiative. New Jersey has joined New York, Delaware and several New England states in talks about developing a 'cap-and-trade' program for greenhouse gas emissions from electric generation. (Cap-and-trade is a flexible, market-based system to control pollution which is easier on businesses than one-size-fits-all regulations.) He will work to get the interstate compact up and running, ensure that polluters are not given windfalls from the sale of emission credits, and seek to include more states*" (emphasis added).¹⁹

During his victory speech on election night, Jon Corzine insisted that he be held "accountable for his [words and his] actions", and New Jersey residents should not be reluctant to do so.²⁰

These high costs, unlike the environmental benefits imagined, are real. Northeast residents should pay careful attention, in particular, to the news coming from Europe concerning the upwardly revised electricity and natural gas costs projected for Europeans in 2010 and 2020, as the result of onerous EU greenhouse gas regulations tied to the Kyoto Protocol. As in the case of the RGGI, Brussels regulators assured European industries and consumers that their regulatory regime would trigger only modest increases in national and regional energy costs. However, recent studies released by a prominent Brussels think-tank²¹ have found that the original modeling assumptions underlying the EU climate change regulations were seriously flawed, notwithstanding such assurances. Consequently, energy costs in three EU member states (Spain, Italy, and the United Kingdom) are now projected to be significantly higher than originally estimated, with negative implications for both job security and their national economies.

"[T]he Brussels-based think tank International Council for Capital Formation has just released three studies that focus on major European countries. For each of them, pursuing Kyoto targets will require spending significant resources to buy emission quotas abroad -- *none of the cities will be able to achieve its national goals domestically. This will lead to dramatic increases in the price of energy (both electricity and gasoline), that in turn would result in a slower economic growth and job losses*" (emphasis added).²²

In addition, these and other reports have also revealed that the environmental benefits promised have yet to materialize in Europe because a number of EU member states have been unable to meet their emissions caps.²³

Regulators' Ignorance of the Markets Places Energy Security in Jeopardy

Prices will rise significantly because the RGGI will effectively place most, if not all, of the burden of meeting regional energy demand on regional natural gas producers and distributors, while taking



existing coal facilities off-line, freezing nuclear facility re-licensures, and precluding new coal and nuclear plant builds.

This reliance on natural gas, however, is misplaced. The current regional infrastructure for natural gas is inadequate to meet current demand, let alone future demand. Industry experts know full well and even the Washington Post recognizes (10/7/05) what northeastern governors, congressman and environmentalists continue to publicly deny, namely that liquefied natural gas (LNG) “Imports are not able to make up for the lost supplies -- as they have for oil and gasoline -- because not enough liquefied natural gas is available. Too few ships and terminals exist to handle a significant increase in imports. Domestic production, which has been flat in recent years, cannot be quickly increased without significantly more drilling, analysts said.”²⁴ And, the capacity and price problem has only been exacerbated by the damage suffered as the result of the severe hurricanes recently experienced in the southeastern United States.

The facts concerning LNG have been corroborated by a recently released Congressional Research Service report.²⁵ It reveals that there is only *one* operating LNG onshore facility within the northeastern United States, and only three along the entire east coast!²⁶ This is due, in large part, to continued political opposition from influential environmental groups concerned more about the environment than about national and regional energy security and reliability. As noted during the past year by both the Los Angeles Times²⁷ and the San Francisco Chronicle,²⁸ non-science and non-economics-based reasoning underlies environmentalist opposition to proposed LNG facilities off the coast of Southern California, and largely explains why there are *no* operating onshore *or* offshore LNG facilities along the west coast. Tragically, due to the higher logistics costs and low domestic supply triggered by environmentalist objections, the U.S. has been forced to export rather than retain most of its Alaska-based LNG production, which arguably raises local and regional energy costs on the west coast and compromises national energy security. Even if the needed hard-to-find liquefied natural gas imports were available, any such imports would likely be sourced from developing countries located in politically unstable regions (e.g., Algeria, Egypt and Trinidad), and thus, susceptible to additional price volatility.

Furthermore, the wholesale and retail cost-models prepared by RGGI government consultants and embraced by northeastern governors are also flawed, as they forecast only slight wholesale and consumer price increases. They rely mostly on idealistic estimates of unrealistically low energy prices, increased output from relatively untested and unreliable new or not-yet-produced renewable energy sources and on imagined efficiencies mandated by additional energy efficiency measures, including renewable portfolio standards demanded by environmentalists.

Sneakin’ In and Out the Back Door

Most troubling though, is the *‘back-door’* track that the northeastern governors will likely follow to ensure that their RGGI baby does not emerge a stillborn. Conscious of mounting public and industry scrutiny of and opposition to what is effectively another hidden *‘back door’* tax on goods and

services, northeastern governors have instructed their staffs to follow an arcane and technical executive rule-making procedure rather than an open, public and inclusive legislative review process.

The legal thinking behind this strategy was first revealed publicly last year in remarks made to an Associated Press reporter covering the December 2004 United Nations Kyoto Protocol conference of the parties (COP) meeting that took place among signatory nations in Buenos Aires, Argentina. When interviewed, Kenneth Colburn, former Executive Director for the Northeast States for Coordinated Air Use Management (‘NESCAUM’²⁹), stated that, “[i]n some states the plan won't even need legislative approval, but could be enacted via executive regulations’ ...”³⁰

New York State Assemblyman Tonko refers to this strategic maneuvering as ‘disturbing’ in his August 2005 letter to Governor Pataki:

“I am also concerned with the *closed-door nature of these negotiations* and that the reported draft proposal is confidential. This is very disturbing. I cannot share the positive comments of those quoted in newspapers merely because movement towards a carbon dioxide emissions policy has made progress. What are the specifics in the proposal? Are the reference price data used to support the cost of the program reflective of the current run up in oil prices in the past several months? Further, why is it necessary to craft this policy in confidential negotiations? *Who will determine when the proposal will be disclosed to the public in general?* Further, it appears that the terms of this proposal will require legislative action. When and how will this be proposed to the legislature for deliberations and action? *What will be the ability of the legislature to modify any presented proposal – or will it be presented as a fait accompli?* *The citizens of New York State deserve an accounting of all of the proceedings and the data that were utilized to make assumptions on price and emission impacts.* Therefore I am requesting all documentation relating to this initiative including transcripts, data and any other relevant information” (emphasis added).³¹

In a recent article appearing within the American Prospect, Jim Marzilli, a Massachusetts state representative and the chairman of the National Caucus of Environmental Legislators, explains why the governors have chosen to employ such a strategy. He states that,

“Any program as ambitious as the RGGI faces big hurdles. The process was designed to be a regulatory matter handled by the governors of the region, *bypassing the legislatures*. But a carbon-permit auction may require legislative approval in every state in the region. The environmental community hurt its chances of success by acquiescing to a process that excluded state legislators. Winning approval of a strong carbon auction will also be difficult, as opponents will brand it a tax. Various industry groups will try to block implementation of a strong program on a state-by-state basis. If they fail with the governors, they will appeal to the state legislatures, where their strength is greater than the environmental community’s” (emphasis added).³²

These planned actions are eerily reminiscent of those preceding the ‘*back-door*’ taxes imposed centuries ago by King George upon the residents of Massachusetts - they led ultimately to the event known as the Boston Tea Party. As in the prior case, self-assured modern sovereigns (northeastern governors), without even a public utterance, and despite growing opposition, are endeavoring to go

behind the backs of their trusting public constituents to tax them - ‘regulation without representation’.

Yet, there is another perspective concerning RGGI that the northeastern governors are loath to address. There is now documentary proof that the RGGI has all along been a staged initiative of the European Union designed to drag the United States into the Kyoto Protocol through the 'back door', even though the Bush Administration has affirmatively renounced it.³³

A recent in-depth report released by the Washington Legal Foundation³⁴ documents how RGGI was devised with the help of European national government, EU Commission, and Canadian provincial experts. Indeed, its domestic proponents admit that RGGI has always been internationally focused. According to Kenneth Colburn, former Executive Director for the Northeast States for Coordinated Air Use Management (‘NESCAUM’), “[The RGGI states] are doing what they think needs to be done. That may even include linking up with the Europeans *in a ‘back-door’ trading scheme on emissions* – although...that would meet a ‘lot of skepticism’ in Congress... ‘I don't see why our own individual power plants couldn't register and purchase allowances in the *European system*’” (emphasis added).³⁵ Similar sentiments were also expressed by Christopher James, Director of the Connecticut Department of Environmental Protection, who sees that, “...there is no reason why RGGI could not link up with other trading schemes - be they part of Kyoto or sub-regional schemes that may come out through Canada or Australia for example. This is something that we are focused on at the moment” (emphasis added).³⁶

In addition, the report reveals how the RGGI serves as a ‘*back-door*’ attempt to export a European legal concept known as the precautionary ‘better safe than sorry’ principle to the U.S. at the state level in an effort to increase American industry costs, change U.S. federal and state law, and undermine U.S. global competitiveness.³⁷ In particular, it discusses how increased volumes of emissions trading and burden sharing are necessary, both regionally and internationally, to bring down the costs of GHG emission reduction credits to be traded on international GHG emissions trading exchanges, and how the EU is relying on a U.S. state-led approach spearheaded by the RGGI to spark a change in U.S. federal climate change policy that is favorable to Kyoto and to European companies’ competitive position. This fact is corroborated by Mr. Marzilli. “Much of the international community sees the *RGGI as the single most important climate initiative happening in the United States*” (emphasis added).³⁸ In this regard, Marzilli notes how the RGGI embodies a key European legal principle known as the ‘polluter's pay principle’ that will seriously affect businesses within the U.S. if adopted. “The most intriguing aspect of the RGGI is the possibility that the carbon permits could be sold to the utilities on the basis of a “polluter pays” policy.” In essence, Mr. Marzilli argues that it is time to look past the blockage in Washington and to pursue energy policy at the state and regional level.

The Washington Legal Foundation report, furthermore, documents how RGGI was intended all along to teach a reluctant American administration and American Kyoto Protocol naysayers a symbolic lesson in U.S. constitutional law, namely that climate change policy can be pursued

collectively by individual states regardless of Washington’s position. According to a scholar at the Washington think-tank CSIS, who advocated this underhanded ‘divide and conquer’ approach, “[T]he EU must for its part recognize that the federal government is not the only locus of authority in the United States. *A constructive US-EU dialogue on climate change policy must include state governments. Brussels would acknowledge the leadership of states* if the Commission proposed a new transatlantic forum dealing with climate change which included state officials (emphasis added)”.³⁹ And, according to Seth Kaplan, director of the clean energy and climate change program at the Conservation Law Foundation, and one of the key environmental stakeholders participating in the RGGI process, “...the Regional Greenhouse Gas Initiative would be the latest environmental innovation, such as fuel efficiency standards, to come out of the states as the federal government has failed to act... ‘We can start to write the game plan for the nation’” (emphasis added).⁴⁰

Moreover, a recent UPI article expressly notes how the European Commission unabashedly continues to push for Washington’s embrace of the RGGI:

*“Robert Donkers, an environmental counselor to the European Commission, said at a congressional briefing Monday that American companies based in Europe are looking for a nod from the administration that would open the door for their partners and other corporations within U.S. borders to participate in the European Union's fledgling "cap-and-trade" trading system...American companies in EU countries must adhere to the Kyoto Protocol. Domestic companies are barred from participating in the EU's emissions trading scheme because the United States has not ratified the treaty. The United States has not budged from its non-participatory stance on Kyoto for eight years, even though it was intimately involved in its creation. The current administration eschews authorizing it because of concerns about the feasibility of the trading scheme and well-documented political opposition to participating in any policy that might ‘significantly harm the U.S. economy’...Bush administration's official stance on Kyoto and greenhouse emissions issue has not deterred EU officials, nor has it discouraged emerging private and public sector partnerships to use cap-and-trade as a *back-door mechanism to get the United States to rethink its position*” (emphasis added).⁴¹*

Hence, it is now apparent that, while Brussels officials and rotating EU Presidents had long occupied the attention of the Bush White House as their experts ruminated about how to collectively address the effects of global warming at both a bilateral and international level, EU member state governments, with the aid of Washington think-tanks, congressman, environmentalists and northeastern governors, were busy sneaking the RGGI in through the ‘back door’ of U.S. public policy-making. In effect, they have helped the EU to court U.S. states in an effort to ravage federal climate change policy at the domestic level *from within*. Unfortunately, if the RGGI is enacted in the near future without public debate, these governors, congressman and policy experts will have much to answer for prior to the next elections, because they will have unwittingly benefited European industry⁴² at the expense of American consumers, American industry, and the American economy.

Endnotes

¹ ‘Back Door Man’ is the title of a famous song written by Willie Dixon for the blues artist Howlin’ Wolf, and released in 1960. See: “The Mississippi Writers and Musicians Project of Starkville High School, at: (<http://www.shs.starkville.k12.ms.us/mswm/MSWritersAndMusicians/musicians/Dixon.html>). Actually, the 1962 album *Howlin’ Wolf*, which contains the song Back Door Man, “is one of the most famous and influential blues records.” See: Wikipedia, at: (http://en.wikipedia.org/wiki/Howlin%27_Wolf). The song ‘Back Door Man’ was rewritten and reinterpreted in 1967 by vocalist Jim Morrison and guitarist Robbie Krieger of the rock and roll band, The Doors. See: (<http://www.songfacts.com/detail.lasso?id=222>); “The Back Door Man – The Doors Lyrics”, at: (http://home.att.net/~chuckayoub/Back_Door_Man_lyrics.html). According to one website, “A ‘Back Door Man’ is a guy who has relations with a woman while her husband has been out slaving away to provide for her. The usual guilty perpetrator if a wife was caught cheating was a regular tradesman caller (Ice Man, Insurance Salesman etc.). He would then run out the back door as the husband entered the front door.” In blues lingo, a backdoor man is “a man that runs out of the backdoor when you come home to see your woman.” See, e.g.: (<http://www.bernzilla.com/item.php?id=53>); See, also: (<http://www.island.net/~blues/faq1.html>); Webster’s defines the term backdoor as “indirect, devious”, while Roget’s Thesaurus describes it as being synonymous with method, track, path, opening, etc.

² We thought the title of this white paper particularly appropriate given the deep involvement of the Rolling Stone Magazine, a pop-culture medium, in the climate change *political* debate. The Rolling Stone Magazine, for example, supports the National Resources Defense Council (NRDC) as “The Earth’s Best Defense” and Greenpeace as “Giving the Fragile Earth a Voice”, promotes the ‘stop global warming project’ of the Tides Center (www.stopglobalwarming.org), and has recently (11/4/05) co-published with Salon Magazine another Armageddon-like article authored by Al Gore entitled, “The Time to Act is Now” (See: <http://www.salon.com/opinion/feature/2005/11/04/gore>). The Rolling Stone Magazine has been politically active on this issue and has criticized the Bush Administration for not taking an alarmist approach to resolving it, since at least 2004. See, e.g.: Tim Dickinson, “Climate Change is Real, Bush Administration Not Helping Matters”, Rolling Stone Magazine (6/1/04), at: Mongabay.com, at: (http://www.mongabay.com/external/rolling_stone_climate_change.htm). And, just recently, the cover of the November 17, 2005 issue of Rolling Stone Magazine boasts the headline “Warriors and Heroes: Twenty-five Leaders Who Are Fighting to Stave Off the Planet-wide Catastrophe” (See: http://www.rollingstone.com/politics/story/_/id/8742145). Included among these ‘select’ twenty-five is “The Avenger: Al Gore”, who, “As vice president... was a chief architect of the Kyoto Protocol...” However, according to Stuart Eisenstat, who previously served as Chief Domestic Policy Adviser to former President Carter and in several high profile positions under former President Clinton during Mr. Gore’s tenure as vice president, environmental groups such as NRDC and Greenpeace exerted an undue and destructive influence during the negotiations leading to the signing of the Kyoto Protocol. “While these groups did not sit at the negotiating table, there is no question that *through their lobbying efforts and their constant demands for steeper emissions cuts in carbon dioxide (CO2)*, they were able to exert a substantial impact on the course of the negotiations. As environmental advocates, *they pressed for unrealistically large reductions in greenhouse gas emissions without consideration of the economic costs*. They also helped stiffen the position of developing nations against taking any obligations to reduce even the rate of growth of their emissions, notwithstanding the fact that these same nations will be the biggest emitters of CO2 by the mid-twenty-first century. *This stance ultimately undermined support in the United States for eventually ratifying the Kyoto Protocol* (emphasis added).” See: Stuart E. Eisenstat, “Non-governmental Organizations as the Fifth Estate”, SETON HALL JOURNAL OF DIPLOMACY AND INTERNATIONAL RELATIONS, (Summer/Fall 2004), at 17. See, also: “Global Warming on the Cover of Rolling Stone”, Steven Milloy, Foxnews.com, (11/10/05), at: (<http://www.foxnews.com/story/0,2933,175241,00.html>). The Rolling Stone Magazine article listed Mr. Milloy as one of the six “‘leading debunkers’ of global warming” in the world. In light of the above, we therefore believe that Rolling Stone Magazine’s management, which is more skilled in music than politics, will truly appreciate the meaning of this white paper’s title.

³ While many environmentalists and scientists believe that some sort of global climate change is underway, there is *no global scientific consensus* regarding the pattern, magnitude or timing of such a change, or concerning the degree to which that change is being caused by man-made, rather than natural activities and processes. “Showing specific

causation in the climate change context could be particularly difficult. First, climate change's effects involve shifts in climatic activity...Second...the natural phenomena affected by climate change are subject to natural fluctuations in frequency and severity. The chaotic system underlying climatic effects makes it quite difficult to differentiate a particular pattern change in temperature or sea level caused by anthropogenic climate change from one caused by natural variability." See: David A. Grossman, "Warming Up to a Not-So-Radical Idea: Tort-Based Climate Change Litigation", 28 COL. J. ENV. L. 1 (2003), at 24. Even Ernest Zedillo, former Mexican President and current director, of the Yale Center for the Study of Globalization, was quoted recently in Forbes (11/14/05) as *admitting* that there is *scientific uncertainty* surrounding the degree to which human activities may impact global warming, and that *international* action to address it must be preceded by and premised on *scientific evidence and serious economic and social analysis*. "The question of whether or not global warming is taking place has been settled by science: It is happening. The discussion is now about [1] how far the warming could go if present trends continue; [2] *the degree to which human activities, through the generation of greenhouse gases (GHG), have worsened and will continue to accelerate the warming*; [3] the possible consequences on human habitat; and, of course, [4] the way to go about approaching climate change...The international community must pursue anew a consensus on the real dimensions of the problem; and, *if warranted by the scientific evidence on climate change and by serious economic and social analysis*, the required strategies to counteract global warming must be adopted..." See: Ernest Zedillo, "Climate Change: Prudence or Venture?", Forbes Pg. 41 Vol. 176 No. 10 (11/14/05), accessible at forbes.com, at : <http://www.forbes.com/global/2005/1114/018A.html>).

⁴ See: "Enviros Caught Between RGGI and a Hard Place" (9/14/05), at:

<http://neinuclearnotes.blogspot.com/2005/09/enviros-caught-between-rggi-and-hard.html>).

⁵ See: Matthew L. Wald, "Aging Nuclear Power Plants May Affect Emissions Pact", New York Times (9/14/05), at p. A16.

⁶ See: "The Role of Nuclear Energy in Reducing in Reducing CO2 Emissions in the Northeastern United States", Prepared by Polestar Applied Technology, Inc. for the Nuclear Energy Institute (May 2005), at p. 1 "Findings – Nuclear Power Plants Must Keep Producing Electricity", at: http://www.nei.org/documents/Polestar_Northeast_GHG_Study_6-7-05.pdf).

⁷ According to Marzilli, Chairman of the National Caucus of Environmental Legislators, both "...Governors Pataki and Romney, who represent two of the three biggest carbon-dioxide emitting states...[have]...political ambitions...Both are laying the groundwork for presidential campaigns in 2008." See: Jim Marzilli, "Laboratories of Progress", The American Prospect Online Edition (10/5/05), at:

<http://www.prospect.org/web/page.wv?section=root&name=ViewPrint&articleId=10313>). One recent New Jersey media article drew an interesting parallel between Governor-elect Jon Corzine and former U.S. President Woodrow Wilson as concerns the state-level political obstacles each faced as they assumed the New Jersey governorship. In noting how former President Wilson eventually overcame those obstacles and went on to become president, it stated the following: Like Jon Corzine, Woodrow Wilson entered New Jersey politics as an outsider, embracing reform and claiming no debt to the political machines...Wilson ended up successfully opposing [those obstacles]...Wilson went on to champion further reforms and wage more wars with the party bosses, developing the reputation that helped make him president. *Some who have worked closely with Corzine say he harbors White House aspirations...*" (emphasis added). See: Josh Gohlke and Mitchel Maddux, "Corzine Stands at Crossroad of Reform", NorthJersey.com (11/13/05), at: <http://www.northjersey.com/page.php?qstr=eXJpcnk3ZjczN2Y3dnFIZUVFeXk2MDcmZmdiZWw3Zjd2cWVIRUV5eTY4MTU4NDAmcXJpcnk3ZjcxN2Y3dnFIZUVFeXky>).

⁸ See: Dierdre Fulton, "Scorched Earth Policy", The Boston Phoenix (3/1/05), at:

http://www.bostonphoenix.com/boston/news_features/other_stories/multi_3/documents/04495072.asp).

⁹ See, e.g.: Lawrence A. Kogan and Dr. Slavi Pachovski, "A Real Nor'easter", Tech Central Station (8/30/05), at:

<http://www.techcentralstation.com/083005D.html>).

¹⁰ See: Marc Morano, "Greens Concede Kyoto Will Not Impact 'Global Warming'",

CNS News, Dec. 17, 2004 at:

<http://www.cnsnews.com/ViewSpecialReports.asp?Page=/SpecialReports/archive/200412/SPE20041217a.html>). "[The Protocol] is important in the *political* message and the inspiration it is giving people around the world. People can say

‘yeah, our politicians do care – they are not just interested in power and their own greed and in their own money. They do care about the future of the planet’” (emphasis added). *Id.*, quoting Peter Roderick of Friends of the Earth.

¹¹ See: Carlo Stagnaro, “Europe’s Kyoto Bill”, Tech Central Station (11/16/05), at:

(<http://www.techcentralstation.com/111605A.html>).

¹² *Id.*, citing Ronald Bailey, “Wind Breaks: Why the Favorite Energy Source of Environmental Activists is Unsustainable”, The Science and Environmental Policy Project (2002), at: (<http://www.sepp.org/NewSEPP/WindBreaks-RonaldBailey.htm>).

¹³ See: Peter J. Howe, “Fuel Prices Usher in New Coal Age”, The Boston Globe (10/24/05), Boston.com, at:

(http://www.boston.com/business/globe/articles/2005/10/24/fuel_prices_usher_in_new_coal_age). According to this article, New England residents, in response to expected higher oil and natural gas costs for the upcoming winter, have begun to shift to less expensive alternative fuel sources such as coal and wood - “A century ago wood and coal stoves or furnaces used to be the sole source of heat for most New England homes.” *Id.*

¹⁴ See: “Northeast Business Leaders United to Oppose Regional Greenhouse Gas Initiative Proposal”, Business Wire (9/22/05), at: (http://home.earthlink.net/~cevent/9-22-05_bus_ldrs_oppose_ghg_proposal.html); “Proposed Greenhouse Gas Regulations: High Cost, Little Benefit”, Industry News, The Manufacturing Advancement Center (Oct. 2005), at:

(<http://www.massmac.org/newsline/1005/article06.htm>).

¹⁵ See: Scott Helman, “Romney Favors Pact by States on Emissions”, The Boston Globe (11/8/05), Boston.com News, at: (http://www.boston.com/news/local/articles/2005/11/08/romney_favors_pact_by_states_on_emissions/?page=1).

¹⁶ See: “Business Leaders Urge Northeast Lawmakers to Reconsider RGGI Proposal”, News Release, The Business Council of New York State, Inc. (9/22/05), at: (<http://www.bcny.org/whatsnew/2005/0928rggiletter.htm>).

¹⁷ See: [Letter from Assemblyman Paul Tonko to the Honorable George E. Pataki](#), (8/24/05), a copy of which was e-mailed to Lawrence Kogan of the ITSSD, on August 30, 2005. To view the letter click [here](#).

¹⁸ See: “Speech on the Environment”, Jon Corzine for Governor, (10/7/05), at:

(<http://www.corzineforgovernor.com/speech/view/?id=296>).

¹⁹ See: “Jon Corzine’s Environmental Agenda” at: (http://www.corzineforgovernor.com/i/pdf/plan_environment.pdf).

²⁰ See: Josh Gohlke and Mitchel Maddux, “Corzine Stands at Crossroad of Reform”, NorthJersey.com, *supra*.

²¹ See: “The Cost of the Kyoto Protocol: Moving Forward on Climate Change Policy While Preserving Economic Growth” Executive Summary, International Council for Capital Formation (Nov. 2005), at:

(<http://www.iccfglobal.org/pdf/Country-reports-overview.pdf>).

²² See: Carlo Stagnaro, “Europe’s Kyoto Bill”, Tech Central Station (11/16/05), at:

(<http://www.techcentralstation.be/111605A.html>).

²³ *Id.* See, also: “Hot Under the Collar; Climate Change”, The Economist U.S. Edition (11/19/05), The Katoomba Group’s Ecosystem Marketplace, at:

(<http://www6.lexisnexis.com/publisher/EndUser?Action=UserDisplayFullDocument&orgId=1925&topicId=100002042&docId=1:328550966&start=1>); “EU ETS ‘Unlikely’ to Reduce CO2 Emissions, Says Report”, Platts

Emissions Daily (Feb. 15, 2005), at:

(<http://www.platts.com/Electric%20Power/Resources/News%20Features/emissionsmarket/#8>); Alasdair Murray,

“Counting the Cost of Climate Change”, E!Sharp (Sept. 2004).

²⁴ See: Justin Blum, “Natural Gas’s Danger Signs – Higher Costs Threaten Economic Growth, U.S. Manufacturing”,

Washington Post (10/7/05), at: (<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/06/AR2005100601683.html>).

²⁵ See: Paul W. Parfomak and Aaron M. Flynn, “Liquified Natural Gas Import Terminals: Siting Safety and Regulation”, Congressional Research Service, Updated 4/20/05.

²⁶ There are an additional three onshore LNG facilities that have been applied for on the east coast, and four more LNG locations (onshore and offshore) for which feasibility studies have been prepared. There are currently NO operating LNG facilities on the west coast at all, though there is one operating facility along the Gulf Coast. In total, there are currently only five terminals where liquified natural gas can be imported into the United States.

²⁷ See: Scott Doggett, “Passions Fueled”, Los Angeles Times (10/25/05), latimes.com, at:

(http://www.latimes.com/travel/outdoors/la-os-coronados25oct25_1_2878169.story?coll=la-headlines-outdoors).

²⁸ See: David R. Baker, “New Fuel Battle Ignited in State Intense Debate Over Liquefied Natural Gas Terminals Along Coast”, San Francisco Chronicle (1/23/05), at: (<http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/01/23/BUGCEATF801.DTL>).

²⁹ “NESCAUM is the acronym for the Northeast States for Coordinated Air Use Management, an interstate association of air quality control divisions in the Northeast states. The eight member states are comprised of the six New England States, as well as New York and New Jersey. NESCAUM's purpose is to exchange technical information, and to promote cooperation and coordination of technical and policy issues regarding air quality control among the member states. See: (<http://www.nescaum.org/about.html>).

³⁰ See: “Some States Flirt With Europe on Carbon Controls”, Associated Press (12/16/04), in USA Today, at: (http://www.usatoday.com/weather/resources/climate/2004-12-16-states-climate_x.htm).

³¹ See: Letter from Assemblyman Paul Tonko to the Honorable George E. Pataki, (8/24/05), supra.

³² See: Jim Marzilli, “Laboratories of Progress”, The American Prospect Online Edition, supra.

³³ See: “US GHG Regs Seen as Move to Protect European Business”, Platts, POWER Magazine (8/24/05), at: (http://www.platts.com/Magazines/POWER/Power%20News/2005/082405_3.xml).

³⁴ See: Lawrence A. Kogan, “Exporting Precaution: How Europe's Risk-Free Regulatory Agenda Threatens American Free Enterprise”, The Washington Legal Foundation (11/4/05), 4-17, 54-60, at: (<http://www.wlf.org/upload/110405MONOKogan.pdf>).

³⁵ See: “Some States Flirt With Europe on Carbon Controls”, supra. However, according to Republican congressman Joe Barton...chairman of the House Energy and Commerce Committee”, who was also interviewed, “Any international compact involving state governments would have to be approved by Congress... We would tend to look at it with a lot of skepticism,” he said. *Id.*

³⁶ Mr. James has also publicly referred to the RGGI states as independent sovereign entities in just the same way that EU Member States refer to their relationship with the EU Commission. “[E]ach state is much like a member state in the EU - a sovereign state, subject to its own processes and regulations. So the same sort or dynamics are in play here where you will have, just by the nature of the beast, individual uniqueness that will not fit into the overall regional piece.” See The Climate Group Viewpoint Interview Series – “The Opportunities and Challenges Associated with Emissions Trading”, quoting Christopher James, Director, Connecticut Department of Environmental Protection, at: (<http://www.theclimategroup.org/index.php?pid=568>).

³⁷ See: Lawrence A. Kogan, “Exporting Precaution: How Europe's Risk-Free Regulatory Agenda Threatens American Free Enterprise”, The Washington Legal Foundation, supra.

³⁸ See: Jim Marzilli, “Laboratories of Progress”, supra.

³⁹ See: Alberta M. Sbragia, “US-EU Relations and Climate Change: The Need for Institutionalization”, prepared for the CSIS Think Tank Summit, titled “The Future of US-EU-NATO Relations: After the Cold War and Beyond the War in Iraq”, at 4-5, at: (http://www.csis.org/zbc/tts_papers.htm); (<http://www.csis.org/zbc/sbragia.pdf>). “[T]he EU has to recognize that political power in the US is not found exclusively in Washington. The US is in fact a federal system in which state governments are able to exercise considerable latitude in legislation as well as implementation. *In the field of climate change policy, the states have in reality been leading the way.* For those with a historical memory, the role of the states now on climate change recalls the role of the states in social policy in the 1920s and early 1930s. Essentially, states are experimenting with policies which are custom tailored to both individual state needs and governance structures” (emphasis added). *Id.*, at pp. 2-3.

⁴⁰ See: Scott Helman, “Romney Favors Pact by States on Emissions”, supra.

⁴¹ See: Joi Preciphs, “Cap and Trade System Gaining Support”, UPI (4/27/05), Science Daily, at: (<http://www.sciencedaily.com/upi/index.php?feed=Science&article=UPI-1-20050427-18203300-bc-cap-trade.xml>).

⁴² We have repeatedly noted that, if RGGI is enacted, it will dovetail with the costly regulatory requirements imposed by the Kyoto Protocol, which, as other scholars also have recognized, serves actually as a new form of disguised European trade protectionism. “...Kyoto activism is in reality not about saving the world. It is about exploiting Green sympathies and justified environmental concerns to convince the world that it should accept a new form of *European protectionism*... If one looks at the world from Brussels, the Ruhr or Berlin, the motivation for pushing centrally planned Kyoto controls becomes understandable. *Political and industry leaders, as well as the people, observe the growing political costs of proliferating nterventionism, fuel levies, high taxes, and collective welfare for a rapidly aging population...[I]t is easier*

to cope with a rationing system such as the Kyoto controls if one has little or no economic growth, as is the case in Europe. Fast-expanding economies with growing populations, such as Australia or America, easily overshoot fixed targets...It is only natural for Europeans to try and handicap the new competition by seeking supposedly virtuous pretexts, such as saving the world from global warming...Seen in this light, the European Union's Kyoto drive only replicates EU tactics of fuelling global GM hysteria to protect the interests of EU agriculture..." (emphasis added). See: Denis Dutton and Wolfgang Kasper, "Green Protectionism", POLICY, The Centre for Independent Studies, at 23-25 (Summer 2002-2003), cited in, Lawrence A. Kogan, "Exporting Precaution: How Europe's Risk-Free Regulatory Agenda Threatens American Free Enterprise", supra, at pp. 106-08.