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New York Department of Environmental Conservation
VIA Online Submission

Re: Invitation to Comment on New York Cap and Invest Pre-Proposal Draft

Dear Department of Environmental Conservation Staff:

On behalf of bp America, thank you for the opportunity to participate in the New York Cap and Invest (NYCI) rulemaking process and provide comment on the Pre- Proposal Draft of December 20, 2023 (the "Draft").

About bp

bp is investing in America's energy system as we transition from an international oil company to an integrated energy company. With $150 billion invested in the US since 2005, we employ more than 30,000 people and support more than 275,000 jobs. In New York state, bp has over 480 employees and supports approximately 900 total jobs. We have a bigger footprint in the US than anywhere else in the world, and we're proud to be a trusted partner for secure, affordable, and reliable energy.

bp has been participating in carbon markets as far back as 2001. bp's low carbon trading function plays a vital role in connecting bp and our customers to carbon pricing through our activity in the world's compliance and voluntary carbon markets.

bp supports Governor Hochul's aim to design a New York Cap-and-Invest Program ("NYCI") with the capability to join other current and future programs. In our experience with compliance and voluntary carbon markets, when it comes to linkage, all programs must be compatible to avoid negative impacts on the carbon markets. In this regard, we respectfully offer comments on six key areas of the Draft that can help NYCI successfully link with other cap-and-invest programs.

Market distortions due to escalator differences

The pre-proposal indicates that the auction price floor is to increase by 8% each year. This differs from the escalator adopted in California, Quebec, and Washington state, which is 3% plus Consumer Price Index (CPI). Linked markets rely on economic efficiency. Differing floor prices, even if small initially, could compound into large differences over time. The resulting potential for market distortions poses an obstacle to linkage.

Global warming potential differences

The pre-proposal includes the application of the 20-year global warming potential ("GWP") to GHG emissions within the definition of allowance, with reference to how GHG emissions are calculated for compliance obligation in NYCI. A 100-year GWP is the standard used by the United Nations' Intergovernmental Panel on Climate Change, the U.S. Environmental Protection Agency, and the three states – California, Oregon, and Washington – with GHG emissions cap programs. While we recognize the potential benefits of each standard, when contemplating linkage NYCI's usage of a 100-year GWP standard would best align with the aforementioned programs.

Holding limits

bp welcomes the Draft's recognition that the regulations will need to allow for a process for Obligated Entities with a large share of total GHG emissions to have holding limits set at a value that allows them to meet compliance obligation through auction, without the need to enter a secondary market as a captive buyer. bp's firsthand experience within existing cap and invest jurisdictions indicates that if holding limits are not appropriately addressed, an unintended consequence would be to place upward pressures on program costs within the supply chain. The Draft addresses the holding limits in a manner that would be conducive to potential program linkage.

Banking of allowances

An area of concern and inconsistency with other programs, like California and Washington, is that the pre-proposal does not allow banking of allowances between Compliance Periods 1 and 2. By not allowing banking of allowances between the initial two compliance periods, the NYCI approach introduces market volatility into the program at its inception. Therefore, we would recommend that the Department of Environmental Conservation allow for banking between Compliance Periods 1 and 2.

Data availability alignment for transparency

For other active programs, availability of market data in a timely manner has been essential for market participants managing the cost of compliance and ensuring the program goals will be met. bp appreciates the inclusion of an initial auction at the outset of the program, as this will allow for an allowance price to be established for obligated entities so they can understand and manage the cost of their compliance responsibilities. As the NYCI program is established, bp recommend the Department of Environmental Conservation to create a database for market data for public access to allow transparency to the market activities.

The role of biofuels and upstream emissions factors in the NYCI program

Referencing the California Air Resources Board[1] "the CO_2 emitted from vehicles during biofuel combustion should be considered carbon neutral, in accordance with IPCC and U.S. EPA GHG inventory guidelines, as the carbon released was taken up from the atmosphere by the source of the biofuel feedstock within a short timeframe." The NYCI approach to biofuels is at odds with other domestic cap and invest programs (and potential linkage partners) in not recognizing the carbon neutral aspect of their combustion. Instead of exemption under the cap, NYCI's only concession to biofuels is to differentiate through the upstream emission weighting on fossil fuels. The net result is likely to be a weak market signal for incremental lower carbon fuels (e.g. biofuels) usage. This may result in diminished compliance options, potentially adding cost to the program and providing another potential obstacle to linkage.

It is bp's opinion that life cycle emissions should be addressed using a technology-neutral approach and not specifically targeted to fossil fuel through the state's upstream emission weighting requirements. The current approach also may lead to unintended consequences for related products. For example, in the paving and construction sector liquid asphalt, being derived from refined fossil crude, would be subject to the cost of the NYCI program's upstream emission factors[2] while out of state cement, which is a very energy- intensive product, would not.

Upstream emissions would be appropriately addressed by adopting (in tandem) a Low Carbon Fuel Standard (LCFS). Through attempting to integrate features into NYCI that would be better served in an LCFS program, the state runs the risk of creating a more expensive program that will be extremely challenging for existing cap and invest programs to link with.

Thank you for the opportunity to make these initial comments. Please do not hesitate to reach out to me at 703.981.1180 or nathan.weiss@bp.com if you have any questions or need additional context.

Sincerely,

Nathan Weiss
bp America

[1] https://ww2.arb.ca.gov/sites/default/files/2020-09/basics-notes.pdf
[2] https://extapps.dec.ny.gov/docs/administration_pdf/ghgappxclcpaemissfctrs22.pdf