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September 14, 2012

Hand Delivered  
Debra Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301



Re: DE 10-188, Core Docket and Proposals For Use of  
2012 RGGI Funds

Dear Ms. Howland:

On September 7, 2012 The Jordan Institute (Jordan) filed a revised proposal on behalf of itself and four other intervenors in this docket regarding the proposed use of 2012 RGGI funds. The Way Home offers the following comments to the revised proposal of The Jordan Institute. Seven additional copies of this letter are enclosed with this original.

**A. The Revised Request For A Direct Award Of RGGI Funds.**

According to the revised proposal, The Jordan Institute and the four other intervenors would receive a total of \$4 million of \$5.7 million that Jordan estimates will be in the RGGI fund as of December 31, 2012. Of this \$4 million, The Jordan Institute itself would receive \$820,000 for projects for three undisclosed C & I clients.

The Way Home questions the appropriateness of an award of RGGI funds to clients of The Jordan Institute pursuant to PUC 2604.01(b)(2) under the circumstances described in the revised proposal. The proposal does not indicate that the Jordan clients were or are previous RGGI grantees. The proposal also does not indicate that these three Jordan clients received services through the Core program. It is therefore unclear how RGGI funds can be distributed to the Jordan Institute for these clients under PUC 2604.01(b)(2).

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**B. Distribution of RGGI Funds Under PUC Rule 2604.01(b)(2).**

The Way Home has concerns about whether RGGI funds can be awarded to all of the Jordan intervenors pursuant to PUC 2604.01(b)(2), as part of the Core docket, however worthy the proposals might be.

The Jordan Institute claims on page 4 of its revised proposal that the Commission agreed to consider alternative proposals in this docket that are not limited to existing Core program offerings. The Way Home, however, interprets the Commission's Secretarial letter dated August 16, 2012 to limit the Commission's consideration of alternative proposals to "alternatives and modifications to the existing core programs."

The Jordan Institute's revised proposal does not seek RGGI funding for either existing, new, or modified "Core" programs. Instead, the Jordan proposal seeks to use RGGI funding for projects that are not administered through the Core programs. While it might be possible to order the use of some of the RGGI funds requested by Jordan for non-Core purposes pursuant to PUC 2604.01(b)(3) this is not what Jordan is proposing. Since this proceeding is taking place pursuant to PUC 2604.01(b)(2), it is the understanding of The Way Home that an order for the use of RGGI funds must be limited to existing or new Core programs.

**C. RGGI Funds For the CAA Intervenor Proposal Could Possibly Be Directed To The Existing Core Low Income Program.**

The RGGI funds sought by the Community Action Agencies (CAA) could possibly be directed to the existing Core low income Home Energy Assistance (HEA) program.

The record shows that the CAAs currently administer the federal Department of Energy Weatherization Program (WAP) in conjunction with the Core HEA program. In fact, the CAAs leverage the Core HEA funds with WAP funds to provide energy efficiency and weatherization services for low income clients who are served by both of these programs. Many of these low income clients also receive federal fuel assistance, which is also administered by the CAAs.

The RGGI funds sought by the CAAs could thus be directed to the low income HEA program. These RGGI funds would then be going to an existing Core program and would be used for the purposes intended by the CAAs as described in The Jordan Institute's revised proposal.

**D. Jordan's Revised Proposal Regarding RGGI Funds Requested By The Utilities For the Core Programs.**

The Jordan Institute's revised proposal provides that the utilities would receive only \$1,642, 506 of 2012 RGGI funds (the other \$4 million going to the Jordan intervenors). The utilities made clear at the hearing on August 30<sup>th</sup> that their proposal is for \$2 million even though only \$1,642,506 might be in the RGGI fund as of the date of the hearing. The Way Home supports the proposal of the utilities for the full \$2 million. See Exhibit 59, letter on behalf of The Way Home dated August 14, 2012.

**E. Jordan's Legal Argument For Distribution of RGGI Funds.**

The Jordan Institute suggests that the Commission can approve its revised proposal under PUC 2604.01(b)(2) and cites the following electric restructuring statutes in support of its position: RSA 374-F:4, VIII(a); RSA 374-F:3, X; and, RSA 374-F:3, XIV. The Way Home does not find support in these statutes for the position of The Jordan Institute for disposition of the 2012 RGGI funds through PUC 2604.01(b)(2).

**F. Jordan's Request For A Waiver.**

The Jordan Institute requests that the Commission waive PUC 2604.01(b) pursuant to PUC 201.05 if the Commission finds that it is inappropriate to award some of all of the RGGI funds under PUC 2604.01(b)(2).

The Commission was directed by RSA 125-O:8, II to promulgate rules to administer the RGGI fund pursuant to RSA 125-O:23. Commission Rule PUC 201.05 says that the Commission "shall" waive the provisions of "any" of its rules unless precluded by statute, when the criteria of PUC 201.05 are met. However, it is unclear to what extent a waiver of PUC 2604.01(b) should be granted when RSA 125-O:23, the statutory authority for PUC 2604.01(b), is being repealed effective January 1, 2013 by HB 1490-FN, 2012 Session, Chapter 281:4.

The Jordan Institute argues that it meets all of the criteria of PUC 201.05 unless precluded by statute from doing so. The Jordan Institute further argues that it is in the public interest to waive the Rule and that the waiver will not disrupt the orderly and efficient resolution of matters before the Commission.

The Jordan Institute's request for a waiver impacts the distribution of a significant amount of funds. It is unclear that the requirements of PUC 201.05 are met. It is also unclear that it would be in the public interest to waive the Rule, and that doing so would not be disruptive to the orderly and efficient resolution of matters before the Commission.

**G. Recommendation of The Way Home.**

The Way Home suggests that the RGGI funds sought by the CAAs could possibly go to the Core HEA program pursuant to PUC 2604.01(b)(2).

The Way Home also suggests that to the extent that all or portions of the revised proposal of The Jordan Institute cannot be addressed under PUC 2604.01(b)(2), the Commission could consider opening a non-Core adjudicatory docket under PUC 2604.01(b)(3). The Commission could set an expedited procedural schedule to provide for a fair, orderly and efficient disposition of the matter by the end of this year, similar to the process in the Core docket.

In a non-Core adjudicatory proceeding under PUC 2604.01(b)(3), worthy proposals, such as those submitted by the CAAs, Community Loan Fund, and NH Housing Finance Authority, could be considered and approved as consistent with the provisions of the current RGGI statute, RSA 125-O:23, III. The other Jordan Institute proposals could be considered if deemed to be consistent with the provisions of RSA 125-O:23, II.

The Way Home further recommends that the Commission forthwith approve the proposal of the utilities for \$2 million for the Core programs, including the low income Core program. The record shows that the Core low income program is in great need of an infusion of funds as soon as possible. See, for example, Exhibit 68 (CAA letter dated August 29, 2012) and Exhibit 60 (EESA Board letter dated July 31, 2012).

Thank you for considering these comments of The Way Home.

Sincerely,



Alan Linder

Dan Feltes

Attorneys for The Way Home

AL:blg

Enclosures: O + 7

Cc:

DE 10-188 Service List

Dianne Pitts, The Way Home