



PennFuture

Testimony of Robert Altenburg, Esq. Director, PennFuture Energy Center

Pennsylvania House of Representatives
Environmental Resources and Energy Committee

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Good morning Chairman Metcalfe, Chairman Vitali, and Members of the Committee, thank you for inviting me to testify today. My name is Robert Altenburg and I am the director of the Energy Center at Citizens for Pennsylvania's Future, also known as PennFuture. We are a statewide environmental nonprofit with offices in Harrisburg, Philadelphia, Pittsburgh, and Mt. Pocono. Since our founding in 1998, we have promoted clean energy and energy efficiency across Pennsylvania, and the growing climate crisis makes that more important now than ever.

Pricing Carbon is the Right Thing to Do

Our families and small businesses understand that when they need to dispose of garbage or sewage, they don't just open the window and toss it outside and they don't go down to the river and dump it. Instead, they pay someone to ensure their waste is recycled or disposed of safely. We call this "the polluter-pays principle," but for most people it's just common sense.

Currently, electric generation is creating more carbon pollution than any other source in the region, but Pennsylvania's polluting generators get to dump their waste into our air for free. In a report from last April, the PA Department of Environmental Protection (DEP) estimated this social cost of carbon pollution would be as high as \$95 per ton of emissions by 2050.¹ Who pays for that damage if not the polluters? We all do as a hidden tax in our medical bills, higher insurance costs, lower productivity, and lost wages.

This is not only unfair, this represents a market failure. In testimony before our State Senate last April, Kathleen Barrón, a Senior Vice President of Exelon Corporation explained that

¹ PA DEP, Pennsylvania Climate Action Plan, (April 29, 2019).

because “fossil generators have the luxury of having the costs of their pollution borne by society...” and not having to factor that in to their price “...means that a market offer from a fossil generator appears artificially lower than it should be [and offers from] non-emitting generators appear more expensive even though they aren’t.”² In other words, coal and natural gas plants are implicitly subsidized by Pennsylvanians because they don’t have to pay for their environmental damage from carbon pollution. The recent closure of Three Mile Island and the pending closure of the Beaver Valley nuclear power plants are symptoms of this market failure, but fossil fuel subsidies also make it more challenging for clean alternatives like solar and wind to compete.

Governor Wolf, by signing Executive Order 2019-07, has taken the first step toward pricing this pollution and correcting this market failure. Admittedly the current cost of Regional Greenhouse Gas Initiative (RGGI) allowances are a far cry from the \$95 per ton that polluters will cause in damages, but this proposal is a lot better than the \$0 per ton polluters currently pay. A RGGI program can also generate revenue that, if invested wisely, will bring additional benefits like more clean energy and energy efficiency, more jobs for displaced workers, or lower electric bills for consumers.

We know that RGGI alone isn’t going to solve the climate crisis, but that is no excuse for not doing the right thing. It’s hard to imagine someone coming into this building and arguing they should have a free pass to dump their trash in public because other people will still litter even if they stop. Sadly though, that is essentially the argument we are hearing from polluters and their allies. Sad, but not surprising, as Ms. Barrón said in her testimony “when the rules allow you to pollute for free...of course you like the rules.”

Governor Wolf has the Authority to Take This Action

Several members of the Legislature and industry have voiced opposition to the Governor’s plan. These members haven’t presented any alternative plan to stop the increase of carbon pollution, so these challenges are not a matter of differences in preferred approach—rather their goal is inaction. To date, much of this opposition amounts to claims that the Governor lacks the authority to take this action, but this is simply not true.

Through Pennsylvania’s Air Pollution Control Act (APCA), the Legislature has provided the Environmental Quality Board (EQB) the power and the duty to “Establish and publish

² Testimony of Kathleen Barrón, PA Senate Consumer Protection and Professional Licensure Committee (April 10, 2019).

maximum quantities of air contaminants that may be permitted under various conditions at the point of use from any air contaminant source in various areas of the Commonwealth so as to control air pollution.”³ At its core, that is all that the Governor’s Executive Order requires—control on the amount of pollution natural gas plants (and others) are permitted to emit. The fact that it is modeled as a trading program gives more flexibility to the regulated community, and will likely lower the costs of compliance, but that does not require separate enabling legislation. The DEP has already promulgated similar trading mechanisms for the Acid Rain Program, NOx Budget Trading Program, Clean Air Interstate Rule, and the Cross-State Air Pollution Rule.

It’s also important to realize that RGGI is not an interstate compact and Pennsylvania doesn’t delegate rulemaking authority to any other state or body. In the RGGI program, DEP will propose a rule to regulate emissions of pollutants in Pennsylvania. This rule could function without any interstate component at all, but by choosing to make our program compatible with RGGI, we will reduce administrative costs and lower the cost of compliance.

The Legislature, of course, has significant input in this process though their presence on the EQB, members and appointees on various advisory committees, the ability to submit public comment, and statutory review procedures under the Regulatory Review Act.⁴ Although the Legislature lacks power to block executive action without bicameralism and presentment,⁵ a lot can be accomplished by cooperating in the development of the program.

You Have a Responsibility to Act

As Representatives, you have all taken a solemn oath to support, obey, and defend our state’s Constitution—that includes Article 1, our “Declaration of Rights” much like the federal Bill of Rights. It contains guarantees of the right to life, liberty, and the pursuit of happiness; the freedom of speech and freedom of the press; the right to trial by jury; and the right to bear arms in our own defense. But, our state Constitution goes farther than that. That very same Article I also says that “Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come [and as] trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”⁶

³ PA Air Pollution Control Act § 5(a)(2).

⁴ Act of Jun. 25, 1982, P.L. 633, No. 181.

⁵ Com. v. Sessoms, 532 A. 2d 775 (1987).

⁶ Constitution of the Commonwealth of Pennsylvania, Article I § 27.

That is a very powerful statement. It is saying that clean air and a healthy environment are not just our rights, they are literally our property. By naming the Commonwealth as the trustee, it gives you each an individual fiduciary duty to act solely and impartially in the interests of the beneficiaries, that is we the people and future generations.⁷

The need for climate action is becoming even more urgent. Just last year, the US Global Change Research Program reported the “Earth’s climate is now changing faster than at any point in the history of modern civilization, primarily as a result of human activities.”⁸ In spite of decades of well-funded opposition from professional deniers, over 97 percent of climate scientists endorse the consensus on man-made global warming,⁹ and that consensus is clear that our window of opportunity to avoid the worst effects of climate change is closing.¹⁰ We all have a role to play in addressing the crisis.

As trustees, you must act with prudence and caution. Rather than risk our health and welfare on a long-shot bet that the problem will go away on its own, you have a responsibility to take the climate crisis seriously and use the tools we have on hand to limit carbon pollution. Supporting the Governor’s plan to cap carbon emissions is a start, but it also means investing in clean renewable generation and energy efficiency.

Pennsylvania has a history of being a leader in the energy field from oil, to coal mining, to hydraulic fracking, and, today, we have a unique opportunity to continue that leadership in clean renewable energy development. If we choose to, we can inspire innovation that will have positive impacts well beyond our borders.

⁷ 20 Pa.C.S.A. § 7771 *et. seq.*

⁸ U.S. Global Change Research Program, Fourth National Climate Assessment, Vol II, pg. 34.

⁹ J. Cook, et al, "Consensus on consensus: a synthesis of consensus estimates on human-caused global warming," *Environmental Research Letters* Vol. 11 No. 4, (13 April 2016).

¹⁰ IPCC, Global Warming of 1.5°C (Oct, 2018).