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Senate of Pennsylvania

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CHAIRMAN

February 2, 2021

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101
[via email to irrc@irrc.state.pa.us]

Dear Commissioners:

Pursuant to Section 5(d) of the Regulatory Review Act and subsequent to a majority vote of the Senate Environmental Resources & Energy Committee ("Committee"), this letter is intended to convey the Committee's serious legal and policy concerns with the Environmental Quality Board's ("EQB") proposed Regulation #7-559 (IRRC #3274), entitled, "CO₂ Budget Trading Program." The proposed rulemaking is intended to implement the Regional Greenhouse Gas Initiative ("RGGI") in Pennsylvania, which would impose a tax on all fossil fuel electric generation plants in the Commonwealth.

We urge the Independent Regulatory Review Commission ("Commission") to review thoroughly the concerns expressed by numerous commentators, including those from organized labor leaders, business leaders and many of our colleagues who have weighed in against the proposed regulation.

Our concerns are as follows:

The EQB lacks any statutory basis to join RGGI.

All RGGI states have express statutory authorization to implement RGGI or, as with New York, expressly authorize the regulation of CO₂. RGGI represents the single most impactful energy policy reform since the deregulation of the electricity market under the Electricity Generation Customer Choice and Competition Act of 1996, and only the General Assembly, not DEP, has the power to determine whether or how to implement RGGI. Consistent with Section 5.2(4) of the Regulatory Review Act, the Commission must consider "Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review." We encourage you to consider those arguments carefully.

The RGGI "allowance" is a tax.

The RGGI "allowance," which fluctuates every calendar quarter and is now currently \$7.41 per CO₂ ton, is estimated by the EQB to raise more than \$2.4 billion over nine years (based upon now outdated modeling assumptions at \$5.65 per allowance). Pennsylvania law and precedent very clearly supports "the power of taxation, in all forms and of whatever nature lies solely in the General Assembly" and a regulatory fee is "intended to cover the cost of administering a regulatory scheme." The EQB intends to allocate only five percent for its administrative purposes and one percent is to be allocated to RGGI, Inc., a private third-party corporation. Therefore, the remaining 94% of revenue raised is done so via a tax, requiring express legislative authorization.

DEP violated the Air Pollution Control Act’s (APCA) mandate for public hearings to be held within impacted communities.

The EQB’s so-called “public hearings” violated the APCA, which expressly requires public hearings to be held “by the board or by the department...in any region of the Commonwealth affected” by the proposed regulation. EQB hosted five, all day, “virtual” hearings that limited individuals to five minutes each, assuming they have access to broadband and can successfully navigate DEP’s complex, two-step registration process. This process discriminated against rural Pennsylvania communities directly impacted by RGGI-mandated plant closures and has disenfranchised hundreds of thousands of Pennsylvania families whose voices were unable to be heard due to lack of reliable internet access. This is an issue raised by the [Pennsylvania News Media Association](#) in its comments: “We recognize and appreciate the importance of COVID mitigation requirements, and we appreciate the ability to participate remotely, but we must point out that virtual-only settings can exclude significant numbers of Pennsylvanians who do not have access to the internet.”

The modeling upon which the RGGI regulation is based is already obsolete.

Since DEP released its modeling data in April 2020, the [RGGI allowance price](#) has increased from \$5.65 per allowance to \$7.41, a 32% increase. Moreover, the modeling assumed the RGGI allowance price would not exceed \$7.00 until calendar year 2025. It is irresponsible to rely upon this modeling data to provide a policy justification for the proposed regulation where, as demonstrated, the core assumptions upon which RGGI is based are fundamentally wrong. We encourage the IRRC to highlight this discrepancy. DEP must commence a new modeling study in conjunction with PJM and the Independent Market Monitor.

Further, none of the modeling provided in support of the regulation accounts for the phenomenon known as “leakage.” The detrimental impact RGGI will have on Pennsylvania’s coal-fired power plants will be immediate, and many older natural gas-fired power plants will also suffer as they will be at a competitive disadvantage to baseload generation in other non-RGGI PJM states. DEP’s modeling data shows little to no decline in CO₂ emissions due to leakage.

PA DEP Reference Case

Affected CO2 Emissions (Million Short Tons)

	2020	2022	2025	2028	2030	2019-2030
MA	10	9	7	7	6	94
CT	8	7	6	4	3	71
ME	1	1	-	0	0	6
NH	2	1	1	0	0	12
RI	3	3	2	2	2	30
VT	0	0	0	0	0	0
NY	28	32	27	21	20	315
DE	1	1	1	1	1	12
MD	9	9	9	10	9	108
VA	27	24	25	25	24	303
NJ	16	17	16	14	12	187
PA	74	78	73	70	60	871
Total 11 state RGGI	105	104	94	85	79	1,138
Total CO2 Emissions PJM	358	329	315	313	298	3,885
Total CO2 Emissions SERC	356	279	287	305	305	3,628
Total CO2 Emissions EI	1,298	1,119	1,114	1,148	1,140	13,880

Source: PA DEP

PA DEP Policy Case

Affected CO2 Emissions (Million Short Tons)

	2020	2022	2025	2028	2030	2019-2030
MA	10	9	7	6	6	93
CT	8	7	5	4	3	71
ME	1	1	-	0	0	5
NH	2	1	1	0	0	12
RI	3	3	2	2	2	31
VT	0	0	0	0	0	0
NY	28	32	27	21	20	314
DE	1	2	1	1	1	16
MD	7	9	9	11	8	112
VA	27	25	25	25	24	304
NJ	16	18	17	15	13	195
PA	75	57	55	51	51	691
Total 12 state RGGI	178	163	151	138	130	1,843
Total CO2 Emissions PJM	356	320	306	305	295	3,798
Total CO2 Emissions SERC	355	283	289	306	307	3,651
Total CO2 Emissions EI	1,297	1,116	1,109	1,143	1,138	13,837

Source: PA DEP

This is supported by the Penn State Center for Energy Law and Policy, which reported that “86% of the CO₂ reductions from Pennsylvania’s joining RGGI would be offset by emissions increases in PJM and/or other RGGI states.”¹ This is a critical issue and, in the Committee’s opinion, completely undermines the proposed regulation, which effectively subsidizes fossil fuel plants in West Virginia and Ohio, as well as, non-RGGI PJM state economies at the worst possible time. Given the extensive economic losses caused by RGGI, it makes no sense for PA to eliminate coal and natural gas-fired power generation for no environmental gain.

Pennsylvania has significantly reduced CO₂ emissions without programs like RGGI.

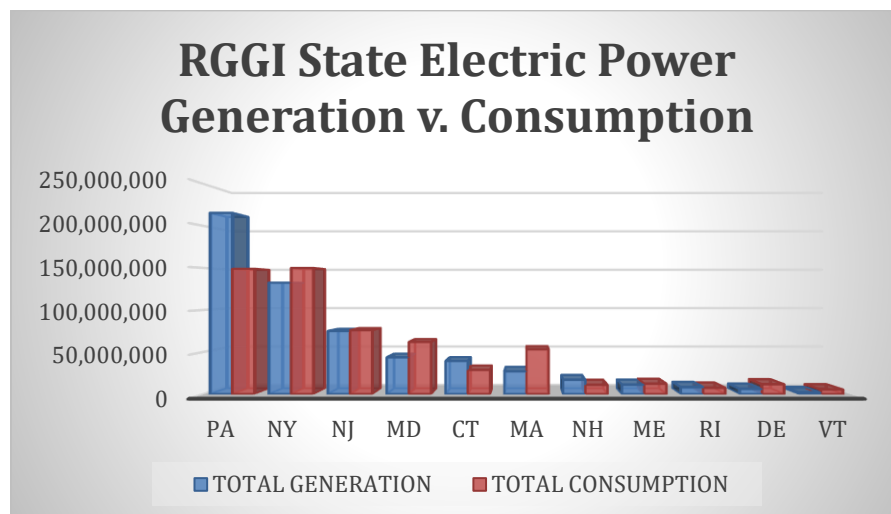
Since 2008, CO₂ emissions from fossil fuel power generation in Pennsylvania have been reduced by 38% while maintaining a role as an energy exporter.

STATE	2008 CO2 (short tons)	2020 CO2 (short tons)	CO2 Reduction 2008 to 2020 (%)
Pennsylvania	119,393,275	74,002,281	-38%

Source: EPA Clean Air Markets Division

Leakage in RGGI states is extensive, as any reduction in CO₂ in RGGI states is largely attributed to the importation of power from energy exporters like Pennsylvania.

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Source: EIA 2018 State Electricity Profiles

The economic and fiscal risks for Pennsylvania to join RGGI are very real.

According to modeling conducted by DEP and upon which the proposed regulation is based, the immediate economic and fiscal risks are very real, including:

- RGGI will trigger the near immediate closure of all coal plants in Pennsylvania in the first year of the program, devastating the tax bases of local governments and school districts, and hurting small businesses in those communities.
- RGGI will trigger the closure of or reduce generation from Pennsylvania natural gas plants, and will make it highly unlikely that any new natural gas plant will be constructed to replace the lost Pennsylvania generation.
- Thousands of union and non-union jobs will be lost by the plant closures, and the effective prohibition on future natural gas plants, which will have a negative impact on communities and families impacted by the plant closures. See, for instance, comments from: [Rick Bloomingdale](#) (Pennsylvania AFL-CIO); [Frank Sirianni](#) (Pennsylvania Building and Construction Trades Council); [Michael Welsh, John Fultz and Charles Knissell](#) (International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers and United Mine Workers); [Phil Ameris](#) (Laborers' District Council of Western PA); [Tom Melcher](#) (Pittsburgh Regional Building Trades Council); and [John Dougherty](#) (Philadelphia Building and Construction Trades Council).
- According to Penn State Center for Energy Law and Policy, "Pennsylvania's entry into RGGI causes the load weighted average price of electricity in Pennsylvania to rise by \$2.56 per MWh annually between 2022 and 2030."² This represents a 7.8 percent increase for Pennsylvania consumers. Low income households spend a much higher percentage of income on heating and powering their homes and according to the [Energy Information Administration](#) (EIA), residential consumers pay more than 40 percent of the statewide average of all consumers.³ Compounding this, the Pennsylvania PUC concluded that low income households, even after receiving

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<https://www.ahs.dep.pa.gov/eComment/DocumentServer.ashx?enc=1xIDOiZQfBuB5SsbD9T0MrhM3RzfHWY%2flakx%2bwNNuk%3d> p.4

³ <https://www.eia.gov/electricity/data/state/>

subsidies via customer assistance programs, pay nearly 15 percent of total household income on heating and electrifying homes.⁴ RGGI would only serve to increase the energy poverty index for these families.

- As acknowledged by DEP's [Hayley Book](#) and more recently by the Penn State Center for Energy Law and Policy, "Save for a legislative intervention that expands DEP's investment authority, the agency has no means of subsidizing ratepayers." In short, the Clean Air Fund cannot assist low-income households with direct bill subsidies as virtually all RGGI states provide, and RGGI proponents should not assume that, if RGGI is implemented, that the General Assembly would legislate funds in this manner.
- In contrast to the very real impact on current, blue collar jobs, families and communities, the so-called green or energy efficiency jobs touted by the EQB are speculative, at best, and low-paying compared to the jobs that will be lost as a result of this proposed regulation. As [Shawn Steffee](#), International Brotherhood of Boilermakers, commented: "The projected 'green' energy jobs are not at all comparable and cannot provide the wages and benefits that are current industry standard. I represent skilled workers who build and maintain engineering marvels. These men and woman will likely flee the state under the new restrictions."

The President and Congress are aggressively moving forward with climate change policies.

There is no reason for Pennsylvania to implement RGGI, which in the absence of a national policy, will effectively subsidize fossil fuel generation in neighboring, non-RGGI states. A massive federal effort to combat climate change is well underway. The federal courts also recently invalidated the Affordable Clean Energy (ACE) rule, which was intended to replace the Clean Power Plan (CPP) regulations advanced under President Obama and directed the Biden EPA to commence a new rulemaking.

The risks of Pennsylvania joining RGGI, far outweigh any benefits; especially in light of recent federal political and policy developments. RGGI will lead to tremendous economic disruption - including the loss of thousands of blue-collar jobs, major impacts to the property tax bases in host plant communities and dramatic increases in electric rates for residential, commercial and industrial customers. Low income households, already suffering from energy poverty will be hit the hardest as residential consumers pay significant more for delivered electricity.

We urge IRRC to convey its serious concerns with the proposed CO₂ Budget Trading Program regulation and if the proposed regulation returns to IRRC in final form, reject it as contrary to law and not in the public interest.

Sincerely,

[MEMBER SIGNATURES WILL BE ADDED FOLLOWING COMMITTEE VOTE]

cc: Governor Tom Wolf
All Senators
Environmental Quality Board
PA Department of Environmental Protection

⁴ <https://www.puc.pa.gov/pdocs/1602386.pdf>