

August 18, 2021

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

RE: Comments to Reg #7-559: CO2 Budget and Trading Program

Dear Commissioners:

Pursuant to Section 5.1(j.2) of the Regulatory Review Act (RRA), the Senate Environmental Resources and Energy Committee writes to express our disapproval of the Environmental Quality Board's (EQB) CO2 Budget Trading Program Regulation #7-559 (IRRC #3274). This final proposed rulemaking, which lacks any statutory basis and is opposed by wide, bipartisan majorities in both Chambers of the General Assembly, is intended to implement the Regional Greenhouse Gas Initiative (RGGI) in Pennsylvania. This letter also serves as notice that the Committee is exercising its authority to extend its review of this final rulemaking for 14 days, as provided for under Section 5.1(j.2) of the RRA.

In February of this year, this Committee provided detailed objections to the proposed RGGI regulation, which included our conclusion that there is no statutory basis for the RGGI regulation and that the EQB failed to comply with the criteria outlined under Section 5.2 of the RRA. We stand by those comments and encourage the Independent Regulatory Review Commission (IRRC) to consider this letter in conjunction with our earlier comment letter. Suffice to say, DEP's reliance upon Section 5(a) of the Air Pollution Control Act, which was enacted in 1972, requires a monumental and unprecedented stretch of the concept of legislative intent to conclude that the 1972-73 General Assembly intended to provide DEP with the power to restructure Pennsylvania's electricity generation through a rulemaking process. Further, the power of taxation lies solely in the General Assembly, and the revenue projected to be generated from RGGI is far in excess of the "fees" necessary for the support of the program that are authorized under the Pennsylvania Air Pollution Control Act.

RGGI would impose a massive tax on all coal and natural gas electric generation plants in the Commonwealth, which will contribute to the premature retirements of several power generation facilities, the loss of thousands of current jobs and the impairment of thousands of future jobs. According to information provided to the Committee from PJM, and backed up by the Penn State Center for Energy Law and Policy (Penn State Center), this regulation will also trigger double-digit consumer electricity rate increases, which will be as high as 18 percent for low- and fixed-income households. Pennsylvania's average electricity price is 9.81 cents/kilowatt hour, about 7% below the United States average. The picture for the RGGI states is much different. Looking at the most expensive states in the continental United States, RGGI states fill the top four slots and eight of the top 10. They include: Connecticut - 18.66 cents/kWh, Rhode Island - 18.49 cents/kWh,

Massachusetts - 18.40 cents/kWh, New Hampshire - 17.15 cents/kWh, Vermont - 15.36 cents/kWh, New York - 14.34 cents/kWh, Maine - 14.04 cents/kWh and New Jersey - 13.42 cents/kWh. RGGI states have seen their electricity prices rise three times faster than Pennsylvania's. It would also render uncompetitive or significantly less competitive two-thirds of our state's current electric generation capacity. In fact, DEP has readily admitted that Pennsylvania generators would lose out. We struggle to envision a more substantial and, in this instance, unsound energy policy regulation for Pennsylvania, which is blessed with vast amounts of coal and natural gas resources. These resources have allowed Pennsylvania to possess one of the most diverse, reliable and affordable portfolios of electric generation in the country. With this in mind, there is no question the proposed final RGGI regulation, which takes environmental and economic control out of the hands of the Pennsylvania legislature and places it in the hands of a coalition of other states, "represents a policy decision of such a substantial nature that it requires legislative review," and therefore fails to meet the standards of Section 5.2(b)(4) of the RRA.

In the months that followed the Governor's RGGI executive order in October of 2019, this Committee received countless comments from organized labor, business and community leaders, local government officials and consumers impacted by RGGI-caused electric rate increases. Based upon this testimony, there is no doubt that Pennsylvania's participation in RGGI will trigger enormous economic disruptions within the Commonwealth, especially western Pennsylvania. Sadly, and in spite of the Governor's executive order commitment to the contrary, the Administration has yet to meet with any of the impacted plants or communities in the western part of the state to discuss the rulemaking. Notably, DEP failed to hold public hearings as required under APCA in those parts of the state, which was highlighted by the Pennsylvania NewsMedia Association in its February 18, 2021 letter to DEP and copied to IRRC: "[T]he lack of public access has highlighted numerous issues with virtual-only/phone-in public meetings, including the many Pennsylvanians who do not have reliable access to the Internet."

During our Committee meetings we learned a great deal about the harsh economic impacts that will result from this proposed final rulemaking. RGGI's impact from just four coal plants in western Pennsylvania would reduce state revenues by \$34.2 million. Similarly, RGGI would wipe out nearly \$4 million in local taxes for some of the poorest and most rural areas of Pennsylvania. In terms of the broader economic impact, RGGI will eliminate \$2.87 billion in economic activity, impacting at least 8,170 jobs and \$539 million in employee compensation. Because of the extreme consequences of this rule, it is vitally important for all to understand the resulting job losses, tax base implications for state and municipal governments, lost property tax revenue for school districts, and impacts on the affected communities that will be most affected by the finalization of this rule. This is required under Section 5.2(b)(1) of the RRA and DEP's refusal to account for these impacts is yet another fatal flaw for this regulation.

DEP claims this rule is necessary to address climate change. To that end, Section 5.2(b)(3)(v) of the RRA requires DEP to produce "acceptable data" to form the basis of the regulation. DEP's data from its most recent modeling of RGGI's impact on regional CO₂ emissions concludes that 99.1% of all CO₂ reductions in Pennsylvania would be offset by increases in CO₂ emissions in non-RGGI PJM states, such as neighboring Ohio and West Virginia. Similarly, the Penn State Center, which is cited by DEP nearly 50 times throughout the Regulatory Analysis Form and its Preamble, concluded: "Specifically, we estimate that 86% of the CO₂ reductions from

Pennsylvania's joining RGGI would be offset by emissions increases in PJM and/or other RGGI states." The varying data, and common sense, confirms that there is nothing that Pennsylvania can do unilaterally that will provide any meaningful CO₂ reductions beyond those that have already occurred or will occur through current market forces. As we have previously highlighted, significant CO₂ reductions have already been achieved through the use of state-of-the-art technology in the energy sector right here in Pennsylvania. As a result, CO₂ emissions from fossil fuel power generation in Pennsylvania has been reduced by 38 percent since 2002, and more than all RGGI state's combined. In fact, emissions in the United States are lower than they have been since the beginning of the Industrial Revolution. According to DEP's own modeling, in PJM by 2030, there will be a 0.89% reduction in CO₂ emissions, which is the difference between 3,128 million short tons without RGGI and 3,100 million short tons with RGGI. That is less than 1%. In the Eastern Interconnection, it is 0.168% decrease by 2030, which is based on 11,274 million short tons without RGGI and 11,255 with RGGI. Again, far less than 1%. This is the type of regulation with disastrous economic consequences and virtually no environmental benefits whatsoever.

While the imminent retirement of Pennsylvania's remaining coal fleet within the next seven years has been identified by DEP as a basis for RGGI, forcing these units to retire years in advance of their current lifespan will only result in moving generation and corresponding emissions to other PJM states not participating in RGGI. Again, this negates any environmental benefit attributed to Pennsylvania's participation in RGGI. Further, rate increases have recently been approved in West Virginia which allows coal-fired power plants to continue to operate until 2040.¹ This highlights that the forced, accelerated shutdown of coal-fired power plants in Pennsylvania is nothing more than a symbolic gesture from the standpoint of environmental impacts, which effectively stimulates capital investment and job creation in states like Ohio and West Virginia at the expense of Pennsylvania.

It is also deeply troubling that DEP failed to engage PJM in a plant-by-plant assessment of the effects of Pennsylvania's participation in RGGI as required by Section 5.2(b)(1) of the RRA. In contrast, this Committee has consulted with PJM, which informed us that RGGI will lead to significant leakage and consumer electric rate increases. Neither of the two RGGI models DEP procured included any unit specific pricing as a result of the RGGI price adder, which continues to increase with each quarterly RGGI auction - from \$5.20 in September 2019 to \$7.97 in June 2021.² Nor did the modeling effort include the various transmission constraints within the PJM electric transmissions system that define the ability of the various electric generating units operating within PJM to provide power to certain areas, including the electric generating units not affected by RGGI participation. PJM is the only source of these critical data necessary to accurately assess this proposed rulemaking. This data is critical to accurately determine what, if any, emissions reductions will occur within PJM due to Pennsylvania's participation in RGGI.

Further confounding a critical assessment of the represented benefits, in both its original and updated modeling, DEP has used a methodology to calculate the collateral health benefits that EPA has identified as being merely a "screening tool" with considerable limitations. A screening level assessment is a very conservative assessment used to determine if a more rigorous assessment is

¹ <https://energycentral.com/news/wva-psc-approves-another-appalachian-power-rate-increase>

² RGGI Allowance Prices, <https://www.rggi.org/Auctions/Auction-Results/Prices-Volumes>.

appropriate and necessary to determine actual effect and impacts. A screening level assessment does not result in accurate total monetized health benefits nor does it provide accurate monetized benefits for any particular region. DEP has assigned these same monetized benefits to all areas of the Commonwealth, regardless of the location of the reductions; regardless of the population; regardless of the exposure; regardless of the current health of the population; and regardless of whether or not that area is achieving and maintaining the National Ambient Air Quality Standards (NAAQS). Importantly, those air quality standards are established to protect all populations with an adequate margin of safety.

Further calling into question the monetized health benefits represented by DEP is a presentation made by DEP to the Small Business Compliance Advisory Committee on July 22, 2020. This presentation showed great improvements that have been achieved in ambient air quality in Pennsylvania. Significantly, the 2017 – 2019 ambient monitoring data, the 2019 design values, collected by the DEP demonstrated that the ambient air quality standards, which are developed to protect all members of the population, were being met at the vast majority of monitoring sites. Consequently, further emissions reductions by the Pennsylvania electric generating units that would be retired due to RGGI participation would not provide the monetized benefits calculated by the DEP.

Based upon DEP and the EQB's failure to meaningfully respond to the objections raised in our comment letter on the proposed regulation, and numerous other commentators (e.g., organized labor, business leaders, the regulated community, etc.), including IRRC, we urge the Independent Regulatory Review Commission (IRRC) to exercise its independence and reject this proposed final regulation. We understand that IRRC's decision on RGGI is not the end of the process. We also acknowledge that DEP completely disregarded IRRC's recommendation to delay RGGI by at least one year to allow for impacted industries and communities to engage. Nevertheless, we believe IRRC's rejection will help pave the way for a more constructive dialogue between the Governor's Office and the General Assembly to consider common sense energy policy reforms that do not impair our economy and harm our constituents.

Sincerely,