



General Assembly of Pennsylvania

February 1, 2021

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Dear Commissioners:

We write this letter as members of the House and Senate Republican Leadership teams to express our serious concerns with the recently proposed regulation regarding the Regional Greenhouse Gas Initiative (RGGI), Environmental Quality Board (EQB) Regulation #7-559. Not only will joining RGGI greatly harm the residents of our Commonwealth and Pennsylvania's energy industry, but the EQB and the Department of Environmental Protection (DEP) lack the constitutional and statutory authority to promulgate this regulation to link Pennsylvania with the initiative.

First, on the issue of authority, the revenue generated from the RGGI auction, the mechanism which is the core of the initiative, clearly represents a tax and not a fee. The Constitution of Pennsylvania and Pennsylvania Supreme Court precedent are not ambiguous - the power to levy taxes is solely the General Assembly's. A governmental action is defined as a tax when it is intended as a revenue-producing measure. On the other hand, a measure is considered a fee and not a tax when the income generated is primarily intended to cover the government's cost of administering the program. The RGGI auction has generated billions of dollars for the RGGI states, of which only a small percentage has been allotted to run the program. Instead, the overwhelming majority of the substantial revenue generated by the auction has been distributed to support each states' policy initiatives. The auction mechanism is clearly by definition a tax, and further an unauthorized one, as the General Assembly has not enacted it.

Furthermore, the EQB and DEP have no statutory authority to promulgate this regulation without approval from the General Assembly. No state or federal mandate exists that would require the capping and taxing of carbon dioxide emissions from electric generation units. DEP mistakenly cites Pennsylvania's Air Pollution Control Act (APCA) in its regulatory analysis form, but the APCA grants them no such unilateral authority. The APCA clearly states that DEP may work

with other states to control air pollution and “formulate interstate air pollution control compacts or agreements for the **submission thereof to the General Assembly.**” The clear text of the statutes grants DEP no ability to execute agreements such as RGGI, merely the ability to formulate them. Any such agreement must be submitted to the General Assembly for its approval or rejection, which DEP has declared that it has no intention of doing.

In addition to our significant concerns regarding DEP’s lack of authority for the regulation, the simple fact is that RGGI is not the right move for Pennsylvania. Unlike the potential benefits of RGGI, the risks are not speculative. They are real, immediate, and certain. DEP’s own modeling demonstrates that coal-fired power plants in Pennsylvania will be eliminated if the RGGI regulation is enacted. Natural gas plants will also be severely impacted as many will close or reduce generation.

While DEP may want you to believe that it is merely large energy corporations that will bear the brunt of these changes, this will have drastic impacts to real Pennsylvanians all over the Commonwealth. Thousands of family-sustaining jobs will be immediately lost due to the closure of these plants. Many small businesses that exist and thrive in communities driven by these industries will also be forced to close when the plants and workers that support them are no longer operating. The communities surrounding these plants will also be devastated as the tax revenue supporting their school and local government services is drastically reduced.

Worse still, the impacts of the regulation would not remain localized to the communities that DEP would effectively be condemning through this regulation. Neutral studies have indicated that electric prices will rise significantly in the Commonwealth if we join RGGI. This will impact the ability for businesses to competitively manufacture goods in our state. Additionally, the many small businesses that have been struggling to stay afloat throughout the pandemic across the state can ill afford to pay higher electric bills at this time. Finally, low-income residents, who already pay a greater percentage of their income to cover their electric bills, will be devastated by an increase in those bills during this challenging period in our history. DEP has clearly stated that, unlike other states in RGGI, the APCA would not authorize them to use auction revenues to provide relief to low-income households facing rate hikes due to RGGI.

These negative consequences we describe are certain to occur if the Commonwealth enters RGGI. On the other hand, the positive aspects to RGGI are both speculative and drastically overstated. DEP’s own modeling and neutral studies have confirmed that carbon dioxide emission reductions within the Commonwealth will be substantially offset by an increase in generation and emissions in our neighbor states that do not participate in RGGI. In fact, some models indicate that 86% of these emissions will be offset, meaning that considering the global picture, the actual environmental benefits of Pennsylvania’s participation will be entirely negligible. To devastate our Commonwealth’s energy economy for this outcome is absolutely unacceptable.

Pennsylvanians should not be forced to shoulder another economic burden now when so many citizens and businesses are suffering financially, particularly a burden unnecessarily imposed by their own government. Considering the dubious legal ground the regulation stands on, if it is promulgated, our Commonwealth will be plunged into a state of uncertainty as court challenges swiftly and inevitably come. We urge you to raise the regulation's fatal infirmities with the DEP and the EQB and would respectfully request that if this regulation is promulgated in its final form, that you disapprove of it.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan Cutler".

Bryan Cutler, Speaker
Pennsylvania House of Representatives

A handwritten signature in blue ink, appearing to read "Jake Corman".

Jake Corman, President Pro Tempore
Pennsylvania Senate

A handwritten signature in blue ink, appearing to read "Kerry A. Benninghoff".

Kerry A. Benninghoff, Majority Leader
Pennsylvania House of Representatives

A handwritten signature in blue ink, appearing to read "Kim L. Ward".

Kim L. Ward, Majority Leader
Pennsylvania Senate

cc: Environmental Quality Board
Department of Environmental Protection