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RECEIVED
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Independent Regulatory Review Commission

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Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477
Submitted by eComment

Re: **Opposition to Proposed Rulemaking: CO_2 Budget Trading Program (#7-559)**

Rosebud Mining Company (Rosebud) appreciates the opportunity to provide comments to the Environmental Quality Board on the proposed CO2 Budget Trading Program that would establish a program to limit the emissions of carbon dioxide (CO2) from fossil-fuel fired electric generating units (EGUs) and join Pennsylvania to the Regional Greenhouse Gas Initiative (RGGI).

Rosebud is a producer of thermal coal located in Armstrong and Indiana Counties that provides fuel to the local coal fired EGUs located in these same counties. These supplying coal mines provide quality jobs for our employees that help sustain the local community.

Rosebud believes that the proposed CO2 Budget Trading Program regulation will result in dire economic consequences at the local and regional levels throughout Pennsylvania if it is promulgated and that it represents a dramatic overstepping of the legal authority granted under the Air Pollution Control Act (ACPA) and the Pennsylvania Constitution; all while providing minimal environmental benefit. While the Department of Environmental Protection (DEP), conducted by ICF, has performed extensive modeling, the DEP has not stated what the anticipated drop, pause or reduction in increase on global temperature will be if the proposed rulemaking is implemented. This is the fundamental reasoning for regulating CO2 emissions. Further, DEP states numerous impacts from anthropogenic climate change from increased flooding, increased asthma rates, crop and dairy production declines and increases in Lyme disease; while again not providing the anticipated improvement to these impacts that will be the result of this proposed rulemaking.

While there are minimal if any improvements for the environment from this rulemaking, the economic impact to the coal industrial will be substantial. Coal mining helps drive the Pennsylvania economy, supporting nearly 18,000 jobs, contributing $4.7 billion annually to the state's economy, and serving as the cornerstone of economic development for many of Pennsylvania's rural communities over the last two centuries. [1] Pennsylvania produced over 50 million short tons of coal in 2019, making it the third largest coal-producing state in the nation.[2]

In 2018, carbon dioxide emissions from fossil-fuel fired EGUs were 33.2% below 2005 emission levels.[3] This reduction is well in advance of Governor Wolf's stated 2025 goal of 26% below

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[1] "The Economic Impact of the Coal Industry in Pennsylvania", Allegheny Conference on Community Development, April 2019
[2] Rankings: Coal Production 2019, EIA, https://www.eia.gov/state/rankings/?sid=PA#series/48
[3] EPA CAMD Data for PA EGUs, 2018 and 2005

2005 levels.[4] Moreover, these reductions have been accomplished while Pennsylvania has maintained a stable and reliable supply of electricity at competitively priced rates, significantly below those of RGGI-states. This can be attributed to the fact that over 95% of Pennsylvania's energy generation comes from in-state low cost generation sources – including coal, natural gas, and nuclear. However, promulgation of this proposed rulemaking would radically and irresponsibly alter the states' energy generation portfolio resulting in increased costs for electric ratepayers, and significant negative economic impacts in communities throughout Pennsylvania.

The proposed regulation would dramatically alter Pennsylvania's energy generation portfolio by causing the near immediate closure of the state's remaining coal fired EGUs. These closures will result in the premature retirement of these coal-fired EGUs, the loss of thousands of jobs supplying and supporting those EGUs, a substantial reduction in property taxes in communities that host those power plants and the coal mines that supply them, and higher electric rates in our state.

However, the economic devastation resulting from the closure of these plants does not lead to a significant reduction in carbon dioxide emissions. ICF modeling shows less than a 1% decrease in carbon dioxide emissions in PJM and the Eastern Interconnection if the rule is promulgated as written.[5] This clearly demonstrates that fossil-fuel fired electric generation is simply being shifted to non-RGGI states within the PJM, primarily Ohio and West Virginia. This concept, known as leakage, was required under Governor Wolf's Executive Order to be "minimized", however the proposed regulation contains no provisions to address what is an obvious generation shift to neighboring PJM states that do not participate in RGGI.

Prior to consideration of the proposed rulemaking package by the Board, many of these potential negative economic consequences and shortfalls of the proposal were considered and discussed by three specific Department Advisory Committees. All three advisory boards, including the Air Quality Technical Advisory Committee, the Citizens Advisory Council, and the Small Business Compliance Advisory Committee rejected "recommending" the rule to the Board. Despite failing to achieve agreement from a single advisory committee, the Department made no changes to the rule and presented it as such to the Board, further evidence that the Department has not carefully considered the proposed rulemaking nor has there been meaningful consultation or interaction with affected parties during the development of the proposed rulemaking.

In addition to the negative economic impacts and minimal environmental benefits of the proposed rule, it also represents a dramatic overstepping of the legal authority under the APCA and the Pennsylvania Constitution. The APCA contains no reference to carbon dioxide under the definition of "air pollution", or any express authority to regulate, cap, and tax carbon dioxide emissions. The APCA definition of an air pollutant requires it to be "inimical to public health, injurious to humans, or which unreasonably interferes with the enjoyment of life or property," unlike carbon dioxide which is necessary to sustain life. Furthermore, the Pennsylvania Constitution specifically prohibits the General Assembly from delegating taxing power to any special commission, private corporation, or association. The proposed regulation implements a carbon tax and not on fee on affected EGUs. Fees under the APCA are limited to covering the direct and indirect costs of program administration. However, economic modeling on the proposed regulation shows potential revenue generation in the hundreds of millions of dollars, well beyond the cost of program administration. Thus, the proposed regulation implements a carbon tax that was never authorized by the General Assembly as required by the Pennsylvania Constitution. Therefore, the Board should therefore withdraw the proposed regulation.

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[4] See Executive Order: 2019-01 – Commonwealth Leadership in Addressing Climate Change and Promoting Energy Conservation and Sustainable Governance

[5] See PA DEP IPM Modeling Results Discussion Reference Case and RGGI Policy Scenario, 4/23/2020, Slide 30

The proposed regulation represents a statutorily unauthorized attempt to institute a tax on carbon dioxide emissions from fossil-fuel fired EGUs, and does not reflect the intent of the General Assembly. Additionally, the proposed regulation will impose extraordinary hardships on impacted employees, local communities, with affected EGUs, and consumers seeking a reliable and affordable supply of electricity. All of which will be done for a less than 1% reduction in carbon dioxide emissions across the PJM over the next decade; with no known measurable impact on global temperatures or other stated anthropogenic climate change impacts facing Pennsylvania. For these reasons Rosebud thus urges the Board to withdraw the proposed regulation.

Sincerely,

John St. Clair
Manager of Permitting
Rosebud Mining Company