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Independent Regulatory Review Commission

CONSOL ENERGY
FUEL THE WORLD FOR A BETTER TOMORROW

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January 14, 2021

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

Subject: Opposed to Proposed Rulemaking: CO_2 Budget Trading Program

To Whom It May Concern:

CONSOL Energy Inc. (CONSOL) appreciates the opportunity to provide comments to the Environmental Quality Board (Board) on the proposed CO_2 Budget Trading Program that would establish a program to limit the emissions of carbon dioxide (CO_2) from fossil fuel-fired electric generating units (EGUs) and join Pennsylvania to the Regional Greenhouse Gas Initiative (RGGI).

CONSOL'S IMPORTANCE IN PENNSYLVANIA AND AMERICA

CONSOL, a Pennsylvania-based publicly traded company, is a leading, low-cost producer of high-quality bituminous coal, focused on safely and responsibly producing coal in the Appalachian Basin. Together with our predecessors, we have been mining the coal that has powered economic progress in the U.S. and around the world since 1864. The Company's ability to efficiently produce and deliver large volumes of high-quality coal at competitive prices is related to the strategic location of our mines and our team's commitment to safety, compliance, innovation, and continuous improvement.

CONSOL's assets include the Pennsylvania Mining Complex (PAMC), the CONSOL Marine Terminal located in the Port of Baltimore, the Itmann Mine in Wyoming County, WV, and more than 1 billion tons of undeveloped reserves. We are proud to call Greene and Washington Counties home to our flagship PAMC, the largest producing underground coal mining operation in North America, and also home to many of our employees and their families. In 2018, CONSOL's direct economic contribution to the Commonwealth exceeded $200 million.

Coal from the PAMC is valued because of its high energy content (as measured in Btu per pound), relatively low levels of sulfur and other impurities, and strong thermoplastic properties that enable it to be used in metallurgical, thermal, and industrial applications. Importantly, the high quality and high energy content of coal produced at PAMC has a lower carbon intensity than other, lower quality coals produced in the Northern Appalachian, Central Appalachian, Illinois, and Powder River basins. For instance, the carbon intensity of our PAMC product is approximately 6 to 12% lower than that of sub-bituminous, lignite, and anthracite coals.[1] This creates opportunities for coal produced at PAMC to be utilized in efficient and environmentally controlled coal fired EGUs, such as the higher efficiency units promoted by the U.S. Environmental Protection Agency (EPA) Affordable Clean Energy (ACE) rule.

For this reason, CONSOL's Pennsylvania coal should be the most desirable coal to be mined as the world strives to achieve specific air quality goals. These desirable quality characteristics and our extensive logistical network, which is directly served by both the Norfolk Southern and CSX railroads, allows CONSOL to aggressively market our product to a broad base of strategically selected, top-performing, environmentally controlled power plant customers in the eastern United States.

CONSOL's employees help generate the fuel that accounts for nearly one-quarter of the nation's power supply through coal fired EGUs.[2] In 2019, approximately 67% of our production was sold to our domestic based coal fired EGU customers. Our energy supports the American way of life by helping deliver electricity 24/7/365, creating family-sustaining jobs and keeping our nation competitive in the global marketplace.

THE RGGI PROPOSAL'S IMPACT ON CO2 EMISSION REDUCTIONS WOULD BE NEGLIGIBLE

In 2018, carbon dioxide emissions from Pennsylvania fossil fuel-fired EGUs were 33.2% below 2005 emission levels.[3] This reduction surpassed Governor Wolf's stated goal of achieving a 26% reduction in emissions compared to 2005 levels before 2025.[4] Notably, this goal was accelerated and achieved by innovation and market conditions alone. Pennsylvania's proposal to join RGGI, however, will not lead to a significant reduction in carbon dioxide emissions. In fact, if the rule is promulgated as written, carbon dioxide emissions in the PJM and the Eastern Interconnection are expected to decrease by less than 1%, based on ICF modeling.[5] This nominal change is indicative of a shift in fossil-fuel fired electric generation to non-RGGI states within the PJM, primarily Ohio and West Virginia. This concept, known as leakage, was required to be "minimized" under Governor Wolf's Executive Order; 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.

PADEP's own modeling shows that RGGI will have a negligible impact on CO_2 emissions reduction. It projects that participation in RGGI will reduce CO_2 emissions from 78 million to 58 million tons per year (tpy) between 2022 and 2030, but also concedes that under the "base case" scenario without promulgation

[1] CONSOL Energy Management and EIA, Carbon Intensity of Selected Fuels (2017), https://www.eia.gov/oiaf/1605/coefficients.html.
[2] 2019 U.S. electricity generation by source, EIA, https://www.eia.gov/tools/faqs/faq.php?id=427&t=3.
[3] EPA CAMD Data for PA EGUs, 2018 and 2005.
[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.

of the proposed rule, that emissions over the same period will drop to 60 million tpy.[6] Furthermore, this insignificant 2 million ton difference is approximately 1% of Pennsylvania's total annual CO_2 emissions from all other sectors in the Commonwealth.[7] The Department failed to evaluate technical alternatives that could achieve the same outcome, or better, such as through broad investment in emissions control and efficiency technologies.

In addition, RGGI is not expected to drive the use of renewable forms of energy in Pennsylvania. Based on PADEP's modeling, the share of renewables is almost unchanged by 2030 whether the Commonwealth participates in RGGI or not.[8] So, rather than regulating CO_2 emissions either to reduce them or to force a switch to renewable energy, RGGI does neither, while simultaneously imposing a tax on fossil fuel-fired EGU's that will accelerate job losses and production declines. It is, in effect, a tax that provides virtually no environmental benefit by an environmental protection agency that has no general taxing authority.

<u>THE RGGI PROPOSAL'S NEGATIVE ECONOMIC IMPACT WOULD BE SEVERE</u>

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.[9] Pennsylvania produced over 50 million short tons of coal in 2019, making it the third largest coal-producing state in the nation.[10]

The steam or thermal coal market represents the largest market by far for Pennsylvania-mined coal, and Pennsylvania coal fired EGUs are a significant end use consumer for Pennsylvania coal. In 2019, over 36% of Pennsylvania coal distributed to the electric power sector was consumed by Pennsylvania-based coal fired EGUs.[11] Accordingly, CONSOL has an immediate and significant interest in the proposed CO_2 Budget Trading Program regulation.

The proposed CO_2 Budget Trading Program regulation will result in dire economic consequences at the local and regional levels throughout Pennsylvania if it is promulgated. If implemented, the proposed CO_2 Budget Trading Program regulation could result in decreased demand or decreased prices for our coal. Moreover, it could significantly affect our ability to produce and sell our coal and develop our reserves, could increase the cost of the production and sale of coal and could materially reduce the value of our coal and coal reserves.

<u>THE RGGI PROPOSAL WILL RADICALLY INCREASE ELECTRICITY COSTS FOR RATEPAYERS</u>

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[6] See PA DEP IPM Modeling Results Discussion Reference Case and RGGI Policy Scenario, 4.23.2020, Slides 16 & 17.
[7] See PA DEP 2020 Pennsylvania Greenhouse Gas Inventory Report, July, 2020. Page 6.
[8] See PA DEP IPM Modeling Results Discussion Reference Case and RGGI Policy Scenario, 4.23.2020, Slide 26.
[9] "The Economic Impact of the Coal Industry in Pennsylvania", Allegheny Conference on Community Development, April 2019.
[10] Rankings: Coal Production 2019, EIA, https://www.eia.gov/state/rankings/?sid=PA#series/48.
[11] "Annual Coal Distribution Report", EIA, October 5, 2020.

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 shift the Commonwealth's energy generation portfolio to out of state sources, 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 tax revenues for communities that host those power plants and the coal mines that supply them, and higher electric rates in our state.

THE RGGI PROPOSAL IS ILLEGAL

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 Commonwealth's Air Pollution Control Act (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. 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 a fee on affected EGUs. Fees authorized 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.

ALL THREE ADVISORY COMMITTEES REVIEWED AND REJECTED THE RGGI PROPOSAL

Finally, prior to consideration of the proposed rulemaking package by the Board, many of these potential negative economic consequences and technical 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.

CONCLUSION

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 in the vicinity of affected EGUs, and consumers seeking a reliable and affordable supply of electricity. All of these hardships will be created for a less than 1% reduction in carbon dioxide emissions across the PJM over the next decade. Not only does this proposed regulation provide virtually no environmental benefit, but it also attacks the production of Pennsylvania coal, which is arguably the best coal for reducing CO_2 emissions.

In order to achieve meaningful progress toward achieving aspirational air quality goals, investment in innovative emission reduction technologies across all sectors within the Commonwealth is required. Contrary to the irreparable impacts of the RGGI proposal, growth and implementation of these technologies will foster economic, social, and environmental sustainability within Pennsylvania. For these reasons, CONSOL urges the Board to withdraw the proposed regulation.

Thank you for the opportunity to comment.

Sincerely,

Jacqueline M Fidler

Jacqueline M. Fidler
Vice President, Environmental & Sustainability