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Jan 14 2021
Independent Regulatory Review Commission

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Calpine Corporation

January 14, 2021

VIA EMAIL AND ONLINE SUBMISSION
RegComments@pa.gov

The Honorable Patrick McDonnell, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

RE: CO2 Budget Trading Program (50 Pa.B. 6212)

Calpine Corporation (Calpine) submits the following comments on the Pennsylvania Environmental Quality Board's (EQB's) proposed CO_2 Budget Trading Program rulemaking, which seeks to limit emissions of carbon dioxide from fossil fuel-fired electric generating units and establish the Commonwealth of Pennsylvania's participation in the Regional Greenhouse Gas Initiative (RGGI).

About Calpine

Calpine is one of the country's largest generators of electricity and among the cleanest. Calpine operates the largest fleet of natural gas combined cycle (NGCC) and combined heat and power facilities in the U.S. We are the nation's largest producer of electricity from renewable, base-load geothermal resources and highly efficient cogeneration plants. We operate in 23 states and Canada, with 77 power plants in operation or under construction.

In Pennsylvania, Calpine operates four natural gas combined cycle units in Pennsylvania: the two unit Bethlehem Energy Center (1,130 megawatts), the York Energy Center 1 (565 megawatts) and the newly built York 2 Energy Center (828 megawatts). In addition, Calpine serves load through its wholesale entity and through its retail subsidiary, Calpine Energy Solutions in Pennsylvania.

Calpine has long been engaged at the federal and state levels on climate change policy and has consistently advocated for policies that support both environmental stewardship and fair competitive markets. In 2006, in the landmark Supreme Court case, *Massachusetts v. EPA*, Calpine was the only generator to submit a brief that argued that the Clean Air Act authorizes EPA to regulate greenhouse gas (GHG) emissions. Once EPA adopted regulations requiring GHG limits in federal permits, Calpine also submitted a brief to the Supreme Court in a case challenging those regulations, *Utility Air Regulatory Group v. EPA,* in which we described our GHG permitting experience in support of preserving EPA's authority to regulate GHG emissions from large sources.

We are guided by our principle that transparent and fair markets that place a clear price on carbon emissions will ensure the U.S. can meet net-zero targets by incentivizing the environmentally efficient dispatch of power generation facilities.

Carbon Trading Programs Work Best When They Include All Relevant States

While Calpine generally supports market-based programs for managing CO_2 emissions, we have serious concerns regarding the usefulness of the proposed rulemaking in the absence of a mechanism to minimize the shifting of emissions from states with carbon pricing to states without carbon pricing. Ohio and West Virginia do not participate in RGGI, yet fossil fuel-fired electric generating units in those states will continue to have the ability to provide power into Pennsylvania without having to bear a RGGI cost. This will displace Pennsylvania generators that must account for the cost of RGGI when submitting bids to PJM. (PJM is a regional transmission organization that coordinates the movement of wholesale electricity across 13 states and the District of Columbia. However, not all states in PJM's territory are members of RGGI.) Electricity is sold within the PJM region based on bids submitted by generators. PJM then selects the lowest bids to meet demand. This means generators that do not have to comply with RGGI can submit lower bids. This provides an advantage to generators in Ohio and West Virginia that are in the position to provide power to Pennsylvania.

The ability to minimize "emissions leakage" from Pennsylvania to Ohio or West Virginia will be one of the keys to a successful program in the Commonwealth. Without an ability to minimize leakage, the cost-benefit analysis of the proposed rulemaking fails to adequately justify the reasonableness of the regulation as required under the Regulatory Review Act. 71 P.S. §§ 745.5(a)(10) *and* 745.5b(b)(3).

Given the significance of the leakage issue, the EQB should propose additional regulatory provisions to address it, and these provisions should be subject to an additional public notice and comment period before any RGGI rulemaking is finalized. *See* 45 P.S. § 1202 (revisions to proposed regulations cannot enlarge their original purpose).

Transition Period

Calpine believes there should be a transition period, of up to three years, in which generators receive all or a portion of the auction revenue based on their historical Pennsylvania emissions. The refund would be subject to a deduction of DEP's administrative expenses. The transition period would ease the burden of RGGI on generators in two ways:

1. It would mitigate the impact of lost revenues due to *leakage*, and
2. It would protect generators, to an extent, from volatile allowance prices during initial program implementation.

Unlike the SO_2 and NOx cap and trade programs (where sources are given a certain number of allowances each year based on historical emissions and must purchase allowances for excess emissions), RGGI requires sources to purchase allowances for each ton of CO_2 they emit. Accordingly, a transition period is needed to allow covered sources adequate time to gain experience with the allowance procurement process and adjust their financial planning.

A transition period would also assist the communities with the most effected generators by stabilizing revenue during the initial program implementation period.

Following the Transition Period, Auction Proceeds Should be Refunded to Tax Payers

Calpine agrees with the EQB that "auction proceeds are an integral part to carrying out the primary purpose of the proposed rulemaking." *See* Regulatory Analysis Form, p. 17. However, the EQB has yet to develop a plan for the investment of auction proceeds to benefit consumers and the economy. This raises potential operational concerns with respect to Pennsylvania's entry into RGGI, since the EQB "plans to develop a draft plan for public comment outlining reinvestment options separate from this proposed rulemaking." *See* Regulatory Analysis Form, p. 35.

Calpine suggests that after the transition period (recommended above), auction revenue should be refunded to the tax payers of Pennsylvania. Refunding the auction revenues would lessen the overall burden on the residents of Pennsylvania.

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Calpine looks forward to continuing to work with the Pennsylvania Environmental Quality Board as it considers these and other comments. Please do not hesitate to contact me at Steven.Schleimer@calpine.com or (713) 830-8923 if you have any questions or need any additional information.

Sincerely,

Steven Schleimer
Senior Vice President, Government and
Regulatory Affairs