



January 14, 2021

Attachment A: Environmental Defense Fund Supplemental Comments on CO2 Budget Trading Program and Emissions Leakage

Dear Members of the Environmental Quality Board,

On behalf of Environmental Defense Fund (EDF) we respectfully submit the following supplemental comments on the Pennsylvania Department of Environmental Protection's (DEP) draft CO2 Budget Trading Program related to addressing potential emissions leakage and referenced on page 16 of our CO2 Budget Trading Program comments. We commend DEP for its proposal to set a declining limit on carbon pollution emitted by Pennsylvania's fossil fuel electric generating units. We support promulgation of the draft CO2 Budget Trading Program rule and appreciate the significant opportunities that have been offered to provide written and oral comments. Linking Pennsylvania to the Regional Greenhouse Gas Initiative (RGGI) will ensure carbon emissions decline in Pennsylvania and the region.

Legal Authority

EDF believes DEP has the authority to design a GHG emissions reduction program so as to minimize the incentives to move GHG-emitting entities to other states, a phenomenon known as leakage. The DEP is charged with developing a "general comprehensive plan for the control and abatement of existing air pollution and air contamination and for the abatement, control and prevention of any new air pollution and air contamination."¹ Under this broad language, DEP's authority is not limited to sources that must obtain permits; rather, the EQB is authorized to adopt regulations "applicable to all air contamination sources regardless of whether such source is required to be under permit by this act."² The term "air contamination source" means "any place, facility or equipment, stationary or mobile, at, from *or by reason of which* there is emitted into the outdoor atmosphere any air contaminant."³ The phrase "by reason of which" shows that the APCA authorizes the regulation at various places along the supply chain, not just at the location of the emission. The sale of electricity within the state would be the "reason by which" the electricity source is emitting carbon, so DEP has clear authority to regulate such sale within the state as a "source," such as at the first point of sale in the state.⁴

Regulatory Tool to Address Leakage

As noted in other comments filed by EDF, analysis shows that some emission leakage may occur as Pennsylvania links with RGGI, but the magnitude is not large enough to significantly undo the climate benefits of Pennsylvania's participation in RGGI, which results in a meaningful *net* reduction in carbon emissions below BAU levels in 2030. Even when emissions leakage is not mitigated, the vast majority of emissions reductions (nearly two-thirds) achieved by Pennsylvania are retained within the region under our modeling. However, we recommend that Pennsylvania institute an effective leakage mitigation mechanism, such as placing emissions

associated with imported electricity under the emissions budget, to ensure the state can achieve even greater regional reductions and ensure greater net retention of reductions made by Pennsylvania's program.

DEP can take steps to partner with PJM to monitor any emissions leakage that may occur as a result of implementing RGGI and respond accordingly. We recommend that DEP and the PUC request any information from PJM that may be necessary or helpful to assess and minimize emissions leakage. As noted above, we also recommend DEP plan to cover imported power under the emissions budget. This would require partnership with PJM for necessary data and updates to its framework, but would be an effective way to ensure Pennsylvania's imported power faces the same regulatory system and cost for carbon emissions as in-state resources. To ensure DEP can readily cover those emissions, when data becomes available, DEP should make the changes below in red to the draft regulation:

- Definition for Electric Distribution Company
"Electric distribution company." An incorporated entity that receives electric power from an electric generator or another electric distribution company and distributes that power to retail consumers.
- alter the definition of applicable units under § 145.304:
 - (a) CO2 budget unit. Beginning blank (Editor's Note: The blank refers to the effective date of this rulemaking, when published as a final-form rulemaking.), this subchapter applies to an owner or operator of a unit that, at any time on or after January 1, 2005, served or serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe
 - (b) CO2 budget source. Any source that includes one or more CO2 budget units shall be a CO2 budget source, subject to the requirements of this subchapter.
 - (c) Imported electricity distributed by Pennsylvania electric distribution companies. The portion of electricity distributed by electric distribution companies to retail customers in Pennsylvania determined under section 145.308 to be generated neither within Pennsylvania nor within a participating state shall also be subject to the requirements of this subchapter.

§ 145.308. Imported Electricity

(a) Compliance.

- (1) To ensure electricity that is generated neither within Pennsylvania nor within a participating state does not undermine the efficacy of this program, an electric distribution company serving retail customers in Pennsylvania described under § 145.304(c) shall be required to hold CO2 allowances for CO2 emissions that DEP finds attributable to electricity imported into Pennsylvania from generators located in a state other than Pennsylvania or another participating state for compliance deductions under § 145.355.

- (2) This section does not take effect for an electric distribution company until
- i) DEP has made a determination of the applicable portion of electricity distributed to retail customers in Pennsylvania by the electric distribution company that is considered to be imported electricity from a generator not located within Pennsylvania or a participating state; and.
 - ii) not earlier than six months after publication of a final compliance obligation for EDCs.
- (3) This does not impact obligations for already covered budget units and sources operating in Pennsylvania under § 145.304.

Sincerely,

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¹ APCA § 4(18), 35 Pa. Stat. Ann. § 4004(18).

² APCA § 5 (a)(1), 35 Pa. Stat. Ann. § 4005(1).

³ APCA § 3, 35 Pa. Stat. Ann. § 4003, (emphasis supplied).

⁴ DEP also has separate authority to regulate “at the point of use,” which can also be relied upon to seek to reduce GHG emissions at locations other than the point of emission. APCA § 5(a)(2), 35 Pa. Stat. Ann. § 4005(a)(2).