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Jan 15 2021
Independent Regulatory Review Commission

NFIB

January 14, 2021

Environmental Quality Board
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16th Floor
400 Market Street
Harrisburg, PA 17101-2301
via electronic submission

RE: Regulation #7-559 (IRRC# 3274): CO2 Budget Trading Program

These comments are submitted on behalf of the National Federation of Independent Business in Pennsylvania (NFIB PA) in response to proposed regulation #7-559 for 25 Pa. Code Chapter 145, Subchapter E: CO2 Budget Trading Program. NFIB is the nation's leading small business advocacy organization, representing 13,000 members in Pennsylvania and about 300,000 members throughout the United States. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses.

We appreciate the ability to comment on behalf of Pennsylvania's small businesses on the Governor's proposal to join the Regional Greenhouse Gas Initiative (RGGI).

<u>Small businesses are the backbone of Pennsylvania's economy</u>

Small businesses always have and always will make up an enormous segment of Pennsylvania's business community. In 2019 there were 1.1 million small businesses in Pennsylvania, making up 99.6% of all businesses. They were responsible for 46.2% of the private sector workforce, employing 2.5 million Pennsylvanians.[1]

Though they are critically important to Pennsylvania's economy and its jobs, small businesses have been disproportionately impacted by the effects of COVID-19, and many are currently struggling. Shutdown orders and the sagging economy have devastated a sizable segment of Pennsylvania's small businesses. NFIB research has found that one out of four will not survive if conditions do not improve in the next six months, and another 22% say that they will be able to operate no longer than 7-12 months under current economic conditions.[2] Should small businesses continue to close their doors in communities across the state, Main Streets will suffer, state and local tax bases will collapse, and more workers will lose their jobs.

But there is a reason for optimism. Smart policies will enable small businesses to lead the charge as Pennsylvania recovers from the pandemic. As they have in the past, small businesses can be the engine of economic growth, creating two out of every three *new* jobs. Their success will be key to

[1] https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144152/2020-Small-Business-Economic-Profile-PA.pdf
[2] https://assets.nfib.com/nfibcom/Covid-19-14-Questionnaire-Write-up-FINAL-Web.pdf

Pennsylvania's economic recovery in the coming months and years. As such, policymakers would be wise to consider policies that set them up for success, or at the very least, do not stack the deck against them.

Energy and small businesses

Unfortunately, joining RGGI would set small businesses back at a most inopportune time. Though few would be directly affected by the taxes imposed by RGGI, there are second- and third-order impacts that will harm small businesses disproportionately to other businesses. These indirect costs are extensive but, incredibly, were not part of the EQB's analysis of the regulation.

Most importantly, RGGI will impose extensive costs on the production of energy in Pennsylvania, and these costs will be passed on to ratepayers. DEP's modeling anticipates an energy cost increase of almost 18% by 2030, though there is reason to believe that this is an underestimate, and the model should be revised to include recent events. First, the analysis was conducted prior to the COVID-19 pandemic and did not include economic conditions that are now at play. And second, the clearing price of CO2 credits on the RGGI market increased drastically in 2020, from $5.65/ton in the March auction to $7.41 in the December auction.[3] DEP's model did not anticipate the cost rising to over $7/ton until 2025, meaning it can be expected that electricity costs will rise much faster and likely much higher by 2030 than the model predicts.[4]

With so much uncertainty, how much prices will rise is unknown. But it is certain that Pennsylvania's energy consumers, including small businesses, will pay more. "A Review of the Regional Greenhouse Gas Initiative" by David T. Stevenson of the CATO Institute found that between 2007 and 2015, electricity prices in RGGI states increased by 64% more than in non-RGGI states.[5] **Even now, retail electricity prices are 39% higher in RGGI states than the U.S. average, while in Pennsylvania, they are 7% lower**.[6]

The certainty of price increases is proven by RGGI's report that states spent 16% of RGGI proceeds in 2018 for direct bill assistance, which helped offset the costs of inflated electricity rates for low-income individuals, and in some cases businesses.[7] These programs recognize that energy cost increases are inherently regressive, impacting lower income individuals and small businesses disproportionately to those with more resources. But direct bill assistance is not able to be provided by PA DEP through its authority under the Air Pollution Control Act (APCA).

As it is, Pennsylvania is fortunate to have certain energy advantages that benefit businesses and keep electric rates lower. First, our competitive electric market allows small businesses, like all consumers, to shop for the best price for their energy needs. Electric deregulation has led to competitively low energy rates, innovations in energy distribution, and new products and services for all consumers. In fact, electric competition has produced a strong market for renewable energy sources, which many Pennsylvanians already choose to purchase.

[3] https://www.rggi.org/auctions/auction-results/prices-volumes
[4] http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/RGGI/PA_RGGI_Modeling_Report.pdf
[5] https://www.cato.org/publications/working-paper/review-regional-green-gas-initiative
[6] https://www.eia.gov/electricity/state/
[7] https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2018.pdf

Pennsylvania's competitive advantage is also due in part to the innovations in hydraulic fracturing and horizontal drilling that have revolutionized energy, allowing the U.S. to transition from relying heavily on foreign oil less than two decades ago to producing enough for its own consumption and to export internationally. As a result of American shale gas production, consumer energy prices have come down drastically. One study found that Pennsylvanians saved more than $30.5 billion in energy costs between 2006 and 2016 because of the shale gas revolution.[8]

Small businesses benefit immensely from these advantages. But because of their size, they will also suffer immensely when energy costs increase for several reasons**.** This is especially true of energy-intensive small businesses like laundromats, car dealerships, convenience stores, and small manufacturers. First, tight margins make it difficult to adjust the price of their goods and services. There is little room to maneuver for businesses competing against larger firms that benefit from economies of scale and marketing advantages. To make matters worse, the COVID-19 restrictions have largely closed smaller businesses while leaving big-box stores open, setting them even further behind.

In addition, small businesses are usually unable to change business practices quickly enough to manage steep price increases. For example, small business owners usually are unable to buy new, more energy-efficient equipment if current equipment still has a useful life. And unlike many big businesses, they are typically much too small to negotiate reduced rates from electric suppliers.

NFIB surveys have found that energy costs are one of the top three business expenditures in 35% of small businesses. Even if they are not high on the list of direct expenses, every business—large and small—depends on services and materials that are impacted by energy prices. Higher energy costs stack along each step of the supply chain, increasing the price of services and supplies businesses need to produce, and as a result, inflating the cost of final products. And in today's interconnected marketplace, even slightly higher costs will make it more difficult for Pennsylvania products to compete. In this way, **RGGI's energy cost increases will in effect be a hidden tax throughout the economy that will put Pennsylvania businesses and jobs at risk.**

This hidden tax will have visible impacts. Stevenson's research found that higher electric bills resulted in a 13% drop in goods production and 35% less production of energy-intensive goods in the RGGI states between 2007 and 2015. Non-RGGI comparison states increased goods production by 15% and lost only 4% of energy-intensive manufacturing during this time. Because 98.6% of all manufacturing companies in the United States are small businesses, they have borne the brunt of this in other RGGI states and will in Pennsylvania as well.[9]

Increased costs and less competitive products are a crushing combination for small businesses. In the crisis most Pennsylvania small business owners find themselves in now, putting RGGI into effect will be devastating. At the very least, it will make it difficult for them to climb back to success. But for many, it may very well be the tipping point that makes them close their doors for good. COVID-19 has already shuttered many small businesses, increasing unemployment numbers and putting communities at risk for even more economic hardship.

[8] https://consumerenergyalliance.org/2018/09/report-pennsylvania-consumers-saved-more-than-30-billion-over-10-years/

[9] https://www.score.org/blog/how-small-manufacturing-businesses-drive-us-economy

NFIB believes that the Environmental Quality Board (EQB) did not conduct a complete analysis of the regulation on small businesses as required by the Regulatory Review Act (RRA). Its response to number ten on the Regulatory Analysis Form (RAF) indicates that it identified only ten small businesses that would be impacted by the regulation. While it may be true that only ten small energy producers will be required to purchase RGGI credits, there are hundreds of thousands of small businesses in Pennsylvania that will be impacted indirectly by increased energy prices.

The RRA, at 71 P.S. section 745.5(a)(10) requires the agency to include "an identification of *the financial, economic and social impact* of the regulation on individuals, *small businesses,* business and labor communities and other public and private organizations…" Paragraph (4) of section 745.5(a) requires "[e]stimates of the direct *and indirect costs* to the Commonwealth, to its political subdivisions and *to the private sector*." (Emphasis added.)

The indirect costs of RGGI, as discussed above, will severely impact small businesses throughout the Commonwealth, and this impact has not been examined.

Pennsylvania's energy means jobs and income

Pennsylvania's comparative energy advantages, as discussed above, make it the nation's largest net exporter of electricity,[10] producing more than twice the energy it consumes.[11] This export capacity brings needed capital into the state, creates thousands of jobs, and also ensures energy prices continue to stay competitive. As a result, joining RGGI will affect the commonwealth to a much greater degree than it has other RGGI states, squandering the comparative advantage that Pennsylvania has and losing energy market share to non-RGGI states, where energy production will be cheaper.

RGGI's cost increases on coal and natural gas electric generators, which make up 57% of Pennsylvania's energy mix,[12] will force many power plants out of business. DEP's own modeling shows that all Pennsylvania coal-fired power plants will close almost immediately, and many small gas-fired plants will not be far behind.[13]

But the jobs lost in these communities will not be limited to the power plants. Every small business that supports these plants and the communities around them will suffer too, leading to widespread regional job losses and business closures. Contractors, truckers, heavy equipment operators, fuel suppliers, welders, electricians, mechanics, equipment sales, lumber companies, and rail and barge operators will be among those directly impacted by the closures. But so too will restaurants, garages, grocery stores, accountants, medical offices, car dealerships, and many others whose customers will find themselves without an income to spend. With Pennsylvania's high unemployment rate brought about by COVID-19 business closures, the timing could not be worse for more job losses.

RGGI's business closures and job losses in these local communities will also result in millions of lost tax dollars for local governments, further threatening the welfare of some already economically distressed

[10] https://triblive.com/news/pennsylvania/report-pennsylvania-largest-net-exporter-of-electricity-in-u-s/
[11] https://www.whitehouse.gov/wp-content/uploads/2019/10/The-Value-of-U.S.-Energy-Innovation-and-Policies-Supporting-the-Shale-Revolution.pdf
[12] http://files.dep.state.pa.us/AboutDEP/Testimony/2019/2019.11.01%20House%20D%20Policy%20Committee%20Hearing%20RGGI%20DEP%20Testimony.pdf
[13] http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/RGGI/PA_RGGI_Modeling_Report.pdf (page 24)

areas. One recent study estimated that schools and local governments will lose $3.7 million in taxes as a result of RGGI.

Again, NFIB believes that DEP's analysis of these impacts is incomplete. State statistics note that Armstrong and Indiana Counties alone, which will be heavily impacted by plant closures, had over 3000 small businesses in 2013, employing over 99.98% of workers.[14] Though an update does not seem to be available, it is apparent that the indirect impacts of plant closures on these many small businesses could be extensive.

When asked at the Small Business Compliance Advisory Committee (SBCAC) meeting on July 22, 2020 whether DEP was doing any type of impact analysis for businesses that are indirectly affected by the shuttering of coal-fired power plants, DEP staff replied that conversations had been started with the PA Departments of Labor and Community and Economic Development (DCED) to identify the impact on local communities and employees. The purpose was to identify their needs and better address their concerns. Staff noted that DCED examined related upstream and downstream impacts from the closure of coal-fired power plants, including job losses in the mining sector due to less need for coal. The committee was told that more information would be available on this analysis upon its completion. However, this information has not yet been provided.

Most analysts agree that existing market forces will push coal-generated electricity with CO2 emissions out of the marketplace entirely within about a decade without any cap-and-trade intervention. EQB notes that coal is expected to decline to about 1% of Pennsylvania's generation portfolio by 2030 and that "[t]his shift away from coal-fired generation occurs irrespective of this Commonwealth's participation in RGGI."[15] Allowing the market to drive these decisions will permit the necessary adjustments in the workforce and regional economies to change over time with the same result.

As noted above, indirect impacts of a regulation on businesses and labor communities are required by the RRA to be identified by the promulgating agency. The lack of this analysis was one of the reasons that the SBCAC was one of three at DEP that voted not to move the regulation forward.

<u>Small business impacts</u>

Below are some specific examples of the impact this proposal will have on small businesses. They are indicative of the feedback NFIB has received from many of its members.

Lumber Company: One NFIB member owns a 100-year-old family business in Indiana County that provides high-end treated lumber and supplies to customers in western Pennsylvania. This business has, for generations, supplied timbers to the coal mining industry. More recently, it has served the natural gas industry's hardwood needs. Though not its only customers, the energy industry is a large part of its business. Should energy plants shutter, the decreased demand for mineral resources will certainly jeopardize this small business and its employees.

But the jobs and income lost at this one small business will have big impacts. To produce its usual one to two tractor trailers' worth of mine materials per week, the business contracts with four or five local <u>sawmills</u> for materials. At least two of these sawmills depend on the lumber treatment business as

[14] https://www.pasbdc.org/resources/small-biz-stats
[15] http://www.irrc.state.pa.us/docs/3274/AGENCY/3274PRO.pdf (page 19)

their primary customer. Should the first business shutter, all these sawmills would be affected, and a few would likely also go out of business as well. To take it just one step further, these sawmills most likely buy their timber from lumber companies harvesting world-renowned Pennsylvania hardwoods, whose jobs and small businesses may be impacted too.

This lumber treatment business uses heavy equipment, which it must buy from vehicle dealers (also small businesses). Then it contracts with a local mechanic for forklift repairs and a maintenance shop for truck repairs. It is also heavily reliant on its contract with a local auto parts store for maintaining its heavy trucks and equipment. All of these small businesses will be hit hard by the failure of our first business, illustrating the interrelationships in regional economies that must be considered.

Truck sales business: The owner of a 33-employee truck sales company in Clarion is concerned about the ripple effects of plant closures, which are the lifeblood of his 80-year-old business, as well as increased energy costs. Paying his drivers is a real concern, and he believes the effects of RGGI will be massive and almost certainly impact every business similarly in his small county.

Manufacturing Company: The owner of a small manufacturing company in Greenville employing 28 people, is very concerned about an increase in electric rates. The company's electric bill is currently $5000 - 6000 a month, and even a small increase will hinder the business' efforts to rebuild after a devastating 2020. The owner says she is unable to raise her prices because of stiff competition from overseas. After suffering a large loss in 2020, every expense now puts her business at risk. She believes that RGGI will devastate hers and many other small businesses by increasing the overall cost of doing business and making Pennsylvania small businesses uncompetitive in the marketplace.

Industrial equipment repair and manufacturer: One small family manufacturer in Indiana, which has been in business for 38 years, provides repair services and manufactures products for the coal industry, as well as delivering tooling and expertise to the local community. It was recently able to repair a pump patented in the 1800s at a local sewage treatment plant within a few hours, minimizing the time the plant was down in the community. It also had the expertise to repair a roller bearing on a local newspaper's web press, ensuring that the newspaper could be printed that day. The owner notes that these services are only available to this rural community because the company's primary customers are businesses serving the coal industry. His business has provided steady income and jobs for many over the years, but should Pennsylvania join RGGI, it would be devastating for his business and many others.

Costs and benefits

Given the extensive impacts RGGI will have, the question is whether the benefits are worth the considerable costs that RGGI will bring to Pennsylvania, especially with the uncertainty of our economic recovery in the wake of COVID-19.

Unfortunately, though considerable, the cost analysis in the regulatory materials is incomplete due to the lack of consideration of indirect costs.

What are the benefits? If the primary goal is CO2 reduction, Pennsylvania is already ahead of the game. Between 1990 and 2016, the commonwealth's total CO2 emissions decreased by 18%, even while

Pennsylvania's gross domestic product increased by 177%.[16] From 1990 to 2018, CO_2 emissions from fossil fuel combustion decreased 29.8%, due in large part to Pennsylvania's abundant natural gas reserves.[17] During that same period, RGGI states reduced CO_2 emissions by a slightly larger percentage, but this can be explained largely because they doubled the amount of power they imported, much of it from Pennsylvania and unregulated by RGGI, meaning total emissions reductions were minimal across states. In fact, estimates have found that as little as 5% of emissions reductions in RGGI states were attributed to the program.[18] Power generators did not stop emitting; they only shifted closer to larger population centers, exacerbating air quality problems in neighborhoods already suffering.[19]

It is a pattern that will surely be repeated in Pennsylvania – "leakage" of energy production to states where CO_2 is unregulated. Power plants in Ohio and West Virginia stand ready to pick up Pennsylvania's energy production after its power plants close. Indeed, Penn State researchers estimated that 86% of the anticipated CO_2 reductions from Pennsylvania joining RGGI would be offset by CO_2 increases in other states, thereby minimizing the environmental benefit of this costly program.[20]

DEP has stated that to have the desired impact on climate change models, Pennsylvania's commitment to RGGI would not be enough. In fact, all states would need to commit to similar greenhouse gas reductions, and all nations would have to meet comparable goals. This seems unlikely and raises questions about the return on our investment, especially considering the job losses and the resulting economic and social impact. In 2017 the U.S. emitted 5.1 billion metric tons of energy-related CO_2 out of the total 32.5 billion metric tons globally.[21] And U.S. CO_2 emissions have experienced the largest overall decline of any nation since 2000. In 2019 alone, the U.S. had the largest decline in energy-related CO_2 emissions of any other county, 2.9%.[22]

Given the space devoted to climate change impacts in the regulatory materials, one would expect the proposal to solve the problem in some way. However, one analyst calculated a 0.0011 degrees Celsius reduction in global warming by 2050 if Pennsylvania eliminated ALL CO_2 emissions (not just those under RGGI).[23] This seems to be the primary rationale for those who support the RGGI regulation, but in reality, the actual benefit is negligible to non-existent, considering that RGGI will not eliminate Pennsylvania's emissions.

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[16] https://consumerenergyalliance.org/cms/wp-content/uploads/2019/10/CEA_INFOGRAPHIC_PENNSYLVANIA.pdf

[17] https://www.epa.gov/sites/production/files/2020-10/documents/state_co2_emissions_from_fossil_fuel_combustion_1990-2018.pdf

[18] https://pragmaticenvironmentalistofnewyork.blog/2020/09/03/my-rggi-testimony-to-the-pennsylvania-house-of-representatives-environmental-resources-energy-committee/

[19] https://www.alleghenyfront.org/rggi-behind-the-rhetoric-what-we-know-about-the-regional-greenhouse-gas-initiative/

[20] http://www.irrc.state.pa.us/docs/3274/COMMENTS_PUBLIC/3274%2001-04-21%20Penn%20State.pdf

[21] https://www.usgs.gov/faqs/how-much-carbon-dioxide-does-united-states-and-world-emit-each-year-energy-sources?qt-news_science_products=0#qt-news_science_products

[22] https://www.iea.org/articles/global-co2-emissions-in-2019

[23] https://pragmaticenvironmentalistofnewyork.blog/2020/09/03/my-rggi-testimony-to-the-pennsylvania-house-of-representatives-environmental-resources-energy-committee/

If encouraging renewable energy is a goal, it is also not clear that RGGI is the answer. Between 2007 and 2015, RGGI states increased wind and solar generation by 2.3%, while non-RGGI comparison states increased it by 5.5%.[24]

DEP's plan will raise revenue for the state to spend on air pollution reduction programs. But if pollution reduction is a primary goal of joining RGGI, again, Pennsylvania is already ahead of the curve. Since 1990, nitrogen oxides are down 83% in Pennsylvania, particulate matter, 31%, volatile organic compounds, 60%, and sulfur dioxide, 93%. Total emissions are down 88% in the past 30 years.[25]

Indeed, pollution reduction efforts have been an unheralded success, and our air is cleaner than it has been in decades. Of course, we can always do better, but committing the state to the overhead of an expensive, complicated, and harmful carbon trading program is not the answer.

And although RGGI's supporters say it is a market-based solution, the limits placed on allowances create only an artificial market that derives from mandates. True free-market solutions inspire people to innovate without hindering economic prosperity. Market forces are creating amazing innovations every day that were unforeseen just a few years ago, including energy efficiency innovations, resource conservation measures, and even recycling waste and CO2 into fuel and valuable chemicals. Consol Energy Inc. recently announced plans to build a coal plant that has zero – perhaps even negative – emissions.[26] Many of these ideas will come from entrepreneurs, whose small businesses will need strong economic conditions to thrive. Giving those entrepreneurs the benefit of robust and affordable energy sectors is critical.

<u>Process</u>

There is no doubt joining RGGI involves significant tradeoffs Pennsylvania must consider. This was highlighted by the unwillingness of majorities of three of DEP's committees to recommend the proposed regulatory framework when it came up for a vote at their recent meetings. These advisory groups heard heart-wrenching testimony from union workers, manufacturers, community members, and small business owners concerned that the downsides of RGGI are not being considered.

The significant impacts of RGGI on these individuals' livelihoods and communities, highlighted by the number of comments already submitted on this regulation, demonstrate that costs and benefits must be weighed by representatives of all citizens, not the executive branch alone. The weight of the policy choices here makes clear that this regulation goes beyond legislative delegation authority for an executive agency.

NFIB also has serious concerns about the public review and comment process for this proposed regulation. It is concerning that the period for public review occurred in the midst of a pandemic and over the holidays, which has limited the ability of impacted individuals to respond. Small business owners are preoccupied with keeping their businesses afloat, as well as providing the necessary precautions to keep their employees and customers safe. The virtual public hearings, which were only

[24] https://www.cato.org/sites/cato.org/files/serials/files/cato-journal/2018/2/cato-journal-v38n1-chapter-11.pdf
[25] https://www.dep.pa.gov/OurCommonWealth/Pages/Article.aspx?post=38 (Please note that the data reported was removed from this website after it was accessed.)
[26] https://observer-reporter.com/business/consol-hoping-to-build-coal-fired-plant-with-zero-emissions/article_e1718c04-3a36-11eb-826b-e3287b12b0e2.html

available during the workday, did not provide the necessary opportunity for most small business owners, especially those in rural areas with no access to broadband. The APCA requires that public hearings be held within impacted communities, and at a minimum, this regulation should be delayed until in-person hearings can be scheduled in those communities that will be torn asunder by RGGI. Small business owners deserve a more robust public outreach effort and a comment opportunity that complies with the statute.

<u>Summary</u>

Pennsylvania's small business owners support a clean environment and healthy communities. In fact, many of them make their living from natural resources, from a whitewater rafting operator to a farm-to-table restaurant to a solar panel installer. But they also understand that balance is key, and they know that responsible decision-making involves considering all factors before making a choice. **No analysis has been done of the significant indirect downsides of this regulation, and it should not move forward until this is complete.**

Small businesses need predictability and consistency for success. The past year has presented challenges Pennsylvania's business community has not experienced in a century, and predictability has been in short supply. Introducing RGGI now adds yet more unknowns just as small businesses are trying to navigate recovery.

Policymakers must consider RGGI's significant costs and weigh them against its unclear benefits, especially during what has been an unprecedented time for our economy and small businesses. Now is the time to look ahead to recovery, not to saddle Pennsylvania's job creators and innovators with hidden tax burdens now and for the foreseeable future.

Thank you again for the opportunity to comment on behalf of Pennsylvania's small businesses.

Sincerely,

Rebecca K. Oyler
Legislative Director