



115 VIP Drive, Suite 210
 Wexford, PA 15090
 Phone: (724) 933-7306 | Fax: (724) 933-7310
 Email info@pioga.org | Web: www.pioga.org

January 14, 2021

Submitted via <http://www.ahs.dep.pa.gov/eComment>

Environmental Quality Board
 Harrisburg, PA 17105-8477

Re: Proposed Rulemaking: CO₂ Budget Trading Program
EQB/DEP #7-559, IRRC # 3274

COMMENTS OF
THE PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION

On November 7, 2020, the Environmental Quality Board (EQB) published notice of its proposal to amend 25 Pa. Code Chapter 145 (relating to interstate pollution transport reduction) to add Subchapter E (relating to CO₂ budget trading program) to establish a program to limit the emissions of carbon dioxide (CO₂) from fossil fuel-fired electric generating units (EGU) located in this Commonwealth, with a nameplate capacity equal to or greater than 25 megawatts (MWe). 50 Pa.B. 6212.

Adoption of this proposal will enable Pennsylvania's participation in the Regional Greenhouse Gas Initiative, known as RGGI, a regional CO₂ Budget Trading Program established among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia (joining 2021).

The Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully submits the following comments in opposition to this proposal.

PIOGA is a nonprofit trade association, with nearly 400 members, representing Pennsylvania independent oil and natural gas producers, both conventional and unconventional, and marketers, service companies, landowners and royalty owners, as well as affiliated natural gas-fired electric generators. PIOGA members have direct interests in this proposal, which is intended to and will reduce the production and use of natural gas generally in Pennsylvania, and particularly by electric generating units, and thereby have significant adverse effects on the industry as well as Pennsylvania's energy

users. As explained below, these adverse effects are not necessary to accomplish the proposal's stated purpose and are completely avoidable. The proposal should not be finalized as a promulgated regulation.

1. Pennsylvania's participation in RGGI without Pennsylvania legislative authorization is unlawful.

Without regard to whether Pennsylvania's participation in RGGI is sound policy, which it is not, the EQB's proposal is unlawful because there is no valid Pennsylvania legislative authorization for various aspects of the proposal.

a. Pennsylvania's Air Pollution Control Act does not authorize the regulation of CO₂.

The alleged authority for this proposed rulemaking is Pennsylvania's Air Pollution Control Act (APCA).¹ The APCA authorizes DEP to regulate "air pollution":

"Air pollution." The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or any other matter in such place, manner or concentration inimical or which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property. 35 P.S. § 4003.

No Pennsylvania court has ever held that CO₂ constitutes air pollution or is a greenhouse gas (GHG) under the APCA. Testimony at the July 21, 2020 hearing of the House Environmental Resources and Energy (ER&E) Committee concerning House Bill 2025 showed that CO₂ does not constitute "air pollution" as defined in the APCA:

¹ "This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

....
... Executive Order 2019-07 . . . directed the Department to use its existing authority under the APCA to develop this proposed rulemaking."

[U]nlike other conventional pollutants (for example, lead, mercury, particulates, nitrogen oxides, and sulfur oxides), the inhalation of carbon dioxide or direct exposure to it at typical atmospheric concentrations is not “inimical to the public health, safety or welfare” or “injurious to human, plant or animal life or to property” and does not “unreasonably interfere[] with the comfortable enjoyment of life or property.” By its plain wording, in other words, and unlike states like New York that expressly authorize the regulation of “carbon dioxide” – and without further requirements at the federal level – APCA indicates that it does not allow for the regulation of substances whose sole environmental consequence is that they contribute to global climate change.²

While the Commonwealth Court accepted DEP’s self-serving assertion of authority to regulate CO₂ as a GHG in *Funk v Wolf*, the court’s rationale was based upon DEP’s authority to implement the federal Clean Air Act (CAA) and its “sweeping definition of ‘air pollutant’”.³ The EQB has emphasized that this proposed rulemaking is being promulgated “under the authority of the APCA, not the CAA.”⁴ Accordingly, *Funk v. Wolf* does not support the EQB’s reliance upon the APCA as authority for this proposed rulemaking.

b. Neither the APCA nor Pennsylvania’s Uniform Interstate Air Pollution Agreements Act authorizes Pennsylvania to participate in RGGI through this rulemaking.

Even assuming the APCA authorizes DEP’s regulation of CO₂, neither the APCA nor the Uniform Interstate Air Pollution Agreements Act (UIAPAA) provides the necessary legislative authorization for Pennsylvania to participate in RGGI. As Attorney Holtzman’s testimony stated, Section 4004(24) of the APCA merely authorizes DEP to

² Testimony of Anthony R. Holtzman, Esq., Attachment 1 hereto, at p. 4 (footnote omitted).

³ 144 A.3d 228, 250 n.17 (Pa.Cmwlt. 2016) (quoting 42 U.S.C. § 7602(g)) *aff’d* 158 A.3d 642 (Pa. 2017).

⁴ “While these Federal studies inform the Department’s decision to regulate CO₂ emissions within this Commonwealth, they are not determinative because this proposed rulemaking would be promulgated by the Board under the authority of the APCA, not the CAA.” The Clean Air Act does not directly regulate CO₂ emissions from stationary sources or require promulgation of the proposed Chapter 145 regulations for Pennsylvania to retain primacy to administer the air program in the state.

“formulate” interstate air pollution control agreements *for consideration by the General Assembly*.⁵

The only other Pennsylvania legislation possibly providing the necessary authority is the UIAPAA, upon which the EQB does not rely. Perhaps the EQB does not rely upon the UIAPAA because, as Attorney Holtzman explains, the measures included in the multi-state administrative agreements authorized by this statute must be “non-binding”⁶; this rulemaking proposes regulations that, like RGGI’s measures, are binding.⁷

c. The proposed mandatory CO₂ emission allowance fees constitute taxes that Pennsylvania’s General Assembly has not authorized.

Under EQB’s proposed rulemaking, “the owner or operator of a CO₂ budget unit must obtain one CO₂ allowance for each ton of CO₂ emitted from the CO₂ budget unit each year.” EQB relies upon the APCA as its authority to impose the emission allowance fees required for participation in RGGI: “Section 6.3(a) of the APCA (35 P.S. § 4006.3(a)) also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the Clean Air Act (CAA).” The fees authorized by the APCA are clearly defined:

This section [6.3(a)] authorizes the establishment of fees **sufficient to cover the indirect and direct costs** of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and **the indirect and direct costs of administering** the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the board by regulation to establish fees **to support the air pollution control program authorized by this act** and not covered by fees required by section 502(b) of the Clean Air Act. 35 P.S. § 4006.3(a).

⁵ Holtzman Testimony, Attachment 1 at p. 2.

⁶ *Id.*

⁷ A regulation establishes a “binding norm.” *DEP v. Rushton Mining Company*, 591 A.2d 1168, 1173, *petition for allowance of appeal denied*, 600 A.2d 541 (Pa. 1991). Under EQB’s proposal, “the owner or operator of each CO₂ budget source will be required to have a permit under Chapter 127 . . . which incorporates the requirements of the CO₂ Budget Trading Program. The owner or operator will be required to operate the CO₂ budget source and each CO₂ budget unit at the source in compliance with the permit.”

The allowances that would be imposed by the proposed regulations constitute taxes rather than fees under the APCA. As Attorney Holtzman’s House ER&E Committee testimony explains, under Pennsylvania law only the General Assembly has the authority to impose taxes, and the difference under Pennsylvania law between “taxes” and “fees” is clear:

Under prevailing Pennsylvania case law, something qualifies as a “tax” if it is a “revenue-producing measure.”⁹ Regulatory “fees,” by contrast, are merely “intended to cover the cost of administering a regulatory scheme.”¹⁰ And therefore, as Pennsylvania’s courts have explained, whether an income-producing mechanism imposes a “tax” or a “fee” turns on the volume of income that the mechanism generates and the proportion of the income that goes to cover the program’s administrative costs.¹¹

⁹ *City of Philadelphia v. Southeastern Pennsylvania Transportation Authority*, 303 A.2d 247, 251 (Pa. Cmwlth. 1973)

¹⁰ *Rizzo v. City of Philadelphia.*, 668 A.2d 236, 237-38 (Pa. Cmwlth. 1995)

¹¹ *See, e.g., Greenacres Apts., Inc. v. Bristol Tp.*, 482 A.2d 1356, 1359 (Pa. Cmwlth. 1984)⁸

It is also clear from the EQB’s description of the proposed CO₂ Budget Trading Program that the proceeds from the emissions allowance auctions – correctly described by Attorney Holtzman as the “heart” of the RGGI program – are expected to generate income (\$300 million/yr) greatly in excess of the administrative costs of the program for various programs and activities not authorized by the APCA:

Auction proceeds

The auction proceeds are an integral part to carrying out the primary purpose of this proposed rulemaking which is to reduce CO₂ emissions in this Commonwealth The CO₂ allowances purchased in the multistate auctions generate proceeds that are provided back to the participating states, including this Commonwealth, for investment in initiatives that will further reduce CO₂ emissions. . . . Each participating state determines how best to **invest auction proceeds** to provide public health benefits and further reduce GHG emissions. Historically, **RGGI-funded programs, [have] include[ed] energy efficiency,**

⁸ Holtzman Testimony, Attachment A at pp. 2-3.

clean and renewable energy, GHG abatement and direct bill assistance programs⁹

Further, DEP’s January 2017 presentation to the Citizens Advisory Council concerning “Air Quality Program Budget and Proposed Fee Concepts” shows how much the estimated annual auction proceeds of \$300 million dwarf the funds in the APCA Clean Air Fund (\$19.4 million projected FY 2021-22; slide 17).¹⁰

Well-settled case law makes clear that the CO₂ emission allowance fees are taxes. *Nat’l Biscuit Co. v. Philadelphia*, 98 A.2d 182, 187 (Pa. 1953) (true “user fee” must not substantially exceed costs associated with regulating activity at issue or off-setting burdens the activity imposes where it occurs); *Sterling v. Philadelphia*, 106 A.2d 793, 795 (Pa. 1954) (“substance of the law or ordinance, rather than the designation or name given it by the legislative body, or the fund into which it is placed, that is controlling”); *Building Industry Association of Lancaster County v. Manheim Township*, 710 A.2d 141, 145 (Pa. Cmwlth. 1998) (government-charged impact fee used to generate revenue is a tax); *Simpson v. City of New Castle*, 740 A.2d 287, 292 (Pa. Cmwlth. 1999) (tax as distinguished from a fee is a revenue producing measure characterized by production of large income and high proportion of income relative to costs of collection and supervision) (quoting *Greenacres Apartments, Inc. v. Bristol Township*, 482 A.2d 1356, 1359 (1984)).

As Attorney Holtzman correctly states, “the power and authority to be exercised by administrative agencies must be conferred by the legislature” and the delegation “must be clear and unmistakable as a doubtful power does not exist.”¹¹ The legislature has not conferred the authority on the EQB and DEP to impose the CO₂ emission allowances tax required by the proposal.

That the “investment” of the auction proceeds is the primary purpose of this proposed rulemaking – and *not* a significant or meaningful reduction of “CO₂ emissions in this Commonwealth” or regionally, nationally or globally – is shown by the relatively small, estimated reductions in CO₂ emissions in Pennsylvania, the RGGI states, nationally and globally, as explained more fully below in Section 2.b.

⁹ EQB notice, 50 Pa.B. 6212 (November 7, 2020) (emphasis added).

¹⁰ *Air Quality Program Budget and Proposed Fee Concepts*, Attachment 2 hereto, see slides 3,4,12-14,16,17.

¹¹ Holtzman Testimony, Attachment 1 at p. 3 (quoting *Dep’t of Env’tl. Res. v. Butler Cnty. Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982) and *Eagle Env’tl. II, L.P. v. PaDEP*, 884 A.2d 867, 878 (Pa. 2005).

That the proposed regulations are primarily intended to raise revenue is also shown quite clearly by the fact that there is no discussion in the Preamble or Regulatory Analysis Form (RAF) regarding how or whether reducing CO₂ emissions through RGGI will improve or even affect Pennsylvania climate and precipitation. The obvious conclusion is that adopting the regulations will have no effect on climate change in Pennsylvania.

The operation of the CO₂ cost containment reserve (CCR) allowance and trigger price provisions and CO₂ emission containment reserve (ECR) allowance and trigger price provisions in § 145.382 bears this out. If the auction price of CO₂ allowances falls below the trigger price of \$6.87 in 2023 (which increases incrementally to \$11.02 in 2030), allowances will be withheld from auction. The ECR therefore is intended to ensure that revenue from auctioning allowances never falls below a predetermined amount, thus ensuring revenue to the state. An essentially guaranteed revenue stream having only a small portion (approximately 6% or less) dedicated to administrative purposes to fund the program and contract with RGGI to run the auction effectively constitutes an unauthorized tax.

And finally, Section 9.2(a) of the APCA limits disbursements, of the revenue arising from the auctioning of allowances, from DEP's Clean Air Fund "for use in the elimination of air pollution." Distributing revenue for the wide range of energy efficiency and renewable energy projects discussed in the Preamble, such as upgrading appliances and weatherizing buildings, does not fall within this authority of Section 9.2(a).

2. Assuming that reducing current CO₂ emissions is sound policy and joining RGGI without legislative authorization is lawful, joining RGGI is not in Pennsylvania's best interests.

DEP's rationale for developing this proposed rulemaking to establish Pennsylvania's participation in RGGI is based on the following:

- Climate change is being caused by the emission and atmospheric concentration of greenhouse gases (GHGs), namely CO₂
- CO₂ emissions are a major contributor to regional climate change impacts
- Pennsylvania generates the 4th most CO₂ emissions from electric generating units (EGUs) in the country

- RGGI is a regional approach that will significantly reduce CO₂ emissions and this Commonwealth's contribution to regional climate change¹²

PIOGA disputes all but the 3rd point. As stated above, no Pennsylvania court has ever held that CO₂ constitutes air pollution or is a GHG under the APCA. Moreover, at the August 24, 2020 House ER&E Committee hearing, Caleb Stewart Rossiter, Ph.D., Executive Director of the CO₂ Coalition, explained why the emission of CO₂ is not, in itself, an environmental problem:

[W]eather is not climate change. The UN reports that there has been no statistically significant change in rates of extreme weather, including floods, since the era in which CO₂ emissions were large enough to cause measurable warming began around 1950. Let me be clear: as I have testified before the U.S. Congress, the rates per decade of floods, sea-level rise, droughts, wildfires, tornadoes, and hurricanes are no higher today in the United States, and in the world, than they were 100 years ago.

....

We are not in a CO₂-driven climate crisis; that is the scientific fact. Some models predict we may be in one in a hundred years, but even their estimated damages pale next to the fossil-fueled increase in wealth we will have to manage them. And remember, there are benefits to CO₂ emissions as well, since the molecule is a crucial plant and plankton food that improves crop and ocean productivity.¹³

Gregory Wrightstone, Geologist, also addresses this point in his book, "Inconvenient Facts":

Based solely on charts like this [EPA's GHG pie chart] and descriptions like that given by *National Geographic* [website statement that GHGs "include carbon dioxide (CO₂), methane, nitrous oxide (N₂O), fluorinated gases, and ozone"], one might well conclude that CO₂ is the main driver of greenhouse warming. The main driver of greenhouse warming – water vapor – is often completely ignored.

....

¹² RAF at pp. 2-3.

¹³ Testimony of Dr. Caleb Stewart Rossiter, Attachment 3 hereto at p. 4.

Both sides of the issue agree that water vapor is responsible for the lion's share of the greenhouse effect, though the percentage of warming attributed has been in dispute. There is no agreement, however, on how much warming will occur due to increases in greenhouse gases, or on how much of that warming has been, or will be, man-made.¹⁴

Accordingly, the first inconvenient fact in his book is:

Carbon dioxide is not the primary greenhouse gas.

As PIOGA disputes the truth of DEP's rationale for this proposed rulemaking, PIOGA disagrees that Pennsylvania's joining RGGI is sound policy. So, assuming for the sake of argument that it is, PIOGA also disagrees that Pennsylvania's joining RGGI is a necessary or cost-effective way to reduce CO₂ emissions in Pennsylvania, assuming also that joining RGGI through this rulemaking is lawful.

a. PA CO₂ emissions have decreased without RGGI.

As the testimony from Vince Brisini, Director of Environmental Affairs for Olympus Power, LLC, at the Senate Environmental Resources & Energy (ER&E) Committee hearing on June 23, 2020 regarding Senate Bill 950 states:

Pennsylvania electric generation industry has been reducing carbon dioxide emissions without Pennsylvania participation in RGGI. Pennsylvania electric generation has reduced carbon dioxide emissions below the targets set by Governor Wolf, the Paris Accord and the final target set by the Obama Administration's "Clean Power Plan" all ahead of schedule and without a carbon dioxide mandate on existing units.¹⁵

More specifically, in 2018, CO₂ emissions from fossil-fuel-fired electric generating facilities were roughly 33% below 2005 emissions, well in advance of Governor Wolf's 2025 goal in Executive Order 2019-01 of 26% below 2005 levels. Pennsylvania emissions have declined at about the same rate since approximately 2005 – without RGGI – as they have in the RGGI states.

Moreover, testimony from Rod Williamson, Executive Director of the Industrial Energy Consumers of Pennsylvania (IECPA) at the June 23, 2020 Senate ER&E

¹⁴ Inconvenient Facts (Silver Crown Productions, LLC, 2017), at 5.

¹⁵ Testimony of Vincent J. Brisini, Attachment 3 hereto at p. 3 (Slide 10); Attachment 4 hereto, Slide 10.

Committee hearing showed that Pennsylvania CO₂ emissions “have decreased just as much on a percentage basis as the other states participating in RGGI and have decreased MORE than other RGGI states on an absolute basis without the added cost of the RGGI program!”¹⁶

b. Pennsylvania natural gas is the foundation for reducing GHG emissions.

According to DEP’s 2020 Pennsylvania Greenhouse Gas Inventory Report, GHG emissions from the Electricity Production sector decreased approximately 38% from 2005 to 2017. Table 1 (GHG Emissions by Sector) shows that this overall reduction is attributed to a 59% reduction in emissions from coal and a 552% increase in emissions from natural gas, which shows that the reduction is largely attributed to increased use of natural gas to produce electricity.¹⁷

This is because natural gas has one-half the carbon intensity of coal, is more cost effective than coal and so is currently displacing coal generating facilities in Pennsylvania. Co-benefits of using natural gas instead of coal include less intrusive extraction methods, cleaner fuel overall with regard to air emissions, and no waste byproducts when used as fuel (*e.g.*, coal ash, scrubber waste).

c. Pennsylvania is an energy producing and net-energy exporting state, unlike all the other RGGI states.

At the June 23, 2020 Senate ER&E Committee hearing, Chairman Yaw observed that the testimony showed that Pennsylvania is different from the other RGGI member states because Pennsylvania is an energy exporter while other states are energy users.

Indeed, Pennsylvania has been one of the country’s top exporters of electricity for a long time. Our generation will decline under RGGI because our generators will be operating in a higher cost environment as compared to generators in Ohio and West Virginia. Many of these plants are within a relatively few miles of generators in Pennsylvania. ICF’s modeling predicts total generation in Pennsylvania will be approximately 7% lower between 2022 and 2030 in the Policy Case versus the Reference Case, even assuming ICF’s conservative assumptions are accurate. There is no reason to

¹⁶ Testimony of Rod Williamson, Attachment 5 hereto at p. 2.

¹⁷ As explained above in Section 2, PIOGA does not agree that CO₂ constitutes air pollution or is a GHG under the APCA.

reduce Pennsylvania generation when, as noted below, doing so will not affect climate change whatsoever.

d. Predicted PA CO₂ emission reductions with RGGI are trivial.

CO₂ emissions from Pennsylvania's energy sector, based on estimates from Energy Information Administration (EIA) and other sources, comprise only about 1% of total U.S. energy sector CO₂ emissions, and less than 0.1% of global emissions.¹⁸ According to Attorney Holtzman's testimony, Pennsylvania's most recent Climate Action Plan shows that Pennsylvania's percentage of global GHG emissions is even less – "approximately 0.19%. Taken by themselves, the power plants that would be subject to the RGGI requirements contribute an even smaller percentage."¹⁹

Mr. Brisini's testimony also showed that Pennsylvania coal-fired generation or natural gas-fired electric generation lost to RGGI participation, if replaced by coal-fired electric generation in another non-RGGI PJM state, would result in no CO₂ reduction and "there could actually be increases in carbon dioxide as well as other pollutants."²⁰

As Michelle Bloodworth, CEO of America's Power, a national trade association representing coal-fired electric power generation, testified at the July 21, 2020 House Environmental Resources and Energy Committee hearing, "there are no real climate change benefits from joining RGGI. That's because joining RGGI would reduce CO₂ emissions by a trivial amount."²¹ Indeed, her testimony showed that "[a]ccording to DEP analysis, CO₂ emissions from U. S. electricity generation are almost the same regardless of whether Pennsylvania does or does not join RGGI."²²

¹⁸ Brisini Testimony, Attachment 3 at p. 1 (Slide 3); Attachment 4, Slide 3.

¹⁹ Holtzman Testimony, Attachment 1 at p. 4 n.22.

²⁰ *Id.*

²¹ Testimony of Michelle Bloodworth, Attachment 6 at p. 1-2 ("U.S. greenhouse gas (GHG) emissions—about 80% of which are CO₂—totaled more than 7 billion tons in 2018, according to the most recent data from the U.S. EPA. A reduction of 3 million tons per year if Pennsylvania joined RGGI would equate to a reduction of 0.05% in U.S. emissions, which is a rounding error for all practical purposes.")

²² Bloodworth Testimony, Attachment 6 at p. 1.

e. Joining RGGI would cause PA electricity generation to migrate to non-RGGI neighboring states, resulting in significant economic losses to PA.

The Preamble acknowledges that the RGGI program historically has experienced emissions leakage from the shifting of generation from states with carbon pricing to states without it. DEP's modeling indicates there will be leakage from Pennsylvania to states including West Virginia and Ohio that also supply power to PJM. But there is no prediction or analysis in the RAF or Preamble of the amount of power generation, the capital expenditures, or the number of jobs that might migrate to other PJM states. DEP merely states it will conduct additional modeling with PJM's Carbon Pricing Senior Task Force to better understand and control leakage.

But Mr. Brisini's testimony shows that "RGGI participation typically results in less in-state electric generation and the purchase of more electricity from non-RGGI participating areas," and explains why RGGI states have less generation.²³ Mr. Brisini also explains that "RGGI history has shown us that if there is non-RGGI electricity available, that electricity will be used by RGGI participating states."²⁴

There will be little overall decline in CO₂ emissions within the PJM states as a result of moving generation out of state. Trade unions, among others, have expressed serious concerns about the loss of Pennsylvania blue-collar jobs to power plants in Ohio and West Virginia that would operate in a lower cost environment. Further analysis of the economic and environmental consequences of leakage is critical in view of DEP's failure to do so.

However, Mr. Brisini provided an estimate of the immediate economic impacts in western Pennsylvania if Pennsylvania participates in RGGI:

- > the loss of 8,000 plus jobs
- > the loss of \$2.87 billion in total economic impact
- > the loss of \$539 million in employee compensation
- > the loss of \$34.2 million to state and local taxes base²⁵

²³ Brisini Testimony, Attachment 3 at p. 2 (Slides 5, 6); Attachment 4, Slides 5, 6.

²⁴ Brisini Testimony, Attachment 3 at p. 2 (Slide 7); Attachment 4, Slide 7.

²⁵ Brisini Testimony, Attachment 4, Slide 14.

f. Joining RGGI would significantly increase PA energy prices to manufacturers and industrial users.

Figure 2 in Section 12 of the RAF shows that the RGGI regulations will increase Pennsylvania power prices each year from 2022 through 2030, yet the discussion in this section focuses exclusively on residential electric consumer bills. This not only fails to comply with the requirements of the Regulatory Review Act (RRA), this ignores a significant reality. As Carl Marrara, Vice President of Government Affairs for the Pennsylvania Manufacturers' Association, testified in the June 23, 2020 Senate ER&E Committee hearing, Pennsylvania's joining RGGI "will have dire economic consequences" for Pennsylvania's manufacturers because manufacturing involves energy-intensive operations and that, "[f]or many manufacturers, energy costs are the largest cost output month-to-month [so] [a]dding on additional costs will drive manufacturers out of Pennsylvania and make it exceedingly difficult to bring new firms."²⁶

Moreover, in his testimony at the June 23, 2020 Senate ER&E Committee hearing, Mr. Williamson explained why the overall cost of RGGI in Pennsylvania would not be comparable to any of the other RGGI states:

Pennsylvania is an energy producing state and would be penalized for that energy production. Looking at the annual amount of RGGI auction revenues collected in each participating state spread over the Electric Power sector CO2 emissions in those states results in a cost of \$3.35 per metric ton. When applied to 82.1 metric tons of Electric Power sector CO2 emissions in Pennsylvania, the financial impact just from the RGGI carbon allowance auction on PA would be approx. \$275 million per year in additional cost to electric generators that will be passed along to consumers. However, this does not even consider the costs of additional secondary market CO2 allowances that generators may need to purchase or the increased cost to electric generators to reduce CO2 emissions to comply with RGGI.²⁷

Clearly, Pennsylvania's joining RGGI would increase Pennsylvania energy prices to manufacturers and industrial users to an uncompetitive and damaging level.

²⁶ Testimony of Carl Marrara, Attachment 8 hereto at p. 3.

²⁷ Williamson Testimony, Attachment 5 at pp. 1-2, Table 4.

g. Natural gas is essential to the reliability and resiliency of the electric grid with increased use of wind and solar energy.

PIOGA acknowledges that the power generation market is shifting to a renewable energy focus, but that is happening without RGGI. Indeed, as Rebecca Oyler, Legislative Director for the National Federation of Independent Business (NFIB) in Pennsylvania, pointed out in her testimony at the June 23, 2020 Senate ER&E Committee hearing, “[b]etween 2007 and 2015, RGGI states increased wind and solar generation by 2.3%, while non-RGGI comparison states increased it by 5.5%.”²⁸

However, the reality is that sun does not always shine, wind does not always blow, storage systems are unproven, there are significant environmental costs related to “clean” energy options (from mining and manufacturing the components to their disposal), nuclear development is at a standstill, and there will always be a need for substantial uninterrupted power generating capacity, with natural gas being the only viable option as a clean fuel. We are not going to alter the development of “clean” or “renewable” energy options, but as shown throughout these comments, RGGI is an unneeded and bad social policy for Pennsylvania, and natural gas will remain a clean and reliable source of electric energy for many years to come, as explained in the next section, along with other facts concerning the real costs of renewable energy.

h. Oil and natural gas, and coal, are essential to life as we know it, and essential for the foreseeable future, certainly through 2035 and 2050.

At the beginning of Pennsylvania’s shale revolution, some touted natural gas as the “bridge” to a future of 100% renewable energy. But the industry knew the truth, that oil and natural gas are the key to Pennsylvania’s long-term energy future and the keystone to America’s energy future.

But energy is not the only significant benefit of oil and natural gas. Attachments 10 and 11 show what so many people do not realize –that oil and natural gas are essential for everyday life. Products ranging from personal care items to computer components to clothing to leisure activity products to building materials are made from oil and natural gas,²⁹ as well as medical products.³⁰ Indeed, modern medical care would not be possible without the products made from oil and natural gas, and the personal protective

²⁸ Testimony of Rebecca Oyler, Attachment 9 hereto at pp. 1-2.

²⁹ Attachment 10 (DOE poster).

³⁰ Attachment 11 (PIOGA Emergency Room poster).

equipment now so essential for dealing with the COVID-19 pandemic is made from oil and natural gas.

Many people also do not realize the real costs of renewable energy or the essential role that oil and natural gas, and coal, in actually providing the renewable energy to consumers. Dr. Rossiter explained this in his testimony at the August 24, 2020 House ER&E Committee hearing:

[T]here is nothing renewable about so-called renewable energy. The Sun and wind are indeed free and recurring dally, but the infrastructure needed to turn their energy into electricity is just as fossil fuel intensive, and so just as generative of warming gases and real pollutants like sulfur dioxide, nitrogen oxide, fly ash, and particulate matter, as fossil fuels. Here's why.

* To have wind turbines and solar panels, and the batteries to store – very poorly at present technologies – the intermittent, expensive, and inefficient energy that wind and solar produce, *minerals have to be mined in horrific conditions in the Democratic Republic of the Congo and slightly better conditions at other sites in central and southern Africa. All of this activity is powered by, you guessed it, fossil fuels.*

* Then the minerals have to be *processed* into a usable form, *transported* to America, and *built* into final products which are then *transported again* and *erected* on huge platforms *requiring massive amounts of concrete - another major source of CO2 emissions*, by the way.

* Then the initial electricity must be transformed for lengthy transmission lines that bring it to populated areas thousands of miles from the source.

* And, to top it off, the intermittent electricity, to date, *must be backed up with largely fossil-fueled generation of electricity on demand*. All that expense, *all that CO2 generated to create the "renewable" power*, all those subsidies paid for by taxpayers, *and you still need your gas and coal-fired power plants to keep the lights on*. Detailed analysis of this phenomenon can be found in the work of engineer Norm Rogers, a member of our CO2 Coalition.³¹

³¹ Dr. Rossiter Testimony, Attachment 3 at p. 5 (emphasis added).

3. DEP has not appropriately considered the effects of its proposal on small businesses.

As stated above, the discussion of electric prices in Section 12 of the RAF focuses exclusively on residential electric consumer bills. However, as evident from Figure 2 in this section, the RGGI regulations will increase Pennsylvania power prices each year from 2022 through 2030. Some estimates have noted that buying allowances at the December 2020 quarterly auction price of \$7.41/allowance could add between \$3 and \$9 per megawatt hour to the current price of electricity, depending on whether the fuel source is coal or natural gas. The chair of the Pennsylvania Public Utility Commission testified before the Senate ER&E Committee on June 23, 2020 during the hearing concerning Senate Bill 950 and House Bill 2025 that the PUC had not analyzed how much of this cost will be passed on to consumers.

The RRA requires DEP to analyze the probable effect of a regulation on small businesses. As currently written, Section 24 of the RAF simply states that ten businesses, most of which are waste coal fired facilities, would be subject to the regulations and that the waste coal CO₂ allowance set aside will minimize the impact *on them*. This discussion ignores the reality that many of Pennsylvania's commercial electricity consumers, including many PIOGA members, are small businesses of less than 500 employees. They are not electric generators covered by the regulations, but they likely would be faced with higher electric costs passed along by the generators who will have to buy CO₂ allowances. A more thorough analysis of the projected increased cost of electricity to Pennsylvania's industrial and commercial customers is required in view of DEP's failure to do what is required by the RRA.

Indeed, in her testimony at the June 23, 2020 Senate ER&E Committee hearing, Ms. Oyler explained the importance of Pennsylvania's small businesses and how they would be adversely affected by Pennsylvania's joining RGGI:

Small businesses always have and always will make up an enormous segment of Pennsylvania's business community. More than 99% of Pennsylvania businesses are small. Generally, they are responsible for almost half of the private sector workforce and create two out of every three new jobs. They have also been disproportionately impacted by the recent shutdown orders, and many are currently struggling. Some small businesses won't make it.

....

We believe that the Governor's proposal to join RGGI would stack the deck against small businesses at a most inopportune time. Though they would not be

directly affected by the taxes imposed by RGGI, there are second- and third-order impacts that will harm small business, in many ways disproportionately to other businesses.³²

DEP's complete failure to do its duty required by the RRA with respect to small business is inexplicable and should be unacceptable to the Independent Regulatory Review Commission, which is charged with ensuring compliance with the RRA.

While Ms. Oyler does not address the legal basis why Pennsylvania's joining RGGI is a policy decision for the General Assembly (as PIOGA does in its first three comments above), she correctly states that:

Given the impacts RGGI will have, the question the General Assembly should consider is whether the benefits are worth the considerable costs that RGGI will bring to Pennsylvania, especially considering the uncertainty of our economic recovery.³³

Conclusion

For the reasons set forth above, PIOGA requests that the EQB withdraw this proposed rulemaking.

Respectfully submitted,



Kevin J. Moody
General Counsel
Pennsylvania Independent Oil & Gas Association

³² Oyler Testimony , Attachment 9 at pp. 1-2.

³³ Oyler Testimony, Attachment 9 at pp. 2, and 3-4.