



January 14, 2021

VIA eComment

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

**Re: CO₂ Budget Trading Program
Notice of Proposed Rulemaking, 50 Pa.B. 6212, November 7, 2020**

Dear Members of the Environmental Quality Board,

The Pennsylvania Energy Efficiency for All Coalition, including the Pennsylvania Utility Law Project, Community Legal Services, the Housing Alliance of Pennsylvania, the Green and Healthy Homes Initiative, the Keystone Energy Efficiency Alliance, the National Housing Trust, and the Natural Resources Defense Council, on behalf of low income Pennsylvania residents and in response to the public notice and request for comment published in the November 7, 2020 Pennsylvania Bulletin (50 Pa.B. 3724), hereby submits the following comments regarding the Environmental Quality Board (EQB) Proposed Rulemaking – CO₂ Budget Trading Program which will establish Pennsylvania’s participation in the Regional Greenhouse Gas Initiative (RGGI).

I. Introduction and Background

The Pennsylvania Energy Efficiency for All Coalition (PA-EEFA)¹ is a partnership of Pennsylvania and national organizations that share a common goal of ensuring that low income individuals have access to energy efficiency services to reduce their energy consumption.

¹ The **Pennsylvania Utility Law Project** (PULP) is a specialty legal services program in PA whose mission is to ensure that low income customers can connect to and maintain affordable utility services in Pennsylvania. To achieve this mission, PULP represents the interests of tens of thousands of low income residential utility ratepayers in a range of proceedings before the Pennsylvania Public Utility Commission, the Department of Human Services, the Department of Community and Economic Development, and other state and federal agencies that oversee Pennsylvania’s energy, water, and telecommunication utilities and related assistance programs. PULP has extensive expertise on low income energy policy, as well as the design and administration of effective energy assistance programming that assists low income customers to access and maintain utility services in their homes.

PA-EEFA’s primary interest in the CO₂ Budget Trading Program proposed in this rulemaking is the intersectional economic and environmental impacts the program will have on Pennsylvania’s economically vulnerable residents.

It is undeniable that economically vulnerable communities and communities of color are disproportionately impacted by environmental pollutants – both inside their homes and in their surrounding communities. These same communities are also more susceptible to severe weather events, forced migration, and other real-life impacts effects of climate change.

At the same time, solutions to address the impacts of climate change can be costly, intensifying existing energy poverty – increasing energy costs and threatening the ability of low income households to maintain utility service, exacerbating food insecurity and poor health outcomes, and creating instability across the entire community.

Pennsylvania’s proposed CO₂ Budget Trading Program provides a distinct opportunity to address both the impacts of climate change and the economic inequities often resulting from climate change mitigation efforts. For these reasons, and as explained more thoroughly below, PA-EEFA is supportive of the proposed program. However, our support is not without reservation and

Community Legal Services (CLS) provides free civil legal assistance to low-income Philadelphians. CLS assists clients when they face the threat of losing their homes, incomes, health care, utility service, and even their families. CLS attorneys and other staff provide a full range of legal services, from individual representation to administrative advocacy to class action litigation, as well as community education and social work.

The **Housing Alliance of Pennsylvania** is a statewide coalition working to provide leadership and a common voice for policies, practices and resources to ensure that all Pennsylvanians, especially those with low incomes, have access to safe, decent and affordable homes.

The **Green & Healthy Homes Initiative (GHHI)** is the nation’s leading voice in the efforts to advance energy efficiency and healthy housing, working in over 61 cities and over 20 states. In Pennsylvania, GHHI serves as an advisor to the State childhood lead poisoning prevention program and provides technical assistance to the cities of Pittsburgh and Philadelphia to align, braid and coordinate evidence-based healthy, safe and energy efficient housing intervention programs.

The **Keystone Energy Efficiency Alliance (KEEA)** is Pennsylvania’s trade association for the energy efficiency industry. Our membership, comprised of seventy companies, ranges from small local firms to large multinational corporations and operates across the value chain of energy efficiency. We engage our membership and key policymakers in support of an industry that accounts for more than 71,000 Pennsylvania jobs. The policy we promote at the state and local level expands the market for energy efficiency.

The **National Housing Trust** protects and improves existing affordable rental homes so that low income individuals and families can live in quality neighborhoods with access to opportunities.

The **Natural Resources Defense Council (NRDC)** works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. We combine the power of more than three million members and online activists with the expertise of some 700 scientists, lawyers, and policy advocates across the globe to ensure the rights of all people to the air, the water, and the wild.

caution that the program must include additional regulatory safeguards to ensure that it will help improve the lives of Pennsylvania’s low income communities and communities of color, and not cause further economic or environmental harms.

II. Comments

Energy poverty must be alleviated if climate change mitigation efforts, including RGGI, are to be holistically and sustainably successful. These two substantial policy goals are inextricably linked.²

Energy poverty generally includes three primary factors – inadequate income, high energy prices, and energy inefficient housing.³ This particular type of poverty is often measured in terms of a household’s “energy burden” – which is the percentage of gross household income allocated to home energy costs. Most low income households pay a substantially higher percentage of income to cover the cost of utility service than non-low income residents, regularly exceeding 30% for the lowest income families.⁴

Energy poverty impacts a broad swath of Pennsylvanians. In 2019, Pennsylvania had nearly 1.5 million households with income at or below 200% of the federal poverty level. This number has likely grown exponentially through 2020 in light of the economic devastation associated with the global COVID-19 pandemic, which has most profoundly impacted low wage workers and people of color.

Notably, even with energy assistance, low income energy burdens still dramatically exceed the average energy burden for higher income households – often exceeding 10% of household income, compared to an average of just 4% for higher income households.⁵

Keep in mind, this is only for the cost of energy, and does not include the growing cost of running water, wastewater, rent and other critical housing-related costs. As a result of these incredibly high costs, low income households are regularly forced to choose between paying for food or medicine - or keeping their family warm in the winter.⁶ On the whole, low income

² Diana Ürge-Vorsatz, Sergio Tirado Herrero, Building synergies between climate change mitigation and energy poverty alleviation, *Energy Policy*, Volume 49, 2012, Pages 83-90, ISSN 0301-4215, <https://doi.org/10.1016/j.enpol.2011.11.093>. (<http://www.sciencedirect.com/science/article/pii/S0301421511009918>)

³ *Id.*

⁴ Roger Colton, *The Home Energy Affordability Gap: Pennsylvania* (April 2020), http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html. “Pennsylvania households with incomes of below 50% of the Federal Poverty Level pay 31% of their annual income simply for their home energy bills.”

⁵ *Home Energy Affordability for Low-Income Customers in Pennsylvania*, Pennsylvania Public Utility Commission, January 2019, Docket No. M-2017-2587711

⁶ 2018 National Energy Assistance Survey Final Report, National Energy Assistance Directors’ Association, December 2018

families simply lack the necessary resources to pay for the essentials of life, and cannot afford to shoulder the burden of increased rates for basic services.

Each year, thousands of Pennsylvania households enter the winter months unable to afford gas and electric service.⁷ In 2019, over 17,000 households in Pennsylvania entered the coldest months of the year without heat-related utility service or used unsafe heating sources after having their service terminated for nonpayment.⁸ Note that this does not include the thousands more families not captured in this data who could not afford to purchase deliverable fuels, like oil and propane, necessary to heat their homes.

Importantly, in this Commonwealth, individuals with disabilities, the elderly, people of color, and single women with children face significantly higher rates of poverty, and likely make up a disproportionate share of homes that are without heat in the winter.⁹

This existing energy affordability crisis is exacerbated by the ongoing COVID-19 pandemic – which has laid bare the intersectional issues of environmental and economic inequality. Data is emerging to show that the health impact and resulting loss of life is more profound in low income and minority communities as a result of their disproportionate exposure to air pollutants. Indeed, the regulatory analysis form accompanying this proposed regulation notes that “20% of fossil fuel-fired electric generating units (EGUs) are located in EJ [environmental justice] areas, [so] residents in those areas should benefit from localized emission reductions from power plants near to their homes.” Localized emissions reductions are especially important at this time as data emerges showing the health impact of the COVID-19 pandemic to be more profound in low income and minority communities as a result of disproportionate exposure to indoor and outdoor air pollutants. Low income families are more likely to live near polluting industries, more likely to live in homes with mold and ventilation problems, and more likely to lack access to adequate health care – all of which are attributed to poor health outcomes.¹⁰ Thus, the same communities

⁷ Energy Affordability for Low-Income Customers in Pennsylvania, Comments of the Tenant Union Representative Networks, Action Alliance of Senior Citizens of Greater Philadelphia and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Docket No. M-2017-2587711 (filed May 8, 2019).

⁸ 2019 Gas and Electric Cold Weather Survey Results, available at <https://www.puc.pa.gov/filing-resources/reports/gas-and-electric-cold-weather-survey-results/>. This number is conservative, as it does not include households who were off before the start of the calendar year and did not reconnect to service in 2019. It also does not account for potentially thousands more households who rely on deliverable fuel to heat their homes. When households with deliverable fuel are unable to afford a fuel delivery, they often turn to more expensive and potentially dangerous heating sources, such as electric space heaters, ovens, fires, and portable generators.

⁹ See Comments of AARP *et al.* to the Review of Universal Service and Energy Conservation Programs, PUC Docket No. M-2017-2596907 (August 8, 2017). See also Ariel Dreihobl & Lauren Ross, ACEEE, Lifting the High Energy Burden in America’s Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, at 13 (April 2016), <http://aceee.org/research-report/u1602> (finding that minority households experienced higher energy burdens in large cities across the country).

¹⁰ Xiao Wu & Rachel C. Nethery, Dep’t of Biostatistics, Harvard TH Chan School of Public Health, Exposure to Air Pollution and COVID-19 Mortality in the United States (April 5, 2020), https://projects.iq.harvard.edu/files/covid-pm/files/pm_and_covid_mortality.pdf; see also Rachel Frazin, Experts See Worrisome Link Between Coronavirus,

experiencing energy poverty are also those most likely to experience the most severe impacts of climate change.

The third piece of energy poverty is residents living in energy inefficient homes. The intersection of climate change mitigation and efforts to alleviate energy poverty are most evident with regard to energy efficient buildings. Residents living in such housing will experience higher energy utility bills to maintain comfort. Buildings were identified by a working group of the Intergovernmental Panel on Climate Change to be the end-use sector with the most significant potential for cost-effective mitigation.¹¹ It would therefore be a mutually beneficial policy goal for low income multifamily building stock, for example, to be comprehensively retrofitted with energy efficient measures to drive down energy costs, improve home health, and dramatically reduce CO₂ emissions.

To improve health outcomes, to address pollution, to improve air quality, and to mitigate all other manner of emissions-related concerns, it is important that the Commonwealth embrace common sense climate solutions like RGGI to secure our future. Of equal importance is the manner in which we engage these programs to not only secure our collective future, but to ensure that the future we are walking into is just and equitable – and does not leave low income communities and communities of color further behind.

Consideration of the impact on low income communities is included in supporting documents for the regulation. Specifically, in the regulatory analysis form (RAF) accompanying the regulation, there is included a stated focus on developing a reinvestment strategy for the auction proceeds from participation in RGGI that:

“[E]nsures an equitable distribution of beneficial projects across this Commonwealth, with a focus on benefits for low-income consumers, environmental justice communities and communities impacted by this Commonwealth’s transition to a new energy future. Opportunities for these expenditures include deep and comprehensive weatherization and energy efficiency services to reduce energy use and associated costs for households and businesses, training opportunities related to energy efficiency and renewable energy

Pollution, The Hill (April 12, 2020), <https://thehill.com/policy/energy-environment/492314-experts-see-worrisome-link-between-coronavirus-pollution>; Samantha Artiga, Rachel Garfield, Kendal Orgera, Kaiser Family Foundation, Communities of Color at Higher Risk for Health and Economic Challenges Due to COVID-19 (April 7, 2020), <https://www.kff.org/disparities-policy/issue-brief/communities-of-color-at-higher-risk-for-health-and-economic-challenges-due-to-covid-19/>.

¹¹ Lucon O., D. Ürge-Vorsatz, A. Zain Ahmed, H. Akbari, P. Bertoldi, L.F. Cabeza, N. Eyre, A. Gadgil, L.D.D. Harvey, Y. Jiang, E. Liphoto, S. Mirasgedis, S. Murakami, J. Parikh, C. Pyke, and M.V. Vilariño, 2014: Buildings. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_chapter9.pdf

careers, and the retention of jobs through repowering of coal-fired facilities to natural gas, among others.” (RAF at 47)

PA-EEFA recognizes and appreciates this stated intention to work toward an equitable reinvestment strategy.

It is important to note, however, the initial impact of implementing a market-based cap and trade program can be quite costly for consumers, and could measurably increase the already unduly high energy burden borne by low income Pennsylvanians – who are disproportionately people of color, single women with children, and individuals with a disability. Increasing the cost of energy can and does threaten the ability of low income households to maintain utility service in their home.

In the Preamble to the proposed regulation, the EQB estimates that “consumer electric bills will increase by an estimated 1.5% in the short-term. This amounts to an additional \$1.46 to \$2.05 per month, depending on the home heating source.” (50 Pa.B. 6230). The EQB asserts that this increase would be temporary, as future electricity prices would decline over time. As previously discussed, however, low income residents typically live in inefficient, poorer housing stock, with unstable heating sources. As a result, these households tend to have higher than average energy usage on a per square foot basis compared to middle and high income households. Therefore, the rise in monthly energy costs experienced by low income consumers could range even higher than this estimate, placing a disproportionate burden on low income families.

The reality is that energy prices are already far out of reach for economically vulnerable Pennsylvanians, and further increases without strong and targeted economic mitigation will make it harder for low income customers to remain connected to essential heat and electricity services in their homes.

Ultimately, the EQB’s projected decline in energy prices may never be realized by the end consumer.

Vulnerable communities should not bear any cost – direct or indirect – for joining RGGI, and certainly should not bear a disproportionately high cost compared to higher income consumers. As noted throughout these comments, increased energy costs threaten the ability of low income households to maintain life-sustaining utility service in their homes, exacerbates food insecurity and poor health outcomes, resulting in community-wide instability. These concerns mirror the impacts of climate change; therefore, the cost of the mitigation efforts must not be borne by those most impacted by climate change. This underscores the intersection of energy affordability and climate change mitigation efforts. Indeed, energy affordability is a significant driver of environmental justice. We cannot achieve one without the other.

III. Recommendations

PA-EEFA is supportive of Pennsylvania's participation in RGGI and is therefore supportive of this proposed rulemaking. However, as noted at the outset, this support is not without the critical qualifier that strong safeguards must be included in the regulation to ensure that economic impacts of the program are monitored and remediated.

Our recommendations, thus, focus on two primary factors: (1) ongoing assessment and (2) strategic investment. PA-EEFA is cognizant of the constraints on the EQB's authority in promulgating this rulemaking, and we note that our recommendations are made with these constraints in mind. Should authorization for Pennsylvania to join RGGI go through a different channel, such as the General Assembly, we note that our recommendations regarding strategic investment would be different – and would include a direct bill offset for low income customers. Nevertheless, we strongly believe that targeted investment in energy efficiency and weatherization can achieve a similar result – with the added benefits of reducing energy usage and improving home health and safety. Investment in programs that have a direct and meaningful impact on energy poverty is critical for success of this program, and must have sound regulatory principles that guide and direct future investment.

To help ensure the protection of vulnerable communities when implementing a market-based program such as RGGI, we recommend intentionally-derived processes to evaluate both the environmental and economic impacts of the carbon trading program on local Pennsylvania communities. We therefore recommend the EQB incorporate as a regulatory requirement a triennial impact assessment, to be incorporated in the Monitoring, Reporting, and Recordkeeping section of the proposed regulation, added as subsection 145.378.

This assessment should include:

- Comprehensive economic impacts analysis on low income communities, communities of color, and frontline communities.
 - Specifically, the study shall include an analysis of individualized energy burdens of residential customers at each income tier (50/100/150/200/250/300% of the Federal poverty level (FPL)).
- Comprehensive environmental impacts analysis on low income communities, communities of color, and frontline communities.
- Recommendations for programmatic improvements based on impacts assessment (regulatory and non-regulatory).
- Public comment and stakeholder engagement process.
- Timeline for implementation of recommendations (separating regulatory and non-regulatory as implementation would follow different processes).

- Results of survey of impacted communities to gather targeted information on environmental and economic impacts. Impacted communities must have a strong voice in this process.

The process for conducting the triennial impacts assessment should include the following procedural steps:

- Developing and distributing a survey to low income communities, communities of color, and frontline communities. Including these communities will capture environmental justice and other underserved or disinvested areas. Survey outreach will allow these communities to be engaged participants throughout program implementation.
- Developing and drafting of assessment report.
- Review and input by advisory board(s) including the Environmental Justice Advisory Board (primary reviewing body) and other relevant air quality advisory committees.
 - A specific subcommittee or working group should be formed to focus attention on evaluating RGGI impacts and offering input on the triennial impacts' assessment.
 - The Department should add members to its EJAB with unique expertise on related issues, including energy poverty and social, racial, and economic justice.
- Notification of date of draft report publication to all impacted communities, identifying when the public comment period for the report will be and noting when and where public hearings will be held. This will allow for continued authentic engagement in the review and remediation process.
- Publication of final assessment report that includes remediation plan and implementation schedule for employing recommended program enhancements or making needed corrections.

If the triennial assessment determines that a community is experiencing increased levels of co-pollutant exposure relative to a pre-RGGI baseline, has encountered disproportionate economic impacts as a result of RGGI implementation, or is not sharing in any air quality improvements enjoyed by the broader region, DEP should engage residents and leaders in that community to identify an appropriate remedy – including but not limited to adjusting the reinvestment strategy to respond to emerging or newly identified issues or needs.

The investment of auction proceeds is another fundamental consideration for program implementation. Remedies for correcting identified disproportionate negative impacts should include the priority investment of allowance proceeds in projects or programs that directly benefit the impacted community, offset any increased pollution from nearby power plants, and improve the health and safety of impacted individuals and families.

While PA-EEFA understands that a separate comment process will be initiated to receive more in-depth comment on the reinvestment of the RGGI auction proceeds, we offer that Pennsylvania's reinvestment strategy is a critically important factor in addressing concerns regarding equity and environmental justice related to RGGI.

PA-EEFA recommends that the EQB include principle guidelines for reinvestment to ensure that the low income communities and communities of color are prioritized for investment – now and in the future. We recommend including language in the final rule to guide reinvestment strategies to appropriately mitigate the potential adverse impacts of RGGI on Pennsylvania's most vulnerable residents. Specifically, we recommend that the rulemaking include the following:

- Language requiring the prioritization of reinvestment in programs administered by local, community-based organizations;
- Language stating the use of reinvestment dollars must be used to supplement, enhance, or expand existing programs – or to create new programs. Reinvestment should expand existing programs, not supplant or replace them.
- Language indicating that reinvestment dollars must measurably improve the availability of energy efficiency and usage reduction programming for low income households, including homeowners, heir occupants¹², and tenants.

Wise, intentional, and strategic investment of the auction proceeds can improve energy affordability, providing needed relief to the most vulnerable of Pennsylvania's residents. We note the importance of ensuring that those expenditures are made in ways that benefit communities that are disproportionately impacted by pollutants, as well as low- and moderate-income Pennsylvanians that already bear a disproportionately high energy burden, those experiencing energy poverty.

Proximity of poor communities and communities of color to power plants/polluting industries many times intersects with disparity in energy burdens/termination of utility service. For these reasons, it is of critical import that auction proceeds offset the economic impact of RGGI on electric utility rates.

We recognize that there are legal constraints which may prohibit investing proceeds into direct bill assistance. Nevertheless, targeted investment in energy efficiency and healthy housing programs for low income Pennsylvanians can have the same effect of reducing household energy costs, while simultaneously improving indoor and outdoor air quality. Thus, to help protect low

¹² See Neighborhood Legal Services, "Tangled Title Means You Don't Own Your Home" <https://www.nlsa.us/2020/01/03/tangled-title-means-you-dont-own-your-home/>

income consumers from the economic impact of RGGI, we urge the EQB to enshrine the above priorities and principles into the regulation itself to ensure the prioritization of reinvestment in programs that will directly reduce energy costs for low income households and will provide meaningful supports for local impacted communities.

While Pennsylvania has a number of energy efficiency programs that serve thousands of low income families each year, there are tremendous gaps in those programs that prevent many of Pennsylvania's most vulnerable households from receiving services to reduce energy costs, improve indoor air quality, and offset bill impacts that may be caused by the proposed regulation. Targeting reinvestments to fill the gaps in existing programs would help to measurably improve Pennsylvania's affordable housing stock, strengthen Pennsylvania's skilled workforce, and provide critical economic relief to low income households. As noted previously, improving the energy efficiency of building stock not only helps alleviate energy poverty, it considerably reduces CO₂ emissions.

We look forward to providing more detailed comments on the targeted investment of auction proceeds when that comment period opens for public input, but urge the EQB to set the stage now – in the context of this regulation – to ensure low income families are prioritized for reinvestment.

IV. Conclusion

Energy poverty and climate change intersect, presenting us with an opportunity, through participation in RGGI and intentional investment, to address both issues in meaningful ways.

PA-EEFA reaffirms its support of the CO₂ Budget Trading Program established by this proposed rulemaking, as modified by the recommended amendments detailed above.

Recommended amendments include a regulatory requirement for a triennial impacts assessment and accompanying remediation of adverse impacts, as well as the explicit proscription of broad reinvestment priorities and principles.

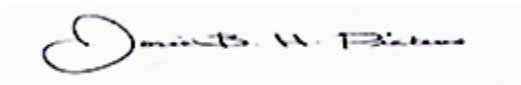
We believe our recommendations will strengthen the program, mitigating potential adverse impacts related to RGGI implementation on low-income communities and communities of color. We believe the process described for public engagement through the development of the triennial assessment will allow for authentic and inclusive participation by those stakeholders residing in low income communities and communities of color. We further believe including guidance for investment strategy in the regulation will better allow for funds to be allocated where they can not only reduce harm but perhaps create benefit in historically underserved communities.

Once again, thank you for the opportunity to comment on this important proposed rulemaking.

Respectfully submitted,



Elizabeth R. Marx, Esq.
Executive Director
Pennsylvania Utility Law Project
emarxpulp@palegalaid.net



Josie B.H. Pickens, Esq.
Robert W. Ballenger, Esq.
Community Legal Services, Inc.
Co-Directors, Energy Unit
jpickens@clsphila.org
rballenger@clsphila.org



Leann Leiter
Director of Legislative Affairs
Keystone Energy Efficiency Alliance
Energy Efficiency Alliance of New Jersey
lleiter@keealliance.org



Dawone Robinson
Eastern Regional Co-Director for Energy
Efficiency for All
Natural Resources Defense Council
drobinson@nrdc.org

/s/ Ruth Ann Norton

Ruth Ann Norton
President & CEO
Green & Healthy Homes Initiative
ranorton@ghhi.org

/s/ Gale Schwartz

Gale Schwartz
Associate Director, Policy & Strategic
Initiatives
Housing Alliance of Pennsylvania
gale@housingalliancepa.org

/s/ Todd Nedwick

Todd Nedwick
Housing & Energy Efficiency Policy Director
National Housing Trust
tnedwick@nhtinc.org