



RESOLUTION No. 6 of 2020

TOWNSHIP OF CROSS CREEK
Washington County, Pennsylvania

Urging Pennsylvania's Independent Regulatory Review Commission
to reject the proposed carbon dioxide budget trading program
regulation as part of the Regional Greenhouse Gas Initiative.

WHEREAS, On October 3, 2019, Governor Wolf directed the Department of Environmental Protection (DEP) by Executive Order 2019-17 to develop regulations that would facilitate Pennsylvania's entry into or partnership with the Regional Greenhouse Gas Initiative (RGGI); and

WHEREAS, in coordination with RGGI, Inc., the private, nonprofit administrator of RGGI, and member states Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont, the Pennsylvania DEP submitted a proposed carbon dioxide trading program regulation to, and received approval from, the Environmental Quality Board (EQB) on September 15, 2020, which is subject to public comment and review by the Independent Regulatory Review Commission (IRRC); and

WHEREAS, RGGI is a multistate program in which each state regulates carbon dioxide emissions from electric generation plants by imposing a cap and then a tax on those emissions, intended to reduce in-state carbon dioxide emissions and generate revenues to fund various non-fossil-fuel-related projects; and

WHEREAS, Under the act of January 8, 1959 (P.L.2119, No.787), known as the Pennsylvania Air Pollution Control Act, there is no reference to carbon dioxide under the definition of "air pollution," let alone express statutory authorization to regulate, cap and tax carbon dioxide emissions, and in contrast to the Federal definition of "air pollutant," the Air Pollution Control Act definition also requires an air pollutant to be "inimical to public health. . .injurious to humans. . .or which unreasonably interferes with the enjoyment of life or property," unlike carbon dioxide which is necessary to sustain life; and

WHEREAS, According to DEP and data from the International Panel on Climate Change (IPCC), carbon dioxide emissions from all Pennsylvania energy production sources, not just from electric plants, represent approximately 0.19% of global carbon dioxide emissions, and according to DEP models, any carbon dioxide reductions in Pennsylvania would be offset by increased carbon dioxide emissions from neighboring, non-RGGI states, like West Virginia and Ohio, and thus fail to meet the Air Pollution Control Act mandate that the RGGI regulation must also meaningfully "prevent, control, reduce, and abate" climate change; and

WHEREAS, there is no Federal court, Federal agency or Commonwealth mandate that the Commonwealth cap and tax carbon dioxide emissions; and

WHEREAS, Under Pennsylvania Supreme Court precedent, "the power of taxation, in all forms and of whatever nature lies solely in the General Assembly" and a regulatory fee is "intended to cover the cost of administering a regulatory scheme"; and

WHEREAS, the RGGI revenue generating mechanism, which according to DEP will generate \$2.4 billion in revenue over 10 years, is a tax because only a small portion will be used to pay the administrative expenses of the RGGI regulatory scheme; and

WHEREAS, Consistent with the Constitution of Pennsylvania and Supreme Court precedent, the Air Pollution Control Act mandates that the EQB may only establish "fees sufficient to cover the indirect and direct costs of administering" the act and the Federal Clean Air Act, however DEP intends to utilize RGGI revenues beyond that purpose; and

WHEREAS, The Constitution of Pennsylvania precludes the General Assembly from delegating taxing power to an unelected board or commission, such as the EQB, by declaring "[t]he General Assembly shall not delegate to any special commission, private corporation or association, any power. . .to levy taxes or perform any municipal function whatever"; and

WHEREAS, the \$2.4 billion RGGI tax will be imposed on all coal and natural gas electric generation plants in Pennsylvania, and according to DEP's modeling will eliminate over 87% of existing Pennsylvania coal generation by 2022 and impair the future competitiveness of all natural gas plants; and

WHEREAS, RGGI represents the single, most significant energy generation restructurings in the history of Pennsylvania, and the forced early retirement of coal and natural gas plants will lead to the loss of thousands of direct and indirect jobs supporting the electric generation industry; and

WHEREAS, if all coal plants and many natural gas plants within Pennsylvania are forced to close as a result of the RGGI fee, Pennsylvania electric customers will be at risk for significant price spikes and potentially rolling brownouts as have occurred in other states that have moved away from fossil fuel electricity before ensuring that nonfossil fuel electricity was available to meet consumer demand; and

WHEREAS, every state within RGGI has enacted legislation that specifically governs entry into the initiative or otherwise expressly authorizes the regulation of carbon dioxide, and nearly all of those state statutes appropriate RGGI revenues to assist low-income families with direct bill pay assistance, which DEP acknowledged cannot occur under its proposed rulemaking; therefore be it

RESOLVED, that the Township of Cross Creek urges Pennsylvania's Independent Regulatory Review Commission to reject the proposed carbon dioxide budget trading program regulation as contrary to State statute and the Constitution of Pennsylvania; and be it further

RESOLVED, that the Township of Cross Creek, Washington County, Pennsylvania deem this resolution to serve as its official public comment for the proposed carbon dioxide budget trading program regulation; and be it further

RESOLVED, that the Township of Cross Creek, Washington County, Pennsylvania has and will continue to advocate for the Legislature of the Commonwealth of Pennsylvania consider statutory energy policy reforms that make sense for Pennsylvania workers, consumers and employers; and be it further

RESOLVED, that a copy of this resolution be transmitted to the Governor, the Department of Environmental Protection, the IRRC and the EQB.

ADOPTED by the Board of Supervisors of the Township of Cross Creek, County of Washington, the Commonwealth of Pennsylvania, this 22 day of December, 2020.

ATTEST:

Rachel Warner Welsh
Rachel Warner Welsh, Township Manager

CROSS CREEK TOWNSHIP

By: Dean E. Casciola
Dean E. Casciola, Chairman

By: Evan Midler
Evan Midler, Vice Chairman

By: Harry Fischer Jr.
Harry Fischer Jr., Supervisor

I, Rachel Warner Welsh, the duly qualified Secretary of the TOWNSHIP OF CROSS CREEK, Washington County, Pennsylvania, hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by a majority vote of the Board of Supervisors of the TOWNSHIP OF CROSS CREEK at a public meeting held on Dec. 22, 2020, and said Resolution has been recorded in the Minutes of the meeting and remains in effect as of this date.

IN WITNESS WHEREOF, I affix my hand and attach the seal of the TOWNSHIP OF CROSS CREEK this 22nd day of December, 2020.

Rachel Warner Welsh
Rachel Warner Welsh, Township Manager
Seal