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RECEIVED
Feb 12 2021
Independent Regulatory Review Commission

SUBJECT: Opposed to Proposed RulemakingCO2 Budget Trading Program

To Whom It May Concern:

Lee Supply Company, Inc. appreciates the opportunity to provide comments to the Environmental Quality Board on the proposed CO2 Budget Trading Program that would establish a program to limit the emissions of carbon dioxide (CO2) from fossil-fuel fired electric generating units (EGUs) and join Pennsylvania to the Regional Greenhouse Gas Initiative (RGGI).

Lee Supply Company, Inc. is a local, family-owned business that has been serving the coal industry since 1954. Our organization supplies various materials, labor and expertise to numerous coal producers in the Appalachian region. Lee Supply Company, Inc. has a long history of not only supporting our valued employees and their families, but also supporting the local Mon Valley communities.

The current Coronavirus pandemic has caused the organization to experience a significant reduction in business activity. Passing of the proposed CO2 Budget Trading Program would be an additional dagger in our operations and cause substantial damage to our operations.

Coal mining helps drive the Pennsylvania economy, supporting nearly 18,000 jobs, contributing $4.7 billion annually to the state's economy, and serving as the cornerstone of economic development for many of Pennsylvania's rural communities over the last two centuries. [1] Pennsylvania produced over 50 million short tons of coal in 2019, making it the third largest coal-producing state in the nation.[2]

The steam or thermal coal market represents the largest market by far for Pennsylvania-mined coal, and Pennsylvania coal fired EGU's are a significant end use consumer for Pennsylvania coal. In 2019, over 36% of Pennsylvania coal distributed to the electric power sector was consumed by Pennsylvania-based coal fired EGUs.[3] Accordingly, Lee Supply Company, Inc. has an immediate and significant interest in the proposed CO2 Budget Trading Program regulation. Lee Supply Company, Inc. believes that the proposed CO2 Budget Trading Program regulation will result in dire economic consequences at the local and regional levels throughout Pennsylvania if it is promulgated and that it represents a dramatic overstepping of the legal

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1 "The Economic Impact of the Coal Industry in Pennsylvania", Allegheny Conference on Community Development, April 2019
2 Rankings: Coal Production 2019, EIA, https://www.eia.gov/state/rankings/?sid=PA#series/48
3 "Annual Coal Distribution Report", EIA, October 5, 2020

authority granted under the Air Pollution Control Act (ACPA) and the Pennsylvania Constitution. The current Coronavirus pandemic has caused the organization to experience a significant reduction in business activity. Supporting coal producers in the Appalachian region provide the organization with more than half of our revenues. Passing of the proposed CO2 Budget Trading Program would be an additional dagger in our operations and cause substantial damage to our operations, placing hundreds of jobs at risk and decreasing our ability to support our local community.

In 2018, carbon dioxide emissions from fossil-fuel fired EGU's were 33.2% below 2005 emission levels.[4] This reduction is well in advance of Governor Wolf's stated 2025 goal of 26% below 2005 levels.[5] Moreover, these reductions have been accomplished while Pennsylvania has maintained a stable and reliable supply of electricity at competitively priced rates, significantly below those of RGGI-states. This can be attributed to the fact that over 95% of Pennsylvania's energy generation comes from in-state low cost generation sources – including coal, natural gas, and nuclear. However, promulgation of this proposed rulemaking would radically and irresponsibly alter the states' energy generation portfolio resulting in increased costs for electric ratepayers, and significant negative economic impacts in communities throughout Pennsylvania.

The proposed regulation would dramatically alter Pennsylvania's energy generation portfolio by causing the near immediate closure of the state's remaining coal fired EGU's. These closures will result in the premature retirement of these coal-fired EGU's,,the loss of thousands of jobs supplying and supporting those EGU's, a substantial reduction in property taxes in communities that host those power plants and the coal mines that supply them, and higher electric rates in our state.

However, the economic devastation resulting from the closure of these plants does not lead to a significant reduction in carbon dioxide emissions. ICF modeling shows less than a 1% decrease in carbon dioxide emissions in PJM and the Eastern Interconnection if the rule is promulgated as written.[6] This clearly demonstrates that fossil-fuel fired electric generation is simply being shifted to non-RGGI states within the PJM, primarily Ohio and West Virginia. This concept, known as leakage, was required under Governor Wolf's Executive Order to be "minimized", however the proposed regulation contains no provisions to address what is an obvious generation shift to neighboring PJM states that do not participate in RGGI.

Prior to consideration of the proposed rulemaking package by the Board, many of these potential negative economic consequences and shortfalls of the proposal were considered and discussed by three specific Department Advisory Committees. All three advisory boards, including the Air Quality Technical Advisory Committee, the Citizens Advisory Council, and the

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[4] EPA CAMD Data for PA EGU's, 2018 and 2005

[5] See Executive Order: 2019-01 – Commonwealth Leadership in Addressing Climate Change and Promoting Energy Conservation and Sustainable Governance

[6] See PA DEP IPM Modeling Results Discussion Reference Case and RGGI Policy Scenario, 4/23/2020, Slide 30

Small Business Compliance Advisory Committee rejected "recommending" the rule to the Board. Despite failing to achieve agreement from a single advisory committee, the Department made no changes to the rule and presented it as such to the Board, further evidence that the Department has not carefully considered the proposed rulemaking nor has there been meaningful consultation or interaction with affected parties during the development of the proposed rulemaking.

In addition to the negative economic impacts and minimal environmental benefits of the proposed rule, it also represents a dramatic overstepping of the legal authority under the APCA and the Pennsylvania Constitution. The APCA contains no reference to carbon dioxide under the definition of "air pollution", or any express authority to regulate, cap, and tax carbon dioxide emissions. The APCA definition of an air pollutant requires it 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. Furthermore, the Pennsylvania Constitution specifically prohibits the General Assembly from delegating taxing power to any special commission, private corporation, or association. The proposed regulation implements a carbon tax and not on fee on affected EGU's. Fees under the APCA are limited to covering the direct and indirect costs of program administration. However, economic modeling on the proposed regulation shows potential revenue generation in the hundreds of millions of dollars, well beyond the cost of program administration. Thus, the proposed regulation implements a carbon tax that was never authorized by the General Assembly as required by the Pennsylvania Constitution. Therefore, the Board should therefore withdraw the proposed regulation.

The proposed regulation represents a statutorily unauthorized attempt to institute a tax on carbon dioxide emissions from fossil-fuel fired EGU's, and does not reflect the intent of the General Assembly Additionally, the proposed regulation will impose extraordinary hardships on impacted employees, local communities with affected EGU's, and consumers seeking a reliable and affordable supply of electricity. All of which will be done for a less than 1% reduction in carbon dioxide emissions across the PJM over the next decade. For these reasons Lee Supply Company, Inc. thus urges the Board to withdraw the proposed regulation.

Thank you for the opportunity to comment.

Kevin M. Lee
President