



**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Proposed Rulemaking: CO₂ Budget Trading Program (#7-559)
25 Pa. Code Chapter 145

**COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE**

The Office of Consumer Advocate appreciates the opportunity to provide these Comments regarding the Proposed Rulemaking to add Subchapter E relating to a CO₂ Budget Trading Program to the Department of Environmental Protection's (DEP) regulations. The purpose of Subchapter E is to establish a program to limit the emissions of carbon dioxide (CO₂) from fossil fuel-fired electric generating units with a nameplate capacity equal to or greater than 25 megawatts (MWe). The Proposed Rulemaking would enable the Commonwealth's participation in the Regional Greenhouse Gas Initiative (RGGI), a regional CO₂ trading program that includes members in six New England states, New York, Delaware, Maryland and New Jersey, with Virginia preparing to join RGGI in the near future. See, DEP Regulatory Analysis Form, pg. 13.

The Office of Consumer Advocate (OCA) was established in 1976 to represent the interests of consumers in matters involving utility service before the Pennsylvania Public Utility Commission and other state and federal regulatory agencies and courts. 71 P.S. §309-1, *et seq.* The OCA also participates actively in policy-making committees of non-government organizations, including the PJM Regional Transmission Organization (RTO), whose decisions have a critical impact on electric prices and service in Pennsylvania.

As the representative of utility consumer interests, the OCA seeks to ensure that Pennsylvania utility consumers enjoy safe and reliable service at reasonable prices. For electric service, the OCA seeks to ensure that consumers have an electric system that is reliable, efficient, economic, environmentally sustainable, and diverse at a reasonable cost. The OCA has worked for decades at the state, regional and federal levels to achieve these goals in the most cost-effective manner for consumers.

From a ratepayer perspective, the best and most cost-effective solutions to meet environmental policy objectives have been market-based. Market solutions have been used to achieve environmental goals and control pollutants, such as the reduction of SO₂ and NO_x and the OCA has supported the use of markets to achieve these goals. Over the long term, the use of these market mechanisms should result in the most efficient and least cost solutions to achieving our goals, as well as fostering innovation in a technology neutral manner. While the OCA is not the environmental regulator and takes no position on the appropriate environmental policies for the Commonwealth, the OCA submits that the most cost-effective means to regulate power plant emissions would be to use the competitive regional wholesale markets that Pennsylvania has embraced. The RGGI proposal is just such a process.

One of the key stakeholder interests in this process is the utility ratepayers of Pennsylvania. As modeled, Pennsylvania's entry into RGGI has the potential to increase energy market prices, on a kilowatthour basis paid by consumers in Pennsylvania and elsewhere in PJM in the short term.¹ DEP Regulatory Analysis Form, pgs. 36-37. While the OCA is concerned with any increase in energy market prices, such an increase need not necessarily lead to an increase in the *total monthly bill* of a customer in the short term or the long term. The proceeds from the auction of

¹ DEP has estimated that the average monthly bill for a residential customer could increase from \$1.46 to \$2.05 per month in the short term (through 2030). DEP Regulatory Analysis Form, pgs. 36-37.

emission allowances under RGGI are returned to the states and can be used for any number of purposes. DEP estimates that in the first year of participation in RGGI (2022), there will be approximately \$300 million in proceeds returned to Pennsylvania. DEP Regulatory Analysis Form, pgs. 20 and 35. The proceeds are expected to be around \$190 million in 2030. DEP Regulatory Analysis Form, pg. 35. One key challenge is to use those proceeds in the most efficient manner to mitigate any potential negative impacts of joining RGGI.

Under RGGI, the proceeds from the auction of emission allowances can be used for such things as reducing ratepayer bill impacts, supporting energy efficiency and supporting renewable resources. These types of initiatives can help to reduce the total monthly bill of a consumer through direct assistance, lowering energy usage, and reducing the price of renewables entering the market. The auction proceeds can also be used under RGGI to support communities and workers affected by the move toward more renewable or carbon free resources being used to provide electric generation service.

The currently participating RGGI states have already realized these benefits for ratepayers and communities while pursuing their state's goal of reducing carbon emissions. Since its inception in 2009 through December 2018, RGGI has auctioned allowances resulting in revenue of approximately \$3.0 billion, of which approximately \$2.6 billion has now been invested by the participating states.² The RGGI states have each adopted unique allocations for their proceeds. Some states have directed a substantial portion of their proceeds to direct ratepayer bill assistance reflected as a reduction to ratepayer bills. For example, in 2018, Maryland allocated 41% of its proceeds to direct ratepayer bill assistance for low income customers and has invested 48% of its

² "The Investment of RGGI Proceeds in 2018," published July 2020, pg. 13 and available at: https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2018.pdf

all-time proceeds for such direct bill assistance.³ In the same year, New Hampshire allocated 77% of its proceeds to direct ratepayer bill assistance for all customers.⁴ Other RGGI states have directed the majority of the funds toward energy efficiency and renewable energy support. For example, in 2018, Connecticut directed 72% of its RGGI proceeds to energy efficiency.⁵

If the proceeds from the auction are utilized substantially in a manner designed to mitigate any short term increases in the market price of energy, the total monthly bill for a ratepayer could decline even if the cents per kilowatthour price for generation increases. The proposed regulations contemplate using the auction proceeds to fund energy efficiency programs, renewable energy, GHG abatement, as well as administrative costs. DEP Regulatory Analysis Form, pg. 35. The OCA supports these programs as an important tool to mitigate any potential energy market price increases that may occur in the short term. Such programs, however, may not reach all consumers and may have some limitations in providing short term relief that may be needed as the market matures. As such, the OCA would recommend that to the extent possible, direct bill assistance to utility ratepayers be provided, at least in the short term, with a portion of the proceeds. Direct bill assistance will better provide benefits to all ratepayers as the program is initiated.

The OCA recognizes that DEP has not proposed that any of the proceeds be used for direct reductions to ratepayer bills or provided to affected communities, as it is proceeding under section 5(a)(1) of the Air Pollution Control Act (APCA). In its Regulatory Analysis Form, DEP states that Section 6.3(a) of the APCA only authorizes regulations to establish fees to support the air pollution control program authorized by the APCA and not covered by fees under the Clean Air Act. DEP Regulatory Analysis Form, pg. 1. The OCA is not in a position to provide a legal

³ *Id.* at pg. 23.

⁴ *Id.* at pg. 29.

⁵ *Id.* at pg. 15.

analysis of DEP's authority, but the OCA would urge the DEP to seek further authority if it is so limited to allow for a broader use of the proceeds. The ability to more broadly utilize the auction proceeds may better serve the Commonwealth and the communities that may be affected by this proposal.

The Office of Consumer Advocate again expresses its appreciation for the opportunity to comment. The proposed regulations to enable Pennsylvania's participation in the Regional Greenhouse Gas Initiative have the potential to achieve the environmental goals in a cost-effective manner.

Respectfully submitted,

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