

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Wednesday, September 1, 2021  
14<sup>th</sup> Floor Conference Room  
333 Market Street

**I. CALL OF THE MEETING**

The September 1, 2021 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:07 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:      George D. Bedwick, Chairman  
   John F. Mizner, Esq., Vice Chairman  
   John J. Soroko, Esq.  
   Murray Ufberg, Esq.  
   Dennis A. Watson, Esq.

**II. APPROVAL OF THE JULY 15, 2021 PUBLIC MEETING MINUTES**

Chairman Bedwick asked for a motion for approval of the July 15, 2021 public meeting minutes, as submitted. Commissioner Ufberg made the motion and Commissioner Watson seconded, and the motion passed 5-0.

**III. NEW BUSINESS**

Chairman Bedwick announced the Commission was in receipt of embargoed mail and the Commissioners would review it. He explained that beginning 48 hours prior to a public meeting, the Commission is prohibited from viewing any communication other than communication requested by the Commission or communication from the legislature until the beginning of the meeting.

David Sumner, Executive Director, said today's meeting would be lengthy. He reported a list of speakers will be posted on the Commission's website along with the statements which were sent in advance of today's meeting. Mr. Sumner said some speakers have canceled because of the impending weather but he noted that their written remarks had been received and would still be considered by IRRC's Commissioners.

At the request of Chairman Bedwick, the Commission's Chief Counsel, Leslie Lewis Johnson, provided an overview of the role of the Commission in the regulatory process and what issues are not before the Commission. Ms. Johnson said that the role of the Commission is to determine whether regulations are in the public interest. She explained that in making this determination, the Commissioners must consider the criteria outlined in the Regulatory Review Act. According to Ms. Johnson, some of the criteria include statutory authority and legislative

intent; economic impact; public health, safety and welfare; clarity, reasonableness and need; whether the regulation represents a policy decision of such a substantial nature that it requires legislative review; and recommendations, comments or objections raised by a standing committee. She pointed out the Commission does not consider issues of constitutionality or internal procedures issued or undertaken by an agency. Ms. Johnson stated, "In conducting our independent review, this Commission considers the material submitted by the agency, all legislative and public comments previously received, and all comments made during the public meeting for the regulation." She said, "Finally, it is important to note that this is a public meeting and not a hearing. This Commission is not a court and performs no judicial function." Ms. Johnson also explained the role of the Office of Attorney General.

Regarding the Environmental Quality Board (EQB) regulation, Chairman Bedwick commented, "I expect each side, pro and con on this issue, which is obviously very controversial, to show respect to the other side." He continued, "There is no reason to attack people or to attack people's beliefs. Show them the same respect that you feel you deserve." Chairman Bedwick said, "Reasonable people can have rational disagreements."

#### **A. DEEMED APPROVED**

1. **No. 3299 Pennsylvania Liquor Control Board #54-102: Purchases, Sales and Returns: General Provisions**

2. **No. 3269 Insurance Department #11-259: Minimum Reserve Standards for Individual and Group Health and Accident Insurance Contracts**

#### **B. ACTION ITEMS**

1. **No. 3274 Environmental Quality Board #7-559: CO2 Budget Trading Program**

Scott Schalles, Regulatory Analyst, explained that in 2019 Governor Tom Wolf signed an executive order that directed the Department of Environmental Protection (DEP) to use its existing statutory authority under the Commonwealth's Air Pollution Control Act (APCA) to develop a rulemaking to abate, control or limit carbon dioxide emissions in fossil fuel-fired electric generation units (EGUs). He further explained the rulemaking will establish a program to limit carbon dioxide (CO<sub>2</sub>) emissions from EGUs by entering the Commonwealth into the Regional Greenhouse Gas Initiative (RGGI). Mr. Schalles noted the rulemaking has generated a great deal of interest from the public and the General Assembly. He reported the people scheduled to speak at this meeting provide a "good representation" of the numerous interests and opinions in support and in opposition to the rulemaking. Mr. Schalles noted the House and Senate Environmental Resources and Energy Committees voted to disapprove the rulemaking.

Patrick McDonnell, Secretary; Jessica Shirley, Policy Director; Allen Landis, Executive Director, Pennsylvania Energy Development Authority; Jennie Demjanick, Assistant Counsel, Bureau of Regulatory Counsel; Krishnan Ramamurthy, Deputy Secretary for Waste, Air, Radiation and Remediation, DEP, were present to answer any questions.

Secretary McDonnell said RGGI is a "huge" step forward in addressing greenhouse gas pollution. He commented on a report issued by the Intergovernmental Panel on Climate Change (IPCC) showing "dramatic" climate change and how CO2 is a driver of climate change. Secretary McDonnell continued by explaining the increase in global surface temperatures and the "crucial" need to address Pennsylvania's greenhouse gas emissions. He noted that Governor Wolf signed an executive order on January 8, 2019, setting climate change goals to reduce greenhouse gas emissions from 2005 levels by 26 percent by 2025 and 80 percent by 2050, aligning Pennsylvania with reduction targets in the Paris Agreement. Secretary McDonnell commented on the threshold of "dire" consequences, including the rise in sea levels and "crippling" heat waves. He noted the current impacts of climate change in Pennsylvania, the effects on vulnerable populations, and the frequency of air quality alerts.

Secretary McDonnell pointed out DEP's 2021 Climate Change Impacts Assessment shows that some Pennsylvanians are at a greater risk of impact because of their location, income, or housing. He stressed that climate change disrupts Pennsylvania's economy because mudslides and floods cause damage to infrastructure, interfering with the delivery of goods and services. Secretary McDonnell said, "In 2018 alone, the Pennsylvania Department of Transportation (PennDOT) had \$125 million in emergency expenses to replace damaged infrastructure." He pointed out that local flooding events do not always qualify for federal assistance. Secretary McDonnell noted the impacts of climate change on Pennsylvania's agriculture industry and how insurance companies will assess climate-related risks. He said, "We have the opportunity to mitigate those risks through sound climate policy." Secretary McDonnell stressed the importance of establishing climate change goals and implementing incentives and policies to support emission reductions. He pointed out that Pennsylvania's electricity sector is the fifth-highest emitting in the U.S., "producing more CO2 than many countries." Secretary McDonnell said, "We must take strong action now, and this final regulation is our opportunity to do that."

Mr. Landis stated that the CO2 Budget Trading Program provides a framework for Pennsylvania to participate in RGGI. He noted that while the regulation is not the complete solution to solving global climate change, it is the "cornerstone of the Commonwealth's climate change policy." He continued that RGGI provides a vehicle through which Pennsylvania can reduce CO2 emissions, address climate change, invest in local economies to create jobs, lower electricity bills, and further reduce pollution. Mr. Landis explained that RGGI has been in existence for 10 years and has led to economic growth and the increased health and wellness of residents in participating states. He pointed out that RGGI is not a multi-state compact but is a regional initiative.

Mr. Landis stressed that the implementation of the final-form rulemaking is "clearly in the public interest," noting that if Pennsylvania begins participating in RGGI in 2022, the first compliance date will be March 1, 2023. He commented on the emission reductions already achieved in Pennsylvania while stressing the urgency of acting now because trends are not continuing. Mr. Landis explained that the EQB has the statutory authority to promulgate RGGI under the APCA. He said, "This regulation conforms to the intent of the General Assembly through the enactment of the APCA." Mr. Landis asserted that the Commonwealth Court endorsed DEP's authority to reduce greenhouse gas emissions. Mr. Landis said DEP estimated that if 188 million tons of CO2 are avoided through 2030, Pennsylvania residents would see

cumulative health benefits amounting to between \$2.79 and \$6.3 billion. He emphasized that RGGI is the most effective means of reducing CO2 emissions and provisions are included in the final-form rulemaking to address the impact on small business stationary sources.

Mr. Landis commented that RGGI is a "non-political issue" that has been politicized. He stressed that movement to less emissions-intensive sources is leaving other technology behind in states, with or without carbon pricing. Mr. Landis remarked that Pennsylvania is a net-energy exporter and produces more energy than is consumed. Regarding RGGI, Mr. Landis said, "This regulation is sound environmental policy based on science that gives us an opportunity to position Pennsylvania to reap the benefits of the market for cleaner sources of energy in a way that will maintain our position as an energy and electricity powerhouse." He explained that leakage occurs when emissions source generation shifts from an area with carbon pricing to one without carbon pricing, such as Ohio or West Virginia. Mr. Landis stressed that the potential for leakage will not negate the positive impact of participation in RGGI. Landis asserted that RGGI will not change Pennsylvania's diverse energy portfolio but will "level the playing field" for all energy types. He said, "RGGI is based on the basic economic principle that a polluter should pay for the cost of their pollution." Mr. Landis concluded by highlighting how the approval of this final regulation is "strongly in the public interest and necessary to take a major step forward in addressing Pennsylvania's CO2 pollution."

Vice Chairman Mizner asked if membership changed on the advisory boards that reviewed RGGI. Mr. Landis said multiple advisory committees provide technical guidance. He continued that three advisory committees, the Small Business Compliance Advisory Committee (SBCAC), the Air Quality Technical Advisory Committee, and the Citizens Advisory Council (CAC), voted on whether to support DEP moving the regulation forward to the EQB. Mr. Landis explained that two of the committees voted to not support DEP, and one had a tie vote. He stated that some personnel changes occurred in the advisory committees during the regulatory process, with the SBCAC having "marginal" changes and some changes in the CAC. Mr. Landis explained that some of the committee members voted differently on the proposed rulemaking compared to the final rulemaking.

Vice Chairman Mizner noted that public hearings addressing RGGI were conducted virtually because of the COVID-19 pandemic. Vice Chairman Mizner noted that a person he spoke with worked 12-hour days and did not understand Zoom or how to participate in a virtual meeting. He asked if there could be wider participation without using virtual platforms and if DEP took that into consideration. Mr. Landis responded that DEP wanted as many people as possible to participate in the hearings. He continued that DEP held 10 public hearings with about 450 people participating, and participants could dial in via phone. Mr. Landis stated that DEP received about 14,000 comments and had greater participation than with in-person hearings. Vice Chairman Mizner commented some people are unfamiliar with the idea of a dial-in number or do not follow social media.

Vice Chairman Mizner remarked on the Regulatory Review Act's criterion of statutory authority. He explained that upon a finding that a regulation is consistent with the statutory authority, the Commission shall consider other criteria listed, including that a policy decision is of such a substantial nature that it would require legislative review. He asked if DEP can provide

an example of a time when a decision met the standard requiring legislative review if RGGI does not meet that standard. Ms. Demjanick said RGGI is not the first cap-and-trade program for Pennsylvania and is similar to other cap-and-trade programs in which DEP participates. She stressed that DEP does not believe that RGGI is a policy decision of such a substantial nature that it requires legislative review. Ms. Demjanick highlighted how DEP has regulated air pollution with the authority in existence. Vice Chairman Mizner asked if Ms. Demjanick can provide an example of an environmental policy decision that would be of such a substantial nature and would require legislative review. Ms. Demjanick said she cannot think of something of such a substantial nature which requires legislative review.

Representative Greg Vitali (D-Delaware), Minority Chairman, House Environmental Resources and Energy Committee, said it is ironic that New Orleans is without power due to Hurricane Ida while many people who object to RGGI are concerned with the costs and benefits of the program. He said the estimate of damages from Hurricane Ida is between \$70 to \$80 billion. Representative Vitali listed the various damages and costs from hurricanes recently and noted that poor people suffer the most from the consequences of climate change. He said this hurricane is the exact type of weather event that will continue to happen with increasing frequency due to climate change. Representative Vitali said he would like to discuss RGGI in relation to state environmental policy, remarking that Pennsylvania joining RGGI is the most important thing to do to address climate change. He said one benefit of RGGI is that 1,000 union jobs were saved in western Pennsylvania already because of RGGI. Representative Vitali said critics of RGGI consistently never acknowledge the seriousness of climate change or propose any solutions other than doing nothing. He said RGGI is in the public interest and is one way to address climate change. Representative Vitali asked for RGGI's approval.

Vice Chairman Mizner asked if RGGI represents a policy decision of a substantive nature that requires legislative review. Representative Vitali said he is on the EQB and he provides input during the regulatory process. He said the opportunity for legislative review exists in the regulatory process as well as a period of public comment.

Senator Carolyn Comitta (D-Chester), Minority Chairman, Senate Environmental Resources and Energy Committee, encouraged approval of RGGI. She noted the Pennsylvania Constitution's guarantee for residents' right to clean air and water and the preservation of the environment. Senator Comitta said Pennsylvania's natural resources belong to all residents and that the Commonwealth will conserve and maintain the environment for all people. She encouraged action to address the disruption of Earth and prevent worse impacts from happening. Senator Comitta urged leaving a cleaner, safer world for the future and to act now to join RGGI.

Senator Joe Pittman (R-Indiana) urged Commissioners to disapprove RGGI. He said his constituents will be the most adversely affected if this regulation is promulgated. Senator Pittman said he represents three coal-fired power plants, one natural-gas-fired power plant, and the world's largest coal-fired power plant. He asserted the plants support family-sustaining wages, school districts via property taxes, ancillary services, and energy in the commonwealth and other states in the PJM Interconnection. Senator Pittman said that DEP and the EQB say the purpose of RGGI is to reduce CO2 emissions from electric generating units, but in order to

generate revenue, CO2 must continue to be emitted. Senator Pittman described the program as counterintuitive as RGGI will make power plants uncompetitive and may force them to close.

Senator Pittman claimed that the administration did not engage with affected communities after the Governor extended the rulemaking process to do so. He noted he has invited the administration to talk with the constituents whose livelihoods are jeopardized by RGGI. Senator Pittman stated that the Governor did not engage in such a discussion and the lack of engagement shows little compassion for those affected by RGGI. He described his attempts to ask the Governor to discuss the impacts of RGGI on affected communities. Senator Pittman said the lack of engagement shows a fundamental concern with the proposed regulation as a whole. He noted that the final-form rulemaking does not address recommendations, comments or objections conveyed by the legislature, specifically regarding statutory authority, fees or taxes collected, public hearings in communities affected, and the delay of implementation.

Senator Pittman concluded that CO2 is not considered an air pollutant according to standards set forth by the General Assembly in the APCA. He said motor vehicle emissions are the leading cause of air pollution. Senator Pittman claimed if DEP is genuine in its efforts to address climate change it should develop policies regarding air pollution rather than regulating CO2. He said the regulation may hinder the economy and devastate communities. Senator Pittman said Pennsylvania is the second-largest exporter of energy in the country and RGGI does not incentivize change.

Senator Pittman encouraged the Commission to disapprove the regulation and require the administration and DEP to fully address the concerns of affected communities.

Vice Chairman Mizner asked Senator Pittman to respond to the sentiment that power plants will close eventually regardless of whether RGGI is approved or not. Senator Pittman said he has lived in Indiana County for 44 years and described how power plants have evolved since they were first built. He said he believes they can continue to evolve. Senator Pittman explained the various ways coal-fired power plants have adapted previously but noted that they cannot do so if they file for bankruptcy, which would be a consequence of RGGI. He said RGGI will disincentivize the possibility of transitioning to natural-gas-fired power plants. Vice Chairman Mizner asked if his constituents had issues connecting to the administration about RGGI. Senator Pittman said broadband connectivity and work schedules resulted in the administration being unable to hear from residents. He recognized that COVID-19 impacted how the administration conducts business but noted that the APCA requires meetings in affected communities. Senator Pittman told the Commission that no such meetings were held in his district, which includes a large number of disaffected residents.

Vice Chairman Mizner asked if the Senate Republican Caucus would work with the administration to develop a process that benefits all residents if the regulation were to be disapproved. Senator Pittman said he asked for cooperation for the past 22 months. He said he had two opportunities to work with Secretary McDonnell where he offered suggestions on the one-year delay and grandfathering existing coal-fired power plants into RGGI. He said DEP suggested modeling makes grandfathering current facilities impossible, and he claimed this is in pursuit of a revenue target as opposed to an emissions target. "I am committed to working on

proactive approaches, such as Alternative Energy Portfolio Standards. We've done it before and we can do it again. It doesn't have to be RGGI, but I think it is a path forward and I'm committed to working in a productive way along those lines."

Representative Donna Oberlander (R-Clarion), Majority Whip, said the power to levy taxes resides in the General Assembly and asserted RGGI requires legislative authority. She said that with House Bill 2025 of 2019 and the bipartisan majority vote in both chambers, the legislature believes they have the authority to vote on such a large policy change. Representative Oberlander said the administration is upsetting checks and balances by going through with RGGI without the legislature. She requested the Commissioners reject the policy change included in the regulation. Representative Oberlander said this is a very personal and emotional issue because RGGI will increase electric bills for residential, commercial and industrial consumers by billions of dollars. She noted this increase will affect low-income individuals, families and fixed-income seniors and decrease competitiveness. Representative Oberlander said Virginia and Connecticut both experienced increased electric rates. Lastly, Representative Oberlander said local and regional job loss is another reason to not join RGGI. She said school districts would lose funding and the perceived benefits of the policy do not match the costs to the state. Representative Oberlander encouraged disapproval of the regulation.

Representative Jim Struzzi (R-Indiana) said his district has two of the largest coal-fired power plants in Pennsylvania. He questioned why the Governor wants to join RGGI despite its economic detriments to the entire Commonwealth. He said power plants will move from the Commonwealth to Ohio and West Virginia, resulting in Pennsylvania's transition from an energy exporter to an energy importer. Representative Struzzi said the four states with the highest electric rates in the country are RGGI states. He said residents are terrified of what RGGI will do. Representative Struzzi noted that the administration promises that money from the carbon tax will offset the job loss. He claimed this promise is impossible to attain. He encouraged the Governor to tell residents about job loss instead of promising other jobs will be created. Representative Struzzi said job replacement will not be equal to jobs lost. He claimed that if policy that impacts the entire commonwealth is going to be set, legislators should be involved in the process. Representative Struzzi said his legislation last session was vetoed by the Governor despite legislators from 63 of 67 counties wanting the bill approved. He asked the administration to consider the job and economic losses as a result of RGGI. Representative Struzzi described RGGI as an assault on the fossil fuel industries to benefit green industries. He asked for RGGI to be stopped.

Representative Pam Snyder (D-Greene) said the International Brotherhood of Electrical Workers (IBEW) in Pittsburgh noted today's livestream interruptions underscore the irony of discussing virtual meetings with residents from western Pennsylvania. She said many residents in her district could not connect to meetings online. Representative Snyder noted the different mines in her district and that the coal mining industry makes up four of the top five employers. She said one out of every three jobs in Greene County is directly related to the coal industry. Representative Snyder said 27 cents of every dollar paid to Greene County in taxes come directly from the coal industry. She said these are a few statistics regarding coal's importance in her district.

Representative Snyder asked the Commission to reject RGGI. She said RGGI is an unfair tax on the fossil fuel industry that will devastate western Pennsylvania. She said RGGI will prematurely shut down coal-fired power plants. Representative Snyder said the CO2 Budget Trading Program sounds better on paper than in practicality. She said Pennsylvania's energy grid depends on coal as the cheapest baseload energy. Representative Snyder said coal is reliable, cost-effective and flexible, and if Pennsylvania doesn't provide coal, other states will. She said PJM Interconnectivity will find coal elsewhere if Pennsylvania cannot offer it, putting thousands out of work.

Representative Snyder said retraining displaced workers is an offensive concept because coal miners are skilled in their craft. She said coal miners receive \$100,000 salaries and false promises exist regarding retraining. Representative Snyder claimed that some believe RGGI will generate millions of dollars, but at the last EQB meeting DEP acknowledged that RGGI revenues will be reduced from the initial projection of \$300 million to as little as \$127 million. Representative Snyder claimed there is no plan on how to spend this money or how much the state will receive. This is not the way for Pennsylvania to address climate change, Representative Snyder claimed, as RGGI has nothing to do with climate change. She said 86 percent of what Pennsylvania will eliminate in carbon emissions will leak back to the Commonwealth from non-RGGI states. She claimed RGGI will result in importing solar panels from China and exporting coal industry jobs to China. Representative Snyder said other countries are building coal-fired power plants that do not meet environmental standards, unlike ones in the United States. As opposed to reducing coal, she encouraged investments in carbon capture and carbon sequestration.

Representative Snyder said electricity production accounts for 29 percent of Pennsylvania's greenhouse gas emissions while transportation makes up 24 percent. She questioned why there is no proposal for transportation from the administration in light of similar impacts on the environment. Representative Snyder said she believes in a diverse energy portfolio, which includes coal. She described the impacts of closing power plants in her district, remarking renewable energy has not made up the energy shortage from closures, but natural gas has. Representative Snyder encouraged the development of more natural gas power plants as they provide union jobs. She added that RGGI will stifle the growth of natural gas power plants. Representative Snyder asked the Commission to reject RGGI.

Vice Chairman Mizner asked if this is a Democratic or Republican issue. Representative Snyder said this issue is about jobs, notably union jobs. "I am a proud Democrat because I do support working families," she concluded.

Representative Danielle Friel Otten (D-Chester) said she received a text saying that the Pennsylvania RGGI modeling report shows total electricity bills have declined from two to three percent on average in participating states since implementation, resulting in \$340 million in consumer savings. She said it is hard to believe that people making six-figure salaries are being discussed as the "little guy" in conversations when people who work at power plants often do not live nearby. Representative Otten said people who live near power plants are typically persons of color or economically disadvantaged, and that pollution impacts their lives. She said babies who live closer to power generation have a much higher likelihood of congenital heart disease.



Representative Otten noted her position on the House Environmental Resources and Energy Committee and as the House Chair of the Pennsylvania Legislative Climate Caucus. She said RGGI gives Pennsylvania an opportunity to clean its air, protect residents from climate change and move away from its legacy as a greenhouse gas producer to a state with science-based solutions to carbon emissions. Representative Otten said RGGI is not the sole solution to climate change, but by incentivizing the energy industry to reduce carbon pollution, RGGI provides a first step towards a clean energy future. She said RGGI will promote local energy sources, create family-sustaining jobs, electrify transportation systems and meet greenhouse gas reduction goals. Without RGGI, Representative Otten said, Pennsylvania will miss carbon reduction goals, which poses great risks to the Commonwealth.

Representative Otten noted that energy is too often provided at a cost of dirty infrastructure emissions and pollution, which creates lifelong health risks for residents. She said individuals with exposure to high levels of air pollution are at greater risk of severe outcomes regarding COVID-19. Representative Otten said the administrative authority is granted to provide for the greater protection of the health of residents, and DEP, EQB and the Environmental Hearing Board have authority regarding health risks and include representation from the legislature. She noted Pennsylvania's commitment to environmental rights and Northeast and Mid-Atlantic states' commitment to reducing carbon emissions. Representative Otten called on Pennsylvania to do its part in reducing CO2 emissions as one of the largest climate polluters in the country. She said RGGI will improve the quality of life across the Commonwealth and that it can prevent premature deaths and hospital visits related to respiratory illness.

Representative Otten concluded that Pennsylvania must stop socializing the risk of the energy industry and privatizing the profits of industries that leave a legacy of a boom-and-bust economy for the state. She encouraged the Commission to approve RGGI to provide real and meaningful action on climate.

Glendon King, Republican Executive Director, House Environmental Resources and Energy Committee, said he is speaking on behalf of Rep. Daryl Metcalfe (R-Butler), Chairman of the House Environmental Resources and Energy Committee. He said the Committee disapproved the regulation previously and thanked the Commissioners for considering the Committee's disapproval. Regarding Vice Chairman Mizner's previous questions, Mr. King indicated that the number of testifiers and public comments on RGGI is indicative of the serious concerns with RGGI. He said that besides legal and statutory questions, the Committee believes the regulation fits under the category of a regulation that constitutes a substantial policy decision requiring legislative approval. He said how RGGI reshapes Pennsylvania's energy economy demonstrates this clearly. Mr. King said if Pennsylvania is going to join RGGI, the public should be afforded the opportunity to engage with elected officials regarding the process. He said state agencies and boards do not have the same responsibility to residents. Mr. King stated that the General Assembly takes separation of powers seriously and that he believes this issue belongs in the legislature's domain.

Chairman Bedwick extended his regards to Representative Metcalfe.

The following individuals and organizations spoke in support of the regulation or provided written statements:

- Evangelical Environmental Network;
- Exelon Corporation;
- Clean Air Board of Central Pennsylvania;
- Ohio River Valley Institute;
- Phyllis Blumberg, resident of Bala Cynwyd;
- Sierra Club Pennsylvania Chapter;
- Pennsylvania Interfaith Power & Light;
- Pennsylvania Council of Churches;
- Romeade Farm;
- Pennsylvania Farmers Union;
- Widener University Environmental Law and Sustainability Center;
- Alliance of Nurses for Healthy Environments;
- Keystone Energy Efficiency Alliance;
- Fred Kraybill, member, Citizens Climate Lobby;
- Krug Architects, and Pennsylvania Climate Change Advisory Committee;
- Art Leopold, environmental activist and Erie resident;
- Joel Hicks, Carlisle resident; and
- Conservative Energy Forum.

The following individuals and organizations spoke in opposition of the regulation or provided written statements:

- Pennsylvania Power Alliance;
- Pennsylvania Chamber of Business and Industry;
- Marcellus Shale Coalition;
- CONSOL Energy;
- Pennsylvania Coal Alliance;
- International Brotherhood of Boilermakers;
- CO2 Coalition;
- Industrial Energy Consumers of Pennsylvania;
- Pennsylvania Manufacturers' Association;
- Boilermakers Local 154;
- National Federation of Independent Business in Pennsylvania;
- United School District;
- Armstrong County Board of Commissioners;
- K&L Gates, and Coal and Gas EGUs;
- Americans for Prosperity Pennsylvania;
- Armstrong School District;
- Indiana County Development Corporation;
- Homer-Center School District;
- Indiana County Chamber of Commerce;
- IBEW Local 459;

- Keystone Generating Station; and
- Indiana County Commissioners.

DEP responded to the comments made by the individuals and organizations and answered more questions from Commissioners.

Mr. Landis said he wants to provide clarity on some of the issues. Ms. Shirley said she wants to address comments regarding the investment plan and what the resources can be used for. She continued that the investments would need to be used to improve air quality. Ms. Shirley commented on Senate Bill 15 and House Bill 1565, which would give DEP the authority to spend 50 percent of RGGI revenue in communities, establish an Energy Community Trust Fund focused on communities where coal-fired plants will shut down, and address those that have shut down previously. She explained that the legislation would also establish an Environmental Justice Trust Fund and invest dollars in communities to improve air quality and add to economic development. Ms. Shirley commented on the possibility of direct payments to school districts and addressing unemployment compensation for coal-fired power plant workers who lose their jobs. She stressed that the legislature would need to act because DEP only has the authority to address air quality pollution and greenhouse gas emissions.

Vice Chairman Mizner asked about additional revenue available for other programs and asserted that means RGGI is a tax, noting his belief that RGGI is not a fee. Ms. Demjanick stated that the legislation referenced is separate from the regulatory process, and proceeds generated from the auctions would need to be used to eliminate air pollution. Vice Chairman Mizner stated that Ms. Shirley commented on the additional revenues generated that could be allocated for different programs assuming that the General Assembly passed legislation. Ms. Demjanick said the legislature is free to do as they wish and could pass further legislation. Vice Chairman Mizner said there will be additional revenue to create a pool. Ms. Demjanick stated that she is talking about the auction proceeds.

Vice Chairman Mizner commented that more revenue will be available for a program that the legislature creates. Ms. Demjanick said the auction proceeds will be used to eliminate air pollution and go into a segregated fund. She continued that the General Assembly could act and put the money in the General Fund instead of the Clean Air Fund. Vice Chairman Mizner asked if the money would go to another fund if the Clean Air Fund did not need it. Ms. Demjanick emphasized DEP's role in protecting Pennsylvanians from air pollution while noting that the General Assembly can take part of the money and apply it to programs to assist workers outside of the reduction of air pollution.

Vice Chairman Mizner asked if the legislature would use the money to first address the underlying problem. Commissioner Watson commented on specific suggestions on how the money could be used and asserted that what Ms. Demjanick is suggesting is that the General Assembly has the authority to use funds for purposes other than addressing pollution. Ms. Demjanick said that is correct. Commissioner Watson noted that New Jersey used the money for other purposes, and DEP can only use the money to address pollution concerns. Ms. Shirley stated that the legislature frequently moves money from DEP special funds to the General Fund for other programs. She commented on the possibility of a similar situation regarding RGGI and

noted that DEP is working on an investment plan where 100 percent of the revenues will be used to reduce greenhouse gas emissions.

Commissioner Ufberg asserted that what Ms. Shirley is suggesting would be consistent with a fee and not a tax. Ms. Shirley agreed.

Chairman Bedwick commented that a tax needs to be authorized by General Assembly. He continued that the legislature can pass legislation dealing with a different allotment of the funds not going to the Clean Air Fund and that would negate the tax versus fee argument. Ms. Demjanick stated that if funds were allotted by the legislature, the argument would not matter. She continued that none of the RGGI states or courts consider RGGI auction proceeds to be a tax but a cost of compliance with the program.

Commissioner Soroko asserted that other states used legislative action to enter into RGGI. Ms. Demjanick said some of them did but not all of them. She continued that when New York began participating in RGGI in 2008, they used similar statutory authority to that of DEP. Commissioner Soroko asked Ms. Demjanick if she listened to testimony by Mr. Holtzman about the difference between a fee and a tax and asked if he is wrong. Ms. Demjanick responded that she disagrees with Mr. Holtzman's legal argument because DEP is using auction proceeds to further eliminate air pollution with the goal of reducing greenhouse gas emissions.

Commissioner Soroko asked if Ms. Demjanick believes that is the case even when auction proceeds are of such a magnitude that no one knows how they would be spent, making RGGI a tax and not a fee. Ms. Demjanick stated that the amount of money can be a factor when considering whether something is a tax or fee, but \$100 million to address air pollution is not a "great amount of money." Commissioner Soroko asked how giving money to school districts improves air quality. Ms. Shirley responded that DEP's current plan addresses greenhouse gas abatement and does not involve giving money to school districts, but it is an option that Governor Wolf proposed as a potential for legislation. Commissioner Soroko asserted that the fact that giving money to school districts is a discussion topic provides information about the amount of revenue being produced and the "disassociation with anything" opining that would "qualify as a tax" and asked if DEP sees it that way. Ms. Shirley said she did not.

Mr. Landis provided clarity about the earlier advisory committee question. He said DEP cannot change the makeup of advisory committees because they have legislative and gubernatorial appointees. Mr. Landis continued that the recent changes were largely legislative changes related to retirements, and some members changed their vote between the proposed and final regulation.

Chairman Bedwick asserted that while the membership may have changed, the appointing authorities and the number they can appoint did not. Mr. Landis stated that is correct and noted that DEP did not reappoint people. He continued that the hearings were advertised in 12 newspapers and people could call in. Mr. Landis emphasized that participating in a hearing is the equivalent of providing writing testimony, and both are treated equally in the rulemaking process.

Mr. Landis commented on leakage and a reference to the Penn State study. He remarked on the 86 percent of emissions in Pennsylvania in PJM and how the climate benefits of emission reductions in PJM exceed the costs of Pennsylvania participating in RGGI. He continued that the modeling results regarding leakage in DEP's and Penn State's studies assume no further policy change in PJM for other states or the federal government between now and 2030 in the electricity sector. Mr. Landis noted that leakage will be mitigated as other actors take action to mitigate leakage. He highlighted comments about reliability and points made about coal being necessary to provide reliable electricity. Mr. Landis pointed out that Pennsylvania lost 17 coal power plants over the last 11 years due to market forces without RGGI, with no impact on Pennsylvania's reliability in the electricity grid. Mr. Landis stressed that RGGI is not seeking more power plant closures, which are occurring with or without RGGI. He said there will be no impact on reliability with Pennsylvania participating in RGGI. Mr. Landis referenced exporter status and stated that the impact of RGGI on the power sector shows that Pennsylvania will remain a leading electricity exporter with participation in RGGI.

Mr. Landis commented on references to an increase in Virginia's electric bills of \$30 per month with participation in RGGI. He continued that Dominion Energy in Virginia stated that participation in RGGI resulted in a rate increase of less than \$2.50 per month for residential bills. Mr. Landis pointed out that Pennsylvania is a deregulated electricity state, which shifts impact pricing to outside ratepayers. He stated that a large commercial customer using 200 kilowatt-hours per month would only experience an increase of \$150 to \$250 per month with RGGI participation, which does not account for energy efficiency investments from program proceeds.

Mr. Landis addressed comments about emissions already decreasing without RGGI, lessening the need for it. He stated that the decrease in emissions resulted from switching from coal to natural gas without much shifting left to occur in the future. Mr. Landis continued that nuclear energy provides about one-third of Pennsylvania's electricity without a promising economic situation long-term. He stated that when nuclear power comes off the grid, it will most likely be replaced by natural gas, leading to an increase in emissions. Mr. Landis stressed that emissions continue to increase in Pennsylvania. He asserted that DEP estimates emissions will increase about 4 to 5 percent by 2050 if no action is taken.

Commissioner Watson asked about the estimate of an 18 percent rate increase. Mr. Landis said he does not agree with that and asserted that the increase would be between \$1.50 and \$2.50 for residential rates. Commissioner Watson asked about the Air Pollution Control Act's implementation. Ms. Demjanick said it has existed since 1960 and was amended in 1990. Commissioner Watson asked about DEP's use of models and if they used the most favorable. Mr. Landis said DEP used three models and referred to the model using the investment of proceeds into the energy sector to reduce air pollution. He explained that the other two models were a reference point, and one model took all the program proceeds to pay off bonds. Mr. Landis noted that the other model was used to offer bill assistance to ratepayers, which DEP does not have the authority to do. He stressed that the other two models had worse economic results than the one used.

Commissioner Watson asked about DEP's perspective regarding the delay in implementing RGGI. Mr. Landis stated that Governor Wolf signed his executive order in 2019,

and DEP has been working on the final rulemaking since then. He commented on compliance with the first compliance date of March 1, 2023, and the full compliance date of March 1, 2024. Commissioner Watson asked about health benefits or detriments and how DEP determined the dollar value. Mr. Landis commented on CO<sub>2</sub>, sulfur dioxide (SO<sub>2</sub>), and nitrogen oxides (NO<sub>x</sub>) reductions and the use of the U.S. Environmental Protection Agency (EPA) incident-per-ton methodology.

Commissioner Watson asked if the method used is one determined by the EPA. Mr. Landis said that is correct. Commissioner Watson asked about premature deaths methodology. Landis said that is the same methodology used by the EPA. Commissioner Watson asked about using information from non-profit consultants. Mr. Landis stated that ICF is an international consultant, as is Delta Built Environment Consultants. He noted that DEP uses a public procurement process. Commissioner Watson asked about the Penn State study. Mr. Landis said the Penn State study provided an independent analysis. Commissioner Watson asked about updated reports. Mr. Landis said the ICF did remodeling on the proposed rulemaking.

Commissioner Ufberg asked if leakage was considered when assessing the benefits of RGGI. Mr. Landis said DEP focused on the benefits to Pennsylvania, and the Penn State studies showed that the benefits exceed the cost of the program. Commissioner Ufberg asked about funds used for rehabilitating energy communities. Mr. Landis said if other nearby states increase emissions, that could impact Pennsylvania. He stated that reducing emissions in Pennsylvania benefits neighboring states. Commissioner Ufberg asserted that air quality would be included in assessments. Mr. Landis said DEP would look to invest in communities with power plants that may not be operating much longer.

Vice Chairman Mizner asked why Governor Wolf or Secretary McDonnell did not talk with people impacted by closures in Indiana County. Ms. Shirley stated that representatives from the Governor's office met with county executives in Indiana County. Vice Chairman Mizner said the people from Indiana County did not seem to be aware of that visit. Ms. Shirley stated that she met with Senator Pittman several times. Vice Chairman Mizner said the Governor should come to communities and hear from the people there.

Chairman Bedwick asked about the modeling regarding health benefits. He asserted that the results do not consider reductions in CO<sub>2</sub> but in NO<sub>x</sub> and SO<sub>2</sub>. Mr. Landis said they are reduced together. Mr. Ramamurthy said DEP has not quantified all the benefits but quantified the secondary formation of particulate matter. He stressed DEP's obligation to ensure the benefit outweighs the costs by using the EPA model.

Chairman Bedwick commented on written testimony from United School District that discussed the impact to their tax base if the Seward Generating Station closed and referenced it as using waste coal. He asked if the Seward facility is eligible for that set-aside. Mr. Ramamurthy said the impact from RGGI is nil if they are using waste coal.

Commissioner Soroko made a motion for disapproval. Vice Chairman Mizner seconded, and the motion failed 2-3, with Chairman Bedwick, Commissioner Ufberg and Commissioner Watson dissenting.

Commissioner Soroko stated the regulation is not in the public interest as provided in the Regulatory Review Act. He explained that the Regulatory Review Act essentially directs the Commission to examine any proposed regulation from two perspectives, requiring the Commission to determine whether the proposed regulation is one the agency has the statutory authority to promulgate and, if so, that the proposed regulation conforms to the intention of the General Assembly in its enactment of the underlying statute upon which the proposed regulation is said to be based. Commissioner Soroko said he found at the outset that it is "extremely doubtful" that the proposed regulation can properly be viewed as one where both the agency had the statutory authority to promulgate it and the proposed regulation conforms to the intention of the General Assembly in its enactment of the underlying statute. He stated, "In making this determination, I have given consideration to all of the eight factors prescribed under Section 5.2(b) of the Regulatory Review Act, and considering them in their totality I concluded that those factors compel a determination that Regulation #7-559 is not in the public interest as it is to be determined under Section 5.2(b)." The other factors include: economic and fiscal impact; adverse effect on the price of goods and services; and a policy decision of such a substantial nature that it requires Legislative review.

Commissioner Watson expressed his opposition to the motion. He stated, "I find the proposed regulation meets all the criteria for meeting the public interest." Commissioner Watson said he found DEP's written materials and oral presentations persuasive. He also said that from their written materials and responses to questions from Commissioners "it is apparent to me that the Department's approach was conservative in trying to come up with estimates as to what the effects would be if these regulations were to be adopted." Commissioner Watson argued that the Commonwealth has to address the impact on communities affected by the regulation, but "at the same time we must address the long-term effects of global warming." He believes DEP has the authority under the APCA to promulgate the regulation.

Vice Chairman Mizner expressed his support for the motion. He commented, "To me the issue is not whether we need to take action to protect the environment but the manner in which we do it." Vice Chairman Mizner said, "I believe this process has been flawed, and part of it has to do with the fact that much of it occurred during COVID-19 and all of the meetings were by Zoom." He continued, "I know I may be a lone wolf on this, but a lot of people don't understand how to participate in this process through Zoom, don't know what Zoom is, and may not have broadband. I don't understand why at some point there couldn't have been some opportunity, in a safe and healthy manner, for there to have been some meetings, especially in the most affected areas." Vice Chairman Mizner stated, "The regulatory process should be a collaborative process, and I believe the Department has reached out and I believe a lot of stakeholders have participated." He added, "But I don't believe for this type of regulation that there has been sufficient access to the process." Vice Chairman Mizner also said that it is his belief that this does not serve the public interest for two primary reasons: the input of the House and the Senate, and that it is a policy decision "of such a substantial nature that it requires legislative review." Vice Chairman Mizner stated that we are too dependent on other countries for our energy supply.

Commissioner Ufberg made a motion for approval. Commissioner Watson seconded, and the motion passed 3-2, with Vice Chairman Mizner and Commissioner Soroko dissenting.

Commissioner Ufberg commented that he listened very carefully and respectfully to the views presented at today's meeting. He said, "I have been and remain extremely concerned about air quality." Commissioner Ufberg added, "It is something that has concerned me for a long time and the literature supplied to us advising a level of CO2 being emitted in Pennsylvania has really shocked me." Further, "While we have very good reason to appreciate the conservation efforts made by our legislature, it is apparent, at least to me, that there is a need for much more to be done."

Vice Chairman Mizner commented, "I know we probably have more people watching this today than ever before and they should not go away from today thinking that IRRC votes on party lines because today it happens to be that two Republicans voted one way and three Democrats voted another way." He pointed out that if anyone would look at the record of the Commission they would find the Commissioners vote as individuals and they will not find a discernable pattern of political voting.

Chairman Bedwick expressed his support for the motion. He noted that each Commissioner reaches their decision and is responsible for how they vote. Chairman Bedwick stated, "I hope we could all agree . . . that we have made every effort to approach the issue with an open mind and we have, in fact, conducted this proceeding in an open and fair manner in permitting as much testimony as people wanted to provide us." He suggested DEP consider proposing to the legislature other types of programs that can benefit communities through other sources of funding. Chairman Bedwick also urged DEP to reach out one more time to the affected communities and to those who have indicated that they want to talk to DEP but were unable to. He said, "As I look at this realistically, we are one step in the process, and if it plays out in the way I assume it will, there will be legislative action, which will provide time for you to sit down and talk with these people."

#### **IV. OTHER BUSINESS**

##### **Approval of Vouchers**

Vice Chairman Mizner made motions to approve vouchers and expenses for the period June 18, 2021 through July 15, 2021. Commissioner Ufberg seconded, and the motions passed 5-0.

#### **V. DATE AND PLACE OF SUBSEQUENT MEETING**

Chairman Bedwick announced the next public meeting is scheduled for Thursday, September 23, 2021, at 10:00 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg.

#### **VI. EXECUTIVE SESSION ANNOUNCEMENTS**

Chairman Bedwick announced that no executive session would be held.



## **VII. ADJOURNMENT**

Chairman Bedwick adjourned the meeting at 4:29 p.m.