INDEPENDENT REGULATORY REVIEW COMMISSION
POTENTIAL ATTENDEES: SEPTEMBER 1, 2021
PUBLIC MEETING

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

DEP

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

LEGISLATORS

1. Representative Greg Vitali, House of Representatives, Democratic Chair, Environmental Resources and Energy Committee
2. Senator Carolyn Comitta, Senate of Pennsylvania, Minority Chair, Environmental Resources and Energy Committee
3. Senator Joe Pittman, Senate of Pennsylvania, Vice Chair, Environmental Resources and Energy Committee
4. Representative Jim Struzzi, House of Representatives
5. Representative Pam Snyder, House of Representatives
6. Representative Donna Oberlander, House of Representatives, Majority Whip
7. Representative Danielle Friel Otten, House of Representatives
8. Glendon King, House of Representative, Executive Director, Environmental Energy and Resources Committee

PUBLIC

1. Greg Moreland, PA State Director, NFIB
2. Shawn Steffee, Executive Board Trustee and Business Agent, Boilermakers Local 154

3. Carl Marrara, Vice President, Government Affairs, Pennsylvania Manufactures' Association
4. Barry Naum, Counsel, Industrial Energy Consumers of Pennsylvania
5. Gregory Wrightstone, Executive Director, CO2 Coalition
6. Martin Williams, National Coordinator of State Legislative Affairs, International Brotherhood of Boilermakers
7. Rachel Gleason, Executive Director, Pennsylvania Coal Alliance
8. John Dernbach, Professor, Widener University, Commonwealth Law School
9. Michael Kovach, Vice President, Pennsylvania Farmers Union
10. Robert B. McKinstry, Jr., Romeade Farm
11. Rev. Sandra L. Strauss, Director of Advocacy and Ecumenical Outreach, Pennsylvania Council of Churches
12. Jacquie Fidler, Vice President, Environmental and Sustainability, CONSOL Energy Inc.
13. David A Heayn-Menendez, Executive Director, Pennsylvania Interfaith Power & Light
14. Tom Schuster, Clean Energy Program Director, Sierra Club Pennsylvania Chapter
15. Joanne Kilgour, Executive Director, Ohio River Valley Institute
16. Pat Henderson, Director, Regulatory Affairs, Marcellus Shale Coalition
17. Craig Jurgensen, Board Member, Central Pennsylvania Clean Air Board
18. Kevin Sunday, Director, Government Affairs, Pennsylvania Chamber of Business and Industry
19. Kim Anderson, Eastern OH Western PA Field Organizer, Evangelical Environmental Network
20. Aric Baker, IBEW Local 459
21. Paul Cameron, Business Manager, IBEW Local 459
22. Joel Hicks, Council Member, Carlisle Borough
23. Mark Hilliard, President, Indiana County Chamber of Commerce
24. Curtis Whitesel, Superintendent, Homer Center School District
25. Steve Krug, Principal, Krug Architects
26. Byron Stauffer, Jr., Executive Director, Indiana County Development Corporation
27. Fred Kraybill
28. John Kolesnik, Policy Counsel, Keystone Energy Efficiency Alliance
29. Kelly Kuhns, Alliance of Nurses for Healthy Environments

30. Alex Charlton, Senior Manager, State Governmental Affairs, Exelon Corporation
31. Grant Gulibon, Deputy State Director, Americans for Prosperity – PA
32. Anthony Holtzman, K&L Gates LLP
33. Chad Forcey, Executive Director, Pennsylvania Conservative Energy Forum

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Senate of Pennsylvania

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August 31, 2021

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101
RE: CO2 Budget Trading Program Regulation, Regulation 7-559

Dear Commissioners,

Please see my comments below in advance of the September 1, 2021, meeting on the CO2 Budget Trading Program Regulation, Regulation 7-559:

As state Senator representing the 19th District and minority chair of the Senate Environmental Resources and Energy Committee, I strongly support the CO2 Budget Trading Program Regulation, Regulation 7-559.

Our timing could not be more critical.

Every day the impacts of climate change grow more severe.

And every day our window of opportunity to address this crisis gets smaller.

The recent United Nations IPCC report spells out the dangers of the climate crisis in stark detail – "widespread and rapid changes" have already occurred, some of them irreversibly.

We now have a limited opportunity to avoid the very worst effects of climate change.

But we must act now.

We must join RGGI.

Joining RGGI and cleaning up our power sector will significantly reduce our emissions while bringing substantial public-health, cost-savings, economic, and job-growth benefits to Pennsylvania.

Joining RGGI will:

- Prevent hospital visits, reduce healthcare costs, and save lives.
- Reinvest funds in our clean energy economy.
- Lead to thousands of new job opportunities.

- Help transition fossil fuel workers and communities to become clean energy leaders.
- Generate an estimated $2 billion increase in our Gross State Product.
- Significantly reduce consumer electric bills in the long run.

As an energy leader, Pennsylvania is responsible for about 1 percent of the world's greenhouse gases – that is more than many countries.

Voting to join RGGI at this point is a key step in stopping the worst impacts of climate change.

It is a responsible, effective action we can take right now – today.

RGGI has been extensively studied and analyzed for more than a decade.

In Pennsylvania, the rulemaking has made its way through a years-long process, having been more thoroughly reviewed, considered, and commented on than any other initiative in memory.

50 years ago, the legislature approved, and the voters ratified Article 1, Section 27 of the Pennsylvania Constitution, the Environmental Rights Amendment:

"The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the commonwealth shall conserve and maintain them for the benefit of all the people."

July was the hottest month ever recorded.

Will it be the coldest summer for the rest of our lives?

Will we choose to take action to address the destruction of our planet and prevent worse impacts from happening?

Will we choose to leave a better, cleaner, safer world behind for the future?

We can act now.

We must act now to join RGGI.

As a state Senator, a mother, a grandmother, a community member, and a Pennsylvanian, I respectfully ask the commission to approve this regulation.

Respectfully,

Carolyn T. Comitta

Carolyn T. Comitta
State Senator – 19th Distric

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Senate of Pennsylvania

August 30, 2021

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Commissioners,

On behalf of the constituents I represent, I urge the Independent Regulatory Review Commission (IRRC) to disapprove final Environmental Quality Board (EQB) Regulation #7-559 (IRRC #3274), which would establish a CO2 budget trading program and merge Pennsylvania into the Regional Greenhouse Gas Initiative (RGGI).

My constituents will inarguably be the most adversely affected if this regulation is promulgated. I represent three coal-fired power plants, one natural gas-fired power plant, and the world's largest waste coal-fired power plant with the collective capacity to produce nearly 6,000 MW of electricity. These plants provide family-sustaining wages, property taxes to neighboring school districts, support ancillary services throughout the region, and power our homes and businesses here in the Commonwealth and in other states in the PJM Interconnection.

On October 3, 2019, Governor Wolf issued an executive order to unilaterally join Pennsylvania into the RGGI. According to the Department of Environmental Protection (DEP) and the EQB, the purpose of this rulemaking is to reduce carbon dioxide (CO_2) emissions from electric generating units (EGUs); however, in order to generate revenue from the program, CO_2 must continue to be emitted. The manner in which the program is designed is counterintuitive. Carbon must continue to be emitted for the program to operate and produce revenue; however, RGGI will make the power plants uncompetitive in the marketplace, which will force them to close. If carbon is not being emitted by operational EGUs, the program will cease to produce revenue, and affected communities will be in economic devastation because promised revenue will not come to fruition.

On June 22, 2020, Governor Wolf prolonged the rulemaking process to grant DEP a six-week extension to develop the proposed rulemaking regarding Pennsylvania's entrance into RGGI. DEP stated, "we plan to continue our conversations and outreach among the environmental justice community, affected communities, and general public throughout this summer." While the messaging around the extension of the proposed rulemaking was to engage affected communities, to my knowledge none occurred during that time.

On multiple occasions, I have personally invited the Administration to visit my district and to talk with constituents whose livelihoods are in jeopardy if RGGI is to take effect. In the 22 months since Governor Wolf unilaterally ordered DEP to merge Pennsylvania into RGGI, neither Governor Wolf nor his cabinet have stepped foot in my district for the purposes of engaging in such a discussion. The lack of engagement from the Administration is parallel to their lack of genuine compassion for those most affected by this proposed regulation.

I have tried to engage the Administration. Despite my efforts made in good faith, the concerns of my constituents have received little attention. I have repeatedly attempted to have an open dialogue with the Administration to demonstrate the impacts RGGI will have on affected communities. These communication attempts have included the following:

- On October 18, 2019, the Senate Environmental Resources and Energy Committee was briefed on RGGI. During this meeting, I had the opportunity to question DEP. I stated the following, "so I hope you understand why I take this very seriously and very personally, and I would expect that you and the Governor will at least come to my district and meet with the thousand employees whose livelihood they feel very threatened by right now because of this carbon tax."[1] DEP and the Governor did not follow through with this request.
- On November 14, 2019, on behalf of Armstrong and Indiana Counties, I addressed a letter to the Governor to express concerns over Pennsylvania's entrance into RGGI. I requested the Administration visit Armstrong and Indiana Counties, tour the facilities, and meet with their employees in order to better understand the costs RGGI will inflict on the region. Unfortunately, the Administration did not fulfill this request either.
- On February 12, 2020, I addressed a letter to the Governor encouraging his administration to explore the recent announcement from the U.S. Department of Energy's Office of Fossil Energy's National Energy Technology Laboratory (NETL) regarding Carbon Capture Technology (CCT). NETL had announced $64 million in federal funding for cost-shared research and development projects under the funding opportunity. I encouraged the Wolf Administration to explore CCT because it utilizes existing resources in our Commonwealth, while encouraging evolving technologies to develop here. CCT is an underexplored policy option that would also limit carbon emissions without the cost of joining RGGI. Despite this outreach to the Governor's office, I received no direct response.
- On July 14, 2020, I wrote to the Governor again to address the lack of response and to persuade the Administration to engage with communities who will be most affected if RGGI comes into fruition.

[1] https://environmental.pasenategop.com/102219/

- On July 17, 2020, Governor Wolf sent a response letter to a local newspaper that was addressed to me; however, my offices have no record of receipt. In his letter, he apparently indicated that he directed the Departments of Conservation and Natural Resources (DCNR), the Department of Environmental Protection (DEP), and the Department of Community and Economic Development (DCED) to work together to explore approaches to support viable carbon capture utilization and storage (CCUS) projects. The lack of coordination amongst the cabinet became obvious when I questioned DEP about CCUS during a Senate Appropriations budget hearing, and they were seemingly unaware of the effort. Clearly his directive has not been met with substantive engagement from the agencies and I am unaware of any substantial progress in bringing CCUS to affected communities like those I represent.
- In November/December of 2020, I participated in a conference call with DEP to review the regulatory process and to discuss best practices to engage affected communities.
- On March 8, 2020, I participated in a zoom conference call with DEP and the Delta Institute. This call was used to understand the role of the Chicago-based organization and what affected communities should be engaged in the process. It is important to note that the Delta Institute is not involved in the policy development of this proposed regulation. They were hired to develop principles for how Pennsylvania should spend potential revenues from RGGI. This investment plan is not included in the final-form rulemaking because DEP does not have the authority to allocate those funds.
- On March 24, 2021, on behalf of Armstrong, Cambria, and Indiana Counties, I addressed a letter to Governor Wolf imploring him to fulfill the request of these three counties to visit the region and engage in an open dialogue with communities that will be most affected if the carbon tax is implemented. The Governor's office acknowledged receipt of the letter, with a commitment to respond. No further response occurred.
- During the Senate Appropriations Committee budget hearings, I had the opportunity to question the Governor's cabinet secretaries regarding RGGI. When asked specific questions, the departments were unable to give substantive answers, only demonstrating a lack of coordination and communication within the Administration. On May 11, 2021, after continued non-response from the Administration, a letter was sent to DCED, DEP, Department of Education, Department of Revenue, and Department of Labor and Industry imploring them to answer unanswered questions concerning Pennsylvania's entrance into RGGI. Unfortunately, I did not receive a single response from any of the departments.
- In May of 2021, I exchanged emails with the Delta Institute. They provided an update of their work and asked for recommendations for additional stakeholders they should engage. Again, this engagement is related to investment of RGGI revenue and not the actual policy and costs associated with RGGI. The investment plan is not part of the final-form rulemaking, meaning that this final-form rulemaking does not give a full picture of what this regulation will entail.
- On July 13, 2021, I addressed a letter to DEP in response to comments made during the EQB meeting that occurred previously in the day. During the meeting, DEP clearly stated that they had been responsive to all comments they had received up until that point. This was a blatant disregard for the truth. I personally still have outstanding communications with DEP that have not been responded to.

- On July 23, 2021, DEP responded to my previous letter. It was not until continual prompting that I was even acknowledged by the Department and worthy of a response. In their response, they included their own interpretation of engagement between the Department and myself. If anything, their list demonstrates a clear lack of meaningful engagement. They listed six points of engagement, which included two meetings (referenced above), two email exchanges, and two recognitions of comments they received from me. This is not representative of an open dialogue with meaningful engagement given the magnitude of impacts to the communities I represent because of this rulemaking.

While this has been my experience during the regulatory process, I believe it highlights a fundamental concern with this proposed regulation as a whole. The regulatory process has been fast tracked. While DEP and EQB emphasize an urgency to join RGGI, their engagement with affected communities clearly lacks the same urgency. The Administration has no urgency in engaging those who will actually be affected by this regulation. After 22 months of this proposed regulation's debut, Governor Wolf's own cabinet lacks the knowledge to answer basic questions about the proposed regulation and what will happen to the most affected communities if it is implemented.

This final-form rulemaking does not address recommendations, comments, or objections conveyed by the House or Senate Environmental Resources and Energy Committees or raised by IRRC. The following areas specially have not been addressed.

1. Statutory Authority

According to the DEP, they believe the authority to promulgate the final-form rulemaking under the APCA, specifically Section 5(a)(1). DEP stated that "when the APCA was enacted, the General Assembly was concerned with air pollution generally and that it be remedied no matter what the source." However, this cannot be generally stated as the intent of the General Assembly. In 2009, the DEP published a report, "Evaluation of the Pennsylvania Air Quality Program 2002 – 2007." In this report, they claimed that in 1992, the APCA was amended by the General Assembly in order to implement the 1990 mandated federal programs in the Federal Clean Air Act Amendments of 1990 (Clean Air Act or CAA). These mandates specifically dealt with widespread ozone nonattainment issues. When the APCA was enacted and even amended, the intent of the legislation was to allow the DEP to follow federal guidance and implement federally mandated programs that addressed issues with the ozone. CO_2 is not a universally recognized air pollutant today, let alone in 1960 or even 1992. DEP admits the definition needed to include CO_2 as an "air pollutant" is "by extension." There is no clear statutory connection between "CO_2" and "air pollutant." CO_2 is essential to everyday life, unlike other air pollutants that are actually regulated. Regulating CO_2 through a multi-state conglomerate of energy dependent states not approved by the General Assembly was not the true intent of the legislation when enacted.

To DEP's own admission, every cap-and-trade program that has been implemented through the APCA has been promulgated in response to initiatives at the Federal level. These include the Acid Rain Program, NOx Budget Trading Program, the CAIR NOx and SO2 Trading Program. Unlike other programs promulgated by the APCA, RGGI is not a federal mandate. It is a usurpation of authority by the Executive Branch.

In addition, Pennsylvania would be the only state in RGGI that did not allow their state legislature to have a voice in the process. Every other participating state had legislative approval to join RGGI, and clearly stated their entrance in statute. Pennsylvania would be alone among the RGGI states. Participation by executive order does not guarantee longevity of the program depending on the current administration and what their policy preferences may be. The only way to solidify Pennsylvania's energy policy is to involve the duly elected General Assembly.

2. Fee vs. Tax

The Administration argues that under Section 6.3(a) of the APCA, "the Department has the authority to establish fees to support the air pollution control program."[2] In the 2009 DEP report mentioned earlier, they evaluated the effectiveness of programs adopted to implement Clean Air Act Amendments of 1990. This is relevant because in this report they evaluated funding under Section 6.3 of the APCA. DEP concluded that Section 6.3 of the APCA interpretated the meaning to be "fees sufficient to cover the indirect and direct costs of administering air quality programs."[3] RGGI is not designed to collect fees that sufficiently cover the cost of administrating the program. Revenue collected through RGGI is estimated to exceed administrative costs. Instead, RGGI is designed to tax EGUs for the privilege of emitting carbon. The regulation as proposed is not congruent with the true intent of Section 6.3 of the APCA because it is not designed to be a fee.

3. Public Hearings

During this regulatory process, the Administration regularly refers to "affected communities." The 41st Senatorial District is well within the scope of "affected communities" if this regulation is implemented. Pursuant to Section 7(a) of the APCA,

> "public hearings shall be held by the board or by the Department, acting on behalf and at the direction or request of the board, in any region of the Commonwealth affected before any rules or regulations with regard to the control, abatement, prevention or reduction of air pollution are adopted for that region or subregion…in the case where it becomes necessary to adopt rules and regulations for the control, abatement, prevention or reduction of air pollution for any area of the Commonwealth which encompasses more than one region or parts of more than one region, public hearings shall be held in the area concerned."[4]

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[2] Department of Environmental Protection; Environmental Quality Board. (2021). *Final-Form Rulemaking Environmental Quality Board [25 PA. Code CH. 145] CO2 Budget Trading Program*. p.11

[3] Department of Environmental Protection. (2009). An Evaluation of the Pennsylvania Air Quality Program.

[4] Department of Environmental Protection; Environmental Quality Board. (2021). Comment and Response Document. CO2 Budget Trading Program, p. 12.

DEP argues that "in any region of the Commonwealth affected" is not consistent with "in-person" public hearings; however, the precedent up until this regulation has been in-person public hearings. Understanding that circumstances of the COVID-19 pandemic might not have allowed for in-person public hearings, the Administration should have delayed its effects and waited until it was safe to hold in-person public hearings in affected regions, instead of bypassing the law and fast tracking this regulation.

Because all of the public hearings were virtual, DEP knowingly excluded the most affected communities. The most affected communities happen to be in rural areas, which have limited access to the internet. The most affected residents happen to be those with full-time jobs that required them to be at work during the times and dates of the hearings. On October 3, 2019, when Governor Wolf signed the Executive Order, he stated, "we need to make sure the transition to a cleaner energy mix does not leave workers and communities behind."[5] Governor Wolf, DEP, and EQB have not fulfilled this promise and left workers and communities behind throughout the formation of this regulation.

4. Delay of Implementation for One Year

IRRC asked the EQB to delay rulemaking for one year. Rather than utilizing that time to fully comprehend the cost of joining RGGI, EQB blatantly disregarded the recommendation and continued to steamroll through the process. DEP stated that they could not do so because it would "compromise this Commonwealth's ability to meet the GHG emissions reductions goals;" however, there are no emission reduction goals in state or federal statute.

In their rationale for not following IRRC's recommendation, EQB outlined the three-year compliance schedule carbon emitting EGUs must follow. The RGGI model operates on a three-year compliance schedule with only partial compliance required for the first two years. RGGI began their new compliance schedule at the beginning of 2021. While DEP anticipates entrance on January 1, 2022, this is not required. DEP created quarterly on-ramps to compliance to account for any delay in publication of the final-form rulemaking. However, if Pennsylvania does not join by the beginning of 2022 and joins later in the year, compliance of carbon-emitting EGUs is not until March 1, 2023. In other words, the Commonwealth will not be able to collect any revenues for an additional year. This a disingenuous reason to promulgate the rulemaking. Meeting a deadline should not be a driving force behind pushing a regulation through the regulatory process. The Administration should focus their efforts on ensuring they fully understand the costs of this regulation. This is nothing more than a money grab. This recommendation was not taken seriously and that is evident in their response.

In closing, carbon dioxide is not considered an air pollutant according to the standards set forth in the intent of the General Assembly when the APCA was enacted. If carbon dioxide was considered an air pollutant under the APCA, it would have to be "...inimical or which may be inimical to the public health, safety, or welfare or which is or may be injurious to human, plant or animal life..." Carbon dioxide is essential to sustaining life and thus not injurious to life by its very nature.

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[5] https://pacast.com/m?p=17469

To DEP's own admission, motor vehicle emissions are the leading cause of air pollution in Pennsylvania. If DEP was genuine in their efforts to combat climate change, they would engage the General Assembly in developing meaningful policy that addresses air pollution rather than regulating a compound that is not universally considered to be an air pollutant. DEP had the opportunity to evaluate alternatives to RGGI during their "Comment and Response" document. Instead of taking advantage of this opportunity to evaluate alternatives in a meaningful way, they used this section to glorify RGGI. DEP was only required to evaluate the status quo and an auction program that would only cover the cost needed to administer RGGI. DEP essentially stated that RGGI was the only path forward. This is arguable because DEP failed to consider other alternatives such as revamping the Alternative Energy Portfolio Standard to adjust to future standards, seriously exploring carbon capture utilization and storage, or considering the many other suggestions DEP laid out in their very own "Pennsylvania Climate Action Plan."[6] RGGI is not the only solution to combat climate change nor is it the very best or right choice for Pennsylvania.

This proposed regulation has the ability to cripple our economy and devastate entire communities. Unlike the other nine states in RGGI, Pennsylvania is the second largest exporter of energy in the nation. Power production in this Commonwealth has had the ability to adapt to market conditions and shift with changing environmental goals. RGGI does not incentivize change. It causes premature retirement of coal-fired and natural gas power plants, while disincentivizing investment in newer, cleaner plants. The costs to the local economy I represent will be unimaginable. I would have more faith in the Administration's ability to implement the single, most significant energy policy reform in decades if it was not for the fact that they chose not to seriously engage during the entirety of this process and chose to disregard the Senate and House Environmental Resources and Energy Committee's concerns and IRRC's comments.

I encourage IRRC to disapprove this regulation and require the Administration and DEP to fully address the concerns of affected communities and the comments made during the regulatory process. Thank you for the opportunity to share my concerns about this final-form rulemaking.

Sincerely,

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[6] http://www.depgreenport.state.pa.us/elibrary/PublicAccessProvider.ashx?action=ViewDocument&overlay=Off&overrideFormat=Native

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IRRC RGGI Rule Making Testimony
State Representative Jim Struzzi
550 Philadelphia Street
Indiana PA 15701
724-465-0220
Sept. 1, 2021

Good morning and thank you for allowing me to testify today. I am State Representative Jim Struzzi. I represent the 62nd legislative district in Indiana County. I have two of the largest coal-fired electric generation plants in my district and I am proud to represent the hard-working families that sustain our energy industry and power the east coast.

First, I need to state that I am deeply concerned with the negative impacts RGGI will have on our economy and our future. In addition, I have been and remain opposed to the entire process the Administration and the Department of Environmental Protection have taken to enter RGGI. They have continued to move forward at time when people are struggling financially – and mentally and physically – during a pandemic. We have seen this first-hand in our district offices. All of the hearings up to this point were done virtually and many of my constituents were unable to participate due to lack of internet access.

I am also opposed to the process of enacting these rules without legislative approval. If PA enters the Regional Greenhouse Gas Initiative, we will be the only state that enters RGGI without legislative approval, essentially without the voice of all PA residents being heard. This is unacceptable in a state that is constitutionally governed by legislative representation. To that end, I introduced HB 2025 last session that would have required legislative approval for RGGI or any multi-state compact. The bill, which Governor Wolf vetoed, received bipartisan support from representatives in 63 of 67 counties in Pennsylvania. The governor's RGGI plan was not presented as a piece of legislation. It was presented as an executive order, effectively circumventing the entire legislative process. This should not be moving forward without a vote in the General Assembly. I have reintroduced this legislation again this session as HB 637. If RGGI is so good for Pennsylvania, then why not let us vet it through the legislative process?

Pennsylvania's membership in RGGI would have wide-reaching repercussions that would impact much more than our greenhouse gas emission levels which, by the way, have already been reduced significantly more than required in the governor's Climate Action goals, the required reductions under the now repealed Clean Power Plan and the Paris Climate Accord. We have already achieved reductions comparable to those of RGGI member states, all without a carbon tax or a cap-and-trade system. Pennsylvania doesn't need RGGI. If we have already adjusted to climate action goals, why can't we do it again with the support of the Governor's administration and set an example for the nation on how our state can support energy jobs and industry while reducing carbon emissions too?

The decision to move forward with RGGI would have a direct negative impact not only on the employees of these energy producers, but for all Pennsylvania residents who consume energy. RGGI states have seen significant increases in consumer electric rates. The top four highest electric rates in the United States are in RGGI states. But again, none of these negative impacts are being discussed by the administration or in the DEP modeling.

And when these negative impacts were mentioned during Zoom hearings last year, three DEP advisory committees voted against moving RGGI forward. I think that speaks volumes, and yet RGGI is still advancing. In fact, this body, the IRRC, recommended delaying the implementation of RGGI for one year and that too was ignored. How is that acceptable?

If RGGI is enacted we will lose thousands of well-paying, energy related jobs. That is a fact, and the "promise" of possible future jobs is not going to help the families and communities I represent. We already know our power plants will close if RGGI is implemented and jobs and capital investment will go to Ohio and West Virginia. Our four coal-fired electric generation plants in western PA account for 8,170 jobs and contribute $2.87 billion to our economy. In Indiana County alone, that is 1,490 jobs and $873 million to our annual economy. Thousands of other jobs in our communities that rely on these industries will be lost as well. The loss of these jobs will have a devasting impact on our local school districts that rely on property taxes from these plants for their budgets. People are terrified about RGGI will do to our local tax base, our schools, ancillary businesses, even our local restaurants and shops that rely on the energy industry for their customers.

Don't take my word for it on job losses; dozens of different trade unions and business groups from all four corners of the state that represent these hard-working Pennsylvania families support my bill, along with Senator Pittman's in the senate, and oppose RGGI.

I believe that these measures proposed by the governor would impact all Pennsylvanians in ways not considered by the governor or the DEP. This is not about climate change; it is about creating a tax on a specific industry. If RGGI is implemented, PA will go from being an energy exporter to an energy importer. Our economy will suffer and we will see more jobs, families and industry leave our state. RGGI will put our energy industry out of business and carbon tax money the administration is counting on will be gone as well. Pennsylvania workers have been beaten down too much these past two years and it is time for that to stop.

Many experts have stated the Pennsylvania's entry into RGGI will do nothing to impact climate change because energy production will simply shift to other states like Ohio and West Virginia. Why would we want to destroy our economy for zero impact on the climate? It makes no sense.

There are other ways to address climate change without hurting industry and jobs. I implore you to consider the economic and other impacts of RGGI. No one from the administration has come to Indiana County. No one has stood before my communities, these men and women and their families, and looked them in eye to tell them they are killing their jobs and industry now for a benefit that might – might - occur in few decades. If you had these hearings in the communities most affected like Indiana County, I can guarantee the testimony would be dramatically different than what was submitted in the virtual hearings. The people I represent will be crushed by RGGI and I implore you to consider that. RGGI will be devasting for Pennsylvania and it must not move forward. Please make the right decision today and end this now.

Thank you

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Rep. Pam Snyder
RGGI Testimony to IRRC
September 1, 2021

Thank you, Mr. Chairman.

And thank you members of the commission for allowing me the opportunity to speak in front of you today.

I represent Greene, Fayette, and Washington counties in the house of representatives. My district is home to the baily mine complex: the largest underground coal mine in the united states – and possibly the world.

Greene county is also home to the Cumberland mine – the only underground mine left in Pennsylvania that is mined out by a union workforce – the united mine workers of America.
In my home of Greene County – the coal mining industry makes up four of our top five employers.

One out of every three jobs in Greene county is in the coal industry.

As a former county commissioner, i know first-hand that 27-cents of every dollar paid to Greene county in taxes, is directly from the coal industry in the mineral value tax.

These are just a few statistics outlining the importance of coal to the place that i live and represent.

That's why today i am asking the members of the independent regulatory review commission to reject governor wolf's plan to enter Pennsylvania into the regional greenhouse gas initiative.

RGGI is nothing but an unfair tax on the fossil fuel industry that will devastate the communities i represent.
RGGI will artificially and prematurely shutdown coal-fired power plants across Pennsylvania.

These same power plants are using the coal mined in my district to turn our lights on, and heat our homes.

This budget trading program sounds better on paper than it does in practice.

Coal provides the cheapest base load for the energy grid. When it's 100 degrees and air conditioners are running 24/7, it's coal that gets called upon to supply the energy needed.

When the polar vortex hit, it was coal that was able to provide enough energy to heat homes without an issue.

That's because coal is the most reliable and flexible – and we need it.

And if Pennsylvania doesn't have, Ohio and West Virginia do.

My district borders west Virginia to the south and the west.

There are already two coal-fired power plants just across the state line in west Virginia because of Pennsylvania's difficult environmental rules.

RGGI will push even more jobs across the state line to our neighbors.

The p-j-m energy grid needs coal-fired power generation to meet the electricity demands of its customers.

They will find it elsewhere if Pennsylvania can't offer it, putting thousands out of work. The governor and d-e-p have stated countless times that they will retrain our workers left out in the cold by RGGI.

That's offensive to me!

The workers i know are trained and are extremely skilled at their craft.

A coal miner in my district averages a salary of over one-hundred-thousand dollars a year.

No one has been able to answer what kind of jobs these workers will be retrained for – that's because there is no answer.

It's false promises.
There is no other job in Greene county that will pay six-figures.

Coal mining is in their blood. Their fathers did it.
Their grandfathers did it.
Now they do it.

And make a good living to support their families and our tax base.

We've heard that RGGI will generate millions of dollars.

There is no plan to spend those dollars in my district when one-third of our employees lose their jobs.

There is no plan on how to spend this money period – or how much the state will get.

It's just more talking points to sell this bad deal so the governor can say he did something for climate change.

Meanwhile – China and other foreign countries are building new coal-fired power plants that are completely unregulated.

Our power plants here are subject to clean-air standards.

They have invested in technology to reduce their emissions.

Instead of pushing the cheapest and most reliable source of energy out the door – Pennsylvania should be investing in carbon capture.

According to the d-e-p's 2020 report, electricity production accounts for 29% of Pennsylvania's greenhouse gas emissions.

Transportation makes up 24%!

The governor has not proposed a new unfair tax on vehicles or gasoline stations based on carbon emissions despite the little difference.

Highlighting that this is lip-service and not real action.

I strongly believe that we need a diverse energy portfolio.

We need wind. We need solar. We need nuclear. And we need coal and gas.

The legislature has voted in a bi-partisan way to have a say in this decision – only to be met by a veto pen.

The governor does not have the power to tax – we, the general assembly, does.
There is no plan for our workers.

There is no plan for local economies facing destruction.

There is no plan to spend any revenue raised.

I'm asking each of you to recognize that this plan is not fully vetted.
This administration is rushing to have this in place before it vacates office.

Do not let them make such a devastating impact on people's lives in a quick manner for a political win.

I respectfully request the members of IRRC to reject the co2 budget trading program.

6

DONNA OBERLANDER, MEMBER
MAJORITY WHIP
63RD LEGISLATIVE DISTRICT

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August 30, 2021

Dear Secretary Patrick McDonnell and Members of the Independent Regulatory Review Commission:

My name is Donna Oberlander. I am the Majority Whip and the state representative for the 63rd District which includes all of Clarion County and parts of Armstrong and Forest Counties.

I appreciate the opportunity to share my comments in opposition to the implementation of the Regional Greenhouse Gas Initiative (RGGI). I know that there are many that will be sharing their perspectives, as well as lots of data analysis for and against such a comprehensive, policy change, so I will keep my comments brief and focused on 3 main points.

Point # 1-The Power to levy taxes resides with the General Assembly

Article 3, Section 31 of the PA Constitution precludes the General Assembly from delegating taxing power to an unelected board or commission, such as the IRRC 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."

I would suggest this also includes the lack of authority by the Governor to enter a pact with or without support from IRRC. PA Supreme Court precedent "power of taxation, in all forms and of whatever nature lies solely with the General Assembly"

The Governor's attempt to continue to move in this direction violates the checks and balances of our system and is clearly a violation of the PA Constitution. For this reason and this reason alone, you should vote to reject this proposal.

Point #2- Increased Costs & Decreased Competitiveness

RGGI will increase electric bills for residential, commercial, and industrial consumers by $3 billion by 2030, and likely more as modeling is updated. Residential consumers - especially low-income families and fixed income seniors - will pay double digit percentage increases on their electric bills because of RGGI. This will disproportionately impact low income families and fixed income seniors already suffering from energy poverty.

The RGGI tax will render uncompetitive many of Pennsylvania's current electric generation plants. It will undermine our status as an electricity exporter. And it will eliminate thousands of jobs and lead to massive property tax increases from closed plants, not to mention increased electricity rates and the threat of California-like brownouts for everyone.

Virginia, for instance, just joined RGGI and their dominate electric supplier just announced minimum $30/month rate increases. Connecticut, also a member state in RGGI has about double the rates of PA.

Making Pennsylvania less competitive is the 2nd reason this proposal should be rejected.

Point #3-Local & Regional Job Loss

A recent economic analysis of just four of the western PA coal plants concludes that, under RGGI, host communities and the state will lose $2.87 billion in annual economic impact, and affect 8170 total jobs with $539 million in employee compensation and the loss of $34.2 million in state and local tax revenue.

Local counties, schools and municipalities will lose $3.7 million in local taxes, including $2.6 million in property tax revenues, the bulk of which funds schools.

Even more jobs will be lost in manufacturing, transportation logistics, coal and natural gas production which rely on PA's current competitive electric generation market to produce electricity for the lowest possible cost.

When I think of how devastating this policy change would be to my area, I think of the men and women that I know will be directly impacted. I see their faces, their families, and the hardship this will create in an already very challenging time.

The perceived benefits of this policy are greatly outweighed by the substantial losses to our state. For these reasons, I respectfully request that your reject this policy.

Thank you for your attention and your consideration.

Sincerely,

Donna Oberlander

Donna Oberlander, Majority Whip
PA House of Representatives

7

Testimony for CO2 Budget Trading Program Regulation

Name: Danielle Friel Otten
Address: 102B East Wing,
P.O. Box 202155
Harrisburg, PA 17120
Email: repotten@pahouse.net

Organization: Member, Pennsylvania House of Representatives

Good afternoon. My name is Danielle Friel Otten, and I represent the 155th Legislative District in the Pennsylvania House of Representatives, where I also serve on the House Environmental Resources & Energy Committee and as the House Chair of the Pennsylvania Legislative Climate Caucus.

I support linking our state to the Regional Greenhouse Gas Initiative. RGGI gives us an opportunity to clean up our air, protect our citizens from the impacts of climate change, and move away from Pennsylvania's legacy as one of the biggest greenhouse gas producers in the country, toward a science-based solution to reduce carbon emissions.

While RGGI is not a standalone solution to the climate crisis, by incentivizing industry to reduce carbon pollution, RGGI represents an important and necessary first step toward a clean energy future. RGGI will help Pennsylvania promote alternative energy sources, create local, family-sustaining jobs, electrify our transportation systems, and meet greenhouse gas reduction goals established by the state in 2019. (That's a reduction of 26 percent by 2025 and 80 percent by 2050, as compared to 2005 levels). Without joining RGGI, Pennsylvania will not meet even the interim goal, posing a great risk to the Commonwealth.

Too often, we get our energy independence on the backs of communities that take on dirty infrastructure, emissions, and pollution. These conditions can create life-long health risks -- including cancer, heart disease, and lung disease. According to Physicians for Social Responsibility, individuals with exposure to high levels of air pollution are even at greater risk of severe outcomes from COVID-19.

Under the Air Pollution Control Act of 1959, the administrative authority is granted to provide for the better protection of the health, general welfare, and property of the people of the Commonwealth by the control, abatement, reduction, and prevention of the pollution of the air. Authority is specifically granted to the Department of Environmental Protection, Environmental Quality Board, and Environmental Hearing Board. Further, Article 1, Section 27 of the Pennsylvania Constitution grants every Pennsylvanian a right to clean air, pure water, and the preservation of the natural, scenic, historic, and esthetic values of the environment.

The Northeast and Mid-Atlantic states are serious about reducing carbon emissions and halting global temperature increases. It is time for Pennsylvania to do its part. As one of the largest climate polluters in the nation, Pennsylvania joining RGGI would have a tremendous impact on regional, national, and global efforts to reduce greenhouse gas emissions, which are exacerbating the impacts to agriculture, the cost of food, damage, and loss of life and property due to extreme weather, the impact of pests and fires on our forests, disease transmitted by insects, acidification of our oceans, and depletion of groundwater and water sources used for clean drinking water and the exacerbating effect on cardiovascular and respiratory diseases that contribute to premature death.

Most importantly, participation in RGGI will help to improve overall public health and quality of life for many families across the state. The Pittsburgh metro area and the Philadelphia metro area rank #8 and #12, respectively, on the American Lung Association's "State of the Air 2020" list of worst cities for year-round particle pollution. DEP has estimated that between 2022 and 2030, RGGI could prevent up to 639 premature deaths and 30,000 hospital visits for respiratory illnesses in Pennsylvania. But even those numbers don't tell the whole story.

As leaders, we have a responsibility to protect vulnerable populations from harm and to give pollution hot-spot communities their best chance to thrive and enjoy a better, healthier quality of life. Children, the elderly, communities of color, individuals with underlying health conditions, and low-income communities overburdened by the health impacts of air pollution and climate change are depending on all of us to reduce the harm caused by carbon emissions.

We must move away from a history of socializing the risk of the energy sector and privatizing the profits to corporations that perpetuate a legacy of a boom-and-bust economy in Pennsylvania. I urge the IRRC to move deliberately and quickly on the RGGI rule in the interest of real and meaningful climate action for our Commonwealth.

Thank you again for the opportunity to comment on this important issue.

Danielle Friel Otten - Member

155th Legislative District - Chester County

PA House of Representatives

NFIB

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August 16, 2021

Independent Regulatory Review Board
333 Market St., 14th Floor
Harrisburg, PA 17101
via electronic submission

RE: Cover Letter for Regulation #7-559 (IRRC# 3274): CO2 Budget Trading Program

As the testimony will indicate, NFIB has significant concern regarding the negative effects RGGI will have on our small businesses, which are still struggling to keep their businesses open due to poorly conceived state-mandated shutdowns and restrictions during the pandemic.

Quite simply, a flawed process has led to the flawed product being brought before you today.

Below are highlights of the testimony you will find, beginning page 4.

Lack of Statutory Authority:

- When Section 5(a) of the Air Pollution Control Act (APCA) was enacted in 1972, there is no scenario where the General Assembly could have then intended that the Pennsylvania Environmental Quality Board (EQB), acting at the behest of the Department of Environmental Protection (DEP), could promulgate a regulation of this magnitude. In fact, the last time the APCA was amended substantively in 1992 to permit compliance with federal Clean Air Act mandates, the General Assembly added Section 4.2, which limited DEP/EQB regulatory powers to regulate air pollutants covered under Section 109 of the federal Clean Air Act:
    - "Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the Clean Air Act unless authorized or required by this act or specifically required by the Clean Air Act."
- RGGI would fundamentally restructure electric generation in Pennsylvania. Fully two-thirds (66 percent) of all of PA electric generation capacity is derived from coal (22 percent) and natural gas 42 percent). The balance comes from nuclear (20 percent) and oil (9.3 percent), and then hydro (5.4 percent), wind (0.4 percent) and solar (0.15 percent). RGGI will jeopardize one of the most diverse portfolios of electric generation in the country, not to mention Pennsylvania's envious position as a net exporter of electricity if, as expected, the Commonwealth would lose up to a third of our current generation capacity.
- RGGI will eliminate immediately every coal-fired electric generation plant in Pennsylvania and, likely, many older, less efficient natural gas plants. This includes natural gas generation plants that, in an effort to comply with the federal EPA Mercury and Air Toxic Standard (MATS) mandate, converted from coal generation. And every coal generation plant still operating invested $500 million to more than $1 billion to install scrubbers to comply with MATS. Operators of both types of plants made these investments with the understanding that they would be permitted to operate until the end of their useful lives.

Energy and Small Business:

- In our original comments to the EQB opposing RGGI, we emphasized that DEP and its EQB failed to comply with a critical Regulatory Review Act (RRA) mandate. In our comments, we stated: **"NFIB believes that the Environmental Quality Board (EQB) did not conduct a complete analysis of the regulation on small businesses as required by the Regulatory Review Act (RRA)."** In spite of raising this concern, DEP once again failed to consider the indirect impacts of RGGI on small business as required under RRA.
- DEP must provide small business impact statements under both the Air Pollution Control Act (APCA) and the RRA. The APCA requires DEP to provide impact information for small business stationary sources, but the RRA requires a much broader impact statement. The RRA, at 71 P.S. section 745.5(a)(10) requires the agency to include "an identification of *the financial, economic and social impact* of the regulation on individuals, *small businesses,* business and labor communities and other public and private organizations..." Paragraph (4) of section 745.5(a) requires "[e]stimates of the direct *and indirect costs* to the Commonwealth, to its political subdivisions and *to the private sector*." (Emphasis added.)
- The indirect costs of RGGI, as outlined in our EQB comments, will severely impact small businesses throughout the Commonwealth, and this impact has not been examined by DEP. For instance, there are hundreds of small business entities that supply and serve coal and natural gas production, as well as coal and natural gas electric generation plants. These small businesses operate in regions of Pennsylvania that will be hit hardest by the impacts of the RGGI tax. In addition to lost market revenues from closures or reduced operations at those production and generation sites, these same companies will be impacted by potentially enormous property tax increases as taxing districts that host these operations will have to replaces millions in property tax revenues.
- This further ignores the direct financial impact on small business associated with massive electric generation price increases. DEP's modeling, which claims average monthly increases in 2022 to be less than $2.00 per month, is absurd on its face. This modeling was prepared by an organization called ICF, which in addition to signing on to pro-RGGI marketing materials also concluded in its original modeling that the RGGI allowance price would not increase to $7.00 until 2025 at the earliest, only for the price to raise to its current price of $7.97 in 2021.
- Throughout its Comment and Response document, DEP regularly refers to a study conducted by Penn State's Energy Law and Policy Center, which concluded that RGGI will trigger average electric generation price increases by as much as 11 percent by 2030, and an average of 8 percent between 2022 and 2030. Notably, residential, and small commercial ratepayers pay far in excess of the average electric generation rate. Indeed, according to the Energy Information Authority (EIA), residential households in Pennsylvania pay more than 40 percent of the statewide average of all consumers. This means that residential and small commercial ratepayers should expect a minimum electric bill increase of 12 percent as a result of the RGGI tax, and as high as 18 percent.

Massive Leakage of Jobs, Generation, Emissions, Capital Investment into Ohio and West Virginia:

- Perhaps no single issue more powerfully demonstrates the absurdity of Pennsylvania participating in RGGI than the widely accepted notion of leakage. The Penn State EL&P study referenced above concludes that: "86 percent of the CO_2 reductions from Pennsylvania joining RGGI would be offset by emissions increases in PJM and/or other RGGI states."

- This pales in comparison to DEP's modeling, at least the portion that considers leakage within the PJM Interconnection regional transmission organization. DEP's most recent modeling of RGGI's impact on regional emissions concludes that 99.1% of all CO2 reductions in Pennsylvania would be offset by increases in CO2 emissions in non-RGGI PJM states, such as neighboring Ohio and West Virginia.
- IRRC noted in its comments that "the leakage that will occur if the Commonwealth does join RGGI raises the question whether the rulemaking, and its potential benefits, are needed." Rather than providing IRRC with a plan to mitigate against leakage, DEP instead merely declares that it "has been an active participant" in PJM's Carbon Pricing Senior Task Force, which is "examining" leakage of generation, emissions, jobs and capital investments from RGGI states to non-RGGI states.
- Notably, not only have those states - whose coal, natural gas and nuclear plants compete directly against similar plants in Pennsylvania - refused to join RGGI, but both states have recently enacted legislation that subsidizes coal fired electric generation plants within their borders.
- This explains why then-Secretary McGinty rejected Pennsylvania participation in RGGI when presented with the opportunity in 2008. If RGGI were implemented in Pennsylvania, CO2 emissions from power plants in the Commonwealth would, in significant part, transform into emissions from power plants in neighboring, non-RGGI states like West Virginia and Ohio. The result is that Pennsylvania's participation in the program would not materially reduce CO2 emissions in the region.

I look forward to making these points and others at the in-person September 1, 2021, meeting.

Sincerely,

Gregory B. Moreland
NFIB PA State Director

(2)

DRAFT REMARKS IN OPPOSITION TO RGGI TO IRRC, BY SHAWN STEFFEE

I stand before you today, first, as a father and husband. I live in Indiana County...a blue collar region that depends on the continued operation of the three large, coal fired electric generation plants...plants that, in spite of what DEP might have you believe, still have another 7 to 10 left.

I am also here on behalf of Boilermakers Local 154 and as President of the South Central Building Trades. I am responsible for thousands of hard working men and women that depend on electric generation, and other complex industrial operations. Finally, I am here on behalf of the Power PA Jobs Alliance - a coalition of organized labor, business and community leaders opposed to the proposed RGGI regulation. Power PA includes many of the state's largest unions, including:

- The Pennsylvania AFL-CIO
- The Pennsylvania Building and Construction Trades
- The Philadelphia and Pittsburgh Building Trades.
- And regional trades councils and local unions from just about every region in the Commonwealth.

Organized labor is united against the proposed RGGI regulation. There is nothing in it for us but pain and suffering. We are disappointed that Governor Wolf and some legislators who **CLAIM** to support organized labor are supportive of this regulation, and angered by pro-RGGI supporters who claim RGGI would be positive for organized labor.

Those claims could not be farther from the truth. The Governor, and certain legislators, argue that RGGI could provide support for dislocated workers and communities harmed by RGGI. Let's be clear...there is nothing in this regulation that offers such support. And how dumb is it to offer support for people harmed by RGGI when we could avoid it altogher?

And, let's also be clear, there is no scenario where the General Assembly will ever concede this issue to the Governor, which is what would be required for the Governor's false promise of assistance to become a reality.

And what about help for low income families and fixed income seniors? Their electric rates will increase by as much as 18 percent according to Penn State, PJM and federal information agencies. There is nothing in this regulation that will help them. In fact, it is troubling that any person or group could claim that RGGI will lead to "environmental justice."

There is no environmental justice for communities who suffer even more from energy poverty. But, one thing is clear...RGGI will create new environmental justice communities...right in my backyard. And it will do so within months of its implementation.

It is a fairy tale for anyone to say the Legislative Branch intended to allow DEP, **BY REGULATION**, to eliminate immediately every coal and many natural gas plants in Pennsylvania. It is even harder to believe that the Legislative Branch would allow DEP, **BY REGULATION**, to effectively ban the construction of new natural gas plants in Pennsylvania.

Two-thirds of Pennsylvania's electric generation comes from coal and natural gas plants...plants upon which thousands of blue collar families depend for their livelihoods...plants that support blue collar communities...plants that guarantee every Pennsylvanian their absolute right to as much electricity as they need, and ensure that power is reliable and affordable. RGGI will destroy all of this...and it will do so immediately.

In IRRC's comment letter, you suggested "the regulation represents a policy decision of such a substantial nature that it requires legislative review." My brothers and sisters agree, and on their behalf, I urge you to stand by that conclusion and disapprove this job crushing, illegal regulation today.

PMA

Pennsylvania Manufacturers' Association

3

COMMENTS PRESENTED TO THE:
INDPENDENT REGULATORY REVIEW COMMISSION

REGIONAL GREENHOUSE GAS INITATIVE: A FLAWED PROPOSAL FOR PENNSYLVANIA

AUGUST 25, 2021

David N. Taylor, President & CEO
Carl A. Marrara, Vice President of Government Affairs

The Frederick W. Anton III Center • 225 State Street • Harrisburg, Pennsylvania 17101
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RGGI: A Flawed Proposal for Pennsylvania

The Regional Greenhouse Gas Initiative (RGGI) poses significant policy, legal, and ethical implications. Therefore, it is the position of the Pennsylvania Manufacturers' Association (PMA) that RGGI is a flawed proposal and is not sound rulemaking for the Commonwealth of Pennsylvania.

On behalf of PMA, we write to express our opposition to Regulation #7-559 (IRRC# 3274): CO2 Budget Trading Program (RGGI).

Pennsylvania Manufacturers' Association. Founded in 1909 by Bucks County industrialist Joseph R. Grundy, the Pennsylvania Manufacturers' Association is the nonprofit, statewide trade organization representing the manufacturing sector in the state's public policy process. Manufacturing directly employs 570,000 Pennsylvanians on the plant floor, sustaining millions of additional jobs in supporting industries, and generating more than $93 billion in gross state product.[1] Headquartered just steps from the State Capitol in Harrisburg, PMA works to improve Pennsylvania's ability to compete with other states for investment, jobs, and economic growth. PMA's mission is to improve Pennsylvania's economic competitiveness by advancing pro-growth public policies that reduce the baseline costs of creating and keeping jobs in our commonwealth.

Policy Implications

Everyone agrees that Pennsylvania's public policies and regulations should help build and protect a clean, healthy, and sustainable natural environment. The issue at hand is whether or not a government program, which will undoubtedly add substantial costs to Pennsylvania's electricity consumers, is the best mechanism to achieve the cleanest, healthiest, and most sustainable environment possible. RGGI does not accomplish this goal, but the program will negatively impact Pennsylvania's economy in a punishing way. This potential impact could not come at a worse time given the economic downturn caused by the Wolf Administration's decision-making in response to COVID-19.

It is imperative that Pennsylvania policymakers not enact laws or regulations that place our commonwealth at a competitive disadvantage to our competitor states. State laws and regulations should not be more stringent than federal laws and regulations unless there is a compelling reason that is unique to our commonwealth. It is likewise prudent that these regulations achieve real environmental benefits, are within the capabilities of existing technologies, and do not

[1] National Association of Manufacturers. 2019. https://www.nam.org/state-manufacturing-data/2019-pennsylvania-manufacturing-facts/

advantage one sector of the economy to the detriment of another. RGGI fails each of these bright-line tests and should be rejected by the Pennsylvania Independent Regulatory Review Commission.

Unilaterally enacting a policy such as RGGI will have dire economic consequences, as has been proven in other RGGI states. According to research published by David Stevenson of the CATO Institute,

> RGGI allowance costs added to already high regional electric bills. The combined pricing impact resulted in a 12 percent drop in goods production and a 34 percent drop in the production of energy-intensive goods. Comparison states increased goods production by 20 percent and lost only five (5) percent of energy-intensive manufacturing. Power imports from other states increased from eight (8) percent to 17 percent.[2]

Manufacturers are energy intensive operations. No matter what is being made, manufacturers consume large amounts of energy in the process of turning raw materials or component parts into finished goods. For many manufacturers, energy costs are the largest cost output month-to-month. DEP's own modeling has estimated that, if Pennsylvania joins RGGI, Pennsylvania electric consumers - residential, commercial and industrial - will be forced to pay $2.6 billion more for electricity over 9 years.[3] Adding on additional costs will drive manufacturers out of Pennsylvania and make it exceedingly difficult to bring new firms in; essentially making RGGI a hard-cap on economic growth in the manufacturing sector. For every dollar invested in manufacturing the multiplier effect on the larger economy is $2.74[4]; the largest multiplier effect of any industry, making manufacturing the engine that drives whole economies throughout our commonwealth.

Ironically, Pennsylvania was a part of that increase in goods and in power generation cited by the CATO study. Over the past decade, Pennsylvania has been the largest exporter of energy in the United States[5] and has been the main supplier of energy exports for RGGI states, all while our emissions were decreasing at rates faster than theirs. If Pennsylvania enters RGGI, not a single atom of carbon will be lessened because the power generation will just transfer further west to Ohio or West Virginia and be sold back to us for a higher price. We lose the jobs, we lose the power, and we all pay more for no environmental benefit.

Efficiency is inherent to the success of manufacturing operations. One of the ways manufacturers achieve efficiency is through the utilization of best practices to lower overall energy

[2] David Stevenson, "A Review of the Regional Greenhouse Gas Initiative," CATO Institute. Winter 2018.

[3] Industrial Energy Consumers of Pennsylvania, Testimony before Senate Environmental Resources & Energy Committee, August 25, 2020.

[4] National Association of Manufacturers, IMPLAN Data, 2018. https://www.nam.org/facts-about-manufacturing/

[5] U.S. Energy Information Administration, "California imports the most electricity from other states; Pennsylvania exports the most," Today in Energy. April 4, 2019.

consumption. Another major achievement in efficiency is the implementation of Combined Heat and Power programs (CHP). It is ultimately market forces that promote efficiency and potential cost savings through CHP programs; ultimately driving down the cost of each unit produced at that specific manufacturing firm while simultaneously promoting environmental stewardship. While we do recognize the fact that CHP and Biomass are exempt, up to a certain size and/or with a specific percentage of power being sold into the electric grid. However, RGGI is not the best mechanism to grow Pennsylvania's economy; or attract and retain manufacturers to realize these efficiencies. Constraints will serve as a disincentive for manufacturers to install these systems as once the regulations are in place, the parameters can be altered in future. Moreover, several of our members expressed concerns that the higher electric utility costs that would result from RGGI would undermine their efforts to implement clean-air and other environmentally beneficial programs.

Instead, these high-energy intensive manufacturers that might eventually install CHP systems could be driven from the state entirely, as proven in the CATO study. Limiting CHP is the opposite of policy the commonwealth should be enacting. A recent report endorsed by the Pennsylvania Department of Community and Economic Development, dozens of state-wide and regional business organizations, and top industries states, "Pennsylvania's low-cost natural gas resource can create significant economic benefits for energy-intensive manufacturers when used as a source of heat and power. In order to tap into those benefits, we need to identify ways to make it *easier* for manufacturers to adopt CHP (Combined Heat and Power) solutions…"[6]

CHP is a major investment, often utilized by some of the nation's largest manufacturing firms. Growth and business competitiveness make it the smart business decision to invest in a particular location. If goods producers are forced from Pennsylvania because of uncompetitive electric rates, CHP will not be an investment these firms will be able to make. Additionally, ever-shifting government-mandated goals and targets do not inspire confidence in manufacturing firms to locate in states with regulatory uncertainty. RGGI is the very definition of regulatory uncertainty as other states and governing bodies within the program will surely impact future policymaking. Additionally, the same regulatory uncertainty and shifts in environmental policy paradigms will affect the investment of biomass. These will be business investment opportunities that will never be realized in our commonwealth.

Governor Wolf's proposed targeted emissions reductions of 26 percent by the year 2025 are well within striking distance now, just four years away. The private sector has led the way, doing what the private sector does best – inventing, innovating, and forging a better future that is cleaner and more efficient. Energy related CO_2 emissions have decreased 22 percent from 2005

[6] Forge the Future, Ideas for Action. 2018. https://paforgethefuture.com/app/uploads/2019/11/FTF_IFA_report_Final_10118_Web.pdf

to 2017[7] and with more natural gas fired power plants coming online since then, that percentage will increase as the data is updated and republished. Governor Wolf's goals are being met without entering Pennsylvania into a regional accord that will thwart private sector innovation; forcing layoffs of thousands of Pennsylvania workers, and putting our economy into a tailspin as entire communities will be negatively impacted.

These emission reduction goals are being met, in large part, because of competition in the electricity marketplace, which began under Governor Tom Ridge. At that time, PMA was a leading advocate for establishing a competitive market for electricity generation in Pennsylvania through the Electricity Generation Customer Choice and Competition Act. To date, integrating competitive market forces into electric generation has benefited all Pennsylvania consumers - residential, commercial, and industrial. But, by no means has this transition been painless. Abnormally low natural gas prices resulting from booming Marcellus Shale production and a lack of pipeline capacity takeaway, combined with exceedingly expensive state and federal government environmental mandates have taken a serious toll on coal fired generation over the years. We realize that is how competitive markets work. However, RGGI is the antithesis to Pennsylvania's competitive electric marketplace. Imposing a tax that will surely result in the closure of all coal and many natural gas power plants - possibly up to a third of our total generation capacity - thwarts competition and greatly undermines the competitive markets that have proven effective both economically and environmentally.

The premature shuttering of coal and waste coal facilities could have even larger public policy impacts. Consider the fact that Pennsylvania's steel makers require coal to make coke and coke to make steel. Coking coal, more scientifically known as Metallurgical Coal, is a necessary ingredient to produce steel. There is no substitute. Many of the same mining operations that extract coal for power generation also mine Metallurgical Coal. If the power plants shut down, this will surely impact the mining jobs that supply the coal to the power plants. If those mining operations are forced to shutter their businesses, Pennsylvania's steel industry will be impacted as a key feedstock for their product will be more difficult and more expensive to attain. This regional accord threatens entire industries well outside of the realm of which Governor Wolf is aimed, and it puts Pennsylvania at a unique competitive disadvantage. Our economy is not like that of Vermont or Massachusetts, and our public policies should not be reflective of the New England states' directives.

Pennsylvania is fortunate to have abundant natural resources. Individuals have been and continue to be attracted to the Keystone state because of the vast choices for outdoor recreation and quality of life. Likewise, many of those natural resources have been the source of prosperity for

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[7] U.S. Energy Information Administration, State Energy Data System and EIA calculations, United States National-Level Total, *EIA Monthly Energy Review*. September 2018.

the state throughout different points in our history. This is precisely why we should want industrial activity to happen here in Pennsylvania than elsewhere in the world. We benefit from the jobs and the economic activity, but we also benefit from the fact that Pennsylvania has some of the strictest regulations when it comes to emissions standards, oil and gas drilling, and mineral extraction. From an environmental standpoint, we should rather that activity happen here, where companies are responsible stewards of the environment and there is strict oversight, instead of Russia where environmental regulations are skirted, or China where there are serious human rights violations, worker exploitation, and heavy pollution.

By entering into RGGI, industrial activity will be relocated, and it is unknown where that activity will go. Let's not drive that activity back across our borders into neighboring states, or worse, foreign countries. It is not a stretch to say that by supporting RGGI you are supporting Russian and/or Middle Eastern global energy leadership and Chinese steel-dumping. Instead, we should work with our industries to invent, innovate, and forge a clean, healthy, and sustainable environment – not overregulate our many vital industries out of existence.

The policy decisions made here in Pennsylvania will inevitably cause significant unintended consequences and will push environmental regulatory control and economic growth outside Pennsylvania's state lines.

Legal Implications

Unlike Pennsylvania, all RGGI states have express statutory authorization to implement RGGI or, as with New York, can directly authorize the regulation of CO_2.

RGGI represents the single most impactful energy policy reform since the deregulation of the electricity market under the Electricity Generation Customer Choice and Competition Act of 1996, and only the General Assembly, not DEP, has the power to determine whether or how to implement RGGI.

The Constitution of Pennsylvania does not contain any provision that directs the governor or any other official or entity with the authority to sign onto an interstate compact or agreement such as RGGI. While certain sections of the Pennsylvania Constitution impose duties to "conserve and maintain," Pennsylvania's "public natural resources," it does not expand the powers of the governor or the executive branch agencies to enter into an accord or that places a tax and/or fee on a commodity. This was upheld by the Commonwealth Court in 2016 in Funk v. Wolf where the court opined,

> …Payne II, 361 A.2d at 272–73. Because it is the Commonwealth, not individual agencies or departments, that is the trustee of public natural resources under the ERA, and the Commonwealth is bound to perform a host of duties beyond implementation of the ERA, the ERA must be understood in the context of the structure of government and principles of separation of powers. In most instances, the balance between environmental and other societal concerns is primarily struck by the General Assembly, as the elected representatives of the people, through legislative action…

Because this type of agreement is not a provided power of the executive branch, the authority to enter into an interstate accord, compact, or agreement such as RGGI falls to the General Assembly.

Furthermore, there is no statute that provides the executive department or agencies to adopt regulations to conform with RGGI, even if the executive department or agencies sign the memorandum of understanding to participate in RGGI. While it is highly debatable that the executive department or agencies even have the power to sign the memorandum of understanding, the provisions of the regulations necessary to be able to participate in the program are not expressed powers in the Air Pollution Control Act or the Uniform Interstate Air Pollution Agreements Act.

The quarterly auction mechanism that is established through the proposed regulations can only be viewed as a tax. This is because Pennsylvania case law constitutes a fee as "intended only to cover the costs of a regulatory scheme."[8] The fact that only 6 percent of the funds raised in other RGGI states has been spent on the program's administration makes the quarterly auction a tax, not a fee. The Pennsylvania General Assembly and the Pennsylvania General Assembly alone is the governing body that can author a tax in the commonwealth, as has been held time and time again in case law.[9]

Implementing RGGI, as proposed by DEP, would also violate the non-delegation doctrine under the Pennsylvania Constitution because it would enable a third-party, non-governmental entity - RGGI, Inc. - to determine future tax increases and on a quarterly basis; the sort of delegation of powers our Supreme Court has deemed unconstitutional as recently as *Protz v. Workers Compensation Appeals Board*, in 2017.[10]

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[8] Rizzo v. City of Philadelphia., 668 A.2d 236, 237-38 (Pa. Cmwlth. 1995)
[9] Mastrangelo v. Buckley, 250 A.2d 447, 452 (Pa. 1969)
[10] 161 A.3d 827 (Pa. 2017).

Therefore, on the foundation of the Constitution of Pennsylvania and established case law, DEP's RGGI proposal should be rejected by the Pennsylvania Independent Regulatory Review Commission.

Ethical Implications

There are major ethical concerns regarding this proposal that must be addressed. The sources of information and modeling that DEP has used throughout the advocacy process are unsound. Additionally, the timeline and process the department has deployed causes profound concerns.

Any air quality benefits that DEP claims through its modeling process that were completed by "ICF International" must be redacted. This particular firm won a major contract to do air-quality modeling for the proposed RGGI regulations. These models are meant to be an independent assessment. However, ICF International regularly engaged in lobbying practices as a signatory on advocacy letters in support of RGGI before the both the Citizens Advisory Council and the Environmental Quality Board. Additionally, ICF International appeared on a letter that was sent to the General Assembly opposing House Bill 2025, a bill that would have further solidified the legislative approval of regulations similar to RGGI. This presents a conflict of interest at the highest level and presents a major ethical issue the Pennsylvania Department of Environmental Protection must address.[11]

Furthermore, the timeline and process the department has deployed to institute this particular regulation is at best incomplete and at worst corrupt. Please also consider the suspect timeline of this consequential rulemaking. The initial concepts were released, lacking much detail, in February of 2020, before the pandemic took hold of Pennsylvania's attention. However, the process then continued all while Pennsylvania has been operating under the Wolf Administration's emergency declaration. The final rule proposal was not made available for public comment until November of 2020, with a constitutionally mandated suspension of the General Assembly from November 30 until swearing-in on January 5, 20201. During this time, legislative committees, which are key in the analysis and comments on proposed regulations, are not permitted to convene, nor are the committees premised to have assigned members. The implementation of this timeline is a major cause of concern as the General Assembly is extremely limited in its ability to react to this rulemaking. We believe this was a deliberate attempt to exclude Pennsylvania's elected representatives from participating in the process.

[11] https://environmental.pasenategop.com/dep-consultant-under-fire-aJuly s-link-to-other-rggi-support-statements-emerge/

The exclusionary nature of DEPs process as it pertains to the General Assembly can be seen once again with the timeline of the final regulatory proposal we are currently in. DEP quickly and unprecedently rushed the approval of this regulation, without proper adherence to the Pennsylvania Sunshine Act by not allowing access to the public during the voting meeting of the Environmental Quality Board (EQB) on July 13, 2021.

By prohibiting access to the meeting for all but the members of the EQB, DEP failed to adhere to the Pennsylvania Sunshine Act, which requires "official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public[.]"[12] The EQB similarly violated transparency mandates under the Air Pollution Control Act (APCA), which required public hearings to be held within regions impacted by the regulation (e.g., Indiana and Armstrong Counties) as noted by the Pennsylvania NewsMedia Association.[13]

As for process, it is clearly stated in the Air Pollution Control Act, section 7, "Public Hearings.-- (a) Public hearings shall be held by the board or by the department, acting on behalf and at the direction or request of the board, in any region of the Commonwealth affected before any rules or regulations with regard to the control, abatement, prevention or reduction of air pollution are adopted for that region or subregion..."[14]

In this instance, the department held virtual hearings in consecutive days that were not based in the areas of the commonwealth that would be most impacted. These virtual meetings were internet-based, and many of the most impacted areas lack access to affordable and/or reliable broadband internet required to participate. Governor Wolf has acknowledged the severe lack of rural broadband access as recently as December of 2020.[15]

COVID-19 pandemic or not, hosting virtual meetings without clear notification and focus in affected areas is a blatant violation of the letter and intent of the law set forth in the Pennsylvania Air Pollution Control Act. Therefore, based on process and ethical concerns alone, DEP's RGGI proposal should be rejected by the Pennsylvania Independent Regulatory Review Commission.

[12] https://www.openrecords.pa.gov/SunshineAct.cfm
[13] https://media.socastsrm.com/wordpress/wp-content/blogs.dir/2140/files/2021/02/pa-newsmedia-assoc-dep-follow-up-2-21.pdf
[14] Pennsylvania Air Pollution Control Act. Section 7. https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1959&sessInd=0&smthLwInd=0&act=787&chpt=0&sctn=7&subsctn=0
[15] Office of Governor Tom Wolf. Press Release. December 10, 2020. https://www.governor.pa.gov/newsroom/gov-wolf-announces-327000-pennsylvanians-will-gain-access-to-high-speed-internet-through-federal-auction/

Conclusions

In summary, RGGI poses significant policy, legal, and ethical challenges. And to gain what environmental benefit that isn't already being realized? DEP's own modeling shows a negligible impact because the private sector is already reducing CO2 emissions at a steady pace. The remaining CO2 emissions in Pennsylvania that would hypothetically be shuttered due to RGGI will simply shift to coal and natural gas plants in neighboring, non-RGGI states, like West Virginia and Ohio. In attempt to ignore this inevitability, the DEP has used creative forensics to grossly misrepresent any health or monetized benefits to the commonwealth from the RGGI proposal. For these reasons, it is the position of the Pennsylvania Manufacturers' Association (PMA) that RGGI is a flawed proposal and is not sound rulemaking for the Commonwealth of Pennsylvania. We urge the Independent Regulatory Review Commission to wholistically reject Regulation #7-559 (IRRC# 3274): CO2 Budget Trading Program (RGGI).

(4)

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August 30, 2021

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101
irrc@irrc.state.pa.us

VIA E-MAIL

Re: Environmental Quality Board
Regulation No. 7-559: CO_2 Budget Trading Program
Copy of IECPA Oral Remarks for the September 1, 2021, IRRC Meeting

To the Independent Regulatory Review Commission ("IRRC"):

Thank you for the opportunity to provide this brief statement on behalf of the Industrial Energy Consumers of Pennsylvania, an association of energy-intensive and trade-exposed industrial entities taking electric and natural gas service from a variety of regulated utilities within the Commonwealth. I serve as counsel to IECPA and offer these remarks on its behalf.

As the IRRC is aware, IECPA previously submitted Comments to the EQB on the proposed regulations on January 12, 2021, submitted a letter to IRRC on February 10, 2021, and most recently submitted Comments on August 10, 2021. As previously stated in those documents, IECPA generally supports efforts within the Commonwealth to responsibly conserve the environment, including reasonable measures to control the emissions of carbon dioxide and other greenhouse gases. We have also reviewed many of the Comments from other stakeholders, both in support of and in opposition to RGGI. IECPA continues to believe that the proposed regulations are not in the best interest of the Pennsylvania public. We now offer these final remarks, reflecting IECPA's recently submitted Comments, in order to address certain issues with the responses by DEP to comments submitted on the proposed regulations.

Contrary to DEP's claim that Pennsylvania's participation in RGGI "will lead to a net increase of more than 30,000 jobs and add $1.9 billion to the Gross State Product," review of DEP's own "Economic Modeling Results" shows that two out of the three modeling scenarios result in a **NET DECREASE in jobs. In fact, two of the three scenarios show a cumulative DECREASE in Gross State Product and Disposable Personal Income through 2030 along with the jobs decrease.** Even in that same single modeling scenario that indicates a net increase in jobs, it also shows a net decrease in disposable personal income. Yet DEP only highlights the one, most favorable impact modeling result.

The Penn State Center for Energy Law and Policy estimates that the impact of RGGI on electricity rates will result in an increase of $2.56 per MWh. For the average IECPA member manufacturing facility, alone, this increase in electricity price would translate into an increased business operating cost of approximately **1.2 Million Dollars per year.** That's equivalent to the compensation of 16 well-paid manufacturing jobs at a single facility, along with an additional 80 indirect supporting jobs!

And DEP also proclaims that participating in RGGI will yield $2.6 billion in net economic benefits to electricity market participants, citing the Penn State study, the Department seems to ignore the key finding of the study that these benefits primarily inure to generators at the cost of consumers. In the words of the Penn State study, "Pennsylvania ratepayers pay higher prices and lose, whereas Pennsylvania generators gain."

IECPA is further concerned that DEP attempts to minimalize the electric cost increase impact by stating that "a large commercial customer using 200,000 kWh per month has a monthly bill ranging from $11,788.08 to $21,043.18. These customers could expect to see a 2022 potential price increase of $141 to $253 per month, again depending on their electric service territory and associated rates." However, the cumulative cost increase to **all** commercial customers in Pennsylvania is over $57 million per year!

Energy-intensive, trade-exposed businesses like IECPA's members already contribute hundreds of millions of dollars every year toward energy efficiency and demand response goals that serve to advance environmental policy. They simply cannot afford to pay the cost of multiple energy efficiency and environmental compliance programs and policy initiatives that are, or will be, passed through to them without any recourse. To that end, IECPA is very concerned that adoption of any proposed regulations to comply with RGGI will jeopardize the survival of manufacturing and industrial concerns in Pennsylvania. This, in turn, will undoubtedly impact both job retention throughout the Commonwealth and therefore the entire Pennsylvania economy.

The upshot is that RGGI is not good for industrial and manufacturing entities in Pennsylvania -- those entities that provide critically important jobs for a vast number of the Commonwealth's citizens. For this reason alone, RGGI is not good for Pennsylvania, and IECPA urges the IRRC to reject adoption of the final regulation.

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

By ______________________

Barry A. Naum
Counsel to the Industrial Energy Consumers of Pennsylvania

BAN

CO2 COALITION

(5)

July 29, 2021

Pennsylvania Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

To whom it may concern:

Below are comments by Gregory Wrightstone, Executive Director of the CO2 Coalition concerning the state's participation in RGGI to be presented September 1, 2021:

Pennsylvania's Regional Greenhouse Gas Initiative Relies on Faulty Data: Why RGGI is a "solution in search of a problem"

The administration of Governor Wolf attempts to justify Pennsylvania's participation in RGGI with exaggerated predictions of climatic catastrophes resulting from its similarly exaggerated predictions of carbon dioxide emissions and supposedly damaging atmospheric warming. RGGI, the administration claims without regard to past performance, will reduce emissions while boosting the economy and lowering electric rates.

However, analyses of the Wolf proposal by widely respected professionals show that:

- The administration's predictions of floods, droughts, heat waves, pollution risks, destructive sea-level rise and agricultural damage are contradicted by historical data and what science and common sense suggests for the future.
- The administration overestimates future carbon dioxide emissions and atmospheric warming because more than 99 percent of its climate models are flawed and because its assumptions for coal use likely exceed what is even possible.
- The administration's claims of economic benefits ignore RGGI's poor performance in other states over the past decade. A more realistic forecast for Pennsylvania's proposed participation in RGGI is one of billions of dollars in lost gross domestic product, hundreds of millions in tax losses, tens of thousands in job losses, higher electric bills and no environmental benefits.

CO2COALITION

In short, the administration's economic and environmental justifications for entering RGGI are invalid and its claims of environmental and economic benefits are fiction. RGGI is a purported solution in search of a problem. Even if there were a problem — which there isn't — RGGI's theoretical effects on the environment would be too small to measure, much less solve it.

Gregory Wrightstone
Executive Director
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International Brotherhood of

BOILERMAKERS • IRON SHIP BUILDERS BLACKSMITHS • FORGERS & HELPERS

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Martin Williams, International Brotherhood of Boilermakers
Testimony Prepared for the Independent Regulatory Review Commission
Final-Form Regulation: #7-559 CO2 Budget Trading Program, September 1, 2021

Good morning and thank you for the opportunity to offer comments. My name is Martin Williams and I am the National Coordinator of State Legislative Affairs for the International Brotherhood of Boilermakers. The International Brotherhood of Boilermakers is an international labor union with 50,000 members across the United States and Canada working in multiple industries including power generation, refining, shipbuilding, steel, rail, and manufacturing. In Pennsylvania, over 2,000 Boilermakers work with our contractor partners to build and maintain our state's power-generating capacity and provide Pennsylvania with affordable and reliable electricity—which is why I am here to request the Commission to reject the final-form regulation authorizing Pennsylvania's participation in the Regional Greenhouse Gas Initiative, also known as RGGI.

As we have expressed in multiple forums over the past two years, it is our position Pennsylvania's participation in RGGI is not in the state's interest, environmentally or economically, and will have significant consequences for our members and thousands of other workers, communities, and consumers. First, the primary purpose of the RGGI framework is to facilitate reductions in state and regional carbon emissions. However, Pennsylvania has already achieved significant carbon emissions reductions without RGGI. From 2005-2018, CO2 emissions in Pennsylvania's electricity sector declined 41% and 21% across all sectors.[1] This trend is expected to continue as DEP projects power sector emissions to decline an additional 23.6% without joining RGGI.[2]

Regionally, participation in RGGI is expected to produce a negligible benefit. Based on DEP's modeling, the difference in regional carbon emissions reduction between Pennsylvania joining and not joining RGGI is less than 1%. This is a strong indicator of expected emissions leakage which has been a flaw in the RGGI framework since its inception. Expected leakage has also been confirmed in the December 2020 report from the Penn State Center for Energy Law and Policy in which it estimated that 86% of carbon reductions in Pennsylvania under RGGI will leak to other states in the PJM region.[3]

Second, from an economic standpoint, participation in RGGI will be disruptive and devastating to Pennsylvania's workers, communities, and consumers. Every year, thousands of hard-working, highly

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[1] *Electricity energy-related carbon dioxide emissions; State energy-related carbon dioxide emissions by year, unadjusted (1990-2018)*. U.S. Energy Information Administration. 2018.
[2] Obtained from DEP updated power sector modeling, available at https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx.
[3] *Prospects for Pennsylvania in the Regional Greenhouse Gas Initiative Working Paper*, December 2020. Penn State Center for Energy Law and Policy.

skilled Boilermakers are employed to maintain Pennsylvania's fossil power plants, earning family-sustaining wages, health care, and retirement benefits. In fact, the average Boilermaker earns well above the state average across all job classifications. More broadly, Pennsylvania's coal industry supports close to 18,000 jobs, provides over $4 billion to the state's economy,[4] and supports communities through millions of dollars in state and local taxes. Participation in RGGI will prematurely close the state's remaining coal-fired power plants, eliminate thousands of good-paying jobs, jeopardize the retirement security of our members, and is unlikely to replace lost jobs with anything comparable. Indeed, two out of three of DEP's economic modeling scenarios show a net job loss through 2030 under RGGI.[5] Meanwhile, thousands of power sector jobs will be created in our neighboring states as Pennsylvania generation is rendered increasingly uncompetitive through participation in RGGI. Moreover, participation in RGGI is expected to raise electric rates for consumers as much as 15%,[6] which will be especially harmful for low and fixed-income households.

Finally, it is our position that the final-form regulation is inconsistent with the Air Pollution Control Act (APCA), which is cited by DEP as the regulation's legal basis. Though, arguably, Section 4(24) of APCA authorizes DEP to develop interstate air pollution control agreements, the plain language of the statute requires submission of agreements to the General Assembly for consideration. Clearly, that did not happen. Also, the final-form regulation conflicts with both Section 6.3(a) of APCA and constitutional separation of powers. Under Pennsylvania case law, RGGI's allowance auctions would be considered a tax instead of a fee since significantly more revenue would be raised than would be required for program administration.[7] As such, under the Pennsylvania Constitution, taxation and revenue are the jurisdiction of the General Assembly, meaning that the final-form regulation, ultimately, requires legislative approval for implementation.

The Commission is tasked with reviewing regulations for consistency with statutory authority and legislative intent, as well as considering overall impact to the state. We submit the final-form regulation will prove economically harmful to Pennsylvania, provide minimal state and regional environmental benefit, and is inconsistent with current statutory authority. For these reasons, we ask the Commission to reject the RGGI final-form regulation to preserve thousands of jobs in Pennsylvania's power generation industry and maintain the state's position as a national leader in energy.

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[4] *The Economic Impact of the Coal Industry in Pennsylvania*. Prepared for the Pennsylvania Coal Alliance by the Allegheny Conference on Community Development. April 2019.
[5] Obtained from DEP updated RGGI economic modeling, available at https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx.
[6] Fact Sheet: *RGGI Tax Impact on Low and Fixed Income Families*. Power PA Jobs Alliance. https://powerpajobs.com/latest-news.
[7] Testimony of Anthony R. Holtzman, Esq to House Environmental Resources and Energy Committee, July 21, 2020.

PENNSYLVANIA
COAL ALLIANCE

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August 27, 2021

7

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Written Comments for Regulation #7-559: CO2 Budget Trading Program IRRC Number 3274

Dear Commissioners:

Thank you for the opportunity to testify today regarding regulation #7-559: CO2 Budget Trading Program IRRC Number 3274, which if implemented would effectively join Pennsylvania to the Regional Greenhouse Gas Initiative.

My name is Rachel Gleason, and I am the Executive Director of the Pennsylvania Coal Alliance (PCA). The PCA represents over 160 member companies that produce or support the production of over 90 percent of the coal that is annually mined in Pennsylvania. Our industry contributes billions of dollars annually to our state's economy and directly and indirectly supports nearly 18,000 family-sustaining jobs.

The DEP and the EQB did not adequately address the economic and fiscal impacts of the regulation.

In 2019 twenty-four coal mines from twelve western Pennsylvania counties sent nearly nine million tons of Pennsylvania-mined coal to coal-fired electric generating units (EGUs) in our state. Should these EGU's cease operation as a result of RGGI, that coal will be displaced, and will likely become uncompetitive to other nearby production operations in Ohio and West Virginia.

The DEP/EQB ignored the impact RGGI will have on Pennsylvania's bituminous coal industry and dismissed PCA's previous comments regarding those impacts. The scant economic modeling that was conducted does not address the potential loss of jobs due to the displacement of the aforementioned nine million tons of coal. Rather, DEP/EQB stated that the coal mining industry is going away anyway. PCA does not recognize this response as sufficient. I would also like to point the Commissioners to the hundreds of signatures from active underground coal miners, who make an average annual family-sustaining wage of over $100,000, that were submitted to IRRC. These are just some of the people the DEP chose to ignore in their economic modeling.

DEP and EQB Fail to Address Leakage, Joining RGGI Will Not Reduce CO_2.

During this process, at minimum an analysis of our regional transmission organization (RTO) should have been conducted to reflect state-by-state electric generation CO_2 emissions in the entire RTO, thereby allowing the assessment of leakage impacts. This was not completed. However, DEP's contracted modeling does point to less than a one percent overall reduction in CO_2 emissions in the PJM RTO by 2030, and a 0.16% reduction in CO_2 emissions in the Eastern Interconnection during the same time, rendering the regulation ineffective and therefore unreasonable because leakage is not addressed.

Further, the claim that the regulation will prevent the potential closure of nuclear power plants is misleading. While the Beaver Valley Power Station may benefit from not being required to pay the RGGI tax, the company's two massive coal plants, W.H. Sammis in Ohio and Pleasants in West Virginia, with a combined 5.5 GW of installed capacity, will also benefit from not have to pay a tax on the CO_2 they emit. Joining PA to RGGI strengthens that company's the entire portfolio, both nuclear and coal because of leakage.

The EQB and the DEP do not have Statutory Authority to Promulgate the Regulations.
Repeatedly the DEP/EQB have stated that the purpose of the regulation is to price or impose a fee (tax) on CO_2 emissions. However, the Air Pollution Control Act (APCA), limits the authorization of the assessment of fees to criteria pollutants. Not only is CO_2 is not regulated or identified as criteria pollutant under section 502(b) of the Clean Air Act, the final-form regulation does not limit CO_2 because leakage is entirely ignored.

The DEP/EQB claim section 5(a)(1) of the APCA provides the statutory authority for this regulation. However, this provision dates back nearly 50 years when the APCA was amended to include that section, a time when climate change was not a mainstream topic and CO_2 was not remotely considered to be air pollution.

The Regulation is an Unconstitutional Tax.
The regulation is intended to ensure a minimum revenue stream with plans to invest 94% of the revenues in various programs, therefore the purpose of the regulation is to raise revenue, not administer a program, making the regulation a tax, which per the state Constitution must originate in the House of Representatives. It is noteworthy that PCA's member coal operators pay various permit fees that are set at fixed amounts under regulation and, unlike as proposed with this regulation, if DEP needs to increase revenues through higher fees, it must always adjust those fees through subsequent promulgated regulations.

PCA urges the Commissioners to carefully consider all aspects of the RRA. Thank you for the opportunity to comment.

Sincerely,

Rachel Gleason

Rachel Gleason
Executive Director
Pennsylvania Coal Alliance

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STATEMENT OF PROFESSOR JOHN D. DERNBACH
WIDENER UNIVERSITY COMMONWEALTH LAW SCHOOL
ENVIRONMENTAL LAW AND SUSTAINABILITY CENTER

INDEPENDENT REGULATORY REVIEW COMMISSION PUBLIC HEARING ON PROPOSED CARBON DIOXIDE BUDGET TRADING PROGRAM
September 1, 2021

My name is John Dernbach. I am Commonwealth Professor of Environmental Law and Sustainability at Widener University Commonwealth Law School. I also direct the school's Environmental Law and Sustainability Center, and am speaking today on behalf of the Center.

This Commission should approve the regulation because it is consistent with, and required by, Article I, Section 27 of the Pennsylvania Constitution.

First, the Commonwealth's constitutional duty to "conserve and maintain" public natural resources requires the Commonwealth to take meaningful action to help ensure a stable climate. The Commonwealth's trust responsibility also extends to the wide variety of other public resources that depend on a stable climate.

Second, our Supreme Court has made clear that all Commonwealth agencies are trustees under Section 27. DEP and the EQB are not the only relevant trustees in this context; this Commission is also a trustee.

Third, the Supreme Court has held that the meaning of Section 27 is to be supplemented and supported by "underlying principles of Pennsylvania trust law in effect at the time of its enactment." These include the general trust principles of prudence, loyalty, and impartiality. As a trustee under Section 27, this Commission is bound not only by the constitutional language but also by each of these principles.

The duty of prudence requires the exercise of "such care and skill as a person of ordinary prudence would exercise in dealing with his own property." Prudence requires good judgment and caution, particularly when trust resources are being threatened. Joining a well-established and effective partnership like RGGI is a prudent approach to protecting the public trust resources being adversely affected by greenhouse gas emissions.

The duty of loyalty requires the Commonwealth to manage public trust resources "so as to accomplish the trust's purposes for the benefit of the trust's beneficiaries." Under Section 27, loyalty requires the trustee to manage public natural resources for the trust's beneficiaries, and not for others. The Commonwealth would further this duty under the proposed regulation by reducing greenhouse gas emissions that are threatening public natural resources.

Finally, the duty of impartiality requires the Commonwealth to manage public natural resources "so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust." Our Supreme Court held in July of this year that when the Commonwealth "acts as a trustee it must consider an incredibly long timeline and cannot prioritize the needs of the living over those yet to be born." The regulation benefits both present and future generations.

Thank you.

John C. Dernbach
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Pennsylvania Farmers Union

9

September 1, 2021

Independent Regulatory Review Commission
333 Market Street
Harrisburg, Pa. 17101

Remarks on behalf of Pennsylvania Farmers Union in support of the Regional Greenhouse Gas Initiative/C02 Budget Trading Program

Members of the Commission:

Good morning.

My name is Michael Kovach and I am speaking here today in my capacity as Vice President and Policy Director of Pennsylvania Farmers Union. Farmers Union speaks for independent and family farmers across the commonwealth. As of 2017, there were over 53,000 farms across Pennsylvania – and Agriculture is our biggest industry. And if there's one thing our farmers are almost universally concerned about, it's climate change and how it is impacting their livelihoods.

As you are surely aware, climate change is wreaking havoc on our land, air and water. Farmers in Pennsylvania are now having to regularly contend with climate-borne extremes of intense heat, more extreme rainfall events and flooding that damages crops as much as increasing periods of drought. Increased heat also depresses milk yields in dairy cows, and decreases productivity in virtually all livestock. Greenhouse gas pollutants including carbon and methane foul our air and create an inhospitable environment for livestock along with the workers who tend to our animals and our fields.

There is no doubt that fossil fuel fired power plants – Pennsylvania's power sector is the fourth dirtiest in the nation – are contributing greatly to the climate crisis. We have a problem, we need a solution and the Regional Greenhouse Gas Initiative being discussed here today fits the bill. We must reduce C02 pollution in the commonwealth and move toward cleaner, sustainable energy. Family farmers are acutely aware of the importance of sustainability in everything we do. It is we smaller enterprises who worked hardest to keep Pennsylvania's families safe and well fed during the Covid-19 pandemic. As a society, we've pushed ever forward in the pursuit of cheap power, with no regard for the long term consequences. Now those consequences are threatening our very ability to feed ourselves.

RGGI is an established and well vetted, market-based program that will help clean our air as it provides the resources to move us toward a cleaner energy future. I was one of nearly 500 speakers during the rulemaking's public comment period, a majority of whom spoke in favor of our state linking to this program. Pennsylvania's participation in RGGI is most definitely in the public interest, and I emphatically urge you to vote in favor of this rule.

Thank you.

Michael Kovach
Vice President, Pennsylvania Farmers Union

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Statement of Robert B. McKinstry, Jr. in Support of RGGI Regulation Approved the Pennsylvania Environmental Quality Board

I would like to thank the Commission for this opportunity to come before you to urge that you approve the Environmental Quality Board's final-form RGGI regulation. For the Commission, approval of the regulation is not a political choice, but a fiduciary duty as a trustee under Article I, § 27 of the Pennsylvania Constitution.

The arguments of self-interested opponents that the RGGI regulation is not statutorily or Constitutionally authorized lack merit. To the contrary, an environment not unduly disrupted by anthropogenic greenhouse gas pollution is an attribute protected under Article I, § 27 of the Pennsylvania Constitution. As such, *every* Pennsylvania governmental entity, including this commission, has a duty to all present and future Pennsylvanians, to do everything in its power to conserve that resource. That duty was reaffirmed by our Supreme Court for a third time this July in *PEDF v. Commonwealth*, ___ A.3d ____, 2021 WL 3073335 (PA 2021). The Administration, therefore, had a Constitutional duty to do everything within its existing statutory authority to reduce greenhouse gas emissions to prevent dangerous anthropogenic interference with the natural climate within the meaning of the United Nations Framework Convention on Climate Change, a binding international treaty to which the United States is a Party. For this Commission, that duty requires that it not interfere with the RGGI regulation becoming law.

It is beyond cavil that imposing limits on emissions of greenhouse gas pollutants and their control through the RGGI auction-cap-and-trade system is authorized under the Pennsylvania Air Pollution Control Act. Both the clear statutory authorization and the Constitutional obligation to act are analyzed at length in, first, an article that Professor John Dernbach and I published in the Michigan Journal of Environmental and Administrative Law, second, a rulemaking petition before the EQB seeking a broader economywide program that we and others co-authored, and, third, comments to the EQB that a group of us co-authored. *See* Robert B. McKinstry, Jr. & John C. Dernbach, *Applying the Pennsylvania Environmental Rights Amendment Meaningfully to Climate Disruption,* 9 Mich. J. Envt'l & Admin. L 50 (2018); *Petition Pursuant to 25 Pa. Code §§ 23.1-23.5, Article I, §27 of the Pennsylvania Constitution, and the Pennsylvania Air Pollution Control Act to Adopt the Attached Regulation Establishing a Comprehensive Program to Limit Greenhouse Gas Emissions Though an Auction-Cap-and-Trade Program to Conserve and Maintain a Stable Climate and Other Public Resources for Which the Commonwealth is a Trustee* (Feb. 28, 2019), http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2019/02_Petition_GHG%20Emissions/GHG%20Emission%20Petition_February%2028,%202019.pdf;

Comments on Proposed RGGI Rule By Leading Pennsylvania Lawyers, Law Professors, and Other Academics and Professionals Concerned About Climate Disruption (January 13, 2020), http://www.irrc.state.pa.us/docs/3274/COMMENTS_PUBLIC/3274%2001-13-21%20Robert%20B%20McKinstry.pdf.

As we noted in our comments to the EQB, the RGGI Regulation is a necessary initial step to address what is now the existential threat posed by greenhouse gas pollution. When I convened my first conference on addressing this problem as the Goddard Chair in 2002, the world had plenty of time to achieve the emissions reductions necessary to stabilize the climate and avoid the worst ravages of climate disruption. We have frittered away that opportunity and delaying action further will both create greater climate disruption and increase the cost of emissions reductions, with disastrous effects on our environment, our health and our economy. As indicated in the 2018 report by the Intergovernmental Panel on Climate Change and reinforced and updated in the August 2021 report, achieving greenhouse gas emissions neutrality by 2050 is absolutely necessary. The RGGI regulation represents just a first step for Pennsylvania towards achieving this goal in a way that will not disrupt the economy but create jobs and economic growth. Indeed, it is telling that the industry that is actually regulated under RGGI supports the regulation. The regulation in our pending petition will also promote economic growth but will require for the additional emissions reductions necessary to achieve neutrality by 2050.

This final-form regulation clearly meets all criteria for your consideration in section 5.2 of the Regulatory Review Act and is certainly in the public interest. Delaying the inevitable would mean more serious damage to our environment and more economic costs to the Commonwealth. As the most recent IPCC report makes crystal clear, the stakes could not be higher. I urge you to do the right thing and approve this final-form regulation now.

Pennsylvania Council of Churches

Testimony to Support Pennsylvania's Participation in the Regional Greenhouse Gas Initiative

Director of Advocacy & Ecumenical Outreach
Pennsylvania Council of Churches
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September 1, 2021

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Good morning. Thank you to the IRRC for this opportunity.

I am the Rev. Sandy Strauss and I am the Director of Advocacy and Ecumenical Outreach for the Pennsylvania Council of Churches, representing a variety of Protestant denominations in the Commonwealth of Pennsylvania. I am here today to voice support for Pennsylvania's participation in the Regional Greenhouse Gas Initiative. RGGI is a proven multi-state cap-and-invest program that facilitates reductions in carbon pollution from fossil fuel-fired power plants and in so doing, generates proceeds for participating states that can be invested in cleaner energy, cleaning our air and providing fairness for workers impacted by the energy transition—a transition that is well underway—as well as for citizens living in environmental justice communities that have borne the burden of polluting industries for far too long.

We can no longer dispute that we are in the midst of a climate crisis and Pennsylvania, as the third largest greenhouse gas polluting state in the nation, is an outsize contributor to climate change. The impacts of this climate pollution are far-reaching, from extreme heat to an endless cycle of super-storms, wildfires and drought. These and related harms to our environment manifest in poor air quality and associated increases in asthma and other lung and heart ailments—so it's no surprise that Pennsylvania has the third highest rate of asthma in the country. As people of faith we believe that we have a moral imperative to act as stewards of God's creation and protect both people and planet. Failing to do so, especially for the most vulnerable among us, is unconscionable.

We know a majority of Pennsylvanians feel the same way. Recent polling from Yale University and Climate Nexus notes that over 70% of Pennsylvanian voters want to see measures implemented to reduce carbon pollution and during the public comment period on the RGGI rulemaking, a majority of the over 14,000 written comments received by DEP were in favor of the rule. Similarly, over 94% of the individuals that delivered spoken comments, including myself, were in favor of the rule.

The public has spoken in its own interest – and in resounding support of Pennsylvania's participation in RGGI. The overwhelming evidence supports our entry into RGGI and makes clear that this rulemaking is in the public interest and is our moral responsibility. As such, I urge the Commission to vote in favor of this rulemaking.

Thank you for your time today.

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CONSOL ENERGY
FUEL THE WORLD FOR A BETTER TOMORROW

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JACQUELINE FIDLER
Vice President, Environmental and Sustainability

Independent Regulatory Review Commission
333 Market Street, 14th Floor
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Submitted via email to: irrc@irrc.state.pa.us

RE: September 1, 2021 IRRC Meeting Remarks
Related to final-form regulation #7-559 "CO2 Budget Trading Program" (IRRC #3274)

Commissioners,

My name is Jacquie Fidler, and I am the Vice President of Environmental and Sustainability at CONSOL Energy Inc. On behalf of CONSOL, thank you for the opportunity to provide remarks related to the final form "CO2 Budget Trading Program" regulation.

CONSOL Energy is a leading producer and exporter of high quality, bituminous coal. We strive to be the safest, most responsible, and most innovative coal company in the world. We are proud to call Southwestern Pennsylvania home to our flagship Pennsylvania Mining Complex (PAMC), the largest underground mining complex in North America, and home to many of our approximately 1500 employees, hundreds of contractors, and their families. We are focused on sustainably leading the transformation of a mature industry, and in a changing energy landscape, we believe Pennsylvania needs innovation, not RGGI.

The previous concerns and questions raised by IRRC have not been addressed, and simply put, the CO2 budget rulemaking is not in the public interest, and will negatively impact Pennsylvania families, communities, and businesses.

As you've heard today, in a state where 60% of the electrical supply is generated from coal and natural gas, joining RGGI will bring increased costs, substantial layoffs, and a crushing impact to state and local economies. According to Pennsylvania's own estimates, joining RGGI could result in a $2.36 billion tax to energy providers in the next 10 years alone. Groups like the PA Coal Alliance have already pointed out that this sharp rise in costs will trigger a domino effect resulting not only in industry downsizing, but also in increased utility costs for consumers. Contrary to the regulation's aim to reduce and address energy inequities, any increase in costs will disproportionately impact those with reduced or fixed incomes.

In your comments to the EQB, the Commission asked EQB and DEP (the Pennsylvania Department of Environmental Protection) to provide updated and revised information related to the potential economic and fiscal impact of the rulemaking. The Commission also asked EQB to explain why the benefits of the rulemaking outweigh the costs associated with its implementation. In response, the Department acknowledges that contraction in the energy sector is expected because of the rulemaking and the Department references its partnership with the Delta Institute to understand the impacts of a changing energy sector on Pennsylvania's communities. Further, the Department cites its intention to develop a set of "guiding principles" that will be used to inform implementation of the rulemaking and continues to reference the potential to create 30,000 jobs because of the regulation. However, the Department has not completed any comparison of the quality, longevity, and earnings potential of these jobs, compared to the existing opportunities created for Pennsylvania families by Pennsylvania's diverse energy economy.

Simply setting an intention to develop a set of principles or response strategy does not adequately address the Commission's request. For a regulation that will inevitably and substantially impact Pennsylvania's energy workforce, businesses, and communities, concrete, actionable plans are needed, and analysis at the microeconomic level is warranted. A set of guiding principles or recommendations is not acceptable under these circumstances.

The Commission also asked EQB and DEP to consider delaying the implementation of the rulemaking for one year. In response, the Department cites concerns that delaying the rule will cause the Commonwealth to miss its 2025, and possibly its 2050, GHG (greenhouse gas) reduction goals. Based on the 2020 Pennsylvania Greenhouse Gas Inventory Report, at the end of 2017, PA had achieved an approximately 19% reduction in GHG emissions, compared to the 2005 baseline. Based on these estimates, a reduction of approximately 18 to 20 million tons of CO_2 from 2017 levels is required to achieve the 2025 goal. The Department did not specifically address how this target might be achieved even if implementation of the rule was delayed, such as through an alternatives analysis. The Department does not specifically detail or provide supporting information, related to the environmental impacts or consequences that could be reasonably expected to occur in the event the target is delayed by one year. Rather, the Department references energy market dynamics, such as increasing natural gas prices, as a threat to achieving its goals. Again, given the magnitude of the rulemaking and its potential impacts, a thorough analysis is warranted.

In addition, the rulemaking is not consistent with legislative intent and certain technical provisions of the rulemaking have not been fully addressed.

In response to the Commission's inquiry as to whether the regulation requires legislative review, the Department contends that the "final form rulemaking is not a policy decision of such a substantial nature that it requires legislative review" and claims the regulation falls within the Department's statutory authority to regulate air pollution. The Department does not adequately address the fact that most RGGI states were directed to participate in the program through specific legislation, citing that the other states were more willing to address climate change. To the contrary, the preamble to the rulemaking suggests that the rule is consistent with the intent of the General Assembly. If this were the case, House Bill 2025, which required legislative approval for the Commonwealth to participate in RGGI, would not have been contested by the Department, or subject to veto by the Governor.

Further, the Commission asked the Department to explain how the Secretary will manage a substantial increase in the Clean Air Fund, from its current balance of $26 million to more than $2 billion before 2030, and whether management of this magnitude of proceeds is within the Department's authority. The Department cites guidance under the Air Pollution Control Act (APCA) that was developed more than 40 years ago and maintains that the Secretary's authority relates broadly to use of the funds "for the elimination of air pollution." At the same time, the Department's RGGI modeling report contemplates use of the RGGI proceeds for investment in utility scale renewable energy, electric vehicles, and bill assistance, in addition to some research and technology endeavors, at a scale that falls outside of the Department's area of expertise and authority. These types of projects were certainly not contemplated over 40 years ago and are substantially different from those examples incorporated at 25 Pa. Code. Chapter 143.1, which include use of the fund for expenses such as the purchase of air monitoring equipment, laboratory analyses, and personnel training. For a regulation with economic and social implications of this magnitude, a detailed and actionable plan that contemplates the appropriate use of the proceeds under a corresponding, specific regulatory framework is warranted. Again, the Department has not adequately addressed the Commission's concern.

Finally, Pennsylvania has diverse resources that should be considered economic assets that provide a competitive advantage over the other 11 RGGI states. In this regard, we see immense opportunity for the Commonwealth to lead in the development innovative technologies that are needed to achieve global environmental goals, while continuing to support Pennsylvania's diversified energy economy.

CONSOL Energy is building the future of the energy industry in our region as part of what we believe should be an "all of the above" energy policy. CONSOL aims to provide an affordable, sustainable, and stable future for our industry, our employees, and Pennsylvania consumers.

For example, CONSOL is investing in Pennsylvania's energy future by developing innovative technologies like our next generation 300-megawatt coal fired power plant of the future, to be equipped with Carbon Capture and Storage and BECCS – two technologies acknowledged by the IPCC (the Intergovernmental Panel on Climate Change) as being critical to achieving the aspirational goals of a 2° climate scenario. Additionally, CONSOL has undertaken multiple initiatives to develop and invest in coal-to-products technologies. If successful, these endeavors could create new, sustainable markets for coal, and expand opportunities for the regional manufacturing sector.

Policy decisions should focus on creating a diverse, reliable energy mix by investing in technology. Policies should build upon Pennsylvania's broad resource base, which differentiates the Commonwealth compared to other RGGI states.

By choosing innovation over a restrictive regulatory framework, Pennsylvania can maintain its position as an energy leader and industrial hub capable of supporting economic development, family sustaining jobs, and resilient communities.

For these reasons, we respectfully request that the Commission disapprove of the CO2 Budget Trading rulemaking.

Thank you.

Jacqueline M Fidler

Jacqueline M. Fidler
Vice President, Environmental & Sustainability
CONSOL Energy Inc.

Public Comments to the Independent Regulatory Review Commission on the Department of Environmental Protection's C02 Budget Trading Program/Regional Greenhouse Gas Initiative Rulemaking

September 1, 2021

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Commissioners:

Thank you for allowing me to speak today. My name is **David Heayn-Menendez and I am the executive director of Pennsylvania Interfaith Power & Light**, a community of congregations, faith-based organizations and individuals of faith and conscience responding to climate change as an ethical and moral issue, through advocacy, education, and stewardship. We are the Pennsylvania affiliate of Interfaith Power & Light, a national organization, with more than 46 affiliates across the country, and as our mission suggests, we are concerned about the existential crisis we face as a result of climate change. The greenhouse gas pollution we are generating is unsustainable for people and the planet. We are not outliers in this belief: In Pennsylvania alone, a substantial energy-producing state, over 70% of voters in recent polling called for solutions to cut carbon pollution from fossil fuel-fired power plants.

As you know, RGGI is an established multi-state cap-and-invest program that seeks to reduce carbon emissions from the power sector while generating proceeds that can be invested in cleaner energy generation including solar, wind and nuclear. RGGI program proceeds have also bolstered energy efficiency efforts in participating states and according to ACEEE, every dollar invested in efficiency in low-income households through the Weatherization Assistance Program results in $2.53 in energy and non-energy benefits for a community. These are real benefits for Pennsylvanians in frontline communities that have long borne an inordinate pollution burden. It is for these communities and for all Pennsylvanians that I speak today on behalf of thousands of faith who take Climate Change seriously and feel a duty to act.

It is critical that we take action on climate change now and a program like RGGI is positioned to provide immediate benefits to both the environment and economy. I was one of hundreds of speakers who lent their voice last summer during public hearings on RGGI, hearings which affirmed the overwhelming support among Pennsylvanians for the commonwealth's participation in the program. Our citizens are rightly concerned about what the future will look like for their children and families if we don't meaningfully address planetary warming right now. **Having Pennsylvania in RGGI in early 2022 is very much in the public interest, helping all of us to live as stewards of creation, which is why we urge an affirmative vote for this rulemaking from the commissioners today.**

I appreciate your time and consideration.

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8/29/2021

SIERRA CLUB

Comments of Sierra Club Pennsylvania Chapter
To the Independent Regulatory Review Commission

Re: Regulation #7-559: CO2 Budget Trading Program

Members of the IRRC:

On behalf of our over 31,000 members in Pennsylvania, I urge you to approve the CO2 Budget Trading Program, which will place the first ever limits on CO2 pollution from Pennsylvania power plants and allow the Commonwealth to link to the Regional Greenhouse Gas Initiative. This would be the most important action Pennsylvania has taken to date to help mitigate the effects of climate disruption, which is the foremost concern of our Chapter. The window of time for us to address this crisis is rapidly closing - climate scientists warn that we must reduce global greenhouse gas emissions (GHGs) by 50% by 2030, and eliminate them entirely by 2050 in order to avoid catastrophic global warming.

Obviously, this regulation alone will not solve the climate crisis. In fact, if Pennsylvania eliminated all its GHGs tomorrow, that alone would not solve it. That fact does not absolve us from doing our part. RGGI and other state-level policies do not happen in a vacuum, and it is the sum total of all actions that will solve this crisis. Indeed, every state and every nation must do its part, which is what the Paris Accord is all about. It is notable, though, that Pennsylvania emits more annual GHGs than 172 of the 194 nations that signed on the Paris Accord, so our action is critical.

If we do not successfully address the threat of climate change, Pennsylvania will experience:

- More frequent, more intense heat waves that make this summer seem moderate by comparison;
- More air pollution from ozone and wildfire smoke, which are related to temperature;
- More extreme storms, meaning power outages, property damage from wind and trees, flash flooding, washouts and landslides, hail and tornado damage;
- Extreme temperature fluctuations in the winter as well - a polar vortex used to be rare, but now is common because of a weakened jet stream;
- Agricultural losses from droughts, flooding, heat extremes harming livestock, and less predictable spring weather that threatens orchards;
- Tidal flooding of the Delaware River will make parts of Philadelphia and Delaware counties uninhabitable.

Most of these impacts are already happening and the best we can do now is limit the damage. If we do nothing and allow runaway climate change, it will threaten our entire economic and social system. One of the criteria for determining whether a regulation is in the public interest is the protection of public health, safety, and welfare. Runaway climate change is a grave threat to each.

Because we have already waited so long, reducing GHGs as rapidly as we need to will require major changes in every economic sector. RGGI is one of the least costly, least intrusive methods available to do so, which is another key criterion for the IRRC. However, we could choose not to act, and instead hope that other states and nations cut their CO2 and other GHG pollution fast enough to avoid the worst impacts of climate change. If they succeed in saving us, they will have an insurmountable economic advantage due to their earlier investment in the clean energy technology and infrastructure that we failed to make. This would have a severe economic and fiscal impact on the public and private sectors for years to come.

Approval of this regulation today is a critical first step to ensuring Pennsylvania does its part to maintain a livable climate. We hope you will do the right thing.

Respectfully,

Thomas Schuster
Clean Energy Program Director
Sierra Club, Pennsylvania Chapter

September 1, 2021

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Independent Regulatory Review Commission
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Testimony of Joanne Kilgour, Executive Director, Ohio River Valley Institute, to the IRRC in Support of Environmental Quality Board Regulation #7-559: CO2 Budget Trading Program

Good morning, and thank you for the opportunity to testify in support of Regulation #7-559 to establish a carbon dioxide budget trading program; I encourage the Independent Regulatory Review Commission to support the rule as presented.

My name is Joanne Kilgour, and I serve as the Executive Director of the Ohio River Valley Institute, a regional think tank producing sound research for a more sustainable, equitable, democratic, and prosperous Appalachia. Our team of researchers has produced two reports over the last year examining the conditions under which Pennsylvania would join the Regional Greenhouse Gas Initiative (RGGI), assessing the effects RGGI has had to date in member states, and reviewing the Department of Environmental Protection study of the likely economic impacts of joining RGGI. Our research indicates that RGGI membership will benefit Pennsylvanians and provide a much-needed source of funds to assist communities impacted by the market-driven transition away from coal to other, more cost-competitive sources of energy.

These reports include The Regional Greenhouse Gas Initiative: A Common-Sense Guide To RGGI And What It Will Mean For Pennsylvania available at: https://ohiorivervalleyinstitute.org/wp-content/uploads/2020/12/A-Common-Sense-Guide-to-RGGI-and-What-it-Will-Mean-for-Pennsylvania-copy.pdf (also attached to this testimony for your files) and Options and Opportunities for Coal Plant Communities: Pennsylvania and the Regional Greenhouse Gas Initiative (RGGI) available at: https://ohiorivervalleyinstitute.org/options-and-opportunities-for-coal-plant-communities-pennsylvania-and-the-regional-greenhouse-gas-initiative-rggi/ (also attached to this testimony for your files).

Options and Opportunities for Coal Plant Communities examines how Pennsylvania's participation in RGGI could support economic development and job creation, particularly in coal communities, detailing case studies of coal power plant closures in New York, Massachusetts, Colorado, and Washington. These case studies provide lessons for Pennsylvania to sustain and strengthen local coal plant communities. As the first analysis of its kind to draw from the experience of these other states to help inform decision-making here in the Commonwealth, our research demonstrates that Pennsylvania faces two fundamental options:

- Reject RGGI and allow market forces to determine when and if the last Pennsylvania coal-fired generating units at coal plants will close, with little or no help from existing owners or available local and regional funding sources to cushion the impact; or
- Adopt RGGI and use a significant portion of new RGGI funding to assist coal plant workers and coal communities invest in their local economies to generate a more prosperous future and create jobs.

The national trend away from coal to natural gas, wind, solar and other less expensive sources for producing electricity has played out decisively in Pennsylvania. Coal powered electricity's share in Pennsylvania has fallen dramatically from 57% in 2001, to 47% in 2010, to 17% in 2019 and 16% in 2021. Coal-fired electricity is projected to fall to 4% by 2030 with or without RGGI. This shift from coal is unlikely to change. A recent market study found the current "all-in cost" of generating electricity from coal "is more than double" the cost of solar and wind, and "nearly double" the cost of natural gas.

With Pennsylvania's coal plants facing an uncertain future, and as we consider this rulemaking, one topic that deserves more attention is the potential role that RGGI funds could play in economic development and workforce initiatives, particularly in those coal communities most impacted by plant closures and related job losses.

Since it began in January 2009, RGGI states have cut carbon pollution from their electric power plants by more than half, removed tons of dangerous pollutants from the air, invested more than $3 billion in RGGI generated funding into their state economies, and created tens of thousands of new jobs. RGGI currently includes 11 states from Maine to Virginia, and is the nation's first and largest market-based program to reduce greenhouse gas emissions.

Case studies of coal power plant closures in New York, Massachusetts, Colorado, and Washington demonstrate that no local community chooses voluntarily to go through the wrenching experience and economic distress caused by changes in the energy marketplace. These case studies make clear there are no quick and easy solutions when coal plants close, but suggest a roadmap for recovery. Successful long-term strategies require local business and government consensus building and planning, the leveraging of private sector and federal resources, and moving beyond merely plugging short-term funding holes towards long term investment strategies that create jobs for displaced workers and grow new supply chain markets for small businesses.

While the case studies suggest that RGGI funding would not provide a panacea for Pennsylvania's coal plant communities and workers, they demonstrate how a RGGI funded *Energy Communities Trust Fund*, such as that proposed by Gov. Wolf and some state legislators, could provide a uniquely valuable tool for workers and coal plant communities facing common problems associated with power plant closures. Although no one-size-fits-all solution emerges from the case studies, they do reveal some critical issues confronting retired coal plant communities and how RGGI funding could help address them:

Direct Services to Coal Plant Communities for Immediate Needs

- **Replacing Lost "PILOT" (Payments in Lieu of Taxes) or Local Tax Revenues** – New York and Massachusetts both deployed tens of millions in RGGI funds to replace lost revenues. Replacing local tax revenues means saving local first responder jobs.
- **Reuse of Coal Plants to Create New Businesses and Good Jobs** – New York and Massachusetts have deployed millions in RGGI funds and other state funds to prepare coal plant sites for reuse – for new businesses, energy production or other uses – based on local community strategies. Attracting new businesses to old coal plant sites means new jobs.
- **Project Development and Seed Funding** – Coal community mitigation efforts require time for planning and money for new investments. The case studies show instances where RGGI funding played the lead role and others where private sector investments were dominant. Ideally, RGGI and private sector funds can be deployed together through a community and regional investment planning process. The case studies demonstrate the value of seed funding in producing blended state, federal and private sector investment strategies to create new jobs.
- **Job Training & Job Placement for Displaced Workers** – Existing state and federal workforce development programs can be supplemented and enhanced with RGGI funding designed to create local opportunities for displaced coal plant workers. A critical factor is the ability to invest in and develop new local businesses that can hire coal workers at wages comparable to their former jobs.

Funding and Assistance to Develop Long Term Public/Private Strategies

- **Local Planning Approaches** – The case studies vary in the reuse of coal plant sites (from recreational attractions to new gas-powered facilities) and economic development strategies adopted (from private sector funded grant programs to RGGI subsidized site redevelopment). Successful programs adopted locally developed investment strategies with RGGI funding combined with state resources supporting the planning process.
- **Local Coal Plant Community Investment Funds** – A TransAlta/Centralia, Washington case study demonstrates that dramatically improved economic growth rates are achievable after a coal plant closure. This model deserves further analysis.

Pennsylvania has been a national leader on energy technology development and economic innovation since the beginning of the industrial era. The Commonwealth has experienced significant disruptions before in the steel and anthracite coal industries. In analyzing a decision to move forward with RGGI, I urge you to consider the opportunity before you - to support this rule as presented and put Pennsylvania on the path toward reducing harmful greenhouse gas emissions while using new RGGI funding to assist coal plant workers and coal communities through investments in local economies to create jobs and a more prosperous future.

Thank you for the opportunity to share this research with you, and I encourage you to support this rule as presented.

Joanne Kilgour
Executive Director
Ohio River Valley Institute

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Comments of Patrick Henderson
Marcellus Shale Coalition

To the Independent Regulatory Review Commission
September 1, 2021

Good afternoon. My name is Patrick Henderson and I am here representing the Marcellus Shale Coalition. Our members represent those companies who are producing, processing and transporting more than 90% of the natural gas produced in Pennsylvania, and those that partner with the industry.

I submit that the question before you is not whether the Commonwealth will reduce carbon emissions from the power generation sector, despite how this rulemaking has been portrayed to the public. While DEP seems too often averse to recognizing it, the fact is that Pennsylvania has reduced its carbon emissions from the power generation sector by over 40% since 2005 while maintaining its status as a major electric generation state.

So what will this rulemaking do, as projected by DEP's own modeling results (which, it is worth noting, taxpayers paid over $400,000 for):

By DEP's own modeling results, there are few if any tangible environmental benefits:

- While DEP claimed the original rulemaking would result in 188 M tons of reductions through 2030, the revised modeling slashes this in half, to just 97 M tons.
- However, when factoring in modeling results which show an increase of 78 M tons of carbon emissions in neighboring states, this is a net result of only 19 M tons over eight years. By comparison, the market conversion to natural gas has reduced PA's carbon emissions by 256 M tons since 2008.
- To put this into perspective, this means that Pennsylvania's entry into RGGI will reduce carbon emissions by only <u>0.169%</u> across the Eastern Interconnection.
- Yet, even if these reductions are achieved, DEP points to no tangible benefits related to climate change: no cooler temperatures; no less frequent storms, or less severe flooding, or other ailments which are used to justify the urgency and necessity of this rulemaking.

- For this minimal reduction, Pennsylvania consumers will pay potentially $2 - $3 Billion.

I cannot emphasize this enough: this isn't a question of whether you support the concepts or goals of RGGI, or of government taking additional action to reduce carbon emissions. It is a question of whether this specific rulemaking before you provides tangible, meaningful environmental benefits to the citizens of the Commonwealth, and does so in a manner that is lawful. As noted in our substantive comments, this rulemaking is lacking in these important regards.

The department has noted in its own advocacy for this rule that it received "overwhelming" public support. Much of this support was done at the urging of the Department itself to have activist groups across the nation submit form emails extolling the benefits of the rulemaking.

Nearly 14,000 commentators submitted comments. The public comment period ended January 14th, with this Commission's comments submitted on February 16th. Yet, by March 25th – a mere 37 days later – DEP released its updated rulemaking and had essentially completed its consideration of the input and recommendations of not only 14,000 commentators, but this Commission as well. It is no wonder that no substantive revisions were included in the final rule.

The Commission has an opportunity here to assertively uphold the public input process. Too often DEP treats public comment periods as echo chambers; more interested in having their policy viewpoints affirmed than receiving constructive feedback or reasoned disagreement. Public input processes are intended to provide an agency with diverse viewpoints for consideration, and independent evaluation that a proposed rule is both lawful and will result in benefits to the citizenry. It is not a public referendum.

This commission submitted substantive and meaningful comments to the Department, the vast majority of which seem to have been summarily dismissed. We urge the Commission to take action today to insist upon its comments.

Thank you.

RGGI before the Independent Regulatory Review Commission.

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The rise and accumulation of fossil fuel emissions plus smoke from wild fires is causing incalculable disease and death to every population within the US. The accumulation of carbon dioxide in our atmosphere now far exceeds the ability of forest trees and ocean water to absorb it. We humans are tragically trapped in a rising sea of smog and soot. World Health Organization estimates that the human death toll from air pollution is greater than 100,000 per year in the United States. (10 million deaths per year worldwide!) The death toll by itself, however, seriously undercounts the number of people who survive environmental poisoning with horrible long term cardio-respiratory disease. These numbers will rise and accelerate as global warming imposes even worse destructive effects upon all plants and animals in nature. Additional agricultural damages will literally threaten our survival from loss of food supply.

I plead, beg and beseech you to support and advance the RGGI now before the Independent Regulatory Review Commission. All living beings - plants and animals - depend on your humanitarian decisions.

Craig Jurgensen, M.D.

Carlisle, Pennsylvania

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Good morning Commissioners,

My name is Kevin Sunday, director of government affairs for the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth.

I want to thank you and your staff for your consideration of our perspective on this rulemaking. Let me first note that we recognize climate change is and will continue to present significant challenges to our state, and that it is prudent to take action. I would further note that market based approaches are more efficient than command and control regimes.

While we agree it is prudent to take action to reduce emissions, no one is well served by the authorization of a regulation that exceeds statutory authority.

We have throughout this process expressed our concerns with respect to the impact of fossil generation shifting to non RGGI states within the PJM grid, cost impacts, and protecting our energy intensive manufacturing and our role as a net exporter.

We are therefore disappointed that the final form rulemaking contains little meaningful consideration our organization's perspectives to produce a regulation that is in the public interest. Given these outstanding concerns, we urge IRRC to disapprove this regulation.

The final form rulemaking and associated documents do not attempt to control for the aforementioned leakage to more emissions intensive upwind states – not the cost, nor the environmental impact.

The final form regulation conflicts with the policy embedded in the Air Pollution Control Act of not exceeding federal air quality standards. The legislature has not written into statute a greenhouse gas reduction goal for DEP to meet, nor has Congress. In fact, the Biden administration's EPA recently explicitly informed regional offices states have no regulatory obligations for greenhouse gas emission from power plants.

Further, we suggested the final rule simply mirror the very clear bright line federal air quality law draws between power plants and manufacturing facilities that generate power.

There was no meaningful alternative analysis conducted as required by statute.

Nor was there a meaningful consideration of IRRC's suggestion to delay implementation for one year, though the final rule does contemplate delayed implementation of as much as nine months, which strikes us as arbitrary.

Finally, we note at length in our written comments this rule exceeds the authorizations for fees provided for in statute. The Air Pollution Control Act authorizes fees sufficient to administer air permitting programs. IRRC recently approved an air quality fee increase so as to ensure sufficient revenues for such administration. This rulemaking contains no demonstration those recently increased fees are no longer sufficient. Further, we argue that buying allowances on a trading market is not a fee for service payment to the government, as contemplated in statute. The statute further restricts use of the revenues to a much more limited scope than EQB contemplates in its proposed cost benefit, and we note recent court decisions have also limited the use of revenues derived from public natural resources.

These comments have been supplemented by written comments delivered to IRRC. We respectfully urge a disapproval of this rulemaking. Thank you.

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VIA E-MAIL & TESTIMONY

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Ref: Regulation No. 7-559: CO_2 Budget Trading Program
IRRC Number 3274
RGGI: Appropriate and Necessary

Dear Commission,

I am Kim Anderson and I live in Cambria County. I am testifying on behalf of myself and Reverend Mitch Hescox, CEO of Evangelical Environmental Network. Regulation No. 7-599: CO_2 Budget Trading Program or RGGI is appropriate and necessary for correcting market failures, moving to a clean energy future with family-sustaining jobs, addressing climate change, and defending children's health.

First, we are not alone in our position. During the open comment period, 30,500 pro-life Christians expressed deep concerns that pollution harms unborn and born children.

For over a century, the fossil fuel industry has privatized profits while costs have been borne in the lungs, hearts, minds, and even lives of our children. The Regional Greenhouse Gas Initiative (RGGI) will help correct this market failure and supply $500 million in new fees which can aid workers in transition, support those who have suffered impacts and continue the development of a clean energy future that benefits our children now and in the future.

"Change is coming, whether we seek it or not." Those words from the United Mine Workers' Document, ***Preserving Coal Country***, tells the reality of our future. By September 15, only five conventional coal-fired power plants will remain in Pennsylvania, down from 23 in 2004. These closures have **nothing** to do with RGGI and everything to do with market conditions.

In 2015, Appalachian Power's (WV) then-President Charles Patton said, "You just can't go with new coal [plants] at this point in time. It is just not economically feasible to do so....Companies are making decisions today where they are **moving away** from coal-fired generation." Already, utility-scale wind and solar electricity are the **cheapest** way to generate electricity.

Coal as a fuel source for electricity is over, period.

The burning of fossil fuels—the major driver of the climate crisis—causes pollution that harms human health from cradle to grave with impacts like stillbirths, premature births, delayed cognitive development, asthma, heart attacks, strokes, dementia, and Lyme disease. These impacts will get worse if we do not act. Our Commonwealth is already warming - with July 2021 being the hottest in recorded history. We must do our part and joining RGGI could be the start we need.

Pennsylvania has always been a leader in energy production which has brought immense benefit to Pennsylvanians, but it's come at a terrible cost. Coal fouled our air, water and lungs of children and workers. Now, natural gas spews poisons that threaten health and has left over 300,000 abandoned/orphaned wells to leak methane day and night, which releases carbon and methane pollution that fuels climate change.

We no longer need to choose between a strong economy and the health of our children. So, we must use RGGI to both clean up God's creation and to help workers and families.

Thank you for your time,

K A Anderson

Kim Anderson
Associate Director, Pennsylvania
Evangelical Environmental Network

IRRC testimony

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First I would like to thank the commission for this opportunity to speak today about the proposed RGGI regulation. My name is Aric Baker and I work as a emission controls technician at the Keystone generating facility, located in Armstrong County, PA where my job is to maintain and calibrate the equipment that monitors plant emissions for reporting and are also used for tuning the boilers to operate at the highest level of efficiency possible. I worked at Keystone yesterday, today I took a vacation day and drove 3 hours to speak 3 minutes. There will be no one speaking here today more intimate or affected by this.

I do not have the time to reiterate all the facts and figures that you have already heard and know. Keystone alone has invested over 1 billion dollars in the last 20 years on emissions controls in order to be good environmental stewards. RGGI is a gift to plants in other states who haven't done the same and operate less efficiently. These plants operate at a higher heat rate which means they burn more fuel to produce the same amount of electricity that the world class plants of PA do, thus producing more CO_2 per megawatt. I along with my brothers and sisters across the state bust our backs at these plants to provide dependable and inexpensive electricity across the grid. This will be lost if this regulation is approved thus causing the premature closure of these critical world class plants. The reality is that if you look at the generation mixture throughout the PJM interconnection this year you will see that forcing some of PA's most critical plants to close prematurely due to RGGI, the largest grid in the country will fail during severe weather events. Renewables and nuclear combine to make up less than 40% of demand needed on a daily basis on their best day, during high demand days renewables and nuclear combined produce less than 20% of needed electricity, while neither has the ability to respond to changing load requirements as fossil fuel plants can.

In closing I'll say this, I never wanted involved with politics but this issue forced me into it and has made me realize that in the greatest country in the world our democracy is broken. Throughout this process no one outside of the Wolf administration and his appointees have recommended this regulation as a majority. The PA legislators as a super majority voted not to blindly stop this regulation but have it vetted through them as they truly represent the whole state. All of the advisory committees failed to recommend the regulation until their deck was reshuffled to skew the vote. I am asking you to independently review the facts along with the impacts on PA. This is not going to reduce emissions, as it will simply move the emissions to other states. This is not going to produce a windfall of revenue, do to the fact the plants will not be running. It will however produce thousands upon thousands of job losses. Along with those job losses, it will destroy communities, schools and decimate infrastructure. I worked hard, earned my career, built my home and have a family invested in my community. The thought of all of that being lost from this proposed tax really upsets me. If this was a national across the board initiative to reduce CO_2, then I could realize the value but this is nothing more than a assassination of blue collar jobs across PA which in turn will disrupt and ruin the lives of thousands of families. So once again I ask you to disapprove this regulation by independently reviewing the facts. I truly appreciate being given this opportunity to provide you with the reality of this proposed regulation.

Aric Baker

Continuous Emmisions Monitoring Technician

Keystone Generating

(724)541-8166

Paul L. Cameron
Business Manager
I.B.E.W. Local 459

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Speaking on behalf of the International Brotherhood of Electrical Workers, Local 459
408 Broad Street, Johnstown, PA, 15906

I want to thank the Commission for the opportunity to provide testimony.

I am speaking on behalf of myself, a 30 year employee at the Keystone station and more importantly for all of the union members I represent as Business Manager of Local 459 of the IBEW

The workers I represent work 24/7, 365 days a year at the keystone, Conemaugh, Homer City, Seward and Shawville power plants. For decades this workforce has operated and maintained these plants to provide electricity that is second to none for reliability. Obviously, that reliability, and the sacrifice of my union members is taken for granted by most.

One of the major flaws with RGGI is that Ohio and West Virginia are not part of RGGI and Pennsylvania's lost generation is going to be produced by generators to the west of us by plants that are not as clean or as efficient as ours.

With the impact that RGGI will have to thousands of family sustaining incomes, I am respectfully asking for the following to be considered concerning what the future will look like for my members after their jobs are eliminated.

- According to information from PJM, it is common for up to three fourths (¾) of the generational fuel mix to come from coal and gas. Our baseload generators are still very much needed and renewables are not yet in a position to replace what is currently working. We need a longer runway to phase out non-renewable generation.
- Newer energy technologies may lead to new jobs, but not necessarily in the same geographic locations or at comparable wages and benefits. What has done to prepare for job losses? Thank you for the opportunity.

Pennsylvania has a generation mix that is the model of what works. We generate enough baseload to keep one of the largest electrical grids stable. We are taking advantage of wind and solar opportunities. We have numerus hydro facility's through out the state. And proven nuclear generators. By moving too fast with RGGI, this model is being jeopardized.

I respectfully ask that consideration be given to extend the RGGI starting date indefinitely until we are sure we have alternative generation that is capable of supplying energy currently needed.

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My name is Joel Hicks and I am a Councilman of Carlisle Borough and also an Adjunct Professor of Energy and Public Policy at George Mason University, where I also received my doctorate in Public Policy. These comments are on behalf of Carlisle's residents giving our full support for this rulemaking, which is consistent with goals established by the borough's Climate Action Commission, which I also chair.

The recent UN Intergovernmental Panel on Climate Change (IPCC) report released this month states, for the first time in its history, that anthropogenic climate change is now unequivocal. It states that business-as-usual and slow mitigation energy policy scenarios virtually guarantee that surface temperatures well in excess of 2.5^{0}C compared to pre-industrial levels will become the norm in our lifetime. The report reminds us that the last time global surface temperature was sustained above this level was over 3 million years ago, before humans inhabited the planet. The danger this could pose to our communities is unfathomable. This is not hyperbole, this is science. This is a clear issue of public health and safety as well as to our medium and long-term economic interests in the Commonwealth.

To effectively address the risks posed by climate change as well other harmful effects of air emissions to human health, policymakers, like you, have a choice. Do nothing and incur the exorbitant social costs of emitting harmful pollutants, simply ban the emissions altogether, or place a price on the emissions either through taxation or a market-based system, such as RGGI.

Let's be clear. Our dirtiest sources of electricity generation in Pennsylvania are losing an economic battle with cleaner sources of generation today. Without regulation like the CO2 Budget Trading System, however, this trend will continue without any identified revenues to assist communities most affected by these types of energy transitions. Policymakers should strive to approach pareto efficiency, where as many can be made better off without anyone being made worse off. That is a tall order and, frankly, seldom achieved. Economists, however, do recognize we can effectively approach that high bar in the case of negative externalities, such as GHG emissions, if the revenues collected from a Pigouvian price on the externality are directed toward those who may be negatively impacted. That is the most economically efficient model. What RGGI does, as designed here in this rulemaking, is effectively replicate that model.

The avoided social costs, as well as realized social benefits, of RGGI are expansive and compelling. In fact, just the secondary health benefits, or cobenefits, derived from reduced levels of particulate matter and nitrogen oxides, justify this action. Emission market mechanisms already have a proven history of success, both within the current RGGI regime as well as with a national market created by the Clean Air Amendment Act of 1990 which established an efficient market-based emission trading system to mitigate the sources of acid rain, sulfur dioxide and nitrogen oxides. The costs of achieving these environmental objectives with cap-and-trade were significantly less than they would have been with a command-and-control regulatory approach. It worked! And it's working again with carbon mitigation under RGGI.

Lastly, as a HUD-designated LMI community Carlisle Borough will be the benefactor of revenues generated from this program. As a designated environmental justice community we look forward to using these funds to build out our EV infrastructure, to plant new trees in current brownfields, and to build out more pedestrian-friendly modes of transportation.

Coal and coal refuse generating unit operations create significant economic value in communities across Pennsylvania, and that is especially true where I am from in Indiana County and many of our neighboring counties.

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These operations represent $1.54 billion in economic impact and over 3,020 jobs in Armstrong, Cambria, and Indiana counties, some of the more economically vulnerable communities in the commonwealth. In my county of Indiana alone, these generating unit operations represent $1.36 billion in economic impact supporting 1,225 jobs with $59 million in employee compensation annually.

A 2019 study by the Allegheny Conference has also found that for each of these jobs, and additional 1.97 jobs are generated throughout this region. That's nearly a multiplier of 3.

In addition, economic activity from these operations generate $9.4 million in income taxes, $10.7 million in sales tax, and $3.4 million in business taxes for a combined $23.4 in state taxes annually from our region. These taxes also contribute significantly to many of the school districts each year, and the loss of this income for these districts is untenable.

Governor Wolf has promised to speak with communities that may be negatively affected by RGGI. The numbers I just read to you clearly show that the counties of Armstrong, Cambria, and Indiana are arguably the most negatively affected. So, in February of this year, our three counties drafted a letter inviting the Governor to our communities to meet with us and imploring him to at least listen to the leaders, workers, and community members who are about to see our communities devastated by RGGI. That letter was signed by the County Commissioners, and leaders of the Chambers of Commerce and Tourist Bureaus in each county and was hand delivered to the Governor's office. To this day, nearly 8 months later, we have not gotten any response from the Governor or his staff regarding that invitation. We've been hearing about mechanisms that will be put in place to support the hard workers and communities negatively impacted by RGGI with job training programs and economic development opportunities. With only a few months to go before the proposed start of RGGI the three counties most negatively impacted have heard nothing. To me, this speaks volumes.

This speaks volumes. The public hearings were not a venue that most in the rural communities could even attend. Half of our communities do not even have broadband or could not be available at hearing times. There are so many unresolved issues around whether or not there is truly any environmental benefit to RGGI, but what we do know for certain is that these local economies will be devastated. Why didn't the Administration visit the most affected communities even in a virtual setting and at the very least, why didn't they respond to the invitation?

Prepared Statement

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Curtis Whitesel, Superintendent

Homer-Center School District

Recently, Dr Mark DiRocco, Executive Director of PASA (PA Association of School Administrators) said, "I just wish more community members would understand public education is designed for the common good of all students, and the community as a whole," DiRocco said. "Not everyone is going to get what they want."

This belief of the brutal truth of public education in our Commonwealth is not always what members of the general assembly desire to hear yet it is accurate and on point. The same is accurate for the method of funding public education. Property tax is of great importance. We also hear that due to variance in property value and taxes, a question has arisen that ponders if a true "thorough and efficient" manner of education funding is accurately occurring in Pennsylvania. Smaller and rural school districts are experiencing challenges. One challenge for the Homer-Center School District would be the forced elimination of the [Power Plant]. The Homer City Generating Plant provides annual revenue of *12.29%* of the Homer-Center School District's total real estate tax revenue budget. RGGI regulations would cause Homer-Center to unduly suffer, and it is already out of funding balance with close neighbors of the same size, further harming the students and residents of Pennsylvania while harming the educational future of the potential of our children, especially at the Homer-Center School District. I mention the neighboring school districts. Of the seven Indiana County School Districts, Homer-Center receives the least amount of funding with the next closest district receiving almost $2,000,000 more in Basic Education Funding. Others in the county are funded as much as $4,000,000 more than the Homer-Center School District. Ladies and gentleman, we are grossly underfunded at Homer-Center. The numbers prove that.

Let me give you some hard facts to ponder. The Homer City Generating Station has an assessed real estate value of $43,014,500. With Homer-Center's current millage rate of 16.7567, the annual real estate tax value to the district, tax money generated and paid to our district from this plant alone, is $720,781. As stated earlier, that equates to 12.29% of our annual local real estate tax revenue. To replace that revenue, the Homer-Center School District would have to increase real estate taxes 14%, this is an average annual increase of $233 per taxpayer. The millage rate would need to increase from 16.7567 mills to 19.1051 mills. In total, this would be a 2.3485 millage increase for a district that already has the highest millage rate in Indiana County. Also, this millage increase would be just to cover the loss of tax revenue from the Homer City Generating Plant, it does not include millage rate increases for general operating purposes.

Just a quick background of the Homer-Center School District. The district sits in Western Pennsylvania about 55 miles from Pittsburgh. Our district is made up of hard-working citizens that value their schools more than any other district I have ever seen. They certainly aren't happy being the highest taxed district in Indiana County, but they revere the return they receive on their investment. This return, top notched, quality education. The 2008 Blue Ribbon winning School District. Our graduation rate is extraordinarily high with a large percentage of our graduates moving on to post-secondary schools. We accomplish these things simply because we are dedicated to doing what's best for kids. By eliminating 12.29% of our tax revenue, I can tell you the programs we have in place to educate our students would need to be reevaluated with an eye on eliminating programs that work for kids just because we could no longer afford to provide to our students what we currently provide.

There may be new and/or alternative methods/options to work toward the goals of limiting carbon dioxide emissions from the power sector without closing the plant and the economic impact that would have on the entire Homer-Center School District. Public education is impactful, positive and without peer – and so is our search for new and additional manners of improving everyone's life – and I ask, does it have to be so destructive to our school district and community?

In closing I ask, what are the mitigating steps in place for our beloved school district when over 12% of our tax revenue is striped from us? This regulation has been kicked around for 22 months and there has been no direct outreach that I am aware of from the Governor's Office to explain how these impacts on our district will be mitigated. I truly believe that's the question that needs answered before this regulation is approved. I have read and reread multiple articles and stories about the money the state will receive by eliminating these carbon emission plants, but in none of the readings have I found any information that says how they will make up the loss to our rural school districts that relies so heavily on this tax income. I ask of to please consider what's best for kids/students when you are making your decision. I greatly thank you for your time and consideration on this matter.

Curtis A. Whitesel

Superintendent,

Homer-Center School District

Testimony for CO2 Budget Trading Program Regulation August 26, 2021

Regional Greenhouse Gas Initiative (RGGI) Rule-Making Process

A. Stevens Krug, AIA, PE, LEEDap, AEE Fellow
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Good afternoon, Mr. Chairman and committee members. I am Steve Krug, an Architect and Engineer licensed in Pennsylvania, practicing for over 40 years.

I have served in many leadership positions and I run my own businesses, Krug Architects, and am Co-Founder of CHP-Funder.com. My career has involved thoughtfully planning places and designing healthy, energy-efficient buildings that are cost effective and serve beautiful Pennsylvania communities. The buildings include award-winning educational, municipal, institutional and, commercial facilities. Because of my planning and energy experience, I have served on many committees and was appointed by Governor Corbett to the Pennsylvania Climate Change Advisory Committee (CCAC). I was re-appointed by Governor Wolf and currently serve as Chairperson of the CCAC for the third time.

I support RGGI investment for the benefit of Pennsylvania businesses, families, and communities. I encourage DEP to implement a RGGI ruling that helps create healthy, sustainable, and vibrant Pennsylvania communities.

We are in an energy transition and Pennsylvania has been lucky to benefit from an abundance of natural gas. Pennsylvania will benefit from Natural Gas for a very long time to come. Good planning requires us to invest in the future. RGGI is a way to help create jobs for the future. We have seen in the past it takes a generation or more to retool the work force. RGGI has been shown to be beneficial. It is already a smart policy in ten other states. Other RGGI states have invested more than 72% of their proceeds into energy efficiency and alternative energy programs, generating over $4 billion in economic benefits in the form of jobs, consumer utility bill savings, and public-private investment. It has been proven to significantly cut greenhouse gas emissions, improve health, reduce utility bills, and save billions of dollars to invest in energy technologies and jobs for a cleaner, prosperous future.

DEP has done analysis to show that RGGI will lead to similar benefits for Pennsylvania, conservatively adding $2 billion to the State economy from 2022-2030 and helping create 27,000 good-paying jobs. The DEP Climate Action Plan has recommended that Pennsylvania look at a cap-and-trade for the electric generation sector. The Regional Greenhouse Gas Initiative (RGGI) is a market-based approach, with quarterly auctions to get prices for the purchase of allowances. The revenue generated from the sale of the allowances can be invested into energy efficiency programs, including cogeneration (also known as CHP, which stands for Combined Heat and Power), and other greenhouse gas reduction programs that will additionally reduce the electric power sector emissions.

We understand the RGGI template of regulations has been adjusted to include Pennsylvania's concerns, while integrating into the multi-state initiative. We also understand the proposed rulemaking will allow for Pennsylvania to withdraw from RGGI, which states have done in the past, and have subsequently rejoined RGGI because of its benefits. Pennsylvania reserves the right to run their own market, which at this time, would be a heavy lift, and joining the existing successful Regional Greenhouse Gas Initiative makes practical sense. However, having the option to be independent is a good safety valve.

The proposed RGGI regulations include programs that support high performance buildings that save money. For example, we design educational and commercial facilities that allow students and professionals to pay better attention with good daylighting, a high-quality thermal package, and controlled natural ventilation, while saving energy. Good design allows people to perform their jobs more productively, teach better and learn more. Investing RGGI proceeds in energy efficiency will create jobs. Auction proceeds can fund training centers for workers and create pathways with vocational and community schools using RGGI proceeds.

Furthermore, we have been requested to address 3 specific areas of the proposed regulations.

1. First, ways to address the equity and environmental justice concerns. Investing RGGI proceeds into energy efficiency can make the economic landscape more equitable. The

architecture and engineering professions have this challenge, too, and have been able to increase the involvement of women, and minorities by **involving young people**. For instance, having more diversity in Architecture and Engineering Schools has directly resulted in a more diverse profession. The rule making should consider including educational programs so young diverse groups get exposed to RGGI. Having students involved at some level with RGGI, will generate new ideas and input to address equity and environmental justice. AIA's Blueprint for Better campaign involves many people so what we build is inclusive. Having young people involved in emissions reduction will assist those most often impacted by borderline air quality, such as kids and at-risk seniors, particularly in low income and environmental justice communities.

2. Secondly, approaches to benefit the just and equitable transition of workers and communities. The energy mix in Pennsylvania has changed and the forecast for the energy mix continues to change, albeit natural gas is projected to remain stable. In October, Bloomberg published the New Energy Outlook 2020, which shows other fossil fuels will decline. The regulations should address the energy sectors and communities affected by the long-term energy transition and offer work force training and energy technology training for these folks. Data from PA L&I, as well as Industry Partnerships, can provide a source of needed labor assessments. For example, electric vehicles and digital electric equipment continue to grow. From the Environmental and Energy Study Institute (EESI) "dedicated efforts are necessary to support these communities as they move away from single-industry economies toward more diversified, sustainable economies. Opportunities for a transitioning workforce include clean energy, environmental restoration, natural resources, broadband deployment, and entrepreneurship."
3. Third, ways to appropriately address the benefits of cogeneration. As I mentioned above, Pennsylvania has a strong background in the development of Combined Heat and Power (CHP) systems and equipment, which will continue in the new energy markets. Investing in new CHP technologies and manufacturing are well advised, because of the forecast for continued growth in this sector, due to its fuel-flexibility and extremely high efficiency. CHP is used in the industrial sector, which makes those

Pennsylvania companies more competitive. US Department of Energy has a tremendous resource for CHP, *eCatalog*, which we recommend PA DEP support as a partner, to enhance Pennsylvania's CHP market. Funding from the RGGI program will encourage high-performing and net zero buildings and reward developers that embrace energy efficient business practices. Energy efficiency is the best way to reduce costs for electric customers by reducing consumption and making Pennsylvania more competitive.

Thank you for your time today. RGGI will result in cleaner air for the health and productivity of Pennsylvanians, while conservatively adding $3.7 billion to the State's economy by 2050 and creating over 30,000 good-paying jobs. RGGI will help Pennsylvania build a vibrant, economically, and environmentally sustainable, healthy future. I encourage DEP to develop a RGGI rule that prioritizes investment in energy efficiency, which is well positioned to lower customer bills, reduce emissions, create jobs, and help power Pennsylvania's economy.

Indiana County Development Corporation

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August 30, 2021

Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: IRRC Number 3274 | Regulation #7-559: CO_2 Budget Trading Program

Dear Commissioners:

On behalf of the Indiana County Development Corporation Board of Directors, thank you for the opportunity to comment on IRRC Number 3274 | Regulation #7-559, regarding the Environmental Quality Board's (EQB) final-form CO_2 Budget Trading Program, which if enacted will join Pennsylvania to the Regional Greenhouse Gas Initiative (RGGI). We respectfully and strongly urge the Independent Regulatory Review Commission (IRRC) to reject and disapprove the final form regulation.

The Indiana County Development Corporation (ICDC) is a private non-profit corporation that has served the community since 1961. The ICDC's mission is dedicated to stimulating economic growth and promoting industrial and economic development opportunities within Indiana County in order to make it a better place to live. Over the years, the ICDC has implemented a number of strategies and projects including the acquisition and development of land for business parks and the construction of multi-tenant buildings. In any of these activities, the intended benefit for the community at-large is that businesses that locate at a business park or in one our multi-tenant buildings invest their capital resources and in so doing create and/or retain quality jobs for Indiana County residents resulting in an improved economy and local tax base.

It is our collective view that joining RGGI will result in the premature closure of Pennsylvania's coal-fired power plants and even likely many older gas-fired facilities, rendering nearly two-thirds of our Commonwealth's electric generation uncompetitive. The closure of these power plants, including three coal-fired facilities located in Indiana County alone and a fourth on the border with neighboring Armstrong County, will result in the loss of thousands of direct and indirect jobs, negative impacts to secondary and tertiary industries that support these plants, the erosion of income and property tax revenues directly impacting our school districts and municipalities, and increased electric and most likely natural gas prices that will burden consumers and businesses, thus further jeopardizing Pennsylvania's competitiveness to attract new investment and job opportunities.

Approval of the CO_2 Budget Trading Program and joining Pennsylvania into the RGGI compact will not achieve the desired result to reduce carbon dioxide emissions; it merely exports the production of affordable, reliable and resilient electricity to Ohio and West Virginia, where fossil fueled power plants are not taxed, and exports Pennsylvania jobs and our economic base. It is generally accepted that carbon dioxide reductions from power plant closures or reduced electric generation in Pennsylvania will simply shift to neighboring, non-RGGI states, i.e., the leakage factor, the modeling does not seem give significant weight to it during the analysis. These states will also benefit from Pennsylvania's participation in RGGI with increased family sustaining jobs and increased capital investment, which has already been occurring due to the disinvestment of our coal-fired facilities as a result of the debate on RGGI implementation. Unfortunately, the unintended consequence with Pennsylvania entering RGGI there is a foreseeable likelihood that increased emissions from coal-fired power plants from non-RGGI states that the environmental gains and associated health benefits may never be realized by participating in RGGI and the economic impacts of losing electric generation capacity in Pennsylvania may be felt for many, many generations to come.

As you evaluate the immense amount of data and public input, please seek out answers to a few questions, in the context of evaluating the outcomes of the States that are currently participating in RGGI:

1) Were there any net (must add back leakage factor) emission reductions or associated health benefits directly attributable from participation in the RGGI program?
2) Has spending of RGGI (tax) revenue on energy efficiency, wind, and solar power had any significant impact, i.e., economic, environmental, etc.?
3) As a result of RGGI, will Pennsylvania continue to be a national leader and energy exporter?

A regional program like RGGI will result in shifting jobs to other states. As a comparison, a national carbon tax would shift jobs to other countries. A better policy to reduce CO_2 emissions is to encourage innovation rather than rely on taxes and regulation.

At a time when our Commonwealth is continuing to rebound from the ongoing COVID-19 pandemic, with continued employment challenges, it appears that these coal-fired facilities are viewed as liabilities from an environmental perspective, but from an energy security, economic impact, and from a tax base, they are certainly assets to the communities and counties in which they reside. Our fear is that our energy independence will be handed over to neighboring states, driving up electric utility rates and even natural gas rates (as gas will no longer have competition), and thus making Pennsylvania less competitive for investment and economic development opportunities.

Please reject IRRC Number 3274 | Regulation #7-559: CO_2 Budget Trading Program as the data and assumptions used in the modeling fail to address the leakage issue and furthermore does not adequately address the negative economic impacts that will occur throughout many Pennsylvania communities, including Indiana County.

Sincerely,

Byron

Byron G. Stauffer, Jr.
Executive Director

Comments To IRRC In Support Of RGGI

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August 25, 2021

I am a resident of Pennsylvania and the City of Pittsburgh and I have been working for years on the issue of climate change. I am a member of several climate action groups including 350 Pittsburgh and the Citizens Climate Lobby.

We are seeing more severe heat waves, drought, forest fires, rain and flash flooding events. We are seeing loss of glaciers and warming of oceans leading to more severe hurricanes. We are seeing sea level rise and dying of coral reefs and all this is related to climate change.

I drive an electric car, I have solar panels, I support politicians who take climate action seriously. It's important for individuals, corporations, and government entities to do their part to address climate change. All individuals and all organizations must do their part.

As you probably know we are running out of time to address climate change. The Pa state legislature has done very little to address this most pressing issue. It has now fallen on the Governor of the State of Pennsylvania to take action to cut carbon pollution through the Regional Greenhouse Gas Initiative. RGGI already has a long track record of being effective in 10 US states in the Northeast and we need to expand that to more states such as Pennsylvania so that we can set an effective cap on carbon pollution.

I urge you to affirm Governor Wolf's effort to restrict carbon pollution in the state of Pennsylvania. This is a very exciting effort because it will help to unlock many of the roadblocks that stand in the way of clean renewable energy in Pa. The coal, oil, and gas industry are the incumbents in this state and with the power of incumbency, it makes it hard for a new industry to thrive. The financial marketplace in Pa currently has no mechanism to recognize that clean zero emissions energy is so important for the future of this state. The climate and pollution damage of coal, oil, and gas alone, if a dollar figure was assigned to it, we would have the market force necessary to get us moving away from coal, oil, and gas to clean energy. We need climate leaders in this state to push our state in the direction we need to go before it's too late on climate. I ask the board of IRRC to take a bold step and endorse Governor Wolf's strong action to cut carbon pollution!

The solution to pollution is renewable, it's doable! Thanks!

Fred Kraybill

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KEYSTONE ENERGY EFFICIENCY ALLIANCE

From: John Kolesnik
Mailing Address: 614 S. 4th St. #307
Philadelphia, PA 19147
Email Address: jkolesnik@keealliance.org
Organization: Keystone Energy Efficiency Alliance

Re: Final Rulemaking for Regulation #7-559: CO_2 Budget Trading Program

On behalf of the Keystone Energy Efficiency Alliance, we would like to thank the Independent Regulatory Review Commission for the opportunity to comment in support of the Environmental Quality Board's (EQB) Final Rulemaking – CO_2 Budget Trading Program, which will establish Pennsylvania's participation in the Regional Greenhouse Gas Initiative (RGGI).

The Keystone Energy Efficiency Alliance (KEEA) is Pennsylvania's trade association for the energy efficiency industry. The energy efficiency industry is composed of a diverse range of professions—from contractors and manufacturers to engineers, architects, and software developers—and a local workforce that cannot be outsourced. Our membership, comprising 75 companies, ranges from small local firms to large multinational corporations. While the pandemic and related lockdowns caused enormous job losses, energy efficiency is the largest US energy sector, boasting a growth rate 1.7 times faster than the national workforce from 2016-2019.[1]

KEEA strongly supports the proposed Final Rulemaking to allow the state to enter RGGI, as this carbon cap-and-invest program provides an avenue to both combat climate change and simultaneously grow Pennsylvania's economy. In current RGGI states, investment proceeds have generated over $4 billion in economic benefits in the form of new jobs, customer utility bill savings, and public-private investment.[2]

Economic and carbon-reducing benefits of RGGI are amplified by investing auction proceeds into energy efficiency.

KEEA applauds the DEP identifying the extensive benefits that energy efficiency investments can bring to the Commonwealth. The regulations outline four key areas for investment proceeds,

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[1] E4TheFuture, 2020 Energy Efficiency Jobs in America, available at https://e4thefuture.org/wp-content/uploads/2020/11/National-Summary_EE-Jobs-in-America.pdf

[2] Acadia Center, Regional Greenhouse Gas Initiative 10 Years in Review, available at https://acadiacenter.org/wp-content/uploads/2019/09/Acadia-Center_RGGI_10-Years-in-Review_2019-09-17.pdf

each of which is compatible with investment in energy efficiency: Worker Transition, Energy Efficiency, Clean and Renewable Energy Generation, and Greenhouse Gas (GHG) Abatement Initiatives. Through prioritizing energy efficiency, RGGI can **lower energy costs and boost local and state economies** through the creation of local, long-term jobs.

- RGGI will enable Pennsylvania to remain a leader in the energy economy[3] and lead the clean energy workforce transition.
- By investing in energy efficiency programs, energy efficiency workers will be in increasing demand across the state to build, install, monitor, repair, and improve equipment. These jobs are, by definition, local to their communities and offer a higher-than-average salary.[4]
- RGGI is anticipated to create 30,000 jobs and pour up to $2 Billion into Pennsylvania's economy by 2030.[5]

Energy efficiency jobs can also provide a reliable career path for **workers transitioning** from other energy sectors.

- RGGI auction proceeds can provide workforce transition funding to help workers join the energy efficiency and clean energy workforce.
- As coal generation naturally declines, Pennsylvania's leadership should do everything possible to help its current energy workers transition to the new energy sector.
- Prioritizing additional RGGI resources to economic development in traditional energy communities through energy efficiency programs, including workforce development, will provide critical post-COVID economic stimulus benefits and will help increase the 87,313 energy efficiency jobs in Pennsylvania.[6]

Finally, investing in energy efficiency can lay the groundwork for a more **equitable energy** transition by investing in programs that remove the economic and structural barriers that prevent residents and businesses from participating in state and utility offered energy efficiency programs.

- A number of states already leverage RGGI auction proceeds to provide a more comprehensive and accessible energy efficiency program portfolio. Energize Delaware's Pre-Weatherization Program uses RGGI funds directly for Weatherization Assistance Program (WAP) deferrals.[7]

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[3] U.S. Energy Information Administration, Pennsylvania Profile available at https://www.eia.gov/state/analysis.php?sid=PA

[4] 2020 Pennsylvania Clean Energy Employment Report, see page 27 and appendix D available at https://files.dep.state.pa.us/Energy/Office%20of%20Energy%20and%20Technology/OETDPortalFiles/2020EnergyReport/2020PACEIR.pdf

[5] Department of Environmental Protection, available at https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx

[6] Clean Jobs Pennsylvania 2021 - https://e2.org/reports/clean-jobs-america-2021/

[7] Energize Delaware, 2020 Annual Report, Pre-Weatherization Program, see page 9 available at https://www.energizedelaware.org/wp-content/uploads/2021/03/DESEU-32810-FY21-Annual-Report_Full-Report_v4.pdf

- Investing in energy efficiency is also an excellent way to reduce costs for electric customers by lowering the required power from transmission sources.
- Reduced demand for energy also keeps power prices lower for all consumers as it helps avoid investments in costly infrastructure to meet peak demand. For example, electricity prices in RGGI states have fallen by 5.7%, while prices have increased in the rest of the country by 8.6%.This has been a direct result of increased RGGI state investments in energy efficiency.[8]

The effects of energy efficiency investment from RGGI proceeds will ripple out across communities: families with lower utility bills can spend more on local goods and services, and businesses that spend less on energy can spend more on payroll or capital investment. In this way, energy efficiency investments are a win-win-win that will ensure that RGGI delivers not only less pollution, but more jobs, more savings, and a stronger economy for Pennsylvania. Thank you for the opportunity to provide comments in support of this important regulation.

Sincerely,

John M. Kolesnik, Esq.
Policy Counsel
Keystone Energy Efficiency Alliance

[8] Regional Greenhouse Gas Initiative - https://acadiacenter.org/work/rggi/

Alliance of Nurses for Healthy Environments
Bringing Science and Passion to the Environmental Health Movement

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August 29, 2021

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17601
irrc@irrc.state.pa.us

Ref: Regulation No. 7-559: CO2 Budget Trading Program
IRRC Number 3274
RGGI: Appropriate and Necessary

Dear Commission:

Regulation No. 7-599: CO2 Budget Trading Program or RGGI is appropriate and necessary to improve the health of the citizens of the Commonwealth of Pennsylvania. As a nurse, resident and citizen of the Commonwealth of PA, registered voter, and representative of the Alliance of Nurses for Health Environments, I am encouraged by the significant health benefits that can be realized through Pennsylvania's participation in the Regional Greenhouse Gas Initiative (RGGI).

While I am here to today representing myself and the Alliance of Nurses for Healthy Environments, I believe I represent the voice of the more than 200,000 nurses in Pennsylvania and the more 3 million nurses nation-wide. By joining RGGI, the Commonwealth will see the significant health benefits of lowering of the limit of greenhouse gas emissions and systematically investing in the energy infrastructure of the Commonwealth.

Florence Nightingale, the founder of modern nursing, first noted the importance of clean air in her seminal work, Notes on Nursing , in 1860. Nightingale's Environmental Theory of Nursing stressed the importance of clean air in order for patients to regain and maintain health. Today, nurses continue to advocate for the importance of the recognizing the impact of the environment on the health of our patients and our communities.

A 2017 analysis[1] of the health impacts noted in the first six years of RGGI demonstrated ***profound*** and ***significant*** public health improvements. This report identified that more than $5.7 billion in healthcare savings were realized through improved air quality in our Northeast region. They further estimated that more than 8,200 asthma attacks and at least 39,000 lost days of work were avoided.

In the past decade, greenhouse gas emissions have risen more than 30% in the healthcare sector alone. We must address these continued increases in order to prevent continued declines in public and personal health. The health impacts of greenhouse gas emissions are unavoidable and increasingly well-documented. According to a 2018 research study[2], the impacts of greenhouse gas emissions on health are likely widely under-estimated. Using combined economic and environmental modelling, Eckelman and colleagues (2020) noted that in 2018, greenhouse gases and pollution resulted in 388,000 disability-adjusted life years lost – the highest level to date. This means that hundreds of thousands of Americans are living with chronic diseases and suffering premature deaths related to impact of greenhouse gas emissions on their health. Through programs like RGGI, we can begin to reverse this trend, creating a better and healthier future for all, and especially our children.

As a nurse, I have seen these impacts of poor air quality firsthand --in my patients, my students, and my family. The most common health issues related to pollution and carbon emission are those related to the incidence of asthma and other breathing problems. These risks are especially significant in our most vulnerable populations – our children and our elderly.

However, poor air quality affects far more than our breathing – poor air quality places our citizens at greater risk for cardiovascular events such as stroke and heart attack. Poor air quality and increased pollution have been linked to increased risk for Alzheimer's disease and dementia. Poor air quality has been consistently demonstrated to increase premature births, as well as result in very low birth weight babies. Further, recent studies have demonstrated the direct correlation between incidence of attention deficit disorder and decreased air quality. The effects of poor air quality are cumulative and long – lasting. When children are exposed to poor air quality, the effects often endure throughout their lives. As a nurse, I've seen firsthand that the incidence of adult-onset asthma continues to increase, leading to lost days of work, decreased productivity, and more – all of which not only impact individuals but leads to increased healthcare costs and increased burden of disease on all. We must engage in addressing these issues now to prevent continued damage to our children's health.

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[1] Manion et al. (2017). *Analysis of the Public Health Impacts of the Regional Greenhouse Gas Initiative.* Abt Associates https://www.abtassociates.com/insights/publications/report/analysis-of-the-public-health-impacts-of-the-regional-greenhouse-gas

[2] Eckelman et al (2020). Healthcare pollution and public health damage in the United States: An update. *Health Affairs, 39(*12).

In the 2020 "Trouble in the Air" report[3], it was noted that the number of poor air quality days in central PA exceeded those of Philadelphia and of Pittsburgh. In the Harrisburg – Carlisle region we had 114 poor air quality days in 2018, the Lancaster area had 119 days and the Lebanon area had 105 days. In fact, these three mid-state regions were the only regions in Pennsylvania to have more than 100 poor air quality days in 2018. Lowering carbon emissions and decreasing fossil fuel burning is a key factor in improving our air quality.

By joining the Regional Greenhouse Gas Initiative, the Commonwealth of Pennsylvania will be making great strides to improving the health of our citizens, from the very young to our valued elderly. Embracing this vital initiative is essential to our health.

Thank you,

Kelly A Kuhns

Kelly A. Kuhns, PhD, RN, CNE
Chair and Professor, Wehrheim School of Nursing, Millersville University
Member, Alliance of Nurse for Healthy Environments

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[3] Riddleton et al (2020). ***Trouble in the Air.***
https://uspirg.org/sites/pirg/files/reports/EnvironmentAmerica_TroubleintheAir_scrn.pdf

500 North 3rd Street Suite 801
Harrisburg, PA 17101

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COMMENTS OF EXELON CORPORATION

RULEMAKING, CO2 BUDGET TRADING PROGRAM

August 27, 2021

Exelon Corporation (Exelon) appreciates the opportunity to submit comments on the Environmental Quality Board's (EQB's) Final "CO2 Budget Trading Program" (the Rule). Exelon supports the Rule and encourages the Independent Regulatory Review Commission (IRRC) to support the Rule as presented. The Rule as presented provides Pennsylvania with a cost-effective opportunity to preserve and grow its emissions-free energy production, support and enhance programs to assist Pennsylvanians with reducing energy costs as well as job training programs and reduce harmful air pollutants that negatively impact health outcomes across the Commonwealth.

A Fortune 100 company, Exelon is the country's and the Commonwealth's largest producer of emission-free electricity, with a clean portfolio that includes nuclear, hydroelectric, wind, and solar generation. Exelon has a long history of meeting Pennsylvania's energy needs while working to improve air quality in the Commonwealth. PECO Energy Company, an Exelon Utility, delivers electricity and natural gas to several million Pennsylvanians, while Exelon Generation Company powers the Commonwealth with one of the nation's cleanest and lowest-cost power generation fleets. Through Constellation NewEnergy, Inc., Exelon provides energy products and services to Pennsylvanians. All told, the company has an estimated annual economic impact of $4.5 billion in Pennsylvania, supporting more than 9,600 jobs and producing $760 million in labor income.

The Independent Regulatory Review Commission (IRRC) should find the Rule to be in the public interest; this finding is supported by the criteria provided by the Regulatory Review Act (RRA). The Rule will minimize consumer costs while protecting public health and the Commonwealth's natural resources. The Rule is clear, feasible, reasonable, supported by data, and developed in full compliance with Pennsylvania's robust procedural safeguards.[1]

Participating in RGGI beginning January 1, 2022 would help support the continued and long-term operation of the Commonwealth's remaining nuclear plants. Energy Harbor Corporation's announcement to rescind the shutdown decision for the Beaver Valley nuclear facility in Shippingport, which previously had been scheduled to retire prematurely in 2021, highlighted the role RGGI can play in helping to preserve Pennsylvania's nuclear capacity. But for this action, Pennsylvania would have lost another nearly 2,000 MW of emissions-free generation, along with over a thousand high-paying, highly skilled local jobs. The announcement explained that Pennsylvania's decision to begin this regulatory process in time for a 2022 program start date was a large driver for rescinding the retirement plans, and those plans would need to be revisited if Pennsylvania does not begin participation in RGGI next year. The harm retirement of Beaver Valley would have caused the greater Shippingport community, to say nothing of all Pennsylvanians' air and climate, is highlighted by the 2019 closure of the remaining unit at Three Mile Island, which cost the Harrisburg area 650 family-sustaining jobs in addition to more than 7 million MW-hours of zero emission electricity output annually.

Pennsylvania's nuclear energy facilities employ more than 4,500 workers and the nuclear industry in Pennsylvania supports more than 15,000 direct and indirect jobs across the Commonwealth. These are high-paying, family sustaining jobs. Annually, Pennsylvania's nuclear power plants provide the building trades with two million man-hours of outage and maintenance work.

Joining RGGI provides Pennsylvania with a proven, efficient tool to begin addressing climate change and supporting the preservation and deployment of clean sources of electricity, including nuclear. It is a prudent

[1] 71 Pa. Stat. § 745.5b (2020).

insurance policy to help maintain our existing clean electricity resources and encourage continued expansion of emission-free electricity.

A key element of the RGGI program is the investment of auction proceeds. Thus, we support DEP's plan to auction the vast majority of allowances, with the proceeds to be invested in ways that further reduce emissions. As numerous analyses have demonstrated, auctioning allowances and investing the proceeds further reduces emissions and provides additional economic benefits to RGGI states. As Analysis Group found, RGGI states raised approximately $1 billion from the sale of CO2 allowances over the 2015-2017 compliance period.[2]

A prime benefit of Pennsylvania participating in RGGI is that allowance purchases by polluting electric generators will provide revenue that can be used for a number of socially beneficial purposes, including investing in traditionally over-burdened and under-invested communities. Given the cap-and-invest structure of RGGI, it also will benefit those communities harmed both by fossil fuel production and combustion, and then again by the transition away from emitting generation. RGGI investments will allow for a wide variety of projects that significantly reduce air pollution while improving all Pennsylvanians' quality of life. For example, RGGI auction proceeds can fund weatherization and building repair programs that reduce the long-term need for energy assistance while supporting local jobs and economies. These programs will offer Pennsylvanians an opportunity to reduce their energy burdens and breathe cleaner air.

In addition to the many beneficial programs that can be funded through existing statutory authority, new opportunities could be pursued and prioritized if authorized by the Pennsylvania Legislature. We urge the Administration to continue to work with the Legislature to authorize the use of RGGI proceeds to address low-income customers' energy burdens, particularly as the Commonwealth continues its transition to a clean energy economy. But there is no need to delay the Rule while these details are being developed; many important opportunities to improve the lives of Pennsylvanians already existing under current authority.

In recent years, the PA PUC has taken a number of steps to alleviate low-income customers' energy burdens, with the cost of these initiatives being shared by utility customers throughout the state. By taking full advantage of the RGGI funding opportunity, the energy burden of these low-income families can be further reduced without concurrently increasing overall costs. As described below, RGGI funding can provide both immediate benefits in terms of direct assistance and long-term benefits through weatherization and usage reduction investments. Specific recommendations for use of RGGI revenues include:

- Supplementing low-income Customer Assistance Programs (CAP) and providing additional assistance to customers who meet federal poverty guidelines for CAP but are not determined to have sufficient energy burdens for bill assistance. Providing increased direct bill assistance for low-income customers reduces costs for all utility customers by reducing the cost of CAP assistance that must be borne by non-low-income customers, as well as reducing costs associated with delinquency and bad debt.

- State or utility programs that offer weatherization and building repair assistance that will reduce the long-term need for direct energy assistance. Pennsylvania's Act 129 energy efficiency law only applies to large electric distribution utilities, but many households use other fuel sources for heating, cooking, and hot

[2] Hibbard, Tierney, Darling, and Cullinan, "The Economic Impacts of the Regional Greenhouse Gas Initiative on nine Northeast and Mid-Atlantic States," Analysis Group (April 17, 2018); available at: https://www.analysisgroup.com/globalassets/uploadedfiles/content/insights/publishing/analysis_group_rggi_report_april_2018.pdf (last visited Aug. 27, 2021).

water, and these needs have largely gone unmet, particularly for low-income customers. The need for housing improvements across the state is great, as Pennsylvania has the country's fourth-oldest housing stock with an average age of 51 years and 61 percent of renter-occupied units are older than 50 years. In other words, those least able to invest in their housing have the oldest and presumably least-efficient housing. This is a significant challenge for older Pennsylvanians, 67 percent of whom live in homes that have the greatest need for weatherization services and repair. Additionally, many family-owned small businesses operate in buildings that have significant energy efficiency and weatherization needs and could benefit from funding allocated to small business assistance programs beyond electric programs available through Act 129.

- Training Pennsylvanians to address the massive need for weatherization and building improvements throughout the state. Pennsylvania needs to increase workforce development programs to provide a skilled workforce to execute these programs. Scaling up these programs would provide skills training and jobs in disadvantaged communities that cannot be exported. Strategic use of RGGI funds would allow communities throughout Pennsylvania to thrive over the long term. Importantly, even without RGGI, the transition away from more heavily emitting and, importantly, more expensive fossil fuels will nonetheless continue. The Rule provides Pennsylvania an opportunity to proactively invest in communities that need the support, while simultaneously reducing CO2 emissions in a manner that is protective of public health and welfare as well as the Commonwealth's natural resources.

In addition to supporting measures that directly reduce air pollution, auction fees can and should be used to support communities affected by power plant closures in order to facilitate the Commonwealth's transition to a cleaner electric grid. The transition to cleaner power is already happening and will continue; inherent in that transition are social and economic changes in communities that have previously relied upon emissions-intensive generation for jobs and tax base. Making change possible and productive for these communities is integral to the elimination of air pollution.

The Rule is well within DEP's and EQB's authority under the Air Pollution Control Act (APCA) as the APCA provides ample legal authority for the promulgation and implementation of a cap-and-trade program to regulate CO2 emissions from the power sector as set forth in the Rule. Carbon dioxide, a greenhouse gas present in the atmosphere that contributes to a condition that may be inimical to public health, safety, or welfare, is clearly subject to regulation under the APCA. The APCA gives EQB the power and the duty to "[a]dopt rules and regulations, for the prevention, control, reduction and abatement of air pollution"[3] that may, among other things, "prohibit or regulate any process or source or class of processes or sources."[4] In addition, the APCA directs the EQB to "[e]stablish and publish maximum quantities of air contaminants that may be permitted under various conditions at the point of use from any air contaminant source in various areas of the Commonwealth so as to control air pollution."[5]

Under the APCA, gases are included in the definition of "air contaminant," and "air contamination" is "the presence in the outdoor atmosphere of an air contaminant which contributes to any condition of air pollution." "Air pollution" includes "any form of contaminant, including . . . smoke, soot, fly ash, dust, cinders, dirt, noxious

[3] 35 Pa. Stat. § 4005(a)(1) (2020).
[4] Id.
[5] 35 Pa. Stat. § 4005(a)(2) (2020).

or obnoxious acids, fumes, oxides, gases . . . or any other matter in such place, manner or concentration inimical or which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property."[6] The EQB has repeatedly recognized this authority and relied upon the APCA to regulate greenhouse gas emissions.[7] Accordingly, the Commonwealth Court has recognized that the APCA bestows upon DEP a duty to promulgate regulations to reduce greenhouse gas emissions.[8]

The APCA provides broad authority to control air emissions, including through market-based programs such as this Rule.[9] Pennsylvania has repeatedly relied upon this broad authority to adopt cap-and-trade programs for other air contaminants, and no court has found that the Commonwealth lacks authority to regulate air contaminant emissions through these programs, which have long been an effective part of Pennsylvania's efforts to protect its air resources.

In 1997, Pennsylvania established the Ozone Transport Commission NOx Budget Trading Program[10]; in 2000, the NOx SIP Call NOx Budget Trading Program[11]; and in 2008, the CAIR NOx Trading Program[12]. In adopting each of these programs, EQB relied upon its authority under APCA Section 5(a)(1)[13]. EQB correctly found this authority to be sufficient and did not draw on its separate statutory authority to implement the federal Clean Air Act.[14] In fact, under the APCA, Pennsylvania has gone beyond the federal mandates of the Clean Air Act to create broader trading programs. For example, the 2008 rule responded to EPA's Clean Air Interstate Rule ("CAIR"): CAIR required only power plants be covered, but EQB required other industrial sources to hold allowances as well.[15]

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[6] 35 Pa. Stat. § 4003 (2020).

[7] EQB relied on the APCA to require new motor vehicles purchased in Pennsylvania to comply with California's GHG standards. Pennsylvania Clean Vehicles Program, 36 Pa. Bull. 7424 (Dec. 9, 2006) (relying on 35 Pa. Stat. § 4005(a)(1), (a)(7), and (a)(8)). DEP has also found "a strong scientific basis to show that methane meets the definition of air contaminant, air contamination, and air pollution under section 3 of the APCA. As a GHG and ozone precursor, methane is, among other things, inimical or may be inimical to the public health, safety, or welfare." DEP, Technical Support Document for the General Plan Approval and/or General Operating Permit for Unconventional Natural Gas Well Site Operations and Remote Pigging Stations (BAQ-GPA/GP-5A, 2700-PM-BAQ0268) (June 2018) at 10.

[8] Funk v. Wolf, 144 A.3d 228, 250 (Pa. Commw. Ct. 2016) (dicta).

[9] 35 Pa. Stat. § 4005(a)(1) (2020). Opponents have argued that Pennsylvania is executing an "interstate air pollution control compact or agreement" which they say should be submitted to the General Assembly. This is clearly not the case: Through the Proposed Rule, Pennsylvania will independently establish a regulatory program compatible with RGGI. Other states may then independently amend their own regulations to allow acceptance of Pennsylvania allowances. It is also worth noting, because it demonstrates the non-binding nature of participating in RGGI, that the non-binding Memorandum of Understanding in use by some states, which neither DEP nor EQB have signed, includes no enforcement mechanism, and allows unilateral withdrawal, as New Jersey demonstrated before reentering last year. Regional Greenhouse Gas Initiative, Memorandum of Understanding (Dec. 20, 2005); available at: https://www.rggi.org/program-overview-and-design/design-archive/mou-model-rule (last visited Aug. 27, 2021).

[10] 27 Pa. Bull. 5683 (Nov. 1, 1997).

[11] 30 Pa. Bull. 4899 (Sept. 23, 2000).

[12] 38 Pa. Bull. 1705 (Apr. 12, 2008).

[13] See 27 Pa. Bull. at 5683; 30 Pa. Bull. at 4899; 38 Pa. Bull. at 1705.

[14] 35 Pa. Stat. §§ 4004(1), 4005(a)(8).

[15] See 38 Pa. Bull. at 1712; see also, Additional Requirements, 25 Pa. Code §§ 145.211 – 145.223.

Importantly, the EQB has the authority to require regulated entities to pay fees for emission allowances and put those proceeds into the Clean Air Fund.[16] The APCA not only directs fees into the Clean Air Fund[17], but also includes specific authority for the Clean Air Fund to receive contributions from "any private source."[18] APCA also provides DEP the authority to administer the Clean Air fund "for use in the elimination of air pollution."[19]

Allowance auction fees under the Rule do not constitute taxes requiring legislative authorization. Under Pennsylvania law, "[a] tax is generally a revenue-raising measure, imposed by a legislative body, that allocates revenue 'to a general fund, and is spent for the benefit of the entire community.'"[20] While allowance auction fees would raise revenue, they are imposed by a regulatory measure, and they are held in a special fund and charged and expended for a specific purpose. "The question of whether an enactment is a tax or a regulatory measure is determined by the purposes for which it is enacted, and not by its title."[21] The primary purpose of the Rule is not to raise revenue, but rather "to reduce anthropogenic emissions of CO2, a greenhouse gas (GHG) and major contributor to climate change impacts, in a manner that is protective of public health, welfare and the environment."[22]

Several other characteristics of allowance auction payments under the Rule demonstrate that they do not constitute taxes: First, sources will choose to purchase allowances at auction and may alternatively choose to eliminate emissions or purchase allowances on the secondary market; second, these fees do not work like taxes: they are not deposited in the general fund, fee amount is variable, and allowances are fungible, which means proceeds from any given purchase may go outside Pennsylvania[23]; and finally, unlike a tax, payment of a fee confers a value on the purchaser: the permission to emit a pollutant while producing electricity for sale.[24]

While the Rule is important to the Commonwealth's efforts to mitigate climate change, it is not a policy decision of such a substantial nature as to require legislative review. Opponents have argued these actions are outside the scope of the APCA and that such air emissions control programs may only be promulgated by the Pennsylvania

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[16] 35 Pa. Stat. § 4006.3 (2020). Significantly, the RGGI auction fees are a regulatory measure, distinct from fees established "to cover the indirect and direct costs of administering" the various regulatory programs, which are also authorized by the APCA and referred to by Pennsylvania Courts as "license fees." See, e.g., National Biscuit Co. v. Philadelphia, 98 A.2d 182, 188 (Pa. 1953). A "license fee," is intended "to reimburse the licensing authority for the expense of the supervision and regulation conducted by it." Id. The Commonwealth Court has recognized such "license fees," are distinct from the types of fees that would be imposed by the Proposed Rule, which are intended to regulate the conduct of the business on which the fee is imposed. White v. Commonwealth, Med. Prof. Liability Catastrophe Loss Fund, 571 A.2d 9, 11 (Pa. Commw. Ct. 1990). "The classic 'regulatory fee' is imposed by an agency upon those subject to its regulation. It may serve regulatory purposes directly by, for example, deliberately discouraging particular conduct by making it more expensive. Or, it may serve such purposes indirectly by, for example, raising money placed in a special fund to help defray the agency's regulation related expenses." San Juan Cellular, 967 F.2d at 685 (citations omitted).

[17] 35 Pa. Stat. § 4009.2(a) (2020).

[18] 35 Pa. Stat. § 4009.2(b) (2020).

[19] 35 Pa. Stat. § 4009.2(a) (2020).

[20] Nigro v. City of Philadelphia, 2010 U.S. Dist. LEXIS 88897, No. 10-987 (E.D. Pa.) (quoting San Juan Cellular Tel. Co. v. Public Serv. Comm'n, 967 F.2d 683, 685 (1st Cir. 1992)).

[21] White, 571 A.2d at 11 (citing City of Wilkes-Barre v. Ebert, 349 A.2d 520 (Pa. Commw. Ct. 1975)).

[22] Proposed Rule, "Background and Purpose," 50 Pa. Bull. 6212 (Nov. 7, 2020).

[23] Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922); See also National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012) (finding a penalty for failure to purchase health insurance was a tax in part because it was collected by the Internal Revenue Service in the same manner and at the same time as income taxes).

[24] See Trailer Marine Transport Corp. v. Vazquez, 977 F.2d 1, 6 (1st Cir. 1992) (holding a toll for using a road was not a tax in part because it was payment for use of the road).

Legislature. This is incorrect. Rather, the Pennsylvania Legislature has already provided ample authority for the Rule by enacting the APCA, which provides an intentionally broad delegation of authority that directs EQB to fashion air quality programs to protect the Commonwealth's air resources. For the reasons set forth above, the Rule falls squarely within the purpose of—and the powers provided by—the APCA.[25]

The Independent Regulatory Review Commission (IRRC) should find the Rule to be in the public interest; this finding is supported by the criteria provided by the Regulatory Review Act (RRA). The Rule will minimize consumer costs while protecting public health and the Commonwealth's natural resources. The Rule is clear, feasible, reasonable, supported by data, and developed in full compliance with Pennsylvania's robust procedural safeguards.[26] As described above, numerous reputable organizations have looked at the question of Pennsylvania participating in RGGI at the specified emissions budget and found that it would reduce CO2 and other harmful emissions while minimizing costs to Pennsylvanians, including through significant investments made possible through use of RGGI funds.[27]

Respectfully submitted,

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and

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On behalf of Exelon Corporation

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[25] 35 Pa. Stat. §§ 4001-4015 (2020).
[26] 71 Pa. Stat. § 745.5b (2020).
[27] Penn State Center for Energy Law and Policy, "Prospects for Pennsylvania in the Regional Greenhouse Gas Initiative," (Dec. 2020); available at: https://celp.psu.edu/files/2021/01/CELP_RGGI.pdf (last visited Aug. 27, 2021); Pennsylvania Dept. of Environmental Protection, "Pennsylvania RGGI Modeling Report" and modeling presentations and results (Sept. 25, 2020); available at: https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx (last visited Aug. 27, 2021).

AMERICANS FOR
PROSPERITY
PENNSYLVANIA

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TESTIMONY OF GRANT R. GULIBON
DEPUTY STATE DIRECTOR, AMERICANS FOR PROSPERITY-PENNSYLVANIA
BEFORE THE INDEPENDENT REGULATORY REVIEW COMMISSION
SEPTEMBER 1, 2021

Good morning, Chairman Bedwick and members of the Independent Regulatory Review Commission. My name is Grant R. Gulibon, and I am Deputy State Director with Americans for Prosperity-Pennsylvania. I appreciate the opportunity to testify today on behalf of tens of thousands of our grassroots activists across the Commonwealth.

Americans for Prosperity-Pennsylvania is an organization dedicated to breaking down barriers to opportunity of all types for all Pennsylvanians. Among the most important types of opportunity—especially in these uncertain times—is economic opportunity. We believe that the proposed rulemaking under consideration at today's hearing represents one of the gravest threats to economic opportunity that the Commonwealth has faced in quite some time. Therefore, we urge you, as members of the Independent Regulatory Review Commission, to reject the so-called "CO_2 Budget Trading Program" (25 PA Code Chapter 145), and instead support allowing the Commonwealth's elected policymakers the opportunity to evaluate alternative approaches that account for the impact of any such proposal on Pennsylvania's energy, manufacturing, and small business communities.

In truth, the Regional Greenhouse Gas Initiative (RGGI) is just a tax on energy, with immediate, tangible costs to every sector of Pennsylvania's economy and negligible, if any, benefits of any kind for Pennsylvanians—especially for those of our fellow citizens at the lower end of the economic scale. According to the most recent results from the Energy Information Agency's Residential Energy Consumption Survey (RECS), in 2015, nearly one-third of U.S. households reported facing a challenge in paying energy bills or sustaining adequate heating and cooling in their homes. Furthermore, about one in five households reported reducing or relinquishing necessities such as food and medicine to pay an energy bill. Finally, it should be noted that RGGI was a key feature of the Obama Administration's Clean Power Plan regulation, and a September 2020 analysis from MIT found that the Clean Power Plan would have cost the lowest income Americans hundreds of dollars a year in increased electricity bills.

Naturally, our Commonwealth is not immune from the effects described above. According to the Home Energy Affordability Gap, more than 840,000 households in Pennsylvania are experiencing energy insecurity, meaning that they spend more than 10 percent of their annual income on their home energy bill. In other words, nearly one-sixth of the households in our state—even prior to the current economic situation—already faced crippling financial burdens from their energy bills. Perhaps even more disconcerting is the Pennsylvania Public Utility Commission's 2019 finding that "Pennsylvania's average energy burdens for all energy sources were among the highest in the country for households below 150% of the poverty level."

Eight of the 10 states in RGGI have higher retail electricity rates than Pennsylvania. As of summer 2020, these costs were 25 percent higher. If Pennsylvania's electricity costs were to grow to the average of RGGI states, an average Pennsylvania family would pay more than $466 more on its

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electricity bills each year. Clearly, enacting RGGI and embracing antagonistic views toward affordable and reliable existing energy sources does little to nothing to address energy affordability for Pennsylvania's families and businesses—especially in the climate of economic uncertainty created by state government's response to the COVID-19 pandemic.

The preceding provides just one illustration of why requiring legislative consent for Pennsylvania to join or enact any cap-and-trade program, such as RGGI, is, in our view, the only proper course of action, for it is far from clear that joining RGGI is the right policy choice for the Commonwealth. To date, one of the most thorough analyses of RGGI, performed by the Cato Institute, found that there "were no added reductions in CO_2 emissions, or associated health benefits, from the RGGI program. RGGI emission reductions are consistent with national trend changes caused by new EPA power plant regulations and lower natural gas prices." In addition, the combined pricing impact of the RGGI energy allowances resulted in a 12 percent drop in goods production and a 34 percent drop in the production of energy-intensive goods.

Similarly, the nonpartisan Congressional Research Service found that from a practical standpoint, the RGGI program's contribution to directly reducing global greenhouse gas (GHG) emissions is "arguably negligible." In fact, the evidence suggests that Pennsylvania has been extremely successful at reducing emissions of all types without joining RGGI. Between 2007 and 2017, Pennsylvania reduced coal-related CO_2 emissions by more than the 10 RGGI states combined. And, in addition to reducing so-called "greenhouse gas emissions," Pennsylvania ranks #3 in the country in terms of sulfur dioxide reductions from the power sector since 1990, and #2 in reduction of annual power sector nitrogen oxide emissions. Given those findings, one might say that joining RGGI is "all pain, no gain" for Pennsylvania.

Simply put, considering enacting a program in Pennsylvania that has not been successful in achieving its purported policy goals elsewhere is not responsible public policy. Again, RGGI is, at its heart, a revenue-raising mechanism with the sole purpose of allocating the proceeds to politically favored industries and constituencies. This economic development approach, in which state government attempts to pick "winners" and "losers," has failed spectacularly in Pennsylvania over the past several decades, under gubernatorial administrations and General Assembly majorities of both major political parties. While enacting new barriers to economic opportunity in the form of higher energy prices is never advisable, doing it while ignoring the representatives of the people in the General Assembly, especially in a time of significant economic dislocation, is irresponsible.

I thank you for the opportunity to address this critical issue. Americans for Prosperity-Pennsylvania stands ready to work with elected officials and other stakeholders on cost-effective environmental quality measures that do not compromise Pennsylvania's economic competitiveness.

By Anthony R. Holtzman
K&L Gates LLP
On Behalf of Various Coal and Natural Gas Plant Owners

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REMARKS AT SEPTEMBER 1, 2021 IRRC MEETING

The EQB's Implementation of RGGI Would Violate Section 6.3(a) of the Air Pollution Control Act and, at the Same Time, Impose a Tax in an Unconstitutional Manner

Under Section 6.3(a) of the Air Pollution Control Act, the Environmental Quality Board may establish "fees sufficient to cover the indirect and direct costs of administering" the statute and the federal Clean Air Act. The EQB is not authorized to establish fees that would generate revenues that were far in excess of what is necessary to cover those administrative costs. In other words, it is not authorized to impose taxes.

Under the Pennsylvania Constitution, in fact, the power of taxation is vested exclusively in the General Assembly. *See, e.g., Mastrangelo v. Buckley*, 250 A.2d 447, 452 (Pa. 1969). And the General Assembly has not delegated any of that power to the EQB.

So how do we distinguish between a tax and a fee?

Under well-settled Pennsylvania case law, something qualifies as a "tax" if it is a revenue-producing measure. *See, e.g., City of Philadelphia v. Southeastern Pennsylvania Transportation Authority*, 303 A.2d 247, 251 (Pa. Cmwlth. 1973). Something qualifies as a "fee," on the other hand, if it is merely intended to cover the cost of administering a regulatory program. *See, e.g., Rizzo v. City of Philadelphia.*, 668 A.2d 236, 237-38 (Pa. Cmwlth. 1995).

It follows that, whether an income-generating mechanism imposes a "tax" or a "fee" turns on the volume of income that the mechanism generates and the proportion of the income that goes to cover the relevant program's administrative costs.

Under this standard, RGGI's quarterly auction mechanism, which is at the heart of the program, would qualify as a "tax," not a "fee," because the proceeds of the auctions are ***grossly*** disproportionate to the costs of administering RGGI.

The EQB, in this regard, acknowledges that, based on PaDEP's own modeling, only 6% of the revenue from the quarterly auctions would be used "for any programmatic costs related to administration and oversight" of RGGI, which is "in line with the historical amounts reserved by the participating states." 50 Pa. Bull. 6187, 6229 (Nov. 7, 2020).

The auction program would therefore impose a tax, not a fee, in violation of both Section 6.3(a) of APCA and the Pennsylvania Constitution.

When confronted with this reasoning, PaDEP says that the auction proceeds would be used to administer APCA (and would therefore be a fee) because they would be placed into the Clean Air Fund and then spent in accordance with the statute's requirements for how to spend the money that ends up in that fund.

By Anthony R. Holtzman
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This contention ignores that "administering" a regulatory program means supervising, regulating, and running the program, not spending money on things other than supervising, regulating, and running the program. *See National Biscuit Company v. Philadelphia*, 98 A.2d 182, 188 (Pa. 1953).

Under PaDEP's interpretation, in fact, the EQB has the authority to require entities that are regulated under APCA to provide it with ***any*** amount of money that it desires, as long as the agency ultimately uses the funds to support programs that have the effect of reducing air pollution. In other words, under PaDEP's interpretation, the EQB's authority to collect fees from regulated entities would be completely untethered from the costs that are associated with regulating those entities, and would be limited only by its own imagination in finding new ways to spend funds.

Of course, under Pennsylvania law, that is not the way that valid regulatory fees operate. In order to constitute a valid regulatory fee, as I've explained, a charge must be designed to "reimburse the [agency] for the expense of the supervision and regulation conducted by it." *National Biscuit Company v. Philadelphia*, 98 A.2d 182, 188 (Pa. 1953).

And so, again, the proceeds of the RGGI auction unequivocally would amount to a tax, not a fee, in violation of both the statute and the Constitution.

Section 5 of APCA Does Not Otherwise Authorize the Adoption of Regulations to Implement RGGI

The key point here is that, as the Pennsylvania Supreme Court has explained, when the General Assembly delegates rulemaking power to an agency like the EQB, the delegation "must be clear and unmistakable as a doubtful power does not exist." *Eagle Envtl. II, L.P. v. PaDEP,* 884 A.2d 867, 878 (Pa. 2005) (internal quotations omitted).

Under this principle, Section 5 of APCA does not authorize the adoption of regulations to implement RGGI. Simply put, it is devoid of anything that constitutes clear authorization for any agency to adopt regulations that implement the detailed carbon-emission program, including the CO2 allowances regime, that forms the foundation of RGGI.

PaDEP points to Section 5(a)(1) of APCA, which provides that the EQB may adopt regulations that, among other things, "establish maximum allowable emission rates of air contaminants" or "prohibit or regulate any process or source or class of processes or sources[.]" Although with substantial effort, mental gymnastics, and a sweeping view of the meaning of language, it may be possible to read these phrases so broadly that they would allow for regulations that implement the RGGI program, courts are not supposed to take that approach. Instead, in every instance, the rule is that a delegation of rulemaking power ***"must be clear and unmistakable*** as a doubtful power does not exist."

In sum, the EQB lacks the statutory authority to adopt the RGGI rulemaking.

By Anthony R. Holtzman
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On Behalf of Various Coal and Natural Gas Plant Owners

Because the rulemaking here is not authorized under Section 5 of APCA and because, as I explained earlier, the rulemaking would impose a tax, not a fee, in violation of Section 6.3(a) of the statute and the Pennsylvania Constitution, the IRRC should refuse to approve the rulemaking.

Thank you for your time and attention.

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Testimony before the Independent Regulatory Review Commission

September 1, 2021

Chad A. Forcey, Executive Director

Pennsylvania Conservative Energy Forum · www.penncef.org

Greetings Commissioners, staff members and other officials present. My name is Chad Forcey, and I am the Executive Director of the Pennsylvania Conservative Energy Forum.

The Pennsylvania Conservative Energy Forum (PennCEF) is a 501(c)(3) nonprofit educational foundation committed to clean and renewable energy and energy diversity in the Commonwealth. Led by a Board and Leadership Council of prominent Pennsylvania conservative leaders from government, industry and education, PennCEF believes that renewables like solar, wind and biomass should be included in our proud Pennsylvania "all of the above" energy sector. For PennCEF, "all of the above" means that renewables deserve full access to markets, in addition to other significant sources of generation in the Commonwealth.

The Commonwealth leads the nation in domestically-produced energy exports. Next-generation technologies bring the promise of even greater economic expansion to our strong and diverse energy portfolio. Clean and renewable energy jobs now account for the greatest portion of job growth in this sector, as illustrated by the 2020 E2 Clean Jobs Pennsylvania report. The report found that Pennsylvania's clean energy jobs now stand at more than 93,000 and are growing at an annual rate of 10%—a growth rate more than five times the overall job growth in Pennsylvania.

As we emerge from the ravages of the pandemic, the need for economic recovery is paramount. It is in that spirit that I will address the proposed regulations currently under IRCC review.

Regulation #7-559: CO2 Budget Trading Program

The Pennsylvania Conservative Energy Forum is neutral with respect to this regulation. However, I do have some overall comments that I wish to present on this subject.

The regulation before the Commission today will bring the Commonwealth into the Regional Greenhouse Gas Initiative (RGGI). We ask all policymakers with authority to oversee and influence this program to consider how to best bring cleaner and more renewable generation into Pennsylvania, without negatively impacting the jobs and economic development that our strong and diverse energy portfolio encourages. We believe that natural gas and coal have their place in PA's energy mix, and that both forms have increased in efficiency, in recent years. Natural gas production, in particular, has dramatically reduced PA's net carbon emissions over the last decade.

As conservatives, we believe in open markets, less red tape, and greater economic freedom. Pricing the negative carbon impacts of electricity generation, and building that cost into the overall cost of production is an approach taken in other industries -- such as agriculture, where the costs of nonpoint source nitrogen and phosphorus discharge is built into the overall price of commodities via state and federal regulation.

And yet, in agriculture, incentives to decrease these forms of discharge have been adopted by state and federal agencies. These Incentives work to encourage best management practices in our agricultural industries.

With this in mind, we call upon the Department of Environmental Protection to consider how RGGI – as a blunt instrument in the hands of regulators – can best be wielded to improve the final product, which is most certainly cleaner energy production. Care and flexibility will need to be a vital part of the RGGI toolkit.

Additionally, the dollars generated by RGGI should be used to spur new economic development by working hand in hand with industry. They should be focused on the communities most impacted by RGGI. They should be kept out of the general fund, and not used to fill holes in either the state budget, or our roads and bridges. They should be spent on next generation energy projects – which create jobs and provide new industrial expansion in Pennsylvania communities.

This initiative must be tailored to meet Pennsylvania's specific needs and leveraged to create a fair playing field. RGGI efforts have already embraced coal waste reuse, and more could be done to help the miners, farmers and rural Pennsylvanians who truly need assistance. We encourage our state policymakers to study Pennsylvania's needs and take full advantage of newly generated revenue.

Conclusion

We thank the Commission for the opportunity to submit testimony.

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