



MAIN CAPITOL BUILDING  
HARRISBURG, PENNSYLVANIA 17120

October 18, 2021

The Honorable Josh Shapiro  
Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120

Dear General Shapiro:

Pursuant to Section 7(d) of the Regulatory Review Act (RRA), on September 14, 2021, the Senate Environmental Resources & Energy Committee (Committee) reported Senate Concurrent Regulatory Review Resolution 1 (SCRRR 1). This concurrent resolution begins a legislative process ultimately intended to disapprove the "CO<sub>2</sub> Budget Trading Program"<sup>1</sup> regulation, which would force Pennsylvania into the Regional Greenhouse Gas Initiative (RGGI).

We are pursuing legislative disapproval of the RGGI regulation because overwhelming, bipartisan majorities in both the Senate of Pennsylvania and Pennsylvania House of Representatives oppose the Department of Environmental Protection (DEP)/Environmental Quality Board (EQB)'s RGGI regulation. In addition to holding very significant policy concerns, we believe the RGGI regulation violates Section 6.3(a) of the Air Pollution Control Act (APCA) and imposes an unconstitutional tax on two-thirds of Pennsylvania's electricity generation capacity. Not surprisingly, the Pennsylvania electorate holds a similar view, as a recent poll concluded that voters also oppose DEP/EQB's RGGI regulation by a margin of 60 to 29 percent.<sup>2</sup>

DEP has claimed that the carbon dioxide allowance rate would remain low and would actually decrease by 2030, but the opposite has been true. The most recent period from June 2 to September 8 of this year showed an increase in the allowance rate of more than 16 percent. As a whole, DEP has underestimated the average allowance increase by 187 percent. DEP's clear failure to forecast rate increases calls into question the total cost to Pennsylvania taxpayers and ratepayers.

In accordance with Section 7(d) of the RRA, and as confirmed by the Legislative Reference Bureau (LRB), the Senate of Pennsylvania has 30 calendar days or 10 legislative days (whichever is longer) from September 14th to adopt the resolution. Subsequently, the Pennsylvania House of Representatives will also have 30 calendar days or 10 legislative days (whichever is longer) to adopt the concurrent resolution and present the concurrent resolution to the Governor in accordance with Article III, Section 9 of the Constitution of Pennsylvania. In the event of a gubernatorial veto, both chambers would each have an additional 30 calendar days or 10 legislative days (whichever is longer) to override a veto. We anticipate this legislative review will take many months.

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<sup>1</sup> This regulation is not a "budget trading" program. We find it curious and misleading to characterize it as such. Unlike other cap-and-trade programs developed under the Air Pollution Control Act for criteria pollutants (e.g., PM<sub>2.5</sub>), there is no "trading" among RGGI regulated entities or participating states. Under RGGI, power plants must pay the Department of Environmental Protection a price per ton of CO<sub>2</sub> emitted, which changes every calendar quarter.

<sup>2</sup> Susquehanna Polling & Research, "Pennsylvania Statewide Omnibus Telephone Poll, Feb. 16-24, 2021: "Do you support or oppose Governor Wolf taking unilateral action on energy policies that directly impact electric rates and jobs from existing power plants without the approval of the General Assembly? ". <https://bipac-momentum-media.s3.amazonaws.com/Media/assets/000/030/573/original/Toplines-PAStatewide-Omnibus-Feb2021-PMA.pdf>

The Department of Environmental Protection (DEP)'s Environmental Quality Board (EQB) may not promulgate these final-form regulations until the legislative review process described above has ended. Under the RRA, as well as the Commonwealth Attorneys Act (CAA) and the Commonwealth Documents Law (CDL), the Office of Attorney General (OAG) plays a significant role in the final form stage of the regulatory review process. Under Section 204(b) of the CAA, OAG "shall review for form and legality, all proposed rules and regulations of Commonwealth agencies before they are deposited with the Legislative Reference Bureau."

Further, the CAA requires the following from OAG:

"If the Attorney General determines that a rule or regulation is in improper form, not statutorily authorized or unconstitutional, he shall notify in writing within 30 days after submission the agency affected, the Office of General Counsel, and the General Assembly through the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives of the reasons for the determination." (*emphasis added*).

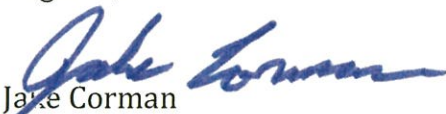
We have attached copies of letters we sent to the EQB and the Independent Regulatory Review Commission (IRRC), which make it clear that DEP/EQB lacked any statutory basis to implement the detailed and complex carbon cap and tax program contemplated by RGGI. We encourage you to review these letters, along with several compelling letters from various commentators attached to this letter, including the following labor leaders and coalitions:


Pennsylvania AFL-CIO  
Philadelphia Building & Construction Trades Council  
Pittsburgh Regional Building Trades Council  
Central Pennsylvania Building & Construction Trades Council  
International Brotherhood of Electrical Workers  
Power PA Jobs Alliance


Based upon a review of these comments, as well as your own independent review, we are confident that you will conclude that DEP/EQB's RGGI regulation is "not statutorily authorized" and "unconstitutional." We believe your office is well positioned to protect blue collar jobs and communities from suffering job losses and ensure ratepayers are not subjected to massive electric rate increases. These rate increases will be particularly harmful to low- and fixed-income households.


In addition, disapproving this regulation would protect the Commonwealth from almost-certain litigation that will be expensive and time consuming.

Regards,

  
Jake Corman  
President Pro Tempore  
State Senate, 34<sup>th</sup> District

  
Kim Ward  
Majority Leader  
State Senate, 39<sup>th</sup> District

  
Bryan Cutler  
Speaker  
State Representative, 100<sup>th</sup> District

  
Kerry Benninghoff  
Majority Leader  
State Representative, 171<sup>st</sup> District