



August 25, 2021

The Honorable George D. Bedwick, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Final Rulemaking No. 3274 (Environmental Quality Board #7-559): CO2 Budget Trading Program via electronic mail irrhelp@irrc.state.pa.us

Dear Chairman Bedwick:

The Marcellus Shale Coalition (MSC) was formed in 2008 and is comprised of approximately 125 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the safe development of natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission in the country, as well as the suppliers, contractors and professional service providers who partner with the industry.

The MSC appreciates the opportunity to comment on the Environmental Quality Board's (EQB or Board) proposed rulemaking related to a carbon dioxide trading program. This proposed rulemaking seeks to enter Pennsylvania into the Regional Greenhouse Gas Initiative (RGGI) multi-state carbon dioxide cap and trade program, as directed under Governor Tom Wolf's Executive Order of October 3, 2019. This cap-and-trade program requires certain electric generation units (EGUs) to procure and submit to the Commonwealth for compliance an allowance for each short ton of carbon dioxide emitted.

On January 14, 2021, the MSC submitted extensive comments and supporting data to both the EQB and IRRC during this final rulemaking's preceding public comment period. The MSC reiterates those comments here, as the vast majority of the issues raised were not addressed in the final rulemaking, or sufficiently acknowledged and responded to in the comment and response document prepared by the Pennsylvania Department of Environmental Protection (PA DEP). To be clear, the MSC supports and is proud of its member companies' contributions to reducing emissions from the electric power generation sector. A brief history of these benefits realized and reductions to date are included in the MSC's January 14, 2021, comment letter.

In the interest of brevity, the MSC draws your attention to the following key issues:

There is No Material Environmental or Health Benefit to the Commonwealth's Citizens from this Final Rulemaking

- PA DEP's revised modeling (from proposed to final rulemaking) demonstrates that CO₂ reductions within Pennsylvania will now be only 97 M tons, not 188 M tons
- PA DEP's revised modeling demonstrates that the net CO₂ reduction is only 19 M tons when factoring in so-called leakage, whereby Pennsylvania's participation in RGGI directly leads to an increase of 78 M tons of CO₂ emissions in neighboring states
- In total, this means that Pennsylvania's entry into RGGI may reduce net CO₂ emissions by 0.169% across the entire Eastern Interconnection electric grid
- PA DEP has failed to revise the Regulatory Analysis Form to reflect the results of its updated modeling. The Department, which has waged an aggressive public relations campaign in support of RGGI, continues to utilize outdated and overstated 'benefits' in this campaign even though it is contradicted by its own modeling results
- The failure to demonstrate that the benefits of this rulemaking outweigh the costs imposed on Pennsylvania residents and its economy is in conflict with the Regulatory Review Act and Executive Order No. 1996-1, which requires that such benefits exceed costs in order to be found in the public interest

Revenue Generated from RGGI Allowance Auctions is Not a Fee but Rather a Tax

- The examples of prior precedence cited by PA DEP in the comment and response document actually argue *against* the Department's position, because in each precedent cited by the Department the underlying "fee" had actually been authorized by a legislative body
- The Air Pollution Control Act (APCA) authorizes the Department, through the EQB, to adopt certain fees. However, those fees must bear a reasonable relationship "to cover the reasonable direct and indirect costs of developing and administering the air pollution control operating permit program" among other similar limitations (APCA Section 6.3(c)). The APCA never envisioned, and does not authorize, the utilization of regulatory authority to generate general revenue that would be used for any purpose other than those envisioned to operate the Department's air quality program and fulfill its obligations under the federal Clean Air Act

Promulgation of the Final Rulemaking Will Create Uncertainty and Chaos within Pennsylvania's Energy Markets, Harming Consumers

- Entry into RGGI constitutes a significant public policy choice to impact the Commonwealth for decades to come
- The failure to cooperatively engage with the General Assembly to seek appropriate legislative authority for entry into RGGI underlines the legitimacy of the rulemaking and its statutory foundation
- Rising electricity prices without any demonstrable environmental benefits discourages capital investment within the Commonwealth and harms consumers, especially low-income consumers who are disproportionately impacted by price fluctuations



On behalf of the Marcellus Shale Coalition, thank you for the Commission's consideration of these comments.

Sincerely,



Patrick Henderson
Director of Regulatory Affairs
Marcellus Shale Coalition

