



Stephen Hoffman

From: vphillips <xenobun@aol.com>
Sent: Wednesday, July 14, 2021 1:37 AM
To: IRRC
Subject: CO2 Budget Trading Program

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TO: Fiona E. Cormack
 Director of Regulatory Review
 Independent Regulatory Review Commission

RE: CO2 Budget Trading Program
 IRRC #3274 Reg. #7-7559

I am writing as a private citizen to urge a rejection by IRRC of the proposed Regional Greenhouse Gas Initiative (RGGI) Rule as follow up to the July 13 majority vote by the Environmental Quality Board for approval. I ask that this comment be considered a formal submission to IRRC opposing adoption of the proposed Rule.

This objection is centered on two basic points. This comment should not be construed as supporting or opposing RGGI's purpose (addressing climate change) but rather on the legality of the proposed Rule.

First, RGGI's regulatory proponents chose to ignore IRRC's opinion that the regulatory process for this Rule should be put on hold. The majority of the EQB appear to be political appointees of the Wolf Administration or its legislative allies. The July 13 vote can be seen as expedient rather than actually considering IRRC's reasons for suggesting a delay. That dismissal affects IRRC's credibility as a regulatory watchdog.

Second, regrettably, the 15-4 vote by the EQB on the Regional Greenhouse Gas Initiative (RGGI) Rule did not appear to consider an important issue -- PA's Constitution.

This language in the PA Constitution questions the legitimacy of Governor Wolf's unilateral action to have PA sign on to what is really an interstate compact somewhat similar to the River Commissions which required formal authorizing legislative approval for PA to join. This point is particularly salient in that RGGI's purpose is to impose financial penalties on Pennsylvania corporations not meeting RGGI's emissions standards.. I think this EQB vote expressed a desire to address climate change as expeditiously as possible, regardless of insufficient legal backup as to whether it was supported by the PA Constitution.

§ 6. Taxation of corporations.

The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party.
 (Apr. 23, 1968, P.L.App.9, Prop. No.5)

1968 Amendment. Proposal No.5 amended and renumbered former

section 3 to present section 6.

Prior Provisions. Former section 6 was renumbered to present section 8 by amendment of April 23, 1968, P.L.App.5, Prop. No.3.

“power to tax...shall not be surrendered or suspended” looks applicable here. Regardless of whether one is personally pro or con RGGI, an underlying issue that has not been adequately addressed is the PA Constitution. The EQB vote pretty much guarantees a constitutional challenge on whether punitive action by RGGI is a "tax"..

I respectfully submit in addition that if Regulation #7-7559 is approved, the Governor's original action and subsequent regulation sets a precedent for future Governors to go it alone regarding interstate arrangements without consultation with the General Assembly. If so, it weakens the checks and balances between the Executive and Legislative Branches enshrined in the PA Constitution..

Regards,

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Disclaimer: The views expressed are those of a private citizen and should not be construed as representing advocacy for any of my former clients.