



October 14, 2021

The Honorable Gene Yaw, Chairman
Senate Environmental Resources
& Energy Committee
362 Main Capitol Building
Harrisburg, PA 17120

The Honorable Daryl Metcalfe, Chairman
House Environmental Resources
& Energy Committee
144 Main Capitol Building
Harrisburg, PA 17120

Dear Chairman Yaw and Chairman Metcalfe:

As the General Assembly further considers Governor Wolf's desire to enter the Commonwealth into the Regional Greenhouse Gas Initiative (the RGGI), we thought it worth sharing with you recent developments that may help inform your deliberations and those of your colleagues.

Allowance Prices Dramatically Increase

On September 8, 2021, RGGI, Inc., the interstate organization which administers the RGGI on behalf of all the participating states, conducted its most recent auction of carbon dioxide allowances. The clearing price for this auction was \$9.30 per allowance, the highest in the history of the RGGI program. Notably, this reflects a steady increase in the cost of allowances. Below are the final clearing prices of the previous five auctions:

- \$9.30 (9/8/21)
- \$7.97 (6/2/21)
- \$7.60 (3/3/21)
- \$7.41 (12/2/20)
- \$6.82 (9/2/20)

These results run in stark contrast to what the Pennsylvania Department of Environmental Protection (PA DEP) forecast for the prices of allowances via its contractor during the RGGI rulemaking process or in the Regulatory Analysis Form provided to your committees and the Independent Regulatory Review Commission. Indeed, PA DEP claimed¹ that RGGI allowances – and thus the cost to consumers to comply with this rule – would remain below \$3.62 per allowance through 2028, declining to near \$3.28 per allowance by 2030. **This means that at current prices PA DEP has underestimated the average allowance price by 187%.** This ever-increasing clearing price, for which DEP clearly failed to account for in its rulemaking, will undoubtedly have a significant impact on consumers that hasn't been previously contemplated.

Indeed, the inability of PA DEP's contractor to forecast RGGI prices should call into question the accuracy of much of its other forecasted claims. While various components of the modelling

¹ Table 7 – Regulatory Analysis Form of final RGGI rulemaking, Page 43

were questioned during the comment period, to which DEP was dismissive in its response, nowhere are these shortcomings more apparent than in the potential compliance costs of the RGGI to Pennsylvania consumers. At the most recent clearing price, the cost to purchase the allowances that PA DEP intends to make available for sale in 2022 is, conservatively, in excess of \$560 Million.

Third-Party Acquisition of Allowances

There are four primary reasons that an entity purchases RGGI allowances:

- Use for its own short-term compliance obligations
- Bank for its own future compliance obligations
- Hold to sell to another compliance entity at a future higher price
- Retire from the market and remove the purchased allowance from being available to a compliance entity

Throughout the rulemaking process, PA DEP was urged by several commenters, including the Marcellus Shale Coalition, to limit the purchase of RGGI allowances only to those entities that had an actual compliance obligation. To do otherwise could either lead to a shortage of available allowances for Pennsylvania power generators to purchase for compliance or drive up the cost of allowances based on price speculation, or both.

PA DEP ignored these comments and recommendations, stating that RGGI's Independent Market Monitor reviews auctions to guard against manipulation, and that rules which limit how many allowances an individual entity may purchase limit the likelihood of any impact to the market. This explanation ignores the policy implications discussed above. Under the construct that PA DEP has developed, both retiring allowances to deprive entities from compliance, and purchasing allowances merely as an investment, are now actions sanctioned by PA DEP and thus, by definition, not manipulation of the auction process.

With this backdrop, it is alarming that in the most recent auction, 48% of all allowances were purchased for a purpose other than meeting a compliance obligation. These successful bidders presumably intend to either hold these allowances in order to sell at a price higher than \$9.30 per allowance, or potentially retire them from availability for use in compliance.

If the purpose of these allowance purchases is the former, it is important to emphasize that the new clearance price, which again was never modelled by DEP, represents a cost floor for any future purchase of these particular allowances. If it is the latter, the retirement of these allowances would only serve to drive the future costs of fewer available allowances, all thanks to deep-pocketed anti-energy funders. Lest there be any confusion, even the Independent Market Monitor itself estimates that only 46% of all the allowances in circulation are being held for compliance purposes.

Anonymity of Successful Bidders

We observe that RGGI does not provide the public with the name of the successful bidders. While a list of potential bidders is available to the public, and approved bidders are supposedly made aware of which bidders are successful, the general public has no way of knowing which bidders secured allowances and which ones did not. We simply note there appears to be a lack of transparency without an understanding of why this information would be withheld from the public.

Future Program Changes

RGGI's current members have begun a third Program Review of the RGGI program. This is anticipated to lead to a new model rule by Fall 2022, which may necessitate a new rulemaking by PA DEP soon thereafter. One proposal from among the states is to allocate up to 70% of the proceeds from RGGI allowance sales to "overburdened" communities. The Program Review will also presumably lay out a schedule of a declining cap on total allowances, which would then dictate how many allowances Pennsylvania can make available in future years. One cannot underestimate the uncertainty this creates for Pennsylvania and its compliance entities, particularly as it is considered on the heels of Pennsylvania's entry into RGGI under the current model rule.

With ongoing deliberations within the legislature on RGGI, we felt it necessary to share the most recent factual information pertaining to RGGI Inc. and hope policymakers find it helpful as you continue to evaluate this rulemaking and its current and future implications on Pennsylvania, its generators and its consumers.

Sincerely,



Jim Welty
Vice President, Government Affairs

cc: Independent Regulatory Review Commission