



September 9, 2020

To: Members of the Pennsylvania Senate

Re: Opposition to House Bill 2025 (P.N. 3907) and Senate Bill 950 (P.N. 1919)

Dear Senators:

The Senate is set to consider both House Bill 2025 and Senate Bill 950; these bills mandate that any rulemaking addressing carbon dioxide emissions be affirmatively approved by the General Assembly. The Pennsylvania Environmental Council (PEC) and Environmental Defense Fund (EDF) urge you to oppose this legislation for the reasons provided in this letter. Our concerns lie both in the framework of the bills as well as the broader implications for our Commonwealth.

Acknowledging the important and complex issues at hand, we urge the Senate to consider and advance Senate Bill 15 (P.N. 1871) instead, which constructively addresses action on emissions as well as the inevitable transition of our energy sector.

The General Assembly Must Affirmatively Act on Energy and Climate

In 2008, with bipartisan support, the General Assembly passed the Pennsylvania Climate Change Act (Act 70 of 2008). Recognizing the immediacy and consequence of climate change to our state, this legislation charged the Department of Environmental Protection (Department) with developing a Climate Change Action Plan, to be updated every three years, that would identify cost-effective strategies for addressing greenhouse gas emissions, including policy recommendations to the General Assembly.¹ In addition, periodic assessments have been developed in consultation with Penn State University on the economic, health, and ecological impacts to Pennsylvania resulting from climate change.²

The Action Plans and Impacts Analyses have consistently underscored the consensus that climate change is an immediate economic and environmental concern, and that our state's contribution to greenhouse emissions is globally significant. These findings mirror public and private conclusions

¹ The most recent (April 2019) Climate Change Action Plan is online at <http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=1454161&DocName=2018%20PA%20CLIMATE%20ACTION%20PLAN.PDF>

² The most recent (April 2020) Pennsylvania Climate Change Impacts Assessment is online at <http://files.dep.state.pa.us/Energy/Office%20of%20Energy%20and%20Technology/OETDPortalFiles/ClimateChange/2020ClimateChangeImpactsAssessmentUpdate.pdf>

from interests as far ranging as the scientific community,³ the U.S. Military,⁴ investment and financial institutions,⁵ and utilities and energy companies.⁶ In fact, a report from the Public Utility Commission, released last month, noted that power outages from severe weather events hit a record high in 2019.⁷

Despite all this, and even with a majority of Pennsylvanians in support of specific policies and actions to reduce greenhouse gas emissions⁸ – even factoring the Covid-19 pandemic⁹ – the General Assembly has remained silent. There has been no comprehensive legislative action to address climate change, or to best position Pennsylvania for the necessary transformation to a net zero economy. This includes failing to address impacts to communities already significantly affected by changes to our energy portfolio even with the absence of policy action. This runs counter to bipartisan action in legislatures across the country which have passed ambitious legislation to hasten and support the transition to a clean energy economy.

Our legislature can and should lead the charge on maximizing the economic and employment opportunities provided through clean and net zero technologies, and to help communities adapt to the inevitable transitions that have occurred and will continue in the years to come. You now have the ability to do so by acting on bipartisan legislation – Senate Bill 15 – that was introduced last month.

PEC has provided policy recommendations¹⁰ for decarbonization of Pennsylvania’s electricity sector which are premised on an “all in” approach that can maintain and improve the state’s energy portfolio. Chief among those recommendations is for Pennsylvania to link to the Regional Greenhouse Gas Initiative (RGGI), a proven market-based platform that provides cost-effective and

³ See the Fourth National Climate Assessment (<https://nca2018.globalchange.gov>), as well as the reports of the Intergovernmental Panel on Climate Change (<https://www.ipcc.ch>).

⁴ See the January 2019 Department of Defense report on the impacts of climate change: <https://media.defense.gov/2019/Jan/29/2002084200/-1/-1/1/CLIMATE-CHANGE-REPORT-2019.PDF>

⁵ For example, Ceres (<https://www.ceres.org/news-center/press-releases/sweeping-new-report-provides-us-financial-regulators-key-action-steps>), Goldman Sachs (<https://www.goldmansachs.com/insights/pages/gs-research/taking-the-heat/report.pdf>), the Federal Reserve Bank (<https://www.frbsf.org/community-development/publications/community-development-investment-review/2019/october/strategies-to-address-climate-change-low-moderate-income-communities/>), and BlackRock (https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter?cid=ppc:CEOLetter:PMS:US:NA&gclid=EAlaIqobChMlkrLx5eL5wIVip6zCh1nBweOEAAAYASAAEgJPFvD_BwE&gclid=aw.ds)

⁶ See <https://www.catf.us/resource/state-utility-climate-change-targets/>, as well as examples such as Shell’s Sky Scenario (<https://www.shell.com/energy-and-innovation/the-energy-future/scenarios/shell-scenario-sky.html>).

⁷ http://www.puc.state.pa.us/General/publications_reports/pdf/Electric_Service_Reliability2019.pdf

⁸ See <https://climatecommunication.yale.edu/visualizations-data/ycom-us/>

⁹ See <https://www.rff.org/publications/reports/climateinsights2020/>;

<https://www.climatechangecommunication.org/wp-content/uploads/2020/05/climate-change-american-mind-april-2020b.pdf>; and <https://www.mckinsey.com/business-functions/sustainability/our-insights/how-a-post-pandemic-stimulus-can-both-create-jobs-and-help-the-climate>

¹⁰ Please see PEC’s October 2018 testimony to the Committee (<https://pecpa.org/wp-content/uploads/PEC-House-ERE-Committee-Testimony.-Oct-28-2019.pdf>) as well as PEC’s Energy and Climate Pathways Report (<https://pecpa.org/wp-content/uploads/PEC-Energy-and-Climate-Pathway.pdf>).

flexible means to reduce emissions from the electricity sector while returning revenue to our state for investment in communities, jobs, and businesses.

RGGI has helped other states reduce their emissions, lower energy prices, and create jobs. RGGI's emission allowance design mirrors other successful air pollution programs in which Pennsylvania has already participated in. There are built-in protections to help control costs and the program has been deemed successful in terms of price discovery, transparency, transaction costs, and other logistical considerations.¹¹

In short, joining RGGI is the most sensible and adaptable program to reduce carbon dioxide emissions. It is supported by states, environmental organizations, and business and energy interests alike.

The Department has now developed proposed rulemaking to have the state link to RGGI beginning in 2022. Even though this rulemaking is in its preliminary stage, the agency has taken added steps to model and publicly present¹² the anticipated environmental and economic benefits and impacts of the proposal – even before the public comment period. The Department will also be providing a full regulatory analysis of the proposal to the General Assembly and public before it is finalized.

Full analysis is of course essential and we welcome robust dialogue on energy and climate policy; but there must be a corresponding commitment to finding solutions. House Bill 2025 and Senate Bill 950 are not those vehicles. This companion legislation is written to allow the General Assembly to block the Department's rulemaking proposal through mere inaction. Furthermore, House Bill 2025 and Senate Bill 950 attempt to revise policy precedent and statutory authority relating to the control of air pollution in our Commonwealth.

House Bill 2025 and Senate Bill 950 are Steps Backwards

Our concerns with HB2025 and SB950 are as follows:

Redundancy with the Regulatory Review Act

HB2025 and SB950 set forth public outreach and informational requirements that are already established by the Regulatory Review Act. We support assurance that rulemakings are fully vetted by the public and supported with sufficient examination; we merely raise this point to explain that long-established processes are already in place – including public comment and hearings, development of regulatory analysis and comment/response documents, and prescribed review by the General Assembly, Independent Regulatory Review Commission, Attorney General, and Environmental Quality Board. As such, these bills are unnecessary to accomplish these ends.

¹¹ See Congressional Research Service, *The Regional Greenhouse Gas Initiative*. See also Paul J. Hibbard et al., "An Expanding Carbon Cap-and-Trade Regime? A Decade of Experience with RGGI Charts a Path Forward," *The Electricity Journal*, 2018; and M.J. Bradley & Associates, *A Pioneering Approach to Carbon Markets: How the Northeast States Redefined Cap and Trade for the Benefit of Consumers*, 2017.

¹² This information and material is available on the Department's website (see, for example, <https://www.dep.pa.gov/Business/Air/BAQ/AdvisoryGroups/Air-Quality-Technical-Advisory-Committee/Pages/default.aspx>).

Conflicts with Existing Statutory and Constitutional Authority

HB2025 and SB950 assert that existing law does not provide the Department with the authority to develop a rulemaking for greenhouse gas emissions, but this is not the case. Through the Air Pollution Control Act (APCA), the legislature has already set forth very clear declarations of policy and authoritative provisions that direct the Department to adopt rules and regulations for the prevention, control, and reduction of air pollution, broadly defined as any pollution or emissions “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.” Greenhouse gas emissions like carbon dioxide clearly fall within the design and intent of the APCA; particularly given the findings generated pursuant to the Climate Change Act.

These bills also run counter to the intent and express language of the Environmental Rights Amendment in our state Constitution, which establishes an affirmative obligation on both the Governor and General Assembly to protect public resources, including air and water quality.

The premise set forth by HB2025 and SB950 that the Department is acting on unfounded authority is erroneous and an oblique attempt to rewrite long-established statutory precedent.

Dismissal Through Inaction

Finally, HB2025 and SB950 grant the legislature the ability to halt the Department’s proposed rulemaking through mere inaction. This rests the power of decision in a handful of leadership and committee chairs who would be under no obligation to act.

Under current law, and at any time, the legislature has the discretion to pass legislation to restart or abrogate a rulemaking proposal. HB2025 and SB950 makes special expansion of this authority solely for a rulemaking proposal designed to address greenhouse gas emissions. Aside from stacking the deck against movement on a critical public issue, the legislation raises constitutional questions.

This provisions of these bills does more to ensure that a rulemaking will not be promulgated than it does to ensure examination and engagement.

Senate Bill 15 Provides a Path Forward

Introduced last month, Senate Bill 15 would accomplish two important objectives: (1) it would chart a course for Pennsylvania to reduce greenhouse gas emissions from the electric power sector; and (2) it would provide a framework for investment in programs that promote energy innovation, mitigate utility bill impacts and protect low-income consumers, increase efficiency, and assist workers and communities impacted by transitions in our energy economy. It would also positively engage the legislature on climate and energy at a time when action is truly needed.

Conclusion

The proposed rulemaking set forth by the Department has provided a basis for constructive dialogue on Pennsylvania's energy and climate future. Senate Bill 15 fully inserts the General Assembly into that dialogue. Instead of considering House Bill 2025 and Senate Bill 950, which do more to close the door than set a path forward, we respectfully ask you to table those bills and support Senate Bill 15 instead – starting a constructive dialogue on the defining environmental and energy issue of our time.

Thank you for your consideration.

Sincerely,

John Walliser
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Pennsylvania Environmental Council

Mandy Warner
Director, Climate and Clean Air Policy
Environmental Defense Fund