

March 21, 2019

Andrew McKeon, Executive Director
Mark Havel, Director of Program Implementation
Regional Greenhouse Gas Initiative
90 Church Street, 4th Floor
New York, NY 10007

Re: Important Provision in Virginia's Proposed CO₂ Budget Trading Program

We understand that, in comments dated February 1, 2019 RGGI questioned an important provision in Virginia's proposed CO₂ Budget Trading Program, which puts utilities and other regulators on notice that they should make planning decisions that assume continued CO₂ reductions beyond 2030 at the same annual rate as is required from 2020-2030. However, the language of 9VAC5-140-6190 C also explicitly indicates that Virginia will make "appropriate adjustments to the base budget for such succeeding years" based upon "the best available science and all relevant information and policies available from any CO₂ multistate trading program in which Virginia is participating when considering further reductions." In other words, the post-2030 reduction rate will be appropriately adjusted in coordination with RGGI's evolving policies.¹

As discussed below, we urge RGGI to support or remain neutral on this proposed language in Virginia's plan. The provision in question addresses unique problems facing Virginia; it is consistent with RGGI's overall policies; and it serves RGGI's interests as well as the interests of residents and businesses in Virginia.

a. This provision is uniquely important for Virginia.

In order to make reasonable judgments about applications to build generation and transmission, electric utilities and Virginia's State Corporation Commission (SCC) need clear guidance that from environmental regulators that CO₂ limits will continue to decline after 2030.

When considering applications to build new electrical generation, the SCC's powers are limited by permits granted by DEQ or other regulatory agencies.² If DEQ grants permits to

¹ In its full wording, the proposed, 9VAC5-140-6190 C states:
C. For 2031 and each succeeding calendar year, the department will review the Virginia CO₂ Budget Trading Program base budget and recommend to the board appropriate adjustments in the base budget for such succeeding years. The department will consider the best available science and all relevant information and policies available from any CO₂ multistate trading program in which Virginia is participating when considering further reductions. Absent any adjustment, the Virginia CO₂ Budget Trading Program base budget for each year of the decade 2031-2040 shall be reduced by 840,000 tons from the preceding year.

² See Virginia Code § 56-580 D.

electric utilities to emit a specified level of CO₂, then the law prescribes that “[i]n order to avoid duplication of governmental activities... the Commission shall impose no additional conditions with respect to such matters.”

Thus, unless Virginia’s final regulations prescribe additional CO₂ reductions for the period 2031-2040 (or preferably longer), utilities will argue that the SCC’s review of proposed new carbon-polluting projects must assume that CO₂ emissions limits will not decline after 2030—an absurd assumption. It will not be enough that RGGI plans to periodically consider further reductions of CO₂ emissions. Nor will it be enough that there is a scientific consensus that CO₂ emissions be sharply reduced until net-zero emissions are achieved as early as 30 years from now. By prescribing flat CO₂ emissions caps after 2030, DEQ could create a fictional basis for future evaluations of certificates of public convenience and necessity.

Virginia has legally-protected monopoly utilities that own nearly all the generating capacity that supplies retail energy in the state. Unlike competing generators in other states, Virginia utilities do not bear the financial risks of building projects that are later required to throttle back or shut down due to revised environmental regulations. As a general matter, they are able to impose risks of SCC-approved construction projects on customers.

Electric generation lasts for decades. Discouraging Virginia from adopting regulations that show continued CO₂ reductions well beyond 2030 would send misleading signals to the SCC and Virginia’s electric markets. Generation decisions based on misleading signals beyond 2030 would cause higher costs to consumers and harmful CO₂ emissions for decades. This could erect potential barriers to Virginia’s agreeing with RGGI to implement future reductions. Thus, creating an illusion that CO₂ emissions limits will remain flat after 2030 would be very harmful to utility regulation and consumers.

b. This provision is consistent with the RGGI model.

Virginia’s proposal to presumptively require continued reductions beyond 2030 is consistent, not inconsistent, with RGGI’s model for continuous progress reducing CO₂ emissions.

First, for the years 2020-2030, Virginia will reduce CO₂ allowances at a rate equal to 3% of the first year, just as provided for in its discussions with RGGI.

Second, while Virginia’s proposed schedule for continued reductions beyond 2030 is needed for the reasons stated above, Virginia will obviously work with RGGI members to make reasonable adjustments in order to remain linked to the RGGI market. Adopting provisions, at this time, which would require continued reductions in 2031-2040, does not prevent DEQ from changing the pace of reductions to meet the emerging needs and the outcome of future negotiations with RGGI members. Indeed, Virginia will be far better positioned to make interim adjustments and/or adjustments to the post-2030 emissions levels, if it clearly puts utilities and others on notice now that they should expect further reductions after 2030 and should plan

accordingly. DEQ's ability to work with RGGI to extend reductions in the future would be hampered if misleading signals now led to stranding utility assets.

Third, it should be recalled that Virginia is far behind RGGI in its reductions of CO₂ emissions.³ While RGGI has stated its plan to reduce CO₂ emissions by 65% by 2030, Virginia will be nowhere near that level of reductions. It will have to continue reducing its CO₂ emissions long beyond 2030 just to catch up.⁴ Thus, there is no inconsistency.

Fourth, it would be entirely unfair for Virginia to be prevented from achieving at least as much total emissions reductions as current RGGI states, particularly given the health and economic benefits that have been achieved by reducing emissions in the RGGI states.⁵

Fifth, we know from volumes of scientific studies that *much greater* CO₂ reductions will be needed as we head toward 2050, just to keep worldwide temperatures from rising 1.5° to 2.0°C above pre-industrial levels. This is plainly demonstrated by the Fourth Annual Climate Assessment and a recent IPCC Report.⁶ As shown in that IPCC Report, the world needs to reach a 45% reduction by 2035 and net-zero GHG emissions by roughly 2050, on an economy-wide basis, in order to avoid worldwide temperature increases of 1.5°C. Even earlier works, such as the Virginia Governor's 2008 Climate Commission Report, recognized that an 80% reduction in CO₂ from 1990 levels would be needed by 2050,⁷ and delays in overall reductions mean that deeper cuts would be needed now. Continued reductions proposed from 2031-2040 would still leave Virginia well short of those goals. Thus, it would be unreasonable for the regulations not to specify a presumptive path for carbon emissions reductions after 2030. Indeed some RGGI members have already announced their intention to cut their CO₂ emissions well beyond the levels set forth in the latest RGGI plans.⁸

³ While RGGI states reduced their covered power plant emissions by 40% from 2008 to 2016, EIA data indicate that Virginia's emissions from all fossil-fuel power plants declined by only 7%. See footnote 10, supra.

⁴ RGGI is now on-track to achieving a 65% CO₂ reduction by 2030. See "RGGI States Announce Proposed Program Changes: Additional 30% Emissions Cap Decline by 2030" (Aug. 23, 2017). Indeed, despite continuing reductions for 10 years beyond 2030, Virginia may still achieve less than RGGI states will achieve by 2030.

⁵ See, e.g., Acadia Center, *Outpacing the Nation: RGGI's Environmental and Economic Success* (Sept. 2017), at 4-7, available at <http://acadiacenter.org/document/outpacing-the-nation-rggi/>; Abt Associates, *Analysis of the Public Health Impacts of the Regional Greenhouse Gas Initiative 2009-2014*, <http://abtassociates.com/AbtAssociates/files/7e/7e38e795-aba2-4756-ab72-ba7ae7f53f16.pdf>.

⁶ U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II Impacts, Risks and Adaptation in the United States* (2018) <https://nca2018.globalchange.gov/>. Volume I presents the scientific assessment for the Fourth National Climate Assessment. <https://science2017.globalchange.gov/>. Intergovernmental Panel on Climate Change. *Global Warming of 1.5° C, Summary for Policymakers*. See http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf.

⁷ The 2008 Governor's Climate Commission's Report recognized that an 80% reduction below 1990 levels would be needed by 2050. Governor's Commission on Climate Change, *Final Report: A Climate Action Plan* (Dec. 15, 2008), p. 14. This report remains substantially correct today in its warnings of climate risks and its identification of available measures to reduce GHG emissions, including clean energy, energy efficiency and creating a cap-and-trade program. Inaction since then has resulted in growing risks today and a requirement for sharper reductions to offset a decade of business-as-usual emissions.

⁸ The New York State Energy Plan calls for 50% of the state's electricity to come from renewable sources by 2030. <https://energyplan.ny.gov/>. Maryland law requires development of a plan by the end of this year which would

For these reasons, it is important that RGGI not discourage Virginia from adopting regulations that presumptively schedule continued CO₂ reductions at a steady pace beyond 2030.

Respectfully submitted,



Kate Addleson, Director
Sierra Club Virginia Chapter
100 W Franklin St. Mezzanine
Richmond, VA 23220
804-225-9113

Cc:

Ben Grumbles, Secretary of the Maryland Department of the Environment
Katie Dykes, Commissioner, Connecticut Department of Energy and Environmental Protection
Jared Snyder, Deputy Commissioner at the New York Department of Environmental Conservation
Martin Suuberg, Commissioner of the Massachusetts Department of Environmental Protection
Marion Gold, Commissioner of the Rhode Island Public Utilities Commission
Sarah Hofmann, Commissioner of the Vermont Public Utility Commission
Bruce Williamson, Commissioner of the Maine Public Utilities Commission
Michael Dowd, Director Air Division, Virginia Department of Environmental Quality