

Pennsylvania's Supreme Court Hears Arguments in Pennsylvania RGGI Litigation

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On May 13, 2025, the Pennsylvania Supreme Court heard oral arguments in the two cases pending before it involving Pennsylvania's attempt to join the Regional Greenhouse Gas Initiative (RGGI), a regional carbon dioxide budget trading program applicable to fossil-fuel-fired electric generating units of over 25 megawatts. See *Pa. Dep't Env't Prot. v. Pa. Legis. Ref. Bureau* (No. 106 MAP 2023); *Bowfin v. Pa. Dep't Env't Prot.* (No. 107 MAP 2023). The Shapiro administration and four environmental groups appealed the Pennsylvania Commonwealth Court's July 8, 2022, and November 1, 2023, decisions that (1) preliminarily enjoined the implementation and enforcement of Pennsylvania RGGI regulation, holding that the regulation imposed an unconstitutional tax; and (2) invalidated the regulation on the merits.

As reported in [Vol. 41, No. 2 \(2024\)](#) of this *Newsletter*, following these decisions, Governor Shapiro proposed two legislative efforts to replace the Commonwealth's efforts to join a cap-and-trade program: the Pennsylvania Climate Emissions Reduction Act (PACER) and the Pennsylvania Reliable Energy Sustainability Standard (PRESS). Bills establishing both PACER and PRESS were introduced into the Pennsylvania House and Senate earlier this year, as discussed above.

At oral argument, industry opposed to RGGI argued that the Pennsylvania Department of Environmental Protection (PADEP) overstepped its authority and violated the Pennsylvania Constitution by imposing an impermissible tax on electricity generators, while PADEP argued that lawmakers gave it broad authority to control air pollution and that requiring power producers to pay for allowances is within its authority. A supreme court opinion is not expected until early- to mid-2026. For a summary of Pennsylvania's RGGI rule, see [Vol. 39, No. 2 \(2022\)](#) of this *Newsletter*. For a summary of the commonwealth court's decisions, see [Vol. 40, No. 4 \(2023\)](#) of this *Newsletter*.

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