

Supreme Court of Pennsylvania Upholds Preliminary Injunction for RGGI Rule

December 1, 2022

FNREL Mineral and Energy Law Newsletter

Pennsylvania – Mining

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The Supreme Court of Pennsylvania has upheld a preliminary injunction of the Regional Greenhouse Gas Initiative (RGGI) rule granted by the Commonwealth Court of Pennsylvania. On July 8, 2022, the commonwealth court granted a preliminary injunction preventing the state from participating in RGGI pending resolution of the case. See Vol. 39, No. 3 (2022) of this *Newsletter*. Governor Tom Wolf appealed the injunction to the supreme court. On August 31, 2022, the supreme court denied the state's emergency request to reinstate the automatic supersedeas, thereby maintaining the preliminary injunction while litigation on the merits proceeds before the commonwealth court later this year. See *Ziadeh v. Pa. Legis. Reference Bureau*, No. 79 MAP 2022 (Pa. Aug. 31, 2022).

As previously reported in Vol. 39, No. 2 (2022) of this *Newsletter*, the Pennsylvania Department of Environmental Protection's (PADEP) CO₂ Budget Trading Program rule, or RGGI rule, which links the state's cap-and-trade program to RGGI, was published in the *Pennsylvania Bulletin* in April 2022. See 52 Pa. Bull. 2471 (Apr. 23, 2022). RGGI is the country's first regional, market-based cap-and-trade program designed to reduce carbon dioxide (CO₂) emissions from fossil fuel-fired electric power generators with a capacity of 25 megawatts or greater that send more than 10% of their annual gross generation to the electric grid.

On April 25, 2022, owners of coal-fired power plants and other stakeholders filed a petition for review and an application for special relief in the form of a temporary injunction, and a group of state lawmakers filed a challenge as well. See *Bowfin KeyCon Holdings, LLC v. PADEP*, No. 247 MD 2022 (Pa. Commw. Ct. filed Apr. 25, 2022). Briefing has been completed and a hearing is expected to occur in November 2022.

Additionally, on July 12, 2022, natural gas companies Calpine Corp., Tenaska Westmoreland Management LLC, and Fairless Energy LLC filed a third legal challenge to the rule with arguments similar to those brought in the other two cases. See *Calpine Corp. v. PADEP*, No. 357 MD 2022 (Pa. Commw. Ct. filed July 12, 2022). Constellation Energy Corporation and Constellation Energy Generation LLC have petitioned to intervene in the case and a hearing on this application was scheduled for November 2, 2022. Briefing in this case is due in December 2022.

Further information regarding the rule and the history of the rulemaking can be found on PADEP's RGGI webpage at <https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx>.

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