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Shapiro Administration Appeals Commonwealth Court Invalidation of RGGI

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On November 21, 2023, the Shapiro administration appealed, to the Pennsylvania Supreme Court, the Commonwealth Court's November 1 ruling that the Regional Greenhouse Gas Initiative (RGGI) is an unconstitutional tax, and therefore is void and unenforceable. See *Bowfin KeyCon Holdings, LLC et al v. Pennsylvania Department of Environmental Protection and Pennsylvania Environmental Quality Board* (No. 247 M.D. 2022). The Commonwealth Court concluded that, to pass constitutional muster, Pennsylvania's participation in RGGI "may only be achieved through legislation duly enacted by the Pennsylvania General Assembly" and not merely through the rulemaking promulgated by the Environmental Quality Board and the Department of Environmental Protection.

The Shapiro administration said it is appealing the decision because the "Commonwealth Court's decision on RGGI—put in place by the prior administration—was limited to questions of executive authority, and our Administration must appeal in order to protect the important authority for this Administration and all future governors."

The Governor's decision to appeal the Commonwealth Court's decision does not necessarily mean he supports RGGI, put in place by the previous Wolf administration. Even if the Shapiro administration wins on the appeal, it is unclear whether the Governor will enforce the

regulation. In fact, the administration did not oppose the Bowfin KeyCon industry petitioners' application to vacate the automatic stay that arises by law when the Commonwealth appeals a case. That means the RGGI regulation will continue to be ineffective and unenforceable while the appeal is pending.

The Shapiro administration is urging lawmakers to develop an alternative plan, stating in a press release that "should legislative leaders choose to engage in constructive dialogue, the Governor is confident we can agree on a stronger alternative to RGGI." The Governor's spokesperson Manual Bonder indicated that Governor Shapiro "stands ready and willing to implement the recommendations of the RGGI Working Group and he would sign legislation replacing RGGI with a Pennsylvania-based or PJM-wide cap-and-invest program, as they proposed."

Shortly after taking office, Shapiro formed the RGGI Working Group consisting of a mix of labor, business, energy, and environmental leaders to determine whether RGGI would "protect and create energy jobs," "take real action to address climate change," and "ensure reliable, affordable power for consumers in the long-term." The Working Group never endorsed RGGI. Rather, it stated in a September 23, 2023 press release announcing the availability of its Working Group Memorandum that it "reached broad consensus that reducing greenhouse gas emissions in Pennsylvania is both necessary and inevitable . . . [and] that any cap-and-invest program should include policy levers and investment strategies which help avoid any potential emissions leakage, higher localized pollution, increased energy costs, and job loss."