

**ENVIRONMENTAL MANAGEMENT COMMISSION
SPECIAL AIR QUALITY COMMITTEE MEETING SUMMARY
June 15, 2021
Archdale Building-Ground Floor Hearing Room
9:00 AM - 11:30 AM**

MEETING BRIEF

During their June 15, 2021 meeting, the Air Quality Committee (AQC) of the Environmental Management Commission (EMC) considered a Petition for Rulemaking to Limit CO2 Pollution from the Electric Power Sector and voted to recommend the full EMC grant the petition.

AQC MEMBERS IN ATTENDANCE

Ms. Shannon Arata, AQC Chairman;
Mr. Charles S. Carter, AQC Vice Chair;
Ms. Yvonne C. Bailey;
Ms. Donna L. Davis;
Ms. Marion Deerhake; and
Dr. Maggie Monast;

PETITIONERS

Mr. Derb S. Carter and Mr. Nicholas Jimenez from the Southern Environmental Law Center (SELC), representing Clean Air Carolina and the North Carolina Coastal Federation

RESPONDENT

Ms. Fern Patterson representing Charlotte Pipe and Foundry

COMMENTORS

Ms. Cathy Buckley Director, Statewide Organizing, North Carolina Alliance to Protect Our People and the Places We Live (NC APPPL)
Ms. Riana Ackley, Southeast Representative for Environmental Entrepreneurs (E2)

OTHERS IN ATTENDANCE

Dr. Stanley A. Meiburg, EMC Chairman;
Mr. Philip Reynolds, EMC Counsel;
Mr. J.D. Solomon, EMC;
Dr. Donald Van der Vaart, EMC;
Mr. Patricia K. Harris, EMC;
Mr. John R. McAdams, EMC;
Ms. Sushma Masemore, DEQ Deputy Assistant Secretary for Environment;
Mr. Michael Abraczinskas, DAQ Director;
Mr. Michael Pjetraj, DAQ Deputy Director;
Mr. Bill Lane, DEQ General Counsel;
Ms. Sharon Martin, DEQ Deputy Secretary for Public Affairs;
Mr. Rahatul Ashique, DAQ Staff;
Mr. Patrick Knowlson, DAQ Staff;
Mr. Brad Nelson, DAQ Staff;
Ms. Katherine Quinlan, DAQ Staff;
Ms. Paula Hemmer, DEQ Energy Office Staff;

Ms. Lois Thomas, EMC Recording Clerk; and
Members of the public

Agenda Item #1, Call to Order and the State Government Ethics Act, N.C.G.S. §138A-15(e)

Chairman Arata called the meeting to order and inquired, per General Statute §138A-15(e), as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Environmental Management Commission's Air Quality Committee. No conflicts were identified.

RULEMAKING PETITION

Agenda Item #2, Petition for Rulemaking to Limit North Carolina's Carbon Dioxide Emissions to Protect a Stable Climate System and Preserve the Natural Resources of North Carolina

Background:

On January 11, 2021, the Division of Air Quality (DAQ) received a petition for rulemaking from Derb S. Carter of the Southern Environmental Law Center (SELC), on behalf of Clean Air Carolina and the North Carolina Coastal Federation. The petition addresses carbon dioxide emissions in North Carolina and requests that the Environmental Management Commission (EMC) initiate rulemaking to implement a market-based approach incentivizing carbon emitting power sources to transition to clean technologies.

After review by the EMC Chairman, DAQ staff, and EMC Counsel in accordance with the criteria outlined in 15A NCAC 02I .0501, *Form and Contents of Petition*, the petition for rulemaking was deemed to be complete and was referred to the AQC for review in accordance with 15A NCAC 02I .0502, *Review by a Committee of the Commission*. 15A NCAC 02I .0502 requires the AQC to review the petition and recommend action to the full EMC.

Notice was sent to interested parties, stakeholders, and to the Secretary of State that the Air Quality Committee would convene for a special session to address the petition. In accordance with the requirements of 15A NCAC 02I .0502, interested parties may make an oral presentation pertaining to the petition for rulemaking.

The EMC Chairman asked the AQC to follow the procedures in 15A NCAC 02I .0501 through .0503 in reviewing the complete petition for rulemaking and then making a recommendation for action on the petition.

Pursuant to G.S. 150B-20, petitions for rulemaking are authorized; however, the rules cannot conflict with statute. It is also important to note that neither the North Carolina General Statutes nor administrative rules require that the petition provide an economic analysis; only cost factor estimates. If the Commission grants the petition, it does not mean that the rules are automatically adopted into the North Carolina Administrative Code; however, it begins the rulemaking process. If the Commission denies the petition, the petitioners may obtain judicial review in a Superior Court.

G.S. 150B-19.1 governs how a rule is adopted and the general principles that an administrative agency must follow. The provisions of G.S. 150B-19.1 also contain additional requirements for noticing the proposed rules; however, a fiscal note or regulatory impact analysis must be approved before the notice is published. G.S. 150B-21.2(c) defines "notice of text", which includes the proposed rule text along with additional information that must also be included pursuant to G.S. 150B-20.

Pursuant to G.S. 150B-19.3(a), an agency is prohibited from adopting an environmental rule that is more restrictive than federal requirements of the same subject matter unless the rule falls within one of the five listed exceptions.

Rules for Presentations:

AQC Chair Arata stated the purpose of the special meeting, welcomed the interested parties, and specified there will be a time limit for presentations. All speakers kept within the allotted time.

Process and Considerations for Rulemaking Petitions (Philip Reynolds, EMC Counsel):

EMC Counsel Reynolds provided an overview of the petition process and rulemaking requirements pursuant to the North Carolina Administrative Procedures Act (APA). He stated this is a quasi-legislative decision because it involves rulemaking, so it is up to their discretion to determine the policy question of whether to pursue it or not, also acknowledging that there are authority questions that have been discussed before. A petition is a request that an agency begin the rulemaking process for a specific set of rules as it would with any other rule. The granting of a petition does not mean the Commission is bound to adopt the rule at the end of that process; only that the rulemaking process itself begin, which is governed by the APA. For the AQC's purposes, today they are deciding whether to recommend to the Commission whether it should or should not grant the petition. The decision today is not final and irrespective of which way the AQC decides, the Commission will still nonetheless have a responsibility for taking final action on the petition only. He emphasized that a vote to recommend is not a vote for final adoption, but a vote to recommend that they continue discussion through the rulemaking process, and whatever that process dictates is what will control these rules. The statute controlling petitions is G.S. 150B-20, which says that when a petitioner petitions an agency to engage in rulemaking which requires the adoption of rules not previously there, then they have to submit the text as well. So, the Committee is voting on the text of the rule.

The decision whether to deny or grant the rulemaking petition or part of the petition is ultimately decided by members of the Commission.

Counsel Reynolds reviewed the administrative procedural requirements and offered his own legal understanding of the Committee's obligation concerning the language proposed within the petition. For the purposes of the AQC's special meeting, the DAQ determined the petition was complete in its form as submitted by the petitioner.

Introduction:

AQC **Chair Arata** thanked everyone in attendance and asked if there were any other questions. No questions were identified.

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Petitioners Statements (Clean Air Carolinas & North Carolina Coastal Federation):

Represented by: Counsel Carter and Counsel Jimenez

Mr. Derb Carter introduced himself and Mr. Nick Jimenez, Mr. Gudran Thompson, and Mr. Franz Litz, who has been involved with RGGI since its inception, most recently advising Virginia. Mr. Carter outlined Governor Cooper's Executive Order 80 and the priorities outlined to address climate change and its impact on the wellbeing of the North Carolina environment and people. The petitioner asked the Committee to support the petition as proposed. The Petitioner provided reasoning for the necessity of the rulemaking action within the petition based on the A1 Report from the 2019 Clean Energy Plan, with clear goals to decarbonize the energy sector, reaching 70% reductions by 2030 and net zero carbon emissions by 2050. The Regional Greenhouse Gas Initiative (RGGI) emissions reduction program is a market-based approach with years of implementation data to review program effectiveness. The RGGI program is currently going through the implementation process in Virginia and the many states north of Virginia have already been participating in the RGGI program for some time. The review of the current program shows it provided quick reductions of carbon emissions. The benefits of the petitioner's proposal to join RGGI and thereby limit all carbon emitting sources producing energy, including those utilizing natural gas and biomass fuel. The authority they site for the Commission to implement

the proposal is N.C. General Statutes § 143 – 211 (a), (c). 213 (2), (5), (16) and 215.107 (a)(3), (5), and (12). Further, there is an urgent need, due to the 2030 date for the emissions reduction goal and given the rulemaking process is itself lengthy with several steps. Therefore, the petitioners ask the Committee to recommend to the EMC to take up rulemaking action on the proposed rules within the petition.

Discussion:

Question & Answers with EMC Commissioners: **Chair Arata** asked each person, recognizing them, if they have questions for the petitioner.

Commissioner Bailey – No Questions

Commissioner Carter asked about the basis of the petition budget of 38,654,000 tons and the current power sector CO2 emissions. Mr. Jimenez responded that it was based on the 2019 inventory of the greenhouse gas emissions, clarifying that the actual emissions change over time and these are a best projection. The intent is to start with actual emissions. SELC included a provision to adjust emissions, depending on when the rule is final. **Commissioner Carter** asked if the current emission level is 40 million tons. Mr. Jimenez responded that, yes, it is about that for in-state emissions. **Commissioner Carter** stated that page seven of the petition has a 2022 CCR CO2 trigger price of \$13.91 per ton which is estimated to generate \$538 million in revenue for the program, and asked who receives that revenue. Mr. Jimenez clarified that Commissioner Carter quoted the cost containment reserve price; however, the price has never gone above \$8 so the exact amount of revenue would be less. The revenue goes back to the emitters, who also have to buy allowances to cover their emissions. The vast majority of emitting generation is owned by regulated utilities. The Utilities Commission oversees how they handle costs and revenues. **Commissioner Carter** stated that he understood that, unlike Title IV where facilities receive allocations, each facility would have to purchase allowances upfront, so there will be an outlay, and the only way facilities will achieve revenue is if they can sell allowances. Who has control over the revenue to distribute the funds collected from the auction of the allowances? Mr. Jimenez stated that the Utility Commission will collect the monies from the auction. **Commissioner Carter** asked how the allocations will be determined. Mr. Jimenez: The regulated source would receive their initial allocation of allowances and then from the auction, purchase the amount needed to cover their projected emissions for the year. If they limit their emissions from the base year set for initial allowance allocations, then they can save the number of allowances they put up for auction if they choose.

Commissioner Davis – no questions at this time.

Commissioner Deerhake asked for a review of the concept of conditional allowance, and whether that is in the Virginia program. Mr. Jimenez responded that it is not in the current Virginia program. In the original Virginia proposal, the initial allowances for the current emitters would be conditional, meaning the source could not use the allowances for compliance directly. **Commissioner Deerhake** asked why Massachusetts vs. EPA ruling was not used in the rationale when explaining the definition of “pollutant” in this context. Mr. Carter: Carbon dioxide is a pollutant under federal law. Given limited time, they tried to keep it specific to North Carolina law. **Commissioner Deerhake** asked who the Agent of the State is. Mr. Jimenez responded that it is RGGI, Inc. **Commissioner Deerhake** asked about the decision making for the revenue from the allowance auction and how it is managed. A section of the petition was cited, which says the Utilities Commission will pass the money along to the utilities to use the money as appropriate, with general guidelines. Is there no opportunity for the DEQ to have funds to manage the program? Mr. Jimenez responded that due to features of state law, the petition was not structured that way. The petition structured the revenues to be passed to the emitters.

Commissioner Monast asked about the impact for states that have already adopted RGGI. Mr. Jimenez stated that it has been substantial, mentioning a net economic benefit of about \$4 billion. Revenues coming in from the auctions are in the low billions, and a lot of it is from investing the revenues in energy efficiency, clean energy,

and low-income bill assistance. The RGGI states have seen economic growth of about 31% greater than non-RGGI states, although tracing the causation is difficult. **Commissioner Monast** asked about electricity rate impacts, noting the struggles for some to pay energy bills during covid. Mr. Jimenez stated that the A1 Report shows \$2 increase to the bills of residential rate payers, but if revenues are passed through to customers, they end up saving money. If low-income bill assistance is implemented, then there is a \$15 benefit to low-income rate payers. for residential customers.

Commissioner Arata asked what would the DAQ or other agencies have to do if the AQC recommends the rule goes to the full Commission, which then votes for the rules to go to public notice, and the rules are adopted? Mr. Carter responded that rulemaking would begin as normal, requiring a Fiscal Note for a substantial economic impact, which could use the data from the A1 Report, then go to notice in the Register, have the standard comment period, a hearing record the same as other rules, a final vote by the EMC on the rulemaking package, then would go to the Rules Review Commission (RRC). With the timeline and 25-day APA limitation preceding a legislative session, the petitioners estimate 2022 will be the year the rule is implemented. Noting this may be a challenge, it would cost another year because it would have to wait until the beginning of the next legislative session. **Chair Arata** asked if joining RGGI be automatic with this rulemaking. Mr. Carter responded that there would be the other states within RGGI that would approve North Carolina joining. The rule is based on the RGGI model rule, so they believe this sets the Commission on the course to joining RGGI.

Commissioner Harris asked if currently, there are any financial benefits from RGGI for North Carolina or other non-RGGI states. Mr. Jimenez responded that investments from revenues are limited to the states in the RGGI program.

Commissioner McAdams – No questions.

Commissioner Meiburg asked how the consignment of the auction allowances works. Mr. Jimenez responded that the presentation slides for the allowances shows this. Conditional allowances cannot be turned right back in for compliance, so the expectation is the sources will sell them into the auction pool and then buy the allowances they will need for compliance based on their expected emissions output. **Commissioner Meiburg** asked if the allocations made by DEQ are proportional to their emissions now. Mr. Jimenez confirmed that it starts out proportional to their emissions. This is an output-based allocation, which updates based on how much energy is produced over time. **Commissioner Meiburg** stated that means if they reduce emissions then the sources can make money by selling their excess conditional allowances. Can you explain the dynamic of banking allowances? Mr. Jimenez responded that banking allowances is allowed, but to keep the dynamic balance between available allowances and those needed for purchase, RGGI tightens the cap to account for banked allowances. Since NC would join right after an adjustment, we would not be participating at this stage.

Commissioner Meiburg stated that, if one predicted the price of allowances would increase, they might buy allowances now as an investment for sale later.

Commissioner Solomon asked, of the 40 million tons, is that what the DEQ is allocating initially? Mr. Jimenez clarified that the 38 million tons in the rule would be the allocation. **Commissioner Solomon** asked for clarification that the allocations do not have a dollar value, but instead the value is set by the RGGI market. Mr. Jimenez confirmed. **Commissioner Solomon** asked, with the legislative schedule, can you say again when these rules would go into effect and entities would have to start paying money for RGGI compliance? Mr. Jimenez stated that the January 2022 start date in the petition was ambitious, a more likely start date given the length of the rulemaking process and the legislative schedule would be 2023. The rule is written to start on January 1 the year after the rule is final. **Commissioner Solomon** asked for confirmation that the sources would have 1 year to prepare to comply with the rule. Mr. Jimenez responded with clarification about the 3-year compliance periods, so sources do not have to turn in allowances until later. **Commissioner Solomon** asked if there would first be trading in North Carolina only, or all RGGI states? Mr. Jimenez answered that we would be trading on the full RGGI market from the start.

Commissioner Van der Vaart asked for clarification for his understanding that other states issue the allowances to RGGI and then receive the money back, but here the issuance of allowances goes to emitters and then to RGGI? If instead the money went to the state, then the legislature would decide where to spend the money not the Utilities Commission, as in this case. He commented on the RGGI market ceiling/CAP of about \$13, and de minimis of approximately \$3. Virginia produced about 43 million from this program, which would be about \$170 million annually. If the regulated community is paying the cost, then somehow this will go on the rate payer? Mr. Jimenez responded that it depends on the Utility Commission chooses to handle it.

Commissioner Van der Vaart asked whether we are talking purely CO₂, not greenhouse gases, so reductions of CO₂ at the expense of increases in methane emissions are not handled, right? It is the Mercury Rule that has caused the shift in most RGGI states from coal to natural gas electric generation. Mr. Jimenez responded that the A1 Report predicts that we would end up building about half as much natural gas as we otherwise would, and natural gas would run less. **Commissioner Van der Vaart** responded that natural gas has not gone down in RGGI states to date, and commented on emission leakage, stating that there is no prohibition for non-RGGI states to import power into RGGI states. He stated that there may be artificial CO₂ reductions, and RGGI is essentially exporting carbon dioxide emissions because this is not a national program. Is there leakage? Mr. Jimenez stated he disagreed with some statements, but confirmed that there is some leakage. **Commissioner Van der Vaart** asked why limit the GHG rule in the petition to carbon dioxide only, when a national program includes other GHGs? Mr. Jimenez responded that CO₂ is the GHG coming out of the stack, while methane comes from other emission points. **Commissioner Van der Vaart** stated it does not matter where the GHG is coming from in terms of global warming.

Chair Arata asked for more explanation about possible leakage. Mr. Jimenez stated that the RGGI states do monitor leakage given it is a connected power grid. The modest carbon price has not caused much leakage. For North Carolina, nothing would be pulled from the east until offshore wind kicks in. There would be no leakage from our North because those states are in RGGI. There is not much transmission capacity to bring in from the West, and South Carolina only has two Duke Energy gas plants providing electricity to customers in NC. Some South Carolina law provisions and practical concerns would prevent new builds. SELC is not concerned with emissions leakage, but if leakage did occur for RGGI states, North Carolina would be better positioned to be at the table. **Chair Arata** asked if Duke Energy operates in any of the current RGGI states. What are some of the utility companies? Mr. Jimenez responded that Duke does not. Dominion and Appalachian Power operate in Virginia, there are cooperatives in VA, and Maryland is deregulated, so utilities are distribution only, with merchant-generators, including Excelon.

Commissioner Carter clarified that if \$8 is the allowance price, the revenue is closer to \$300 [million]. He asked for clarification of who gets that \$300 million when the initial auction takes place. Mr. Jimenez clarified that the emitters are getting the allowances, so they get the money back for the allowances. **Commissioner Carter** stated that when discussed earlier, it was said the utilities have to buy the allowances; they're not allocated. Mr. Jimenez responded that they are allocated the conditional allowances, but they also have to buy allowances to cover their emissions. **Commissioner Carter** stated that is correct, but between the two, allocation vs. consignment, what is the proportion? Half or three-quarters? Mr. Jimenez clarified that it should be about the same, unless, as **Chair Meiburg** stated, the emitter decreases emissions more quickly than anticipated. **Commissioner Van der Vaart** clarified that the sources cannot use the conditional allowance they are allocated for compliance. If Duke wants to emit a ton of CO₂, even though they have allowances given to them by DEQ, they have to buy an allowance out of the RGGI market. Mr. Litz used the Acid Rain Program under Title IV as an example, where allocations are handed out for free and utilities can use them for compliance. The consignment auction is similar, because allowances are given to emitters, who get the revenue back, except that they have to submit the allowances to the auction to be sold in a transparent process before getting the money back, but then they also buy what allowances they need for compliance. They pay the same price as they receive for the allowances they submit. **Commissioner Carter** asked if this is net zero. Mr. Litz clarified that sources could make money from the sale of the allowances they do not need and profit from

reducing their emissions. **Commissioner Carter** commented this would only happen if the source can lower its emissions, but sources will need to cover emissions for providing electricity to customers. Mr. Litz commented that emissions are going down from these very sources. **Commissioner Carter** commented that reductions could be happening for many reasons, including leakage. **Commissioner Van der Vaart** commented that if emissions are going down, RGGI is not needed, and asked about how much RGGI charges for transactional costs. Mr. Litz responded that states fund the auction platform. **Commissioner Van der Vaart** asked how the states get the money to pay RGGI. Mr. Litz responded that the states using RGGI to generate revenue pay directly. **Commissioner Van der Vaart** wanted clarification about whether the PUC or Duke gets the money. Mr. Jimenez clarified that the sources get the money. **Commissioner Van der Vaart** stated that the PUC has to deal with how the revenue is spent. Mr. Litz clarified that Duke is regulated by the Utility Commission, which will factor in their set of laws on how Duke gets a “reasonable rate of return”. It is all transparent, so the Utilities Commission can factor that into its decision of setting rates.

Commissioner Van der Vaart stated that it’s not an issue if this is a zero-sum game, but as the cap declines, the number of allowances will fall below emissions which creates a pinch. Utilities must decide whether to spend the money to reduce emissions or get leakage. He stated that there are transactional costs, and in the future, as the cap declines, he thinks we will see some real costs. SELC elaborated on the Utilities Commission proceedings, clarifying that environmental compliance costs are decided in the annual fuel clause adjustment proceedings because the statute has defined fuel-related costs to include things such as reagents to run scrubbers and the Utilities Commission has historically interpreted that to include costs and revenues from purchases and sales of emission allowances. The utility would recover its environmental costs and those would be offset by revenues, which leads to the average \$2/month average bill increase for residential households. It is a straight pass through; there is no return on the equity on the costs.

Commissioner Carter asked, regarding this procedural process, does it automatically enter us into RGGI, or is there further action required by the Governor or anyone else? Mr. Litz responded that the New Jersey example is pertinent here. The Governor matters. Once the rule is in place, it allows NC to accept allowances from RGGI states, and in return, RGGI states can choose to accept NC’s allowances. RGGI is a collection of states, each with their own programs represented in their rules, that are connected through mutual reciprocity in that they accept allowances from other states in exchange for the acceptance of theirs. They also agree to carry out the auction together because it costs less to pool resources through RGGI, Inc as the agent. After the rule is in the books, the Governor or DEQ would have discussions with other RGGI states to agree to accept allowances between the other states.

Commissioner Deerhake asked so far as the broader and longer-range issues, what are the potential primary and secondary co-benefits of this program? Mr. Jimenez responded that the A1 Report shows that reductions in NOx (50% by 2030) and SO2 (40% by 2030) emissions tracks reductions in CO2, which comes from turning down coal and gas generation. This translates directly into substantial health benefits, especially those with children. Studies for health benefits in existing RGGI states have shown figures in the billion-dollar range, a couple hundred million for children’s health in particular.

Commissioner Bailey – No Questions

Commissioner Davis asked regarding the Clean Energy Plan that is already in place, how effective has it been, and what additional benefits would this program provide? Mr. Jimenez responded that the CEP has been very effective in mapping out what we need to do, but concrete steps need to be taken. There was a climate action in the state about 10 years ago that did not turn into action. This proposal is a concrete step.

Commissioner Monast would like to return to the discussion about how emission reductions in NC are trending in the right direction. The Petition notes Duke Energy’s goal of retiring coal plants. What is the added benefit of participating in RGGI given those tracks? Mr. Carter responded that starting with the baseline year of 2005, so

far projections show North Carolina is halfway to meeting the 70% goal thanks to the Clean Smokestacks Act coal plant retirements, and the Clean Energy Standard enacted by the Legislature, which requires a certain percentage of generation come from renewables and has placed NC number 2 or 3 in the nation in solar capacity. The A-1 Report shows that joining RGGI pushing carbon-intensive generation out of the mix, while Clean Energy Standards can bring on. Because of the efficiency of the market, RGGI is cheaper than the clean energy options. SELC supports a combined approach of RGGI pushing off carbon and a clean energy standard. RGGI can moderate the cost of bringing more clean energy online. **Commissioner Monast** commented and asked for confirmation that this proposal may also provide more regulatory certainty for the sources? Mr. Carter responded that yes, it is straightforward. The regulation sets forth what is expected for a long period of time, allowing emitters to plan for implementation.

Respondent Statements: Fern Patterson from Parker, Poe, Adams and Bernstein, LLP, representing Charlotte Pipe & Foundry

Charlotte Pipe & Foundry are a family-owned business operating in NC since 1901, and is a stakeholder impacted by the proposal in the petition. Parkdale Mills, a textile manufacturer operating in Gaston County, NC since 1916 joins in these remarks. Their opposition to the petition centers around the burden of cost placed on rate payers to support the program without clear benefits. The RGGI program is not nationwide and would put business rate payers at a competitive disadvantage. The Respondent believes a federal program similar to the Clean Power Plan is forthcoming from the Biden Administration. Of note, previous steps North Carolina has taken to jump ahead of national standards to improve air quality have resulted in a disadvantage compared to neighboring Southeastern states historically. In essence, North Carolina was economically punished for being proactive for implementing the Clean Smokes Stacks Act, and reductions made prior to the 2012 baseline year of the Clean Power Plan. Charlotte Pipe & Foundry is investing \$400 million for a new foundry planned in Stanley County to replace the current operations in downtown Charlotte. The coal-based combustion melting process will be replaced with an electric process, eliminating about 19 MW of coal-combustion power; this follows EO80 to increase electrification. The petition would have a significant impact on the rates for industrial, commercial and residential ratepayers. It is their position that joining RGGI is ill-advised, potentially puts NC at a disadvantage with neighboring states, and passes costs to ratepayers without proven environmental benefits. There remain questions regarding the effectiveness of reducing GHGs from the power sector, and the reinvestment of the funds collected by the carbon emitting sources. The current proposal details are still unclear. The switch from coal to natural gas is the major reason for emissions reduction and the proposal does nothing to support this. Regarding the authority of the EMC, the rulemaking this petition proposes is outside the providence of the DEQ or EMC, as proper study has not been conducted in support of the petition. This is especially true with concern to the revenues. Assigning the Utilities Commission the arbiter of the allowance auction revenues appears outside the authority of the EMC. A Legislative process involves a more multi-disciplinary approach and would be more appropriate. For these reasons, the Committee should not recommend this petition to the EMC.

Discussion:

Commissioner Bailey – None.

Commissioner Carter – None.

Commissioner Davis – None.

Commissioner Deerhake – This is my first time hearing this argument and would like a few minutes to process.

Commissioner Lazorick – None.

Commissioner Monast – None.

Chair Arata asked for the breakdown for how Virginia uses the revenues from the auction. Ms. Patterson stated that Virginia has not received those benefits yet since they just joined. 50% will be used for flooding impact, 45% for low-income energy efficiency initiatives such as LED lighting, insulation, and low-income housing, 5% is allocated for operating costs of the VA DEQ and the operating costs for the Department of Health and Human Services. Virginia's revenue is returned to the state, unlike this petition. **Chair Arata** asked how the Biden Administration Policy Proposal for a More Sustainable Energy Plan and EO80 have in North Carolina led to regulatory actions in effect. Ms. Patterson responded that for the Biden Administration, there has been no regulatory action yet to say for sure, but it is expected the Biden Administration will put out a plan similar to the CPP from the Obama Administration, which was rescinded by the Trump Administration. **Chair Arata** asked whether the fiscal note produced during rulemaking analyze the balance of costs and benefits of the proposed petition, or if further analysis of costs and benefits needed. Ms. Patterson stated that the evaluation of cost and benefits of a program as large as this should be a legislative action. A fatal flaw of this cost-benefits analysis is not knowing how NCUC would be required to reinvest the funds.

Commissioner Deerhake stated that there appears to be two paths for states to implement RGGI, one is through the executive and the other legislative. Can you state which paths the other RGGI states have used? Ms. Patterson responded that she does not know. The neighboring and most-recent state to join, Virginia, used the legislative path. New Jersey dropped out of the program at one point. **Commissioner Deerhake** stated that New Jersey rejoined RGGI through the executive path and understands the uncertainty regarding funds being returned to the utilities. This is only the first step in the process; there will be opportunity during the comment period for folks to voice ideas. Do you not see that as one venue for your clients to offer ideas about how funds could be used? Ms. Patterson stated she would still question whether, through an administrative rulemaking initiated by the EMC, the EMC has the authority to provide guidelines that would provide certainty to my clients on the NCUC.

Commissioner Arata asked **Counsel Reynolds** if he had any comments to provide on the statutory authority.

Counsel Reynolds stated he understands that no revenue is generated to the state, only revenue generated to regulated entities, and those that are subject to the NCUC would have to account for those revenues within the applicable regulations and statutes applicable to them decided by the NCUC. This petition would impose upon the NCUC a requirement to take any action, except to the extent of the necessary implications of their own statutes. The EMC would not be setting parameters by which the NCUC has to decide on any answer, but rather this act would trigger their necessary involvement.

Commissioner Solomon stated that if Duke, as the IOU, continues to grow and can't comply, they will have to pay money into the pot to the NCUC. There will not be a status quo. North Carolina will not shut its doors; they will keep generating electricity. It will be passed along at increasing rates. Counsel Reynolds clarified his remarks, to say that the NCUC is absolutely necessarily implicated, because this will generate revenues or costs that will need to be dealt with by the NCUC, but the EMC is not telling the NCUC how they must decide.

Commissioner Solomon asked if Counsel Reynolds agrees that the EMC is sending the NCUC money to do something with, based on the decision of this rule. Counsel Reynolds stated he would rather state it as, it will generate costs or revenues to the regulated community that would necessarily need to be dealt with by the NCUC. The money goes to the regulated entities will have to account for how they accept and generate revenue, and expending the costs to comply, but funds are direct to these EGUs, not the PUC. **Commissioner Solomon** asked if this is the same as when Duke asked for rate increases as a result of the CPP and renewable energy program. Somebody pays to do this. The NCUC has to make a decision and will likely allow rate increases instead of taking out of shareholder profits. Counsel Reynolds clarified that he is not saying rates will or will not increase, but that is the decision of the NCUC. In order to raise rates, they have to go to the NCUC.

Commissioner Harris – None.

Commissioner McAdams – None.

Commissioner Meiburg stated that Duke does not seem to be reluctant to ask for rate increases. Increased energy efficiencies have kept the rates of electricity consumption less than the rate of GDP growth, but those curves are diverging. There will be greater pressure for electrification. He commended the client for electrifying the foundry operation. Did your client support the litigation against the Affordable Clean Energy (ACE) Plan? Is there a plan your client would support to increase supply of affordable clean power? Ms. Patterson had no comment and stated that the client was not asked. **Commissioner Meiburg** stated it is relevant to the discussion about the CPP. There does not seem to be indication by the EPA that they will revise the CPP. Specific to the ACE Plan, the DC Circuit remanded the ACE Plan to the EPA, which has been appealed. Is your client supporting the appeal to the Supreme Court on the vacatur of the ACE Plan? Ms. Patterson has not asked her client. **Commissioner Meiburg** asked if there is a specific federal or state legislative proposal that your client would support? Ms. Patterson reiterated that she is here specific to RGGI and cannot comment on others. **Commissioner Meiburg** stated that to say there will be a federal action on this issue therefore no state action is necessary, when there is no guarantee a similar federal program will come to fruition, weakens the argument.

Commissioner Solomon – None

Commissioner Van der Vaart stated that DEQ has not come up with anything either. Rulemaking to decrease emissions is not the problem, the issue is this option does not appear effective except in cost-effectiveness. There is a lot happening at the federal level, but not here. He stated he does not know if the DEQ is doing anything or has another option for reducing GHGs.

Commissioner Arata stated that if the EMC adopts the rule to join RGGI, it does not preclude the DEQ from moving forward with other proposals; the AQC would be open to hearing other proposals. The DAQ is not sitting idly by, but has been working hard on this.

Commissioner Carter asked if **Chairman Meiburg** believes the Biden administration will not take action to address climate change? Ms. Patterson's argument makes sense because there should be a federal program to address CO2 emission reduction since there is the issue of leakage. RGGI will likely not extend to all 50 states, so you will not get significant CO2 reductions overall. He agreed with **Commissioner Van der Vaart's** statement about looking at a variety of options.

First Commentor – Riana Ackley, E2, Supports the Petition

Came to advocate for effective environmental policies including the AQC's approval of this petition for North Carolina to join other RGGI states. The Commenter supports the EO80 signed by Governor Cooper as well as the economic investments and environmental benefits it produces. Studies show a net economic benefit to the North Carolina economy through job growth and generating funds for re-investment.

Second Commentor – Cathy Buckley, Director of Statewide Organizing for APPPL, Supports the Petition

This is an environmental justice (EJ) issue. With black children seven times more likely to die from asthma than white children, the historically disadvantaged communities in North Carolina deserve clean air. The Commenter urged the Commission to not allow RGGI to be used to increase pollution in already highly impacted communities. Clean air from clean energy sources will come faster with the help of the RGGI program transitioning North Carolina away from fossil fuels and biomass. Overseers of the grid need ensure RGGI levels the playing field among children from all communities and environmental justice should be a primary consideration for any rulemaking. Funds should be used to alleviate the burden on EJ communities. The climate crisis is urgent. The Committee should consider how this petition will benefit our people, our animals, and our homes in North Carolina. How this state transitions to a clean energy economy will show how we treat the least amongst us.

Petitioner Response – Southern Environmental Law Center

Represented by: Counsel Carter and Counsel Jimenez

In order to provide clarity to some of the previous questions from Commissioners, there are these facts as follows: States in RGGI experienced a 47% carbon reduction benefit, which is 90% greater than non-RGGI states. If North Carolina joins RGGI, that would constitute 14 states implementing a program like RGGI, representing over 1/3 of the US population. If a national program does come to fruition, it would likely build on and incorporate the foundation currently existing. Under the CP from the Obama administration, RGGI compliance was CPP compliance. NY and PA have joined by rulemaking, not legislation. The rule requires the utility to submit a plan to the NCUC on how it will use the funds in the public interest, informing the NCUC, which has a legal mandate to protect the rate payers. A process is in place for the NCUC to address those concerns. Regarding the comment about lack of a proper study, RGGI has been more studied than most rulemakings, through the A1 Report.

Discussion:

Commissioner Bailey – No comment.

Commissioner Davis – No comment.

Commissioner Carter – This Committee should request a formal legal opinion from the AG's office. The concern is the Rules Review Commission (RRC) will reject this rulemaking if legal authority is ambiguous. He is not persuaded by the authority argument of the Petitioners, and thinks the NCUC will have something to say about this. The EMC, by itself, is not the right place to do this. Legislative solution at the state and federal levels may be the best avenue. He asked for comment about renewing his motion for a formal AG's opinion on authority.

Commissioner Arata – Asks why this rulemaking proposal is distinguishable from past rulemaking such that it requires a formal legal opinion, mentioning the 111b rules.

Commissioner Carter – Points out there is no current CO2 emission standard, so there is no starting point. What should this all be based on? Several concerns are noted, even if there is a standard or cap, and then impose an allowance scheme on top of that, the only allowance scheme he is aware of is under Title IV. The banking and credit system in NC statutes is voluntary; this is not remotely voluntary, but mandatory imposed on the entities. He does not see the basis to impose an allowance structure. It would need to be done at the federal level through Title IV. Ultimately the point is this Commission lacks direct statutory authority to continue with the proposed rulemaking in the petition.

Commissioner Meiburg – Legal authority needs to be determined. For the steps so far, the consultation with Counsel is satisfactory. Regarding the state vs. federal activity on this, he supports a rapid reduction of CO2 emissions in North Carolina but is agnostic on the mechanism through which that occurs. He is uneasy about opposition without the offer of a separate solution to consider. A national program with a market mechanism would keep costs down, like the Acid Rain Program achieved. The existing 11 RGGI States have a decreasing RGGI cap, which has achieved reductions through the "low hanging fruit", energy efficiency, and switch from coal to cheaper natural gas. The next steps will be more difficult, in part due to electrification in other sectors, placing more pressure on the power sector. This is a market-based solution, and so far as solutions, appears to be a good option. He commented on the "ping-pong" effect of changing administrations undoing actions of previous administrations, a superseding federal program, and the perspective of doing nothing as an alternative.

Commissioner Carter – A market-based solution should be the approach taken, but we need a legal opinion as a pillar to build on. He clarified that the need for a legal opinion is not to stop the petition or an effort against market-based.

Commissioner Monast – Can we hear from **Counsel Reynolds** about the legal authority as presented by the petitioners?

Counsel Reynolds – The burden on the petitioner is to provide a legal basis. This duty is to present a reasonable argument, but it is not necessary to say it is legally valid or not. **Counsel Reynold's** duty is to give an opinion independent of the petitioners, and not to decide whether they are right or wrong. The RRC would likely want a legal opinion from the AG's office. **Counsel Reynolds** would most likely be the one assigned to write this opinion. As an emissions control program, this would allow the Commission under NC G.S. §143-215.107 to decide a cap standard. The standard in this instance would include the system of trading credits. Also, under NC G.S. §143-215.107(a)(12), the EMC has the authority to create a program of incentives to promote voluntary emissions reductions. This does not appear to be an express limitation on general authority to create the program. Whether this is a mandatory versus voluntary program is the issue. Looking at (a)(12), this is an option, not a limitation on the EMC. There is no case law specific to this issue, so it is reasonable to read the text as allowing the EMC broad authority when it comes to emissions reduction programs. For the Committee today, it is clear the EMC has the authority to engage in rulemaking of this kind and may vote to proceed. A question for consideration at a later date will be whether the EMC has authority to adopt these specific rules as written.

Chair Arata stated that the full EMC has voted on **Commissioner Carter's** motion to get a legal opinion.

Commissioner Carter clarified that he is not reintroducing the motion and asked if a fiscal note be required to be presented for vote and asked the Director for timing or comments on the fiscal note.

Chair Arata asked if DAQ Director Abraczinskas has any comments.

Director Abraczinskas – As mentioned by **Chair Arata**, the DAQ is not sitting idle, but is engaged in the review of the petition for completeness and busy putting resources into understanding the RGGI program, including engagement with RGGI, Inc and other RGGI States, and to look forward at what a fiscal note would require, if the Commission votes to proceed to rulemaking. The DAQ has identified that identifying costs, benefits, and rate impacts may require outside help. The DEQ has had discussions with the Public Staff of the Utilities Commission, who would need to do their own analysis and would request information from the affected facilities under their purview, which would likely take several months. DAQ would need this Public Staff analysis to complete our fiscal analysis. Currently the fiscal note work is being scoped out to ultimately be at level the OSBM may approve.

Chair Arata – Is it a fair statement that the Division appears to be in process, but additional steps are needed before it can be presented to the Commission?

Director Abraczinskas clarified that the DAQ is scoping out what it would take to get a fiscal analysis approved by OSBM. Preliminary discussions with OSBM have occurred to plan ahead in the event that the Commission grants the petition.

Chair Arata asked **EMC Chair Meiburg** for his view, considering that a fiscal note is not available for this Committee's recommendation of whether to send this petition forward.

Commissioner Meiburg – Believes the fiscal note will be necessary to vote on the rule, but not for the petition.

Commissioner Carter – Clarified his question was whether a fiscal note is required for the rule, not the petition. Agrees the fiscal note will go with the rulemaking not the petition itself.

Commissioner Deerhake – Supports the petition as following the standard approach and supports a vote of "yes" to continue to the full EMC. There are multiple bodies of government that can move forward, whether

executive, legislative, Utilities Commission or EMC, but none have stepped forward. In terms of study, the executive branch and DEQ have prepared and studied under the Clean Energy Plan, which included stakeholder participation. RGGI promises to reduce GHG emission as a market-based approach comparable to the former acid rain program. The long-term impacts from acid rain damage still affects North Carolina ecosystems and soil quality.

MOTION AND AQC VOTE ON THE PETITION

Motion: Passes 4 to 1 [**Commissioner Carter** votes against, **Chair Arata** and **Commissioner Meiburg** will vote at the full EMC]

Commissioner Monast – Motioned that the AQC recommend to the EMC to grant the petition.

Commissioner Deerhake – Seconds the Motion.

Agenda Item #3, Meeting Adjournment

AQC Chair Arata asked for additional questions or comments, and upon hearing none, noted that the next meeting of the AQC would be July 7, 2021. **AQC Chair Arata** adjourned the meeting.