

August 13, 2026

ATTN: Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control

RE: Public Comment on Proposed Rule, 7 DE Admin. Code 1147, CO2 Budget Trading Program (SAN No. 2026-02; Docket No. 2026-R-A-0003), Amending the Regulation to Reflect the 2025 RGGI Third Program Review Revisions

Dear Ms. Vest and associates,

The Fulcrum Foundation is a nonpartisan organization dedicated to improving state-level regulatory environments through research, policy development, legislative engagement, and implementation support. As a part of its mission to advocate for regulatory relief in critical sectors of the American economy, the Foundation produces public comment on state-level regulatory proposals across the U.S., designed to help highlight the economic costs of regulation and improve regulatory outcomes.

The cost of electricity in the United States has continued to rise, and regional electrical grids face growing strains stemming both from aging infrastructure and from increased demands related to technological development.¹ Unfortunately, these challenges have been compounded in many states by the adoption of production constraints and energy taxes designed to favor the production of “renewable” energy.² The Regional Greenhouse Gas Initiative (RGGI) is one such scheme which continues to hamper energy production and raise the cost of energy for both businesses and consumers in participant states. The Third Program Review Revisions threaten to exacerbate the already damaging effects of RGGI by forcing drastic new cuts to energy production levels where adopted.

Therefore, the Fulcrum Foundation ("Fulcrum") appreciates this opportunity to provide comment on this proposed amendment of 7 DE Admin. Code 1147, the CO2 Budget Trading Program, adopting revisions from the 2025 RGGI Third Program Review, and we thank the Delaware Department of Natural Resources and Environmental Control (the

¹ U.S. Energy Information Administration, "Electricity: Average Price of Electricity to Ultimate Customers," Electric Power Monthly, <https://www.eia.gov/electricity/monthly/>. See also North American Electric Reliability Corporation, 2024 Long-Term Reliability Assessment (Atlanta: NERC, 2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2024.pdf.

² For discussion of the cost effects of state renewable energy mandates, see Michael Greenstone and Ishan Nath, "Do Renewable Portfolio Standards Deliver Cost-Effective Carbon Abatement?" (Energy Policy Institute at the University of Chicago Working Paper No. 2019-62, 2019), <https://epic.uchicago.edu/>.

"Department") for its consideration of our input. We hope to contribute to the Department's understanding of the potential economic impacts of this action, with the confidence that this analysis will be useful in deliberations over the form and estimated impact of the finalized rule, and with other similar actions in the future.

Our response consists of three sections, which proceed as follows: First, we identify several deficiencies in the Department's Regulatory Flexibility Analysis (RFA), which contains an analysis which is based in part on superseded citations and contains inherent contradictions. Next, we examine the Macro-Economic Impact Study referenced within the Department's Regulatory Impact Statement (RIS), illustrating that the estimates cited by the RIS likely excluded material historical evidence about the actual cost impacts of the proposed reductions to program allowance levels, along with several other defects. Last, we evaluate the potential cost of the proposed elimination of the offset program, which the Department failed to consider in a meaningful way as part of this proposal.

1. Deficiencies in the Department's Regulatory Flexibility Analysis

The Department's Regulatory Flexibility Analysis (RFA) claims Exemption A: that the proposed rule "is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to small businesses or individuals at all." The supporting analysis does not sustain that claim, for two reasons.

First, the analysis applies an incorrect legal standard. In explaining why regulated entities are not small businesses, the Department reasons that electric generating facilities would be treated as "business enterprises with annual gross receipts greater than \$4 million." That figure is not the current statutory threshold. The definition of "small business" in 29 Del. C. § 10403, as amended by the Regulatory Transparency and Accountability Acts of 2015, turns on whether an enterprise employs fewer than 50 persons and has gross receipts under \$10 million (and is not owned or controlled by another business enterprise).³ The Department's reliance on a superseded \$4 million figure means its exemption determination rests on the wrong test.

Second, the analysis contradicts itself. Having asserted that the rule "will not apply to small businesses or individuals at all," the Department then concedes in the same document that "it is possible that the smaller municipalities operating electric generating units" may fall below the applicable employment threshold. A determination that no small businesses are affected cannot rest on an analysis that simultaneously identifies a category of potentially affected small entities. The Department also correctly characterizes electric generation as a "personal service," but "personal service" is one of the three

³ Del. Code Ann. tit. 29, § 10403 (2025); see also Regulatory Transparency and Accountability Act of 2015, 80 Del. Laws ch. 111 (2015).

categories that bring an enterprise within the small-business definition, not a basis for excluding one; the characterization, if anything, cuts against the claimed exemption.

These are not immaterial drafting issues. The RFA is the mechanism by which Delaware law ensures that an agency has identified who bears the burden of a proposed rule before imposing it. An exemption determination built on a repealed threshold and an internal contradiction does not discharge that obligation. The Department should amend the RFA to apply the current statutory thresholds, resolve the contradiction regarding municipally operated generating units, and either substantiate the exemption on a correct legal basis or complete the analysis that Chapter 104 requires.

2. Historical Evidence and the Likely Cost Impacts of “Carbon Cap” Reductions

Delaware law requires the Regulatory Impact Statement (RIS) to provide a good-faith estimate of the costs of a proposed rule and to describe less costly alternatives to achieving its purpose. Because the Department is afforded broad discretion in how it implements RGGI, that cost analysis is not incidental to the rule; it is the basis on which a discretionary policy choice is supposed to rest. The current analysis does not meet that standard, in three respects.

First, the Department did not engage meaningful historical evidence about the cost impact of similar regulatory measures in the past, which provides the most relevant information about the likely impacts of this proposal. Its cost conclusions rest on modeling prepared to support the regional program revisions, without addressing the observed record of how allowance prices have actually behaved following past cap reductions. In the period following the last major tightening of the RGGI cap, allowance clearing prices rose substantially (from roughly \$5 per ton in 2019 to over \$13 per ton by 2022, and above \$20 more recently).⁴ Even after discounting heavily for coincident factors such as the 2021 to 2022 natural gas price spike, the observed price response implies a ratepayer cost increase meaningfully greater than the near-zero effect that the Department projects this change will incur.⁵ The implication is that this change, which is similar or greater in magnitude, can be expected to result in similar outcomes.

In order to further illustrate this point, Fulcrum has provided additional evidentiary support to this claim in the form of an independent cost analysis, contained in the appendix to this letter. Although an agency is entitled to weigh competing evidence, it is obligated to

⁴ Calculated from Regional Greenhouse Gas Initiative, Inc., "Auction Results," <https://www.rggi.org/auctions/auction-results>. Clearing prices rose from \$5.20 per ton (Auction 45, September 2019) to a 2022 average of approximately \$13.46 per ton (Auctions 55–58), and reached \$35.00 per ton at the June 2026 auction (Auction 72).

⁵ Specifically, Fulcrum estimates that the 2021 changes resulted in a cost increase of approximately 1%. See appendix for further discussion and analysis.

consider the relevant evidence before it; the Department's analysis does not acknowledge or engage this contrary historical record at all.

Second, the Department's evidence does not match its claim. The analysis asserts a Delaware-specific conclusion, that ratepayer impacts will be negligible across all customer classes. The evidence cited for that conclusion, however, is a regional, RGGI-wide average bill analysis. A regional average does not establish a result for Delaware, whose circumstances are atypical: Delaware is a heavy net importer of electricity within PJM, drawing a substantial share of its power from neighboring states, including Pennsylvania, which is not a RGGI participant. A cap that raises compliance costs on Delaware's in-state generators while much of its consumed power originates outside RGGI's reach raises distinct questions of both cost and emissions leakage that a regional average does not answer.

Third, the conclusions drawn by the Department cannot be fully evaluated, and also appear to rest on an assumption that the rule itself contradicts. The allowance-price trajectory that drives the bill analysis was not disclosed in the record; the underlying model is proprietary, and its Delaware-specific inputs and outputs are not available for review. Moreover, the “negligible impact” result appears to be measured against a baseline that assumes allowance prices remain flat, a premise the rule's own escalating trigger prices contradict: the rule sets a Cost Containment Reserve tier 1 trigger beginning at \$19.50 per allowance in 2027 and rising seven percent annually thereafter. A cost conclusion that depends on a flat-price assumption, while the same rule builds in a rising price schedule, cannot be reconciled on the current record.

The Department should amend the RIS to engage the historical price evidence, to disclose the allowance-price modeling on which its conclusions depend, to reconcile its Delaware-specific claim with the regional character of its evidence, and to consider less costly alternatives (such as a more gradual cap trajectory) as Delaware law requires.

We further note that the record does not contain the analytical support on which the proposed rule relies. The RIS references a technical analysis of the rule's costs and benefits, but no such Technical Support Document appears in the published rulemaking record, in Start Action Notice 2026-02, or among the supporting materials on the Department's Regional Greenhouse Gas Initiative webpage, to which the Department directs the public. Interested parties therefore have no means of evaluating the modeling underlying the Department's cost and ratepayer conclusions. Separately, the analysis asserts that the program has generated approximately \$360 million in proceeds since 2009, but provides no citation or supporting documentation for that figure, which we have been unable to reconcile with the publicly available cumulative proceeds data. We respectfully request that the Department place the Technical Support Document and the

source for its proceeds figure in the public record and afford an opportunity for comment on them before finalizing the rule.

3. The Unconsidered Cost Impact of Offset Elimination

Beginning January 1, 2027, the proposed rule eliminates the offset compliance pathway entirely: no new offset projects may be approved, and only pre-2027 offset allowances remain usable. This change takes effect at the same moment the Department begins its steepest cap reductions, roughly 11% annually from 2027 through 2033.⁶ The RIS does not consider or discuss the cost impact of this change to the offset program, nor does it contemplate the interaction of this change with the concurrent cap reductions.

This is a material omission. Offsets functioned as a low-cost compliance mechanism that placed downward pressure on allowance prices by giving regulated sources a cheaper substitute at the margin, a characterization drawn from the Department's and RGGI's own program materials. The fact that offsets were not widely utilized is not evidence that their economic utility would not be greater when allowance prices are higher (as this proposal virtually guarantees they will be). The value of such a safety valve is greatest precisely when allowance prices are high. Economically, offsets can be considered a *substitute* for purchasing allowances, meaning that they will be utilized when the cost of allowances exceeds the cost of utilizing the offset; a scenario which may not have occurred in the past but may very well occur if the proposed changes are adopted. By eliminating offsets in the same rulemaking that drives allowance prices upward through a sharply declining cap, the Department forecloses a price-relief option at the exact point in the program's history when it would have been most likely to be exercised.

To illustrate this point, Fulcrum includes in the appendix to this comment an independent analysis of the likely impact of offset elimination on the price of allowances. Holding the allowance price constant, and assuming a compliance entity that used its full 3.3% offset allotment, elimination of the offset pathway increases that entity's compliance cost by an average of approximately 1%, and potentially closer to 2% in some scenarios. This is an effect entirely separate from, and additional to, the cap-driven price increase addressed in Section 2.

Under the arbitrary-and-capricious standard governing review of agency rulemaking (29 Del. C. § 10141), an agency should examine the relevant data and articulate a rational connection between the facts found and the choices made, including consideration of all important aspects of the problem before it. By not considering the cost of this change, the

⁶ 7 DE Admin. Code 1147 (proposed), § 1.3 (defining "CO2 emissions offset project" to provide that such projects "can no longer be approved" and that only offset allowances "created before January 1, 2027" remain eligible, as limited under § 6.5.1.3) and § 5.1. Under § 5.1, the base budget declines by 318,965 tons per year from 2027 through 2033, approximately 11 percent of the 2026 base budget of 2,870,690 tons annually.

Department has not fully discharged this obligation. Fulcrum respectfully requests that the Department analyze this interaction on the record and disclose the supporting allowance-price projections before finalizing the rule.

Conclusion

In sum, we thank the Department for considering our comments on this proposed rulemaking, and we welcome the opportunity for additional engagement on this issue if so desired. We urge the Department to, at a minimum, take the following steps:

- Amend the RFA to correct factual errors (applying the current statutory small-business thresholds rather than the superseded figures), and to resolve the internal contradiction between its claimed exemption and its own description of the affected entities.
- Amend the RIS to consider the historical evidence the Department has not engaged, and complete an analysis of estimated ratepayer impacts *in Delaware* rather than merely citing a regional study with limited applicability.
- Disclose the allowance-price modeling underlying the cost conclusions in the RIS, which appears to rest on a flat allowance-price baseline that the rule's own escalating trigger prices contradict.
- Include a discussion of less costly alternatives to the proposed changes in the RIS, as required by Delaware law, including a more gradual cap trajectory and retention of the offset pathway.
- Amend the RIS to consider the cost of each proposed change, including the elimination of the offset program (if this change is retained), a material aspect of the rulemaking the current record does not address.

Finally, we note that the deficiencies identified above cannot be cured simply by supplementing the record at the point of final adoption. The Regulatory Flexibility Analysis and Regulatory Impact Statement are components of the notice on which the public is entitled to comment. Should the Department correct the factual errors in its analysis, disclose the allowance-price modeling underlying its cost conclusions, or analyze the cost of the offset elimination and the availability of less costly alternatives, that corrected analysis may materially alter the basis for the rule or introduce significant information not available to the public during the current comment period. In that event, finalizing the rule on the current record would deprive interested parties of a meaningful opportunity to respond to the Department's actual analysis and reasoning. We therefore respectfully urge the Department, if it undertakes the corrections described above, to re-propose the rule or reopen the comment period so that the public may comment on the corrected Regulatory Flexibility Analysis and Regulatory Impact Statement before the rule is finalized.

Not only are these steps consistent with the Department's obligations under Delaware law, but they are also important for understanding the true cost impact of the proposed changes to this program. The Department is afforded broad discretion on the regulatory implementation of RGGI, and that discretion makes the underlying analysis consequential rather than incidental. We hope that this comment and the accompanying analysis will persuade the Department to consider implementing the program in a less costly manner. More broadly, instead of further constraining local energy production, Delaware should consider all available options to *promote* more local production. Such actions would meaningfully reduce costs for consumers and businesses while also easing the burden its import dependence places on neighboring states.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caleb Taylor', with a stylized flourish at the end.

Caleb Taylor
Chief Executive Officer
The Fulcrum Foundation

Appendix: Independent Analysis

To supplement the record with an independent estimate of the proposed rule's ratepayer impact, Fulcrum has prepared the following analysis using only publicly available data. The analysis treats the most recent comparable RGGI cap reduction, the 2021 program adjustment, as a natural experiment: because that event tightened allowance supply by a magnitude broadly comparable to the present proposal, the price and cost response that actually followed offers direct, observed evidence of what the current proposal is likely to produce.

Following the 2021 reduction, allowance clearing prices rose by approximately 160 percent, from \$5.20 per ton in 2019 to \$13.50 per ton by early 2022. To translate that increase into a residential bill effect, we apply the added allowance cost to the marginal generating unit and pass it through to a representative Delaware residential customer. We then discount that result substantially to isolate the portion of the price increase attributable to the cap reduction itself from coincident factors, most notably the 2021–2022 natural gas price spike, retaining only 25 percent of the observed increase at the low end and 50 percent at the high end.

Applying this method to the 2021 event yields an estimated residential price increase of 0.63 percent to 1.26 percent. Because the presently proposed cap reduction is smaller in annualized terms than the 2021 event (approximately 11 percent per year against approximately 17 percent), we scale the estimate proportionally, by a factor of 0.65, to project the impact of the current proposal. This produces an independent estimate of a 0.41 percent to 0.82 percent increase in residential electricity costs, equivalent to roughly \$0.61 to \$1.22 on a representative monthly bill.

The significance of this estimate lies in its relationship to the Department's own figures. Even the low end of our independent estimate exceeds the midpoint of the Department's projected range, and the high end approaches double the Department's upper bound. Our approach is deliberately conservative at each step, discounting heavily for confounding factors and scaling down for the smaller cap reduction, yet it still indicates a ratepayer cost materially greater than the near-zero effect the Department reports. This divergence suggests that the Department's reliance on regional modeling, rather than observed historical outcomes, has led it to understate the likely cost of the proposed reductions.

Table 1: Independently Modeled Estimates of RGGI Ratepayer Impacts

Scenario	Allowance Cap Decrease	Allowance Price Change	Estimated Consumer Price Change
2021 RGGI Cap Reduction	17% ^a	+160% ^b	+0.63% to +1.26% ^c

2026 RGGI Cap Reduction (RGGI Estimate)	11% ^d	Not disclosed	-0.16% to +0.41% ^e
2026 RGGI Cap Reduction (Independent Est.)	11%	+104% ^f	+0.41% to +0.82% (≈ \$0.61–\$1.22/mo) ^g
a. Regional cap reduction associated with the 2021 RGGI program adjustment, annualized. Regional Greenhouse Gas Initiative, Inc. "Elements of RGGI." https://www.rggi.org/program-overview-and-design/elements. b. Allowance clearing-price increase from 2019 to 2022, calculated from Regional Greenhouse Gas Initiative, Inc. "Auction Results." https://www.rggi.org/auctions/auction-results. From \$5.20/ton (Auction 45, September 2019) to \$13.50/ton (Auction 55, March 2022), an increase of approximately 160 percent. c. Estimated residential consumer price change. Fulcrum Foundation calculation from the allowance-price increase in note b, applying a marginal emissions rate of 0.5 tCO₂/MWh and a representative Delaware residential profile of approximately 900 kWh per month at approximately 16.5 cents per kWh ($\\$8.30 \times 0.5 \div 1,000 \div 0.165 = 2.5\%$). The marginal emissions rate is an approximation of emissions rates from natural gas and fossil fuel power producers; see U.S. Energy Information Administration, "Electric Power Sector CO₂ Emissions," and U.S. EPA, "Emissions & Generation Resource Integrated Database (eGRID)". Retail rate and consumption from U.S. Energy Information Administration, "Electric Power Monthly," https://www.eia.gov/electricity/monthly/. The range reflects an attribution discount retaining 25 percent (low) to 50 percent (high) of the estimated price increase (2.5%) as attributable to the cap reduction, discounting the remainder for coincident factors including the 2021–2022 natural gas price increase. d. Annualized cap reduction under the proposed rule, expressed as the annual reduction (318,965 tons) as a share of the 2026 base budget of 2,870,690 tons. 7 DE Admin. Code 1147 (proposed), Section 5.1. e. Department estimate as reported in the Regulatory Impact Statement, reflecting the Analysis Group customer bill analysis. Analysis Group. "Customer Bill Analysis." RGGI Program Review, June 25, 2025. https://www.rggi.org/program-overview-and-design/program-review. f. Allowance-price change for the proposed reduction, estimated as the 2021 response (note b) scaled by the ratio of annualized cap reductions ($11\% \div 17\% = 0.65$). Fulcrum Foundation calculation. g. Consumer price change for the proposed reduction, calculated as the 2021 estimated range (note c) scaled by the same 0.65 cap-magnitude factor; dollar figures reflect a representative monthly residential bill of approximately \$148 ($900 \times \\0.165). Fulcrum Foundation calculation.			

To assess the cost of the proposed elimination of the offset program, Fulcrum has prepared the following analysis, which isolates the effect of removing the offset pathway from the cap-driven price increase addressed in the preceding section. Offsets functioned as a lower-cost substitute for allowances, available to cover a limited portion of a compliance entity's obligation. Their economic value is not fixed; it rises as allowance prices climb, because the higher the price of an allowance, the more an entity saves by meeting part of its obligation with a cheaper offset instead.

The analysis models a compliance entity using its full offset allotment, capped at 3.3 percent of its obligation, and compares its compliance cost with and without the offset option available. For allowance prices, it uses the proposed rule's own escalating Cost Containment Reserve Tier 2 trigger prices as proxies for future price levels, alongside the prevailing 2026 market price. For offset costs, it uses \$25 and \$30 per ton, a range bracketing the level at which offsets can be inferred to sit: because offset projects have

remained unused while allowances have recently cleared near \$29 per ton, offsets can be inferred to cost at least that much.

The results demonstrate the central point. At present price levels, the offset option is roughly at parity with allowances, and its elimination has little or no measurable effect, because an entity would not use an offset priced above the prevailing allowance. But as the proposed cap reduction drives allowance prices upward along the rule's own trigger schedule, the same offset option moves increasingly into value, and its elimination imposes a growing cost, reaching approximately 1.6 to 1.9 percent of compliance cost by 2037. This is the precise mechanism the Department's analysis overlooks: by removing the offset pathway in the same rulemaking that drives allowance prices higher, the proposal forecloses a cost-relief option at exactly the point in the program's trajectory when it would become most valuable. The cost of that foreclosure is separate from, and additional to, the direct cost of the cap reduction itself.

Table 2: Independently Modeled Estimates of Offset Elimination Impacts on Compliance Cost

Scenario/Step	Allowance \$/ton ^a	Offset \$/ton ^b	Offsets Used ^c	Total Cost (100 tons) ^d	Implied Cost of Offset Elimination ^d
Status quo (2026 prevailing)	\$28.92	\$25	3.30%	\$2,879	0.45%
Status quo (2026 prevailing)	\$28.92	\$30	0%	\$2,892	0.00% (no effect)
2027 — near-term trigger	\$29.25	\$25	3.30%	\$2,911	0.48%
2027 — near-term trigger	\$29.25	\$30	0%	\$2,925	0.00% (no effect)
2031 — mid-period trigger	\$38.34	\$25	3.30%	\$3,790	1.16%
2031 — mid-period trigger	\$38.34	\$30	3.30%	\$3,806	0.72%
2037 — end-period trigger	\$57.53	\$25	3.30%	\$5,646	1.90%
2037 — end-period trigger	\$57.53	\$30	3.30%	\$5,662	1.60%
a. Allowance prices. Status-quo figure is the 2026 year-to-date average clearing price of approximately \$28.92 per ton; 2027, 2031, and 2037 figures are the proposed rule's own CO₂ Cost Containment Reserve (CCR) Tier 2 trigger prices (\$29.25, \$38.34, \$57.53), used as defensible proxies for elevated future allowance prices. Regional Greenhouse Gas Initiative, Inc. "Auction Results." https://www.rggi.org/auctions/auction-results; 7 DE Admin. Code 1147 (proposed), Table 2 (CO₂ CCR Tier 2 Trigger Price). b. Offset cost. Because offset projects remained unused while allowances cleared near \$29 per ton in 2026, offsets can be inferred to cost at least that much; \$25 and \$30 bracket that revealed-cost floor. Regional Greenhouse Gas Initiative, Inc. "Auction Results." https://www.rggi.org/auctions/auction-results.					

c. The illustration assumes a compliance entity using its full offset allotment, capped at 3.3 percent of its compliance obligation, expressed here as 3.3 of every 100 tons. 7 DE Admin. Code 1147 (proposed), Section 6.5.

d. Total cost and implied cost of offset elimination are Fulcrum Foundation calculations. Where the offset cost is below the allowance price, a compliance entity uses its full 3.3 percent allotment (3.3 of 100 tons), and total cost under offsets = $(96.7 \times \text{allowance price}) + (3.3 \times \text{offset price})$. Where the offset cost exceeds the allowance price (2026 and 2027 at \$30), a rational entity uses no offsets, so offset usage is set to 0 percent and elimination produces no cost effect. The implied cost of elimination = $[(100 \times \text{allowance price}) - \text{total cost under offsets}] \div \text{total cost under offsets}$. The effect grows as the allowance price rises relative to the fixed offset cost, reflecting the increasing option value forgone as the cap tightens.