



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

March 7, 2007

Hon. Thomas B. Saviello  
60 Applegate Lane  
Wilton, Maine 04294

Dear Rep. Saviello:

This letter is in response to your request for guidance on whether you can vote on or otherwise influence legislation or a Department of Environmental Protection rule-making regarding the Regional Greenhouse Gas Initiative (RGGI). Your request was considered at the Ethics Commission's meeting on February 27, 2007.

**Factual Background**

The Commission considered the following factual background, based on information provided by you and other interested persons and the DEP website.

RGGI is a cooperative effort among northeastern and mid-Atlantic states to reduce emissions of carbon dioxide by electric power generators. If adopted by these states, the agreement would impose a cap on total carbon dioxide emissions for the region, and power plants that emitted carbon dioxide would likely be required to buy allowances on a market in order to emit carbon dioxide. The DEP has begun seeking public input on the RGGI rules.

If adopted in Maine, six power plants in the state likely would be required to buy the allowances. Two of the six power plants are owned by Verso Paper Holdings LLC, which owns paper mills in Jay and Bucksport, Maine. You are employed as the environmental manager of the Jay mill.

The paper mill in Jay has a power plant which creates steam used in paper production and which also produces electric power which is sold. As the environmental manager for the mill, you oversee compliance of the power plant with the state's environmental laws and rules. Verso Paper engages a consulting firm to oversee the power plant. That firm purchases allowances to emit a different chemical, sodium dioxide.

Because Maine's RGGI program is still under development, it is difficult to know what the costs of the allowances would be to Verso Paper, but for the purposes of this opinion you suggested it could be in the range of \$5 million for each plant. If the Jay plant were

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required to buy allowances, they would be purchased by Verso Paper's accounting department. If adopted in Maine, the RGGI program would not significantly affect your job responsibilities or the performance of your job. The purchases of the allowances would not affect your department's budget.

The Commission received comments from an environmental organization stating that one bill concerning RGGI may contain some financial incentives that would be paid by the state of Maine to Verso Paper.

### **Legal Standard for Legislative Conflict of Interest under Maine Law**

During the course of the discussion, the Commission analyzed the potential conflict under Paragraphs 1(A), (E), and (F) of 1 M.R.S.A. §1014:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation.

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him or a member of his immediate family with intent to influence his conduct in the performance of his official duties, or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community.

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

### **Factors Considered by the Commission**

In considering this matter, the Commission acknowledged certain negative results that would occur if you were to recuse yourself from the RGGI legislation and rule-making:

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- The Legislature's decision-making process is benefited when members bring specialized knowledge and experience to the debate. You have relevant professional and educational experience that bears on discussion of RGGI. If you recused yourself, you would not be available as a resource to your colleagues.
- Policy-making at the State House is benefited when Legislators and others present a range of views, which complement and sometimes even clash with each other. When a Legislator with a valuable professional background recuses himself, the recusal affects the balance of viewpoints considered.
- Your recusal would deny the constituents in House District #90 a representative voice when the Legislature reaches a policy decision on the RGGI rules. Unlike recusal situations in other public offices (e.g., the judiciary), when a Legislator recuses himself, he or she is not replaced by a substitute. So, the residents in your legislative district would essentially be unrepresented if you recused yourself from the RGGI legislation.

Nevertheless, Legislators should consider the appearance of a conflict of interest in addition to whether there is an actual conflict in order to maintain public confidence in government. This advice is included in the statement of purpose of the Legislative Ethics Law (1 M.R.S.A. §1011).

#### **Advice of the Commission**

At the February 27, 2007 meeting, the Commission voted 3-2 to advise you that it would not be a conflict of interest for you to participate in the legislative process regarding RGGI – including discussion of policy issues and providing factual information to your colleagues – but that the Commission would strongly urge you to consider whether you should recuse yourself from voting on each specific bill or resolve concerning RGGI that might affect Verso Paper.<sup>1</sup> This does not mean that the Commission is advising you not to vote on any RGGI legislation or resolve on proposed rules simply because it will affect your employer. Rather, the Commission reminds you that you are under an obligation under Sections 1014(1) and 1015(1) to consider, on a case-by-case basis, whether you should recuse yourself from each RGGI bill or resolve. The Commission is reluctant to conclude at this stage that voting on a proposed law or resolve concerning RGGI will be an actual or potential conflict of interest when you have not presented a specific bill or resolve for the Commission's consideration.

Sincerely,



Andrew Ketterer  
Commission Chair

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<sup>1</sup> Commission members Michael Friedman, Mavourneen Thompson and I voted to approve this advice, and members Jean Ginn Marvin and Vinton Cassidy voted against.