

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Phyllis Reha	Vice-Chair
Dr. David C. Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

In the Matter of Establishing an Estimate of the
Costs of Future Carbon Dioxide Regulation on
Electric Generation Under Minn. Stat. § 216H.06

Docket No. E-999/CI-07-1199

**COMMENTS OF DAIRYLAND POWER COOPERATIVE
ON ESTABLISHING 2012 ESTIMATE**

INTRODUCTION

The Commission issued a Notice dated July 23, 2012, seeking comments on the proposed 2012 update to the range of cost estimates for future cost of carbon dioxide regulation of electric generation filed by the Minnesota Pollution Control Agency (MPCA) and the Department of Commerce Division of Energy Resources (DER) on July 19, 2012. Dairyland Power Cooperative (“Dairyland”) files these comments to summarize the reasons it believes these externality costs have become obsolete as a regulatory matter, and to seek clarification as what role—if any—the cost estimate should play in utilities’ integrated resource plans.

COMMENTS

Minn. Stat. § 216H.06 requires the Minnesota Public Utilities Commission to establish and annually update an estimate of the likely range of costs of future carbon dioxide regulation on electricity generation. The cost estimate “must be used in all electricity generation resource acquisition proceedings.” The purpose of requiring the development and use of a CO₂ cost estimate in resource acquisition proceedings is to account for the risk that the cost of new generation—and coal-fired generation in particular—could substantially increase over the 30-year life of any plant built today. *See, e.g.,* Order dated July 28, 2006 in *In the Matter of Northern States Power Company d/b/a Xcel Energy’s Application for Approval of its 2005-2019 Resource Plan* (Docket No. E-002/RP-04-1752), at 10. In that Order, the Commission noted: “[I]t is widely believed that the growing need to control carbon emissions—and the stringent emissions controls, carbon taxes, and similar measures that may well result—will make it very expensive in the future.” *Id.*

Regulatory developments following the Commission’s establishment of an initial interim estimate and subsequent revisions to the range of cost estimates have greatly diminished the utility of the estimate in resource acquisition proceedings. While acknowledging that Minn. Stat. § 216H.06 imposes a legislative mandate, Dairyland questions the ongoing utility of the CO₂ cost estimate due to the practical impossibility of siting new coal plants within the State of Minnesota or importing electricity generated from new coal plants sited outside the State. As of 2009, Minn. Stat. § 216H.03 effectively imposed a moratorium on both new coal construction and imports of electricity from new coal plants. Minn. Stat. § 216H.03 provides in pertinent part that unless a “comprehensive

state law or rule...that directly limits and substantially reduces greenhouse gas emissions” in effect by August 1, 2009:

- no large fossil fuel-fired power plant can be built in Minnesota;
- no utility can import electricity from a large fossil fuel-fired power plant built in another state that was not operating on Jan. 1, 2007; and
- no Minnesota utility can purchase electricity from an outstate utility under a contract that exceeds 50 megawatts for a term of five years.

Recent federal regulatory developments also make it highly unlikely that new coal plants will be built in the foreseeable future. On April 13, 2012, the EPA published in the Federal Register standards of performance for all new fossil fuel-fired electricity-generating units requiring them to meet an electricity-output-based emission rate of 1,000 lb of carbon dioxide for every MWH of electricity generated. The only plants that can meet this standard without implementing costly carbon capture and storage technology are natural gas plants. The New Source Performance Standards are likely to end new construction of conventional coal-fired power plants as utilities will choose natural gas over coal. *See* U.S. EPA, *Regulatory Impact Analysis for the Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units* (March 2012), available at: <http://epa.gov/carbonpollutionstandard/pdfs/20120327proposalRIA.pdf>.

The State of Minnesota moratorium on new coal plants, as well as EPA’s New Source Performance Standards, are sufficiently effective to prompt utilities to modify their resource plans regardless of the upper limit of the estimated range of likely CO₂ costs arrived at by the Commission. As such, Dairyland disagrees with the comments of MPCA

and DER which conclude that there have been “no significant changes” to warrant re-evaluation of the current range of cost estimates.

In its Order dated December 21, 2007 in this docket, the Commission found that “it would be inappropriate to apply the proposed cost estimates to CO₂ that would be emitted before [future] regulations could be expected to affect electricity costs.” The Commission determined to begin applying the CO₂ cost estimate to projected emissions from 2012 forward, based on the 2012 implementation date of the “most active federal bill addressing CO₂ emissions—the America’s Climate Security Act of 2007” (a/k/a the Lieberman-Warner bill.” *Id.* The rationale for using a 2012 effective date was not substantively re-evaluated in the Commission’s successive orders dated October 8, 2009, and June 3, 2011. The Lieberman-Warner bill died in the Senate in June 2008. A successor bill, the American Clean Energy and Security Act (“Waxman-Markey”) met a similar fate. Since that time, EPA rulemaking has been the major focus of regulatory efforts to control greenhouse gases, and the consensus of most commenters is that climate change legislation has been indefinitely delayed due to economic and political conditions.

Contrary to statements made in the comments submitted by MPCA and DER, the lack of progress on any comprehensive federal greenhouse gas initiative and the changed regulatory focus to EPA permitting rules represent significant changes that should prompt the Commission to reevaluate the applicable emissions date for applying the cost estimate in resource acquisition proceedings. Given that the 2012 date has no basis in any current federal legislative initiative, and that there is no more recent legislation that could reasonably be used to mark the anticipated effective date such costs would begin to be incurred, Dairyland believes that application of the CO₂ cost estimate should be suspended

until there is greater certainty regarding the implementation date of comprehensive greenhouse gas regulation.

In addition, most sources relied upon by MPCA (see comments dated December 9, 2010, referenced in the comments of July 12, 2012) have assumed that a future regulatory framework would be a cap-and-trade approach rather than a tax. Using that assumption, the collapse of the voluntary carbon market due to low prices and minimal activity signals that the minimum of \$9/ton in the current range of estimates is too high. Based on the diminished likelihood of comprehensive greenhouse gas legislation, Dairyland believes that the range of CO₂ cost estimates should be revised to reflect a \$0 minimum.

Dairyland appreciates the opportunity to submit these comments, and believes the Commission should include findings in its forthcoming order regarding the ongoing utility of the CO₂ cost estimate in light of the State of Minnesota coal moratorium and EPA's stringent greenhouse gas regulations incorporated into the New Source Performance Standards. In particular, Dairyland seeks clarification from the Commission as to the nature of resource acquisition proceedings as to which the current cost estimate is to be applied.

Dated this 20th day of August, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties listed on the service lists for these dockets attached hereto.

Dated at Madison, Wisconsin, this 20th day of August, 2012.

Respectfully submitted,

/s/ Mary Beth Peranteau
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