



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple
Governor

Wayne Stenejem
Attorney General

Doug Goehring
Agriculture Commissioner

March 8, 2012

Mr. Bill Sierks
MN Pollution Control Agency
520 Lafayette Road N.
St. Paul, Minnesota 55155

Re: In the Matter of Establishing an Updated 2012 Estimate of the Costs of Future Carbon Dioxide Regulation on Electricity Generation under Minn. Stat. § 216H.06 Docket No. E-999/CI-07-1199

Dear Mr. Sierks:

Thank you for this opportunity to comment on the Minnesota Public Utilities Commission's 2012 update of its estimate of the cost of carbon dioxide under Minnesota's Next Generation Energy Act, Minn. Stat. § 216H.06.

When the Minnesota Public Utilities Commission (Commission) first estimated the carbon dioxide cost, North Dakota requested that the Commission clarify that the estimate would not apply to out-of-state facilities. The Commission denied this request, concluding that its cost estimate of between \$4/ton and \$30/ton for carbon dioxide expected to be emitted in 2012 and thereafter applies "in *all* proceedings to acquire electricity generation resources to serve needs in Minnesota," even when those facilities are located outside of Minnesota. *Order Establishing Estimate of Future Carbon Dioxide Regulation Costs* (Dec. 21, 2007) (emphasis added). For 2009 and 2010, the Commission updated the range of likely cost estimates to between \$9/ton and \$34/ton for carbon dioxide expected to be emitted in 2012 and beyond.

Notwithstanding the Commission's 2007 ruling, we maintain the cost estimate should not be applied to out-of-state facilities. The reasons we previously gave for limiting the applicability of the cost estimate to generation resources within Minnesota are even more apparent today, and for the reasons below we ask that you recommend that the Commission discontinue asserting regulatory authority over North Dakota's resources.

First, Minnesota's attempt to regulate resources located outside of its borders is an improper, extraterritorial extension of state regulatory authority into North Dakota. This violates the Commerce Clause and raises jurisdictional and conflicts of law issues. Similar issues arose in *Re Quantification of Environmental Costs*, Docket No. E-999/CI-93-583 (Externalities Docket), affirmed on appeal, *Matter of Quantification of Environmental Costs*, 578 N.W.2d 794 (Minn. App. 1998). In its July 7, 1997 final order in that proceeding, the Commission determined that, for practicability and comity reasons, it would not apply its environmental cost values in resource planning to facilities located outside of Minnesota. The Commission should make a similar determination in this update.

Second, electricity generators in North Dakota have different options for responding to any future carbon dioxide regulations than do generators in Minnesota. Our electricity generation facilities are located near areas where carbon dioxide can be injected underground for enhanced oil recovery or long-term storage.

Since the Commission first established its cost estimate in 2007, carbon dioxide injection and storage technology has continued to develop and now provides an even stronger justification to confine the cost estimate to Minnesota facilities. North Dakota is a leader in the advancement of this technology. For instance, the North Dakota Industrial Commission provides funds for carbon dioxide sequestration projects and the North Dakota Legislature has adopted laws to manage carbon dioxide storage. Because North Dakota has different options than does Minnesota, any future costs relating to carbon dioxide regulation will be different for North Dakota facilities than for Minnesota facilities, and it is therefore arbitrary to continue to apply the cost estimate to North Dakota facilities.

Moreover, great uncertainty persists regarding what regulatory responses, if any, will be adopted in other countries, at the national level, and in other regions and states. Given this uncertainty, estimating future regulatory costs at this time is an attempt to quantify something that is currently unquantifiable. In addition, many economic, scientific, and legal uncertainties exist that make quantifying the future cost of carbon dioxide regulation impracticable at this time.

Contrary to statements in the Commission's December 21, 2007 order, Minn. Stat. § 216H.06 does give the Commission the discretion to decline to regulate electricity imported into Minnesota. Nothing in § 216H.06 requires the Commission to regulate beyond Minnesota's borders or requires that the Commission's cost estimate for out-of-state facilities be the same as those located within the state. In fact, § 216H.06 makes no reference to out-of-state

generation. Under the statute the Commission has the discretion to determine whether to apply the cost estimate to electricity generated outside of the state, and under its duty to interpret statutes to avoid unconstitutional results, Minn. Stat. § 645.17(3), the Commission must decline to assert Minnesota's sovereign authority within the borders of another sovereign.

We therefore request that you recommend that the Commission update the cost estimate for North Dakota facilities to \$0/ton. The reasons for limiting regulation to facilities within Minnesota's borders have become even more apparent over the last five years, and the Commission's unconstitutional and arbitrary decision to apply its cost estimate to North Dakota facilities should now be rectified.

Sincerely,

North Dakota Industrial Commission

A handwritten signature in blue ink that reads "Jack Dalrymple". The signature is written in a cursive style with a large, sweeping initial "J".

Jack Dalrymple
Governor and Chairman