

BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION  
121 7<sup>th</sup> Place  
Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Investigation into  
Environmental and Socioeconomic Costs  
Under Minn. Stat. § 216B.2422, Subd. 3  
Docket No. E-999/CI-00-1636  
Reference Docket No. E-999/CI-03-583

Comments of the State of North Dakota  
In Response to  
State of Minnesota Public Utilities Commission  
Notice of Comment Period

Submitted by  
North Dakota Attorney General Wayne Stenehjem  
November 7, 2013

The following comments are submitted on behalf of the State of North Dakota in response to the Notice of Comment Period on Motion to Update Environmental Cost Values, dated October 14, 2013 (Notice), issued by the State of Minnesota Public Utilities Commission (Commission). On October 22, 2013, the North Dakota Industrial Commission – composed of Governor Jack Dalrymple, Attorney General Wayne Stenehjem, and Agriculture Commissioner Doug Goehring – authorized Attorney General Wayne Stenehjem to submit these comments on behalf of the State of North Dakota.

North Dakota would strongly oppose any attempt by the Commission to regulate North Dakota facilities – including raising the current value in the 200 mile boundary, extending the 200 mile boundary, or setting a CO<sub>2</sub> value for any North Dakota facility. However, North Dakota takes no position on the potential re-opening of the docket for the values applied to facilities located in Minnesota, which appears to be the issue of this proceeding. North Dakota requests additional opportunity to comment if the scope of these proceedings is expanded to include North Dakota facilities.

## I. NORTH DAKOTA'S INTEREST

North Dakota is a major energy-producing state. In addition to lignite-generated electricity, North Dakota is a significant source of oil, natural gas, biomass, and wind energy. North Dakota is proud of its long history of developing its resources in an environmentally responsible manner. North Dakota's lignite-generated electric industry, for example, is recognized as a leader in installing and operating emissions control technologies. And, North Dakota is on the forefront of the development and implementation of carbon capture and sequestration technologies. The world's largest carbon sequestration project, the Great Plains Synfuels Plant, is located in North Dakota.

Most of the electricity generated in North Dakota is exported to consumers in other states. The State of Minnesota is a major user of North Dakota-produced electricity. North Dakota appreciates the mutually beneficial energy and economic partnership that it has with its neighbor.

North Dakota does not, however, appreciate Minnesota's efforts to regulate activities taking place in North Dakota. Minnesota regulation of North Dakota electricity generation unconstitutionally interferes with North Dakota's energy production. And, it's unnecessary because North Dakota is already regulating its own activities. Over the past two decades, North Dakota has participated in several Commission proceedings to prevent Minnesota's regulation of North Dakota activities and facilities. *See, e.g., In the Matter of Establishing an Estimate for the Costs of Future Carbon Dioxide Regulation on Electricity Generation under Minn. Stat. § 216H.06*, MN PUC Docket No. E-999/CI-07-1199 (comments filed October 5, 2007, January 16, 2009, and April 29, 2009, and Petition for Reconsideration filed Jan. 10, 2008); *In the Matter of the Quantification of Environmental Costs Pursuant to Laws of Minnesota 1993, Chapter 356, Section 3*, MN PUC Docket No. E-999/CI-93-583, OAH Docket No. 6-2500-8632-2.

The dispute has even become the subject of a federal lawsuit. In November 2011, after other attempts at resolution failed, North Dakota filed a complaint against several Minnesota officials, alleging that the application and enforcement of Minnesota's Next Generation Energy Act of 2007, Minn. Stat. ch. 216H, against North Dakota facilities is unconstitutional. *State of North Dakota et al., v. Lori Swanson, Attorney General of the State of Minnesota, et al.*, No. 11-cv-03232 (U.S. Dist. Ct., Dist. of Minn., complaint docketed Nov. 2, 2011). The lawsuit is currently pending.

With regard to the Commission's implementation of Minn. Stat. §216B.2422(3)(a), which is the subject of this proceeding, North Dakota has been involved in order to protect North Dakota's interests since the Commission first began efforts to set environmental costs in 1994 (Externalities Action). North Dakota intervened and became a party in the Externalities Action because of deep concerns about the Commission's establishment of environmental costs, and the application of those costs to electricity generation in North Dakota.

During the Externalities Action, North Dakota addressed four primary concerns relating to the Commission's interpretation and application of Minn. Stat. §216B.2422(3)(a): (1) The Commission's statutory responsibility to establish environmental cost values associated with each method of electricity generation; (2) The preemption of §216B.2422(3)(a) by federal laws relating to environmental regulation and wholesale power transactions; (3) The statutory requirement that "environmental costs" must be "environmental costs" incurred within Minnesota's jurisdiction; and (4) The geographic limitation of the environmental cost values established by the Commission. In its final order dated July 2, 1997, the Commission declined to apply environmental costs for CO<sub>2</sub> beyond the Minnesota border, for reasons of comity and because applying the value outside Minnesota would cause considerable effort for little or no added benefit, and confirmed that costs for the remaining criteria pollutants – SO<sub>2</sub>, PM<sub>10</sub>, CO, NO<sub>x</sub>, and Pb – would not be assessed to

generation more than 200 miles beyond the Minnesota border. These limitations were upheld by the Minnesota Court of Appeals. *Matter of Quantification of Env'tl. Costs*, 578 N.W.2d 794, 801-802 (Minn. Ct. App. 1998)

When, in 2000-2001, the Commission re-opened the Externalities Action, North Dakota again raised the concerns it had raised in the 1990s. The Commission decided not to adjust the geographic limits set in the original Externalities Action. *In the Matter of the Investigation into Environmental and Socioeconomic Costs under Minn. Stat. § 216B.2422, Subd. 3*, MN PUC Docket No. E-999/CI-00-1636 (Orders issued May 3, 2001 and October 5, 2001).

Today, with another potential re-opening of the Externalities Action, North Dakota still has the concerns it raised in the original Externalities Action and the 2000-2001 re-opened Externalities Action. Most importantly, North Dakota still contends that Minn. Stat. §216B.2422(3)(a) does not authorize the Commission to establish environmental costs for electricity generation located beyond Minnesota's borders over which Minnesota has no jurisdiction. To quantify and establish environmental costs that directly regulate the type and location of electricity generation facilities in other states exceeds Minnesota's jurisdiction and raises complex constitutional issues, addressed by North Dakota in the Externalities Action, other Commission proceedings, and the current lawsuit. North Dakota would therefore oppose any attempt by the Commission to impose its regulations on North Dakota facilities. North Dakota would oppose the Commission raising the current value in the 200 mile boundary, extending the 200 mile boundary, or setting a CO<sub>2</sub> value for any North Dakota facility.

## **II. SCOPE OF THE CURRENT PROCEEDING**

As discussed above, North Dakota would strongly oppose any attempt by the Commission to regulate North Dakota facilities. But this proceeding appears to apply only to Minnesota facilities – and not North Dakota facilities. North Dakota's understanding of the scope of the proceeding is based on the Clean Energy

Organizations' Notice and Motion to Update Externality Values for Use in Resource Decisions and the Memorandum in Support of Clean Energy Organizations' Motion (Motion), and on the Commission's Notice.

The Motion contains no discussion of facilities located outside Minnesota and provides no explanation of why the Commission should re-open the Externalities Action for North Dakota facilities. The study submitted in support of the Motion, *Health & Environmental Costs of Electricity Generation in Minnesota*, similarly does not address non-Minnesota facilities and instead discusses solely environmental costs from Minnesota facilities. For example, on page 25, the study states that "the central estimate of the damages from GHG emissions by *Minnesota power plants* in 2006 is \$1.287 billion." (Emphasis added.) And, on page 28, the study states that NRC's report "estimates that the external costs associated with *Minnesota coal power plants* is substantial and primarily associated with air pollution." (Emphasis added.)

Moreover, even if the Clean Energy Organizations were intending to include non-Minnesota facilities in the proceeding, they have not met their burden to show adequate justification for re-opening the Externalities Action as it relates to non-Minnesota facilities. See *Matter of City of White Bear Lake's Request for an Elec. Util. Serv. Area Change Within Its City Limits*, 443 N.W.2d 204, 207 (Minn. Ct. App. 1989). To meet the burden, they would need to include a discussion of why the Commission's previous orders are no longer adequate to address out-of-state facilities and provide evidence to support any such assertions. Their Motion contains no such discussion or evidentiary support, leaving North Dakota nothing to respond to.

Similarly, nothing in the Commission's Notice suggests that the Commission is considering expanding the scope of any potential re-opening of the Externalities Action to include North Dakota facilities. Like the Motion, the Notice makes no mention of North Dakota or facilities located outside of Minnesota.

North Dakota respectfully requests that it be allowed to submit additional comments if the Commission considers expanding the current proceeding to include any issues affecting North Dakota facilities. In addition to the legal arguments discussed above, we would also raise technical arguments. For example, we do not believe that the environmental externality values proposed in the Motion are either scientifically sound or based on economic models and principles that have any proven long-term accuracy.

Because neither the Clean Energy Organizations' Motion nor the Commission's Notice raise the issue of environmental costs for North Dakota facilities, it is North Dakota's interpretation that the Commission will not be considering raising the current values in the 200 mile boundary, extending the 200 mile boundary, or setting a CO<sub>2</sub> value for any North Dakota facility. Accordingly, North Dakota considers its interests preserved by the previous orders issued in the Externalities Action. North Dakota declines to provide additional comment or respond to the remaining issues in the Notice, as North Dakota takes no position on Minnesota's regulation of its own facilities.

Respectfully Submitted,

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