



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

November 14, 2013

Mr. Michael Rothman, Commissioner
Minnesota Department of Commerce
85 7th Place East, Ste. 500
St. Paul, MN 55101-2198

Mr. John Linc Stine, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road N.
St. Paul, MN 55155-4194

Re: **In the Matter of Establishing an Updated 2013 Estimate of the Costs of Future Carbon Dioxide Regulation on Electricity Generation under Minn. Stat. § 216H.06. Docket No. E999/DI-13-796. Docket No. E999/CI-07-1199**

Dear Messrs. Rothman and Stine:

Thank you for this opportunity to comment on the Minnesota Public Utilities Commission's 2013 update of its estimate of the cost of carbon dioxide under 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). In subsequent orders, the Commission updated its estimate of the range of likely costs of carbon dioxide regulation to between \$9/ton and \$34/ton of carbon dioxide emitted. See *Order Establishing 2012 and 2013 Estimate of Future Carbon Dioxide Regulation Costs* (November 2, 2012). Notwithstanding the Commission's 2007 ruling and subsequent orders affirming the ruling, we maintain the cost estimate should not be applied to out-of-state facilities.

First, as North Dakota has continually maintained in this and related proceedings, Minnesota's attempt to regulate resources located outside of its borders is an improper, extraterritorial extension of state regulatory authority into North Dakota. This extraterritorial regulation violates the Commerce Clause and Supremacy Clause of the United States Constitution. Minnesota's unconstitutional actions are the subject of a lawsuit filed by North Dakota challenging portions of Minnesota's Next Generation Energy Act. *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).

Second, Minnesota's actions raise 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.

Third, 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. North Dakota continues to make advances in the use of this technology. 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.

Fourth, there is currently a process underway to determine the regulatory response to carbon dioxide that will be adopted at a national level. Right now, the outcome is uncertain. So, estimating future regulatory costs at this time is an attempt to quantify something that is currently unquantifiable.

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 authority within the borders of another state.

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 six 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


Jack Dalrymple
Governor and Chairman

CERTIFICATE OF SERVICE

Docket No. E-999/DI-13-796
Docket No. E-999/CI-07-1199

I hereby certify that on November 15, 2013, the following document: **LETTER DATED NOVEMBER 14, 2013 FROM GOVERNOR JACK DALRYMPLE RE: IN THE MATTER OF ESTABLISHING AN UPDATED 2013 ESTIMATE OF THE COSTS OF FUTURE CARBON DIOXIDE REGULATION ON ELECTRICITY GENERATION UNDER MINN. STAT. § 216H.06** was filed electronically with Minnesota Public Utilities Commission through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to those on the attached list who have selected electronic service.

I further certify that a copy of the forgoing document was served upon the other participants on the attached list with postage prepaid, in the United States mail at Bismarck, North Dakota this 15th day of November, 2013.

/s/ Margaret I. Olson
Margaret I. Olson
Assistant Attorney General
Email: maiolson@nd.gov

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	OFF_SL_7-1199_1
Jon	Brekke	jbrekke@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_7-1199_1
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_7-1199_1
Mark F.	Dahlberg	markdahlberg@nweco.com	Northwestern Wisconsin Electric Company	P.O. Box 9 104 South Pine Street Grantsburg, WI 548400009	Electronic Service	No	OFF_SL_7-1199_1
Curt	Dieren	cdieren@dgrnet.com	L&O Power Cooperative	1302 South Union Street PO Box 511 Rock Rapids, IA 51246	Electronic Service	No	OFF_SL_7-1199_1
Brian	Drexten	bhdrexten@otpcoco.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380498	Electronic Service	No	OFF_SL_7-1199_1
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_7-1199_1
Karlene	Fine	kifine@nd.gov	Industrial Commission of North Dakota	14th Floor 600 E. Boulevard Avenue, Dept. 405 Bismarck, ND 58505	Paper Service	No	OFF_SL_7-1199_1
Edward	Garvey	garveyed@aol.com	Residence	32 Lawton St Saint Paul, MN 55102	Paper Service	No	OFF_SL_7-1199_1
Benjamin	Gerber	bgerber@mncchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_7-1199_1

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Bruce	Gerhardson	bgerhardson@otpc.com	Otter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_7-1199_1
Elizabeth	Goodpaaster	bgoodpaaster@mncenter.org	MN Center for Environmental Advocacy	Suite 206 26 East Exchange Street St. Paul, MN 551011667	Electronic Service	No	OFF_SL_7-1199_1
Todd J.	Guerrero	todd.guerrero@kutakrock.com	Kutak Rock LLP	Suite 1750 220 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_7-1199_1
Burt W.	Haar	burt.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	OFF_SL_7-1199_1
Casey	Jacobson	cjacobson@bepec.com	Basin Electric Power Cooperative	1717 East Interstate Avenue Bismarck, ND 58501	Electronic Service	No	OFF_SL_7-1199_1
Paula N.	Johnson	Paula.Johnson@alliantenergy.com	Interstate Power and Light Company	200 First Street SE PO Box 351 Cedar Rapids, IA 524060351	Electronic Service	No	OFF_SL_7-1199_1
Larry	Johnston	lw.johnston@smmpa.org	SMMPA	500 1st Ave SW Rochester, MN 55902-3303	Paper Service	No	OFF_SL_7-1199_1
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_7-1199_1
Mike	McDowell		Heartland Consumers Power District	PO Box 248 Madison, SD 570420248	Paper Service	No	OFF_SL_7-1199_1
David	Moeller	dmoeller@alliate.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_7-1199_1

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Andrew	Moratka	apmoratzka@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_7-1199_1
Peter J.	Nelson	peter.nelson@americanexperiment.org	Center of the American Experiment	Suite 1024 12 South Sixth Street Minneapolis, MN 55402	Paper Service	No	OFF_SL_7-1199_1
David W.	Niles	david.niles@avantenergy.com	Minnesota Municipal Power Agency	Suite 300 200 South Sixth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_7-1199_1
Steven	Nyhus	swnyhus@flaherty-hood.com	Flaherty & Hood PA	525 Park St Ste 470 Saint Paul, MN 55103	Electronic Service	No	OFF_SL_7-1199_1
Thomas L.	Osteraas	bademalithomasosteraas@leonard.com	Excelsior Energy	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Paper Service	No	OFF_SL_7-1199_1
Mary Beth	Peranteau	mperanteau@wheelerlaw.com	Wheeler Van Sickle & Anderson SC	Suite 801 25 West Main Street Madison, WI 537033398	Electronic Service	No	OFF_SL_7-1199_1
Craig	Rustad	crustad@minkota.com	Minkota Power	1822 Mill Road PO Box 13200 Grand Forks, ND 582083200	Electronic Service	No	OFF_SL_7-1199_1
Robert K.	Sahr	bsahr@eastriver.coop	East River Electric Power Cooperative	P.O. Box 227 Madison, SD 57042	Electronic Service	No	OFF_SL_7-1199_1
Eric	Swanson	eswanson@winthrop.com	Winthrop Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_7-1199_1
SaGonna	Thompson	Regulatory.Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_7-1199_1

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
David	Thornton	J.David.Thornton@state.mn.us	MN Pollution Control Agency	520 Lafayette Road St. Paul, MN 55101	Electronic Service	No	OFF_SL_7-1199_1
Pat	Treseler	pat.jcplaw@comcast.net	Paulson Law Office LTD	Suite 325 7301 Ohms Lane Ecina, MN 55439	Electronic Service	No	OFF_SL_7-1199_1
Darryl	Tveitbakk		Northern Municipal Power Agency	123 Second Street West Thief River Falls, MN 56701	Paper Service	No	OFF_SL_7-1199_1
Robyn	Woeste	robynwoeste@alliantenergy.com	Interstate Power and Light Company	200 First St SE Cedar Rapids, IA 52401	Electronic Service	No	OFF_SL_7-1199_1

First Name	Last Name	Email	Company Name	Address	Delivery Method	View/Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	OFF_SL_13-796_13-796
Jon	Brekke	jbrekke@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_13-796_13-796
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-796_13-796
Mark F.	Dahlberg	markdahlberg@nweco.com	Northwestern Wisconsin Electric Company	P.O. Box 9 104 South Pine Street Granitsburg, WI 548400009	Electronic Service	No	OFF_SL_13-796_13-796
Curt	Dieren	cdieren@dgmet.com	L&O Power Cooperative	1302 South Union Street PO Box 511 Rock Rapids, IA 51246	Electronic Service	No	OFF_SL_13-796_13-796
Brian	Draxten	bdraxten@otpc.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380498	Electronic Service	No	OFF_SL_13-796_13-796
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_13-796_13-796
Karlene	Fine	kfine@nd.gov	Industrial Commission of North Dakota	14th Floor 600 E. Boulevard Avenue, Dept. 405 Bismarck, ND 58505	Paper Service	No	OFF_SL_13-796_13-796
Edward	Garvey	garveyed@aol.com	Residence	32 Lawton St Saint Paul, MN 55102	Paper Service	No	OFF_SL_13-796_13-796
Benjamin	Gerber	bgerber@mnchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_13-796_13-796

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Tradé Secrét	Service List Name
Bruce	Gerhardson	bgerhardson@olpco.com	Olter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_13-796_13-796
Elizabeth	Goodpaster	bgoodpaster@mncenter.org	MN Center for Environmental Advocacy	Suite 206 26 East Exchange Street St. Paul, MN 551011667	Electronic Service	No	OFF_SL_13-796_13-796
Todd J.	Guerrero	todd.guerrero@kutakrock.com	Kutak Rock LLP	Suite 1750 220 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-796_13-796
Burt W.	Hear	burt.hear@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	OFF_SL_13-796_13-796
Casey	Jacobson	cjacobson@bepec.com	Basin Electric Power Cooperative	1717 East Interstate Avenue Bismarck, ND 58501	Electronic Service	No	OFF_SL_13-796_13-796
Paula N.	Johnson	Paula.Johnson@alliantenergy.com	Interstate Power and Light Company	200 First Street SE PO Box 351 Cedar Rapids, IA 524060351	Electronic Service	No	OFF_SL_13-796_13-796
Larry	Johnston	lw.johnston@smpa.org	SMMPA	500 1st Ave SW Rochester, MN 55902-3303	Paper Service	No	OFF_SL_13-796_13-796
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_13-796_13-796
Mike	McDowell		Heartland Consumers Power District	PO Box 248 Madison, SD 570420248	Paper Service	No	OFF_SL_13-796_13-796
David	Moeller	dmoeller@allte.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_13-796_13-796

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Andrew	Moratzka	amoratzka@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-796_13-796
Peter J.	Nelson	peter.nelson@americanexperiment.org	Center of the American Experiment	Suite 1024 12 South Sixth Street Minneapolis, MN 55402	Paper Service	No	OFF_SL_13-796_13-796
David W.	Niles	david.niles@avantenergy.com	Minnesota Municipal Power Agency	Suite 300 200 South Sixth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-796_13-796
Steven	Nyhuis	swnyhus@flaherty-hood.com	Flaherty & Hood PA	525 Park St Ste 470 Saint Paul, MN 55103	Electronic Service	No	OFF_SL_13-796_13-796
Thomas L.	Osteraas	bademalithomasosteraas@leonard.com	Excelsior Energy	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Paper Service	No	OFF_SL_13-796_13-796
Mary Beth	Peranteau	imperanteau@wheelerlaw.com	Wheeler, Van Sickle & Anderson SC	Suite 801 25 West Main Street Madison, WI 537033398	Electronic Service	No	OFF_SL_13-796_13-796
Craig	Rustad	crustad@minkota.com	Minnkota Power	1822 Mill Road PO Box 13200 Grand Forks, ND 582083200	Electronic Service	No	OFF_SL_13-796_13-796
Robert K.	Sahr	bsahr@eastriver.coop	East River Electric Power Cooperative	P.O. Box 227 Madison, SD 57042	Electronic Service	No	OFF_SL_13-796_13-796
Eric	Swanson	eswanson@winthrop.com	Winthrop Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_13-796_13-796
SaGonna	Thompson	Regulatory_Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_13-796_13-796

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
David	Thornton	J.David.Thornton@state.mn.us	MN Pollution Control Agency	520 Lafayette Road St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-796_13-796
Pat	Treseler	pat.jcplaw@comcast.net	Paulson Law Office LTD	Suite 325 7301 Ohms Lane Edina, MN 55439	Electronic Service	No	OFF_SL_13-796_13-796
Darryl	Tveitbakk		Northern Municipal Power Agency	123 Second Street West Thief River Falls, MN 56701	Paper Service	No	OFF_SL_13-796_13-796
Robyn	Woeste	robynwoeste@alliantenergy.com	Interstate Power and Light Company	200 First St SE Cedar Rapids, IA 52401	Electronic Service	No	OFF_SL_13-796_13-796