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**To: Wisconsin Natural Resources Board**

**From: Bill Skewes, Executive Director**  
**Wisconsin Utilities Association**  
**Brian Rude, Director of External Relations**  
**Dairyland Power Cooperative**

**Re: Comments on Clean Air Interstate Rule (CAIR)**  
**Natural Resources Board Order Number AM-03-06**

**Date: October 10, 2006**

Good afternoon and thank you for the opportunity to testify today. On behalf of Wisconsin's investor-owned gas and electric utilities, the Wisconsin Utilities Association (WUA), joined by Dairyland Power Cooperative (Dairyland), go on record in support of the reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions required by the proposed federal Clean Air Interstate Rule (CAIR).

WUA and Dairyland present the same position at today's public hearing as we have in previous correspondence with the Department - specifically, that Wisconsin should expedite issuance of the federal CAIR rules by adopting the U.S. Environmental Protection Agency's (EPA) recommended Model regulatory framework for the state of Wisconsin. While the Department of Natural Resources (Department) has made several improvements to make the state-level rules proposed today closer to U.S.EPA's Model program, the technical inconsistencies that remain are significant and represent major issues to future energy supply planning for Wisconsin.

WUA and Dairyland provide the following as a general listing of positions and concerns with the Department's proposed rule to implement CAIR. In particular we are concerned about changes from the federal Model Trading Rule proposed by the Department that would, in effect, create de facto energy policy for the state, which is of concern here and for future rulemakings, where even greater economic disruptions are possible.

We also are concerned about the Department's misguided intentions to alter the proposed CAIR regulation to achieve reductions related to the 8-hour ozone issue. For example, the Department states in rulemaking documents that "under an output based allocation scheme, units in Wisconsin's ozone non-attainment areas would receive a smaller allocation than under a heat input based scheme".

## **Federal CAIR Continues Clean Air Progress**

Since the inception of the Clean Air Act, significant reductions have been made in the principal air pollutants. In fact, according to the Foundation for Clean Air Progress, using only data from the EPA and the Energy Information Agency (EIA), since 1970:

- airborne lead emissions dropped by 98%;
- particulate matter (PM<sub>10</sub>) emissions dropped by 75%;
- volatile organic compounds emissions which cause smog, dropped by 42%;
- sulfur-dioxide (SO<sub>2</sub>) emissions which cause acid rain, dropped by 39%;
- the electric utility industry cut emissions of nitrogen oxides (NO<sub>x</sub>) by 40%; and mercury emissions, which have already been cut by 40% as a result of acid rain laws, will be reduced by another 70% by 2018.

The preceding reductions occurred despite a 40% population increase, 71% more drivers, 99% more vehicles, 41% more overall energy consumption and an increase in the use of electricity of 72%.

## **State-Specific Rules Only Hurt Wisconsin Industry**

Nevertheless, Wisconsin must adopt the federal version of the CAIR rules and avoid imposing additional state-specific compliance burdens on the regulated community. U.S.EPA developed Model CAIR rules with the intention of streamlining the regulatory process to achieve major emissions reductions of SO<sub>2</sub> and NO<sub>x</sub> efficiently through creation of a framework that each CAIR state could adopt quickly for approval into the state's implementation plan. "Wisconsin-only" regulations place our native industry at a competitive disadvantage with those in other states by creating a less-than-level playing field. State-level regulations are also an issue for utilities serving consumers in adjoining states.

## **DNR's Draft Rule Establishes New State Energy Policy, Goes Beyond CAIR Scope, Creates Unnecessary Complexity, and Restricts Opportunities for Early Reductions**

The Department chooses to deviate from the federal Model Trading Rule in a number of critical areas as described below. This has the impact of the Department creating de facto energy policy for the state. Moreover, it creates a troublesome precedent for future rulemakings, such as aligning the state's mercury rule with the federal Clean Air Mercury Rule, where the likely economic implications are much greater.

- Allowing Renewable Energy to Get Allowances from the Main Allocation Pool - The department's proposal to treat new renewable units the same as existing fossil fuel fired units is establishing energy policy in the state. While all of the utilities support renewable energy, it is not the department's responsibility to establish renewable energy policy through CAIR.

- Using an Output Based Scheme to Allocate Allowances - The department is proposing an approach that likely will require utilities to develop new, more costly methods to measure gross MWHs. In fact, the Department used a mix of gross and net MWH data sets to develop their output based allocation scheme, thereby creating an “apple and oranges” approach and allocation inequities. This would not be the case if the Department used the heat input allocation approach, which has been used for over a decade in the Acid Rain program. All utilities in the Acid Rain program currently use the same methodology to determine heat input, which provides consistent and accurate monitoring data. No new technology or added costs would be required if the heat input method is used. In addition, using an output based scheme provides disproportionately more allowances to certain natural gas units than to coal units, thereby unfairly affecting utility generation economics.
- Altering CAIR rule structure for 8-hour ozone standard - The department admits that their proposal to allocate allowances based on generation output was done to effect more NO<sub>x</sub> emission reductions in the non-attainment areas and thereby improve Wisconsin's air quality. The department is using CAIR as part of its SIP for the 8-hour ozone standard which is outside the scope of the rule. These rules must be handled separately in the state since the department cannot mandate NO<sub>x</sub> reductions to meet the 8-hour ozone standard outside of the non-attainment areas. Furthermore, in reality use of an output based allocation scheme is not likely to result in more reductions in non-attainment areas and the additional burden created by altering of the rule framework fails to justify the Department's misguided intentions.
- Updating the baseline periodically instead of permanent allocations - The department is adding an unnecessary level of complexity to the program by updating the baseline every five years. This proposal makes emissions planning virtually impossible because it creates a moving target resulting in a policy framework that is driven by continuous regulatory uncertainty. Adopting the federal Model trading rule provides utilities with the regulatory certainty to maximize savings for customers related to labor, construction, materials and technology acquisition costs – an important consideration given the compressed timeframe for compliance. The Acid Rain program, which has been in place for more than a decade, is very effective at reducing SO<sub>2</sub> emissions without updating the baseline.
- Failing to include a fuel adjustment factor to differentiate between fossil fuels – The department is choosing to provide windfall allowance allocations to natural gas units by not using the fuel adjustment factors recommended in the Model Trading Rule. This has the impact of unfairly impacting utility generation economics by reducing the fuel diversity and energy supply mix within the state. The department is again trying to set energy policy in the state by forcing older coal plants to shut down as their allocations get reduced, because of the updating of the baseline.

- Restricting opportunities for early reduction credits – The Department proposes to restrict the amount of early reduction credits potentially available from the NO<sub>x</sub> Compliance Supplemental Pool for utilities that install emission control equipment ahead of deadlines. The Department has been a proponent of incentives for early reductions. The proposed rule's restrictions on early reductions have the effect of negating these incentives, at a time when emissions are higher and potential environmental benefits from reductions are the greatest.

In conclusion, WUA and Dairyland support reductions because our utilities are committed to cleaner air balanced with our statutory obligation to provide reliable energy at reasonable rates. For these reasons, WUA, joined by Dairyland, strongly urges the department to amend the rules to mirror the federal CAIR. Seeking additional reductions beyond CAIR and creating unnecessary complexity increases costs to customers and harms economic development without providing commensurate environmental benefits.