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RE: EPA's Proposal to Regulate Carbon Emissions from Existing Power Plants

Date: August 29, 2014

In an August 4, 2014, email to our organizations, you requested input on various questions relating to the U.S. Environmental Protection Agency's proposed rule to set state-specific rate-based goals for carbon dioxide emissions from the power sector. This proposal, called the "Clean Power Plan" by EPA, also would establish guidelines for states to follow in developing plans to achieve the state-specific goals.[1] You also invited us to raise other topics of interest to us.

While we very much appreciate this opportunity to provide input, these comments are necessarily preliminary and general in scope, as each of our organizations continues to assess the implications of this sweeping proposal as part of developing our own comments to EPA by their October 16, 2014, deadline. Further, we expect to provide additional input to your agencies, the Governor, and other elected officials.

[1] 79 Fed. Reg. 34830 (June. 18, 2014)

General Considerations

Our organizations represent a significant segment of Wisconsin's industrial sector. We are very concerned over the cost and related adverse competitive and jobs implications this proposal will have on our members. Wisconsin and the Midwest will be hit hardest by these regulations. Nearly 60 percent of Wisconsin's electric generating capacity is coal fired. The rule targets our fleet of coal-fired power plants, and is likely to inflict dramatic and irreversible harm to our economy if it is allowed to move forward.

Affordable energy is essential to any economy, and that is especially true for Wisconsin, which often leads the country in manufacturing jobs per capita. Wisconsin's manufacturing sector accounted for only 0.15 percent of all electricity customers in Wisconsin in 2012, but accounted for about 33 percent of total electricity consumed. The average industrial electric bill in 2011 was over $31,000 per month. It is difficult to imagine a competitive business climate in Wisconsin without the availability of affordable energy. Fortunately, Wisconsin has invested in coal as an affordable source of electricity for consumers. In 2011, the cost of coal per million BTU was less than half the cost of natural gas. Unfortunately, when you consider that more than 60 percent of the electricity in Wisconsin is generated from coal, it is easy to see why this proposed rule threatens Wisconsin's access to affordable electricity.

From a broader economic perspective, EPA's plan to essentially reengineer our nation's electric utility system will have little global consequence, yet it will diminish our global competiveness. For example, given the recent phenomenon of on-shoring manufacturing from countries with rising labor and energy costs, it is vital that the U.S. utilizes an all-of-the-above energy strategy. Energy supply diversity keeps energy costs reasonable and ensures steady and reliable energy for factories and homes. For U.S. businesses and global competitors looking for a new home, energy prices represent a major input cost that can ultimately determine viability. With recent technological advances and unprecedented domestic resource availability, the U.S. is at a competitive advantage when it comes to energy prices and reliability. However, regulations such as the proposed Clean Power Plan threaten to remove this competitive advantage from the equation by restricting the available energy sources. As energy prices become more volatile and reliability diminishes, U.S. firms will be less competitive, and those firms looking for a new home in the U.S. will look elsewhere.

Moreover, EPA's regulations on power plants are only the first step of the Administration's broader greenhouse gas regulatory agenda. As the agency has committed to a suite of follow-on rules, many of our members will be hit twice — both as electricity customers and also as industries "next in line" for subsequent rules that EPA has committed to pursuing. For example, EPA proposed new rules restricting emissions from municipal landfills, and the agency's current budget request to Congress notes it will soon begin considering new GHG regulations on the following sectors: refineries, pulp and paper, iron and steel production, livestock operations, and cement manufacturing.

In no uncertain terms, we oppose these other EPA climate change initiatives. They are unlawful and will be detrimental to the Nation and the State of Wisconsin, particularly to our manufacturing industries.

Legal Considerations

Nowhere in your six-page listing of questions is there any mention of the legality of the Clean Power Plan. While we somewhat appreciate the effort to keep separate the legal and technical issues, that is impossible and a potentially dangerous strategy. The trap, whether intentional or not, is that those strategies that might mitigate the costs of these proposals from a technical perspective may have little nexus to the targeted sources and EPA's underlying legal authority.

Notably, Clean Air Act Section 111 does not provide for setting system-wide regulations on a statewide basis. Section 111(d) gives EPA discretion to set standards of performance for existing sources reflecting the best system of emission reduction, or "BSER." But, 111(d) requires EPA to regulate "any existing source," which is interpreted as a single source and not an entire system of sources. A rational interpretation of 111(d) would prohibit EPA from setting BSER on a state-wide basis as proposed in the Clean Power Plan in EPA's four building blocks.

While traditional inside-the-fence measures such as heat-rate improvements are included in the proposal, "outside-the-fence" measures include giving dispatch priority to natural gas combined cycle (NGCC) EGUs to replace coal generation, new and preserved renewable energy (RE) and nuclear capacity, and energy efficiency (EE). EPA has never taken such a broad interpretation of section 111. Further, re-dispatching, new construction, and programs that reduce demand are not a "technology" and, therefore, cannot be used as justification for the best system of emission reduction. We are concerned that supporting such measures may undercut potential legal challenges. We asked that DNR and PSC note that any preference for EPA options or building blocks not be considered a validation of their legality.

Another legal hurdle EPA may not clear relates to its new power plant proposal. Section 111(d) provides that EPA cannot adopt standards of performance for existing sources, unless EPA has regulations in place for new sources under section 111(b). Last September, EPA proposed a standard of performance under section 111(b) for new power plants that EPA intends to finalize in June 2015. If a court overturns the new plant rule, however, section 111(d) precludes EPA from implementing its existing plant rule.

EPA's section 111(b) proposal claims that the best system of emission reduction for new coal-fired power plants is partial carbon capture and storage technology. However, CCS has never been installed on any large-scale power plant anywhere in the world. But the CAA requires EPA to pick a technology that is adequately demonstrated, available at a reasonable cost, and not funded by the U.S. Department of Energy. EPA will have trouble passing any of these tests, much more passing all three.

Another legal impasse for EPA is CAA Section 111(d), which provides:

> (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by Section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance *for any existing source for any air pollutant* (i) for which air quality criteria have not been issued or *which is not* included on a list published under section 7408(a) or emitted *from a source category which is regulated under 7412* but (ii) to which a standard of performance would apply ….

When Congress amended the CAA in 1990, it passed second version of section 111(d), with both being signed into law. Generally, when facing this situation, a court will attempt to give effect to each version, especially because the two provisions are not mutually exclusive. Reading the provisions together, however, means that EPA would not be able to adopt its Clean Power Plan as the target sources are already subject to CAA Section 112.

A final note on the law, which we assume the PSC and DNR fully appreciate, is that the Wisconsin legislature must pass and the Governor must sign enabling legislation as a prerequisite to the development of the state plan envisioned under this EPA proposal.

Policy Considerations

The policy and technical questions presented by your August 6 request for comments sets forth important issues, most of which can be better answered by our colleagues in the utility industry. However, we offer the following perspectives on certain of the more important issues.

1. Electrical Reliability. Without some type of safety value, EPA's proposal will likely adversely impact electrical reliability. For example, coal units designated for retirement may be needed for electric system reliability purposes. States should not be penalized for running such plants or forced to risk reliability by shutting them down. In addition, requiring NGCC units to operate at 70 percent capacity essentially transforms those units into baseload resources at the same time renewable requirements increase load-following demands. Having coal units cover this intermediate load need, with its longer start-up time, will be costly and may decrease reliability.

2. Stranded Costs. Wisconsin utilities will soon have over $3 billion invested in air quality control systems at existing coal plants. It is our understanding that EPA's Integrated Planning Model output suggests that certain plants with these recent investments will be forced to be retired or be drastically curtailed. This would strand hundreds of millions of dollars that neither utilities nor ratepayers should have to cover, particularly considering these were federally mandated costs at the onset.

3. 2012 Baseline. Use of 2012 as a single year baseline will severely punish Wisconsin because it fails to recognize significant early action prior to 2012. This baseline would not recognize emission-reducing actions prior to 2012 that include retirements or fuel conversions, efficiency improvements, renewables and nuclear uprates. Moreover, natural gas prices were extremely low in 2012, resulting in atypically lower coal plant use.

4. Building Block 1 (Heat Rate Improvement). Wisconsin utilities cannot meet the proposed six percent improvement in the heat rate of coal units. Most of our utilities already implement HRI programs to capture efficiency gains, leaving little room for additional improvement. In addition, other EPA emission reduction mandates in existing programs and mandates set forth in this proposal actually negatively impact net heat rate.

5. Building Block 2 (Increased NGCC Dispatch). EPA's 70 percent assumption for increased dispatch by 2020 may be unattainable and otherwise disruptive to the energy markets. As noted above, converting NGCC to baseload could also adversely affect electrical system reliability.

6. Building Block 3 (Nuclear). By assigning states with existing nuclear capacity more stringent goals, EPA's proposed "at-risk" nuclear provision penalizes Wisconsin.

7. Building Block 3b (Increased Generation of Renewable Resources). EPA's use of state Renewable Portfolio Standards (RPS) to determine regional renewable energy goals is fundamentally flawed. These standards are end products of discussions within each state about the need for increased renewable generation and decreased emissions from each individual state's power sector. RPS is a policy-based mechanism for increasing renewable generation but does not necessarily represent actual market dynamics for renewable generation within states.

   EPA's allowance of out-of-state renewable generation to meet in-state goals should be supported by Wisconsin as a least-cost market-based compliance mechanism. Wisconsin's RPS allows out-of-state renewable generation for compliance, and any Clean Power Plan state plan with least cost as a compliance goal should allow out-of-state and out-of-country renewable generation. Further, EPA should allow the use of all renewable hydropower for compliance instead of only new hydropower.

8. Building Block 4 (Increased End-Use Energy Efficiency). EPA's energy efficiency assumptions fail to recognize early action by states and individual companies and presents challenges for compliance demonstration. Wisconsin, having taken early action on energy efficiency, may not be able to reach and sustain the level assumed by EPA due to already having captured the low hanging fruit.

9. Multi-State/Regional Approach. A regional approach has a potential to reduce the cost of compliance. But EPA's proposal to replace individual rate-base goals with a single goal that would be equal to the weighted average of the state goals would create winners and losers, making support unlikely in that form.

On behalf of our member companies, thank you for your consideration of these comments.