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State of North Dakota

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Re: Public Notice
Solicitation of views and comments on the development of a state plan related to EPA's Clean Power Plan

The North Dakota Public Service Commission (Commission) is a state agency established by the North Dakota Constitution (N.D. Const. Art. 5, Subsection 2). The authority of the Commission is set forth in the North Dakota Century Code (Ch. 49-01 et seq., Titles 60 and 64 and Chapters 24-01, 24-09, 38-14.1, 38-14.2, 38-18, and 51-05.1). The Commission has the general jurisdiction over "[e]lectric utilities engaged in the generation and distribution of light, heat, or power." (Subsection 49-02-01). The Commission supervises public utilities with the power to "originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities" (Subsection 49-02-03). The Commission has a statutory duty to ensure that North Dakotans receive a reliable supply of electricity at just and reasonable rates. Additionally, the Commission is responsible for determining whether to authorize generation and transmission infrastructure in North Dakota that is needed by jurisdictional utilities to provide reliable electric service to customers and is otherwise consistent with North Dakota law (North Dakota Century Code Chapter 49-03). <u>The PSC would oppose anything in the State Implementation Plan that infringes on our jurisdiction or obstructs our ability to fulfill our constitutional responsibilities.</u>

The Clean Power Plan (CPP) requires North Dakota to address not only the emitting sources (coal-fueled power plants), but also extends beyond the boundary of a stationary source and incorporates non-emitting sources (e.g., wind and solar generation) and redispatching power to lower emitting units. The CPP also requires North Dakota to take into account reliability of the electrical system when developing North Dakota's plans, which has never occurred with any other air pollution control rule.

The redispatch of power, protecting the reliability of the electrical system, and accounting for wind or solar generation have never before been federal compliance requirements when implementing an EPA rule.

Such an extreme mandate adversely impacts North Dakota citizens, businesses and government. It also threatens North Dakota's ability to continue to use lignite and other coals as a low-cost electricity generation option, as a means to enable responsible development of the Bakken oil reserves that are critical to North Dakota's continued economic development, and as a necessary part of processing rather than flaring associated natural gas.

The cost of compliance is likely more than low-income citizens will be able to afford. Adding costs to electric bills is a very regressive compliance scheme adversely impacting low-income citizens. Rural areas will be hardest hit because more people heat with electricity. The real impact will be immeasurable because many people will maintain their electric service but cut other necessities like medications, healthy foods, and safe heating methods.

North Dakota's electric generation industry consists of multiple companies with unique characteristics and business models. The Department of Health (DOH) cannot assume the use of assets or resources of separate companies to replace curtailed resources.

Energy efficiency improvements at North Dakota power plants are expected to only produce a 1%-2% increase in efficiency.

Various electric generation sources have differing capacity factors. Reliability standards require more than 1 MW of an intermittent resource like wind or solar generation to replace 1 MW of coal fired generation, which is available all the time.

Compliance with the CPP in North Dakota can only be accomplished by retiring coal plants, greatly curtailing their operations, adding prohibitively large amounts of renewable generation, or purchasing emission rate credits (ERC) or allowances. As such, North Dakota (and thus the Commission) has little actual flexibility to perform its statutory role. If coal generation is not curtailed in North Dakota, the affected utilities will have to purchase ERC's or mass allowances. At this time, the number of ERC's or allowances available is unknown because the trading program has not been developed. This also makes the cost of ERC's and allowances unknown. EPA has estimated the cost of compliance at $30 per ton. The cost to North Dakota utilities (ultimately North Dakota and other ratepayers) for the purchase of ERC's could be nearly $375 million per year. With an expanding economy and a large load growth predicted for western North Dakota because of oil and gas development, this makes planning extremely difficult and pushes utilities toward coal-fired plant closures. If plant closures occur, there is insufficient time to plan, design and construct new generation and transmission systems before the initial compliance date of 2022.

Replacement of existing generation resources will likely result in abandonment of generation facilities and electric transmission lines. It will also likely require significant investment in new electric transmission lines and natural gas pipelines – none of which have been planned, permitted or included in cost impacts of the rule.

In development of a SIP:

1. The DOH must include a calculation of annual cost impacts that will result from the plan.

2. The DOH must allow the Commission to suspend implementation mandates if they are deemed imprudent.

3. The DOH cannot assume that rate recovery will be granted to investor-owned utilities for costs associated with implementation.

4. The DOH must not impose requirements which conflict with North American Electric Reliability Corporation recommendations.

The CPP will force North Dakota to make massive expenditures of time and resources designing state plans. To participate in the design of any North Dakota Implementation Plan, the Commission will need to conduct detailed interagency analyses and then consult with various stakeholders to determine what changes can plausibly be made to increase natural gas and renewable energy generation. This process will include an assessment of the forms of energy available to North Dakota, whether developing more new energy sources is feasible, and what changes to North Dakota law would be required. In addition, because EPA's obligations in the CPP may generate interstate regimes, North Dakota will need to engage in interstate consultation, determine the possible arrangements, and assess whether such arrangements are desirable to North Dakota.

Utilities are multi-jurisdictional organizations, susceptible to influences in each of their operating areas. Utilities may choose the path of least resistance to appease the EPA and outside interest groups as long as they are assured full-cost recovery. The "regulatory compact" is a long-standing principle that grants monopoly service to bring efficiency to capital intensive industries. However, this principle also requires clear regulatory oversight in place of competition to protect customers. The Commission ensures that utility companies do not necessarily take the easiest path at the expense of North Dakota ratepayers. The CPP strips the Commission of authority to do so.

The Federal Power Act gives North Dakota exclusive authority to regulate our retail electricity market. The CPP represents an unprecedented preemption of the sovereign authority and discretion held by the Commission. The PSC will oppose a State Implementation Plan that further erodes our authority.

Sincerely,

Randy Christmann

Randy Christmann
Commissioner

Julie Fedorchak

Julie Fedorchak
Chairman

B.P. Kalk

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Commissioner