

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
EPA Proposed 111d Regulations
Information**

Case No. AD-14-736

ORDER DIRECTING RESPONSE TO CERTAIN QUESTIONS

OCTOBER 8, 2014

The North Dakota Public Service Commission (the Commission) is a state agency created by the North Dakota Constitution. N.D. Const. Art. 5, § 2. The authority of the Commission is set forth in the North Dakota Century Code. § 49-01, et. seq. The Commission has general jurisdiction over “[e]lectric utilities engaged in the generation and distribution of light, heat, or power.” § 49-02-01. The Commission establishes rates of all public utilities with the power to “originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities.” § 49-02-03. The Commission shall determine the value of property of every public utility “for the purpose of ascertaining just and reasonable rates and charges of public utilities.” § 49-06-01. The Commission “may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations,” including the federal Clean Air Act. § 49-05-04.2.

The U.S. EPA has issued a proposed regulation entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule,” 79 Federal Register 34830 (June 18, 2014) (Proposed Rule). In the Proposed Rule, EPA has decided how much coal, natural gas, nuclear, and renewable energy North Dakota and each other state should use and how much less electricity North Dakota consumers should use. EPA’s proposed numeric compliance requirements for North Dakota are based on EPA’s view of North Dakota’s potential to reduce CO₂ emissions utilizing EPA’s four “building blocks.” If finalized unchanged, EPA’s Proposed Rule would impose at least a 30 percent reduction in CO₂ emissions from existing power plants in the United States by 2030. The Proposed Rule contains specific provisions concerning North Dakota. EPA’s comment period on the Proposed Rule ends on December 1, 2014.

The Commission held a “Symposium on EPA Carbon Regulation” on January 22, 2014, and heard from the U.S. EPA Region 8 Administrator, the North Dakota Department of Health, the North American Electric Reliability Corporation (NERC), a number of electric utilities and the interested public. On September 10, 2014, the Commission held a conference entitled “Electric Reliability: Keeping the Lights on in North Dakota.” The Commission heard from a Commissioner from the Federal Energy

Regulatory Commission (FERC), the Midcontinent Independent Systems Operation, Inc. (MISO), NERC, a number of electric utilities subject to the Commission's jurisdiction and other utilities operating in North Dakota, and the public.

The Commission now orders that utilities submit comments addressing various issues identified in the several questions below. The Commission also solicits other stakeholder input – including that from the U.S. EPA and the interested public. The purpose of this Order is for the Commission to consider the issues and challenges involved in meeting growing demand for adequate and cost-effective electricity in North Dakota while at the same time considering the EPA Proposed Rule. Information received by the Commission will be used when preparing the Commission's comments on the EPA's Proposed Rules.

QUESTIONS

- a. Do you agree or disagree with the methodology EPA used to calculate North Dakota's proposed emissions reduction goal?
- b. Do you agree or disagree that the statewide "goal" established by EPA for North Dakota is really an enforceable requirement, if finalized?
- c. Do you agree or disagree EPA's Proposed Rule is not consistent with Section 111(d) of the federal Clean Air Act and North Dakota statutes because it would take away the state's primary authority for setting the emission standard?
- d. Do you agree or disagree that the Proposed Rule conflicts with the Commission's statutorily-defined rate-setting and resource planning objectives?
- e. Do you agree or disagree that the Proposed Rule would override the resource planning authority and discretion of the Commission?
- f. Do you agree or disagree that the Proposed Rule raises concerns about electric reliability in North Dakota?
- g. Do you agree or disagree that the Proposed Rule has a significant impact on North Dakota's ability to continue to use lignite and other coals as a low cost electricity generation option?

THE COMMISSION ORDERS THAT:


1. The electric utilities subject to the Commission's jurisdiction shall be prepared to file written responses to these questions no later than October 28, 2014.

2. Municipal electric utilities, electric cooperatives, and other interested stakeholders are invited to submit written responses to these questions also by October 28, 2014.
3. Any interested member(s) and the public may also submit written comments by October 28, 2014.
4. The U.S. EPA shall be provided with a copy of this Order and is respectfully requested to submit written comments by October 28, 2014.
5. This Order shall become effective upon issuance.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner