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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Environment and Natural Resources

Clearinghouse Rule 06-104

Relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency.

Submitted by Department of Natural Resources.

February 01, 2007 Referred to Committee on Environment and Natural Resources.

February 13, 2007 **PUBLIC HEARING HELD**

Present: (5) Senators Miller, Jauch, Wirsch, Kedzie and Schultz.

Absent: (0) None.

Appearances For

- Kevin Kessler, Madison — Department of Natural Resources
- Larry Bruss, Madison — Department of Natural Resources
- Kevin Crawford, Manitowoc — City of Manitowoc
- Carla Klein, Madison — Sierra Club
- Jason Goodwin, Houston — Calpine Corporation

Appearances Against

- Connie Lawniczak, Green Bay — Wisconsin Public Service
- Todd Stuart, Madison — Wisconsin Industrial Energy Corporation
- Scott Manly, Madison — Wisconsin Manufacturers & Commerce

Appearances for Information Only

- None.

Registrations For

- Bill Skewes, Madison — Wisconsin Utilities Association
- Joel Haubroch, Milwaukee — We Energies
- Elizabeth Wheeler, Madison — Clean Wisconsin
- David Benforado, Sun Prairie — Municipal Electric Utilities of Wisconsin
- Nilaksh Kothari, Manitowoc — Manitowoc Public Utilities

Registrations Against

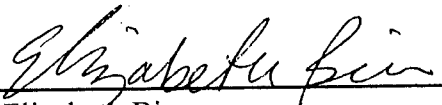
- None.

Registrations for Information Only

- None.

February 28, 2007 Modifications Received.

April 3, 2007 No action taken.


Elizabeth Bier
Committee Clerk

Formula

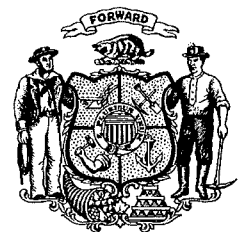
WPS does not come out well

WPS serves some of Nelson's district

WMC is about Federalizing air rule
Mercury



WISCONSIN STATE LEGISLATURE





Wisconsin Utilities Association
44 East Mifflin Street, Suite 202
Madison, Wisconsin 53703

To: WDNR Board

From: Bill Skewes, Executive Director
Wisconsin Utilities Association

Date: January 24, 2007

Re: CAIR Comments

On behalf of Wisconsin's investor-owned gas and electric utilities, the Wisconsin Utilities Association (WUA), offers the following comments regarding proposed NR 432, the state's plan to implement the federal Clean Air Interstate Rule (CAIR).

WUA understands that DNR intends to request approval of NR 432 in order to achieve timely EPA submittal for federal review and approval of the state rule package. The utilities need regulatory certainty as soon as possible since the federal CAIR compliance deadlines remain unchanged. The WUA continues to assert that the state should adopt the federal rule for the reasons stated below, yet as a consequence of this extremely flawed rulemaking process, we recognize that doing so now would likely cause further delays and uncertainty for the utilities which is not in anyone's best interest. Our comments will therefore address specific rule provisions as well as our continuing concerns with regard to the rulemaking process.

WUA is disappointed with the process that led to the publication of this rule, having repeatedly asked the Department to move forward with adopting the federal CAIR as far back as December of 2005. Having the text of the draft rule published less than one week before it is to go in front of the Natural Resources Board for adoption is too short. It is essential to allow affected sources an adequate opportunity to determine how new rules impact their facilities, and exactly what will be needed to demonstrate compliance.

On the positive side, WUA fully supports the Department's decision to participate in the CAIR emission trading program. The national trading program provides an opportunity to reduce emissions from the state's generating units in the most cost-effective manner possible. In addition, the staff did meet with individual utilities in an attempt to address specific concerns. As a result, some of the draft language has been clarified and revised.

Throughout this process DNR has chosen to ignore the fact that any diversion from the federal program inherently results in more administrative costs to both the regulated community and the regulators themselves, which is in direct conflict with the Department's and the Administration's oft-stated goal of streamlining the regulatory process. Draft NR

432 imposes significant regulatory burdens beyond those required by the federal CAIR, specifically the provision requiring updating the baseline every five years. This is a “moving target” that creates regulatory uncertainty and adds to the complexity of the rule.

This rule puts DNR in a position of setting a de facto energy policy for the State of Wisconsin, which is only within the purview of the Legislature and Public Service Commission. By removing the federal fuel-weighting provisions, a significant number of allowances are transferred away from coal-fired facilities and given to natural gas-fired facilities. The result of this rule is a selective rewarding of one fuel over another thereby creating a penalty in state law that does not exist in the federal rule.

The rule also results in unintended consequences. Specifically, the use of output data to calculate state allocations, though intended to reward efficiency, does not. Output based allocations will rely on data that has not been subjected to regulatory reviews to verify quality or consistency. In contrast, the federal input-based system for calculating allowances is already uniformly understood by sources and regulators and is comprised of quality-assured data. This allocation method is supported by over a decade of regulatory experience consistent with the Acid Rain Program.

This proposed allocation scheme results in apparent inequities in the allocation of allowances across some utility service territories, which is unfair to some ratepayers who may pay more for the cost of compliance than if the state adopted the federal program. This is difficult to quantify at this time because the data is uncertified, though from what is provided, one utility receives 16% less allowances than under the federal CAIR and another receives 11% less.

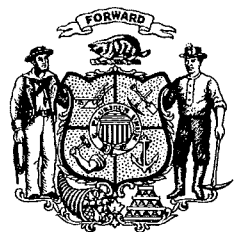
Finally, by going beyond the federal CAIR in these and other areas, DNR’s draft rule seems to be an attempt to micromanage what amounts to about 2% of the total NO_x emissions of a federal program whose expressed intent is to regulate interstate transport of NO_x. This is a rather dubious proposition, especially when balanced against the additional administrative burden the draft creates for no environmental benefit.

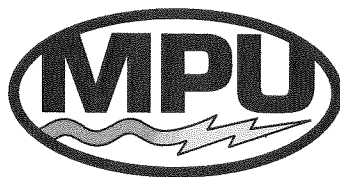
In closing, WUA hopes that future rulemakings will be developed more fairly where our input will be meaningfully considered by DNR regarding implementation methods to achieve the common objective of environmental improvement.

The utilities need regulatory certainty as soon as possible since the federal compliance deadlines remain unchanged. Therefore, it is important that the rule move forward, even though the utilities oppose the Department’s proposed emission allocation methodology and its creation of an ever-changing state baseline.



WISCONSIN STATE LEGISLATURE





MANITOWOC PUBLIC UTILITIES

1303 South 8th Street P.O. Box 1090 Manitowoc, WI 54221-1090 920-683-4600 FAX 920-686-4348 www.mpu.org

Senator Mark Miller, Chair
Committee on Environment and Natural Resources
Room 409 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

February 09, 2007

Subject: Clearinghouse Rule 06-104
Relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency.

Dear Senator Miller:

Manitowoc Public Utilities (MPU) appreciates the opportunity to provide the Committee on Environment and Natural Resources with comments regarding Clearinghouse Rule 06-104. This rule relates to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency. The rule will result in the creation of Chapter NR 432, Allocation of Clean Air Interstate Rule NOx Allowances.

Wisconsin's federally-mandated Clean Air Interstate Rule (CAIR) was adopted by the Natural Resources Board on January 24th and is pending before your Committee (Legislative Clearinghouse Rule No. 06-104). The counterpart federal regulation establishes state-by-state NOx budgets and Wisconsin's rule allocates the state budget among our electric utilities. It has come to my attention that when the Natural Resources Board adopted the NOx allocations, it was based upon incorrect data for Manitowoc Public Utilities that has now been clarified. This error affects the allocation of NOx allowances in Tables 1 and 2 in the rule and it significantly affects the allocations to Manitowoc Public Utilities. According to the corrected data, Manitowoc Public Utilities should be entitled to an additional allocation of 55 tons/year for each of its three generating units. Manitowoc Public Utilities total annual NOx allocation would increase from 252 to 417 tons per year and the ozone season allocation would increase from 114 to 180 tons per year.

Because the allocations are based upon a fixed number of allowances established by the federal government as the state budget (i.e. 40,759 tons in 2009), a change to one electrical generating unit's allocation will affect other units' allocations across the state. The change is a significant increase in NOx allocations for Manitowoc (approximately 65%) and a very small decrease (approximately - 0.5%) for the other electrical generating units across the state.

Manitowoc Public Utilities is a small municipal cogeneration facility and the deficiencies will have significant financial impacts to our utility and ratepayers if not corrected. The proposed rule will "hard wire" the allocations to each affected utility for a period of six years (2009-2014) and we believe we would be unfairly penalized until future corrections would be allowed by the rule.

Manitowoc Public Utilities believes we were not fairly allocated our appropriate NOx credits in Clearinghouse Rule 06-104. Manitowoc Public Utilities respectfully requests that your committee ask the Department of Natural Resources to amend the rule to incorporate the corrected data. Our understanding is that the Department of Natural Resources would be very amenable to a positive response to such a request. Although incorporation of the corrected data would have a nearly inconsequential impact on other utilities, it would have a very major impact on Manitowoc Public Utilities. We believe that the rule should reflect accurate and correct data.

Thank you for your consideration of this request. Please feel free to contact me at 920-686-4351 if you need additional information or clarification.

Sincerely,



Nilaksh Kothari, P.E.
General Manager
Manitowoc Public Utilities

This letter emailed on February 9, 2007 to Senator Mark Miller, Sen.Miller@legis.wisconsin.gov and to everyone copied on the attached list.

Copies to:

Representative Scott Gunderson, Chair
Committee on Natural Resources
Room 7 West
State Capitol
P.O. Box 8952
Madison, WI 53708
Rep.Gunderson@legis.wisconsin.gov

Representative Robert Ziegelbauer
Room 207 North
State Capital
P.O. Box 8953
Madison, Wisconsin 53708
Rep.Ziegelbauer@legis.wisconsin.gov

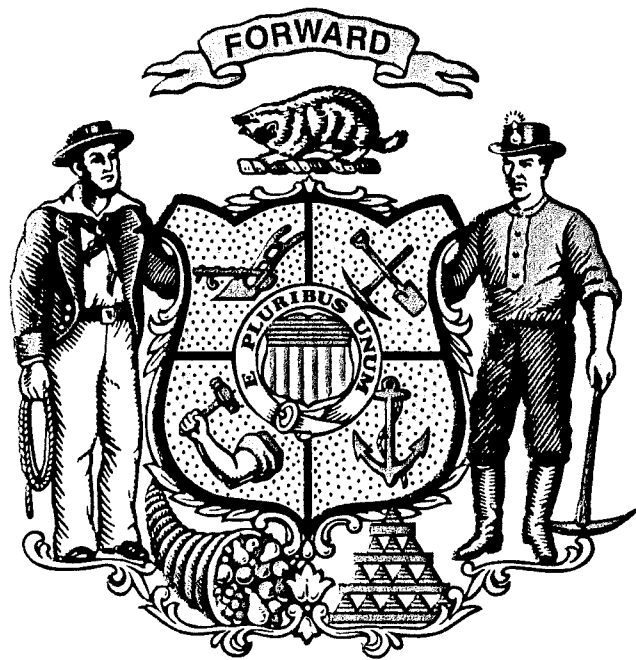
Senator Joseph Leibham
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Sen.Leibham@legis.wisconsin.gov

Mayor Kevin Crawford
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Kevin Kessler
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kevin.kessler@dnr.state.wi.us

William Skewes, Executive Director
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Madison, WI 53703
bskewes@mailbag.com

cc: MPU - Tom Reed, MPU - Don Duenkel, MPU - Engineering Files





February 12, 2007

Senator Mark Miller
Chairman, Environment and Natural Resources Committee
Room 409 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Chairman Miller and Committee members:

We Energies respectfully requests the Senate approve without delay NR 432, the state's plan to implement the federal Clean Air Interstate Rule (CAIR).

We Energies needs regulatory certainty as soon as possible since the CAIR compliance deadlines loom and significant capital expenditures must take place to comply with the rule.

We Energies supports the Department's decision to participate in the CAIR emission trading program. The national trading program provides an opportunity to reduce emissions from generating units in a cost-effective manner. It also offers significant administrative benefits to the Department and state, and avoids regulatory duplication. We also support the decision to follow the federal program and reward early emission reductions. The environmental benefits of our early emission reductions have already been realized, and now the company will also have an opportunity to pass on direct economic savings to our customers.

Though we are urging speed in the rule adoption process, we are disappointed that the proposed NR 432 deviates from the federal model rule as related to emission allocations. As written, the rule will be implemented in a way that is more complicated and less equitable. The proposed emission allocation method results in increased administrative costs, less regulatory certainty, and potential unintended consequences – without any increase in environmental benefits.

Despite the additional regulatory burdens associated with deviations from the federal CAIR, it is important that the rule move forward. The federal compliance deadlines are imminent and regulatory certainty provides us with a clear roadmap to our obligations to reduce emissions from our power plant fleet.

Sincerely,

[via e-mail]

Joel M. Haubrich
Manager, We Energies Government Affairs





Wisconsin Public Service Corporation
(a subsidiary of WPS Resources Corporation)
700 North Adams Street
P.O. Box 19002
Green Bay, WI 54307-9002

Senator Mark Miller, Chair
Committee on Environment and Natural Resources
Room 409 South
State Capital
P.O. Box 7882
Madison, WI 53707-7882

February 13, 2007

Subject: Clearinghouse Rule 06-104
Relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency

Dear Senator Miller:

Thank you for the opportunity to present testimony on behalf of Wisconsin Public Service Corporation (WPS) regarding the proposed NR 432 rules developed by the Department of Natural Resources to implement the federal Clean Air Interstate Rule. These rules are of critical interest to WPS and our customers because of the magnitude of the reductions and associated cost. The rules require over 60% reductions in emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from the company's electric generating units.

First, we appreciate the efforts of the Department in developing this very important rule. We applaud the decision to participate in the CAIR emission trading program. The national cap and trade program provides an opportunity to reduce emissions from our generating units in the most cost effective manner possible. While WPS is pursuing the reduction of emissions from its generation fleet, the option of purchasing emission allowances to supplement periodic shortfalls and cover forced outages or unexpected events is a valuable complement to the company's emission reduction plan. Participating in the federal program also offers an administrative savings to the Department since EPA would administer all of the emissions tracking, reporting, and verification functions.

While Wisconsin Public Service supports the SO₂ and NO_x reductions required by the federal rule, we oppose the "Wisconsin-only" differences in the NO_x allocation process. These differences will result in significant cost to our customers. There are a fixed number of allowances assigned to the state that are part of the state's pool. Each NO_x allowance from the state pool allows a unit to emit 1 ton of NO_x. When comparing the state's proposed allocation process to the federal process, the WPS system is allocated about 1100 allowances less. In a trading program, NO_x allowances that are not needed to cover emissions can be sold. Conversely, if a unit needs more than its allocated share to operate, NO_x allowances can be purchased. Therefore, considering that allowances represent an opportunity cost (buy or sell), having 1100 fewer allowances (table attached) because of the Department's changes may cost WPS customers between \$1.5 and \$2.0 million annually, depending on the future market price. This cost to our ratepayers is in addition to the very significant cost of compliance with the federal program.

In a detailed planning process, utilities evaluate the feasibility of installing controls to reduce NOx emissions versus the option of purchasing allowances. Smaller units, such as a number of units owned by WPS, represent a unique planning challenge, since the cost of installing the best controls for NOx exceeds \$100 million. Other controls achieve less reduction but can typically be installed for under \$10 million. WPS's goal is to achieve compliance and reduce emissions while providing reliable and cost-effective electricity. Therefore, units that are smaller, older, and less efficient may or may not be part of a long range generation plan. However, these plans require significant lead time due to the development and availability of technology, the construction of necessary infrastructure (such as transmission lines), the regulatory approval process, environmental permitting, lead times for equipment orders and outage planning.

By not adopting the federal Model Rule for allocating NOx allowances to existing units, the Department has eliminated some of the critical compliance planning time required for the WPS fleet and has created a system that is discriminatory to customers in northeastern Wisconsin and the Upper Peninsula of Michigan. Specifically, this is the result of several significant deviations from the federal process:

- Use of electrical output instead of heat input,
- Elimination of the fuel adjustment factors
- Inclusion of renewable units as eligible to receive allowances from the main allocation pool

First, the proposed rule changes the allocation basis by using electrical output (megawatts) versus a heat input basis for allocating allowances to existing units. The data availability and quality for heat input as proposed in the federal Model rule is far superior. In fact, the Model Rule's heat input based allocation methodology is supported by over a decade of regulatory experience consistent with Clean Air Act (CAA) Acid Rain Program. CAA Acid Rain provisions require utilities to measure and report on heat input data that is subject to rigorous quality and consistency analysis. There is no comparable CAA requirement to measure or report on output data. The Department's rationale for this change is to reward energy efficiency of electrical generating units. The reality is that utility operations are already driven towards improving energy efficiency due to economics and fuel costs.

Second, the Department has eliminated the fuel adjustment factors in the federal Model Rule. The EPA applied fuel adjustment factors because it represented an equitable market-based approach to reflect the inherently higher emission rate of coal-fired units and consequently the greater financial burden on these units to install controls. The practical impact of the Department's elimination of fuel-weighting is to provide a windfall of allowances to natural gas units at the expense of existing coal generation. On a policy level, this change disfavors energy supply diversity in the state. This rule puts the Department in a position of setting de facto energy policy for the state, which is the purview of the Legislature and Public Service Commission.

Third, in the proposed state rule, renewable units are eligible to receive NOx allocations from the main allocation pool. This is not part of the federal Model rule. In general, renewable technologies will not need NOx allowances to operate and will be able to sell them on the market. Therefore, this is really just a subsidy for certain technologies financed by other technologies. Act 141 was enacted in 2005 and requires Wisconsin utilities to generate

approximately 10% of their electricity using renewable resources by 2015. The company is already increasing renewable generation in accordance with this requirement.

Although not related to how allowances are allocated, the WDNR's rule proposal also requires periodic updating of the allocation baseline, whereas under the Model CAIR Trading Program the baseline is permanent for units in the main allocation pool. To find the most cost-effective emission control compliance strategies, utilities need certainty regarding future allocations. This change creates continuous regulatory uncertainty and discourages utilities from retiring less efficient units because the allowances for a retired unit are eventually lost. The federal Acid Rain program has been very successful and has functioned effectively with baselines established in perpetuity along with occasional adjustments for new units. This enables the long range planning and regulatory approval process faced by state utilities.

In summary, the proposed allocation scheme results in inequities in the allocation of NOx allowances across some utility service territories, which is unfair to ratepayers who will pay more for the cost of compliance than if the state adopted the federal program. WPS is requesting that the rule be changed to incorporate the federal allocation methodology. This will provide regulatory certainty, and contribute to the shared goal of improving air quality in a fair and equitable way.

Thank you for the opportunity to provide comments on the proposed NR 432. Please feel free to contact me at 920-433-1140 if you need additional information or clarification.

Sincerely,



Connie Lawniczak
Director – Environmental Services
Wisconsin Public Service Corporation

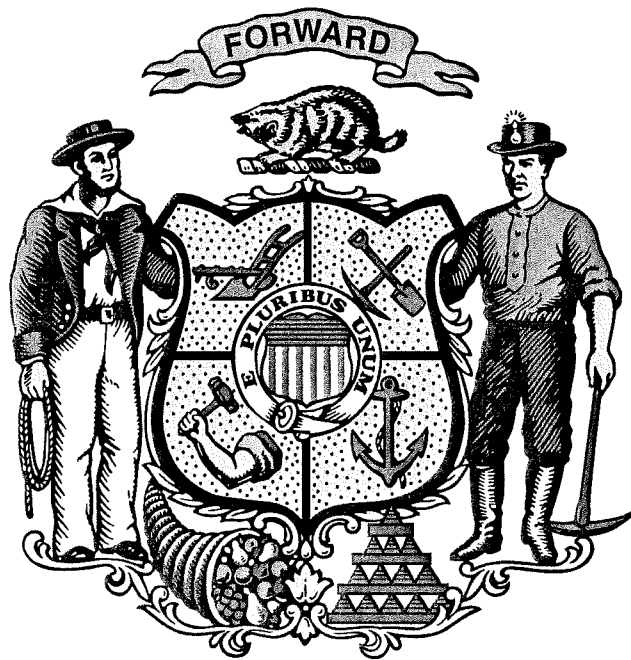
Attach.

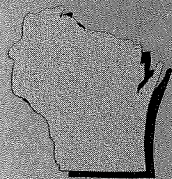
Comparison of Federal and DNR Allocations

Owner	FACILITY NAME	UNIT ID	ANNUAL			OZONE SEASON		
			Federal Allocation	DNR Allocation	% DIFF Federal vs. DNR	Federal Allocation	DNR Allocation	% DIFF Federal vs. DNR
WPL & WPSC	Columbia (WPS share = 31.8%)	1	1049	965	-8%	476	447	-6%
WPL & WPSC	Columbia (WPS share = 31.8%)	2	988	929	-6%	459	440	-4%
WPSC	DePere Energy Center	B01	56	123	120%	28	62	121%
WPL & WPSC	Edgewater (4050) (WPS share = 31.8%)	4	499	497	0%	232	235	1%
WPSC	Pulliam	3	144	100	-31%	63	45	-29%
WPSC	Pulliam	4	176	122	-31%	74	53	-28%
WPSC	Pulliam	5	322	265	-18%	135	114	-16%
WPSC	Pulliam	6	466	376	-19%	186	154	-17%
WPSC	Pulliam	7	547	466	-15%	263	221	-16%
WPSC	Pulliam	8	831	759	-9%	338	314	-7%
WPSC	Pulliam	32	*			*		
WPSC	West Marinette	31	0	12		0	5	
WPSC	West Marinette	32	0	9		0	3	
WPSC	West Marinette	33	39	76	95%	16	33	106%
WPSC	Weston	1	387	321	-17%	163	137	-16%
WPSC	Weston	2	611	531	-13%	268	233	-13%
WPSC	Weston	3	2225	2000	-10%	993	849	-15%
WPSC	Weston	4	*			*		
WPSC	Weston	32	23	39	70%	12	19	58%
Totals			8363	7590	-9%	3706	3365	-9%

* Allocations will come from new unit set-aside account.

Total NOx allocation difference Annual = 773
 Total NOx allocation difference Ozone Season = 341
 Total Difference = 1114





WIEG

WISCONSIN INDUSTRIAL ENERGY GROUP

To: Senate Committee on Environment and Natural Resources

From: Todd Stuart, Executive Director
Wisconsin Industrial Energy Group, Inc. (WIEG)

Re: Comments on Clearinghouse Rule 06-104

Date: February 13, 2007

Thank you for the opportunity to present testimony on this important subject. The following comments are submitted on behalf of the members of Wisconsin Industrial Energy Group, Inc. (WIEG) regarding the implementation of the Clean Air Interstate Rule (CAIR) and Clearinghouse Rule 06-104.

WIEG is a non-profit association of 30 large energy consumers that advocates for policies that drive affordable and reliable energy. Since the early 1970s, WIEG has been the premiere voice of Wisconsin ratepayers and an engine for business retention and expansion. Our companies spend over \$200 million annually on electricity and we collectively employ more than 50,000 Wisconsin residents, each of whom is a state taxpayer and utility ratepayer. WIEG members represent most major Wisconsin manufacturing industries such as paper, food processing, metal casting, fabricating and others.

Industrial customers are very concerned about the reliability of electricity at affordable rates. Rates have been rising in Wisconsin and elsewhere, but industrial rates have risen faster in Wisconsin between 2000 and 2005 than in any other state in the Midwest and have actually surpassed the Midwest average since 2003. The Wisconsin economy has the potential to be at risk of job losses and demand destruction, especially in the manufacturing sector, if rate increases are not managed effectively.

WIEG has the following concerns regarding Clearinghouse Rule 06-104:

First, we have serious concerns over the public process. It quite frankly surprised us that a rule with such profound impacts on industry was given a week to review the updated version before it was sent to the Natural Resources Board. While WIEG supports an expedited process for Clearinghouse Rule 06-104 (industry has been asking for this rule for over a year) having a week to review the rule creates questions over whether

TODD STUART
Executive Director
WIEG

THOMAS G. SCHARFF
Board Chairman
Stora-Enso

BOARD MEMBERS

CHRISTINE GEORGE
Air Liquide
Industrial U.S. LP

PAUL LONDON
Baskin-Robb
Baskin-Robb

BRUCE WILLIAMS
Bemis Company, Inc.

ROBERT BEHNKE
Brillion Iron Works, Inc.

STEVE HIEGER
ERCO Worldwide
(USA) Inc.

TRISH BOWLES
Georgia-Pacific

CAL KOOYENGA
Fairbanks Morse Engine

TARI EMERSON
Kohl's Department
Stores, Inc.

DAVE GREATHOUSE
Ladish Co., Inc.

BERNARD MALNARICK
Linde Gas, LLC

MICHAEL J. POTTS
Orion Energy Systems

BILL WARD
Prater & Gamble
Paper Products Co.

JOE MUEHLBACH
Quad/Graphics Inc.

TONY KARWOWSKI
S.C. Johnson & Sons Inc.

JEFF LOEFFLER
ThyssenKrupp
Waupaca, Inc.

MIKE COLWELL
USG Interiors, Inc.

BOB KENNEY
Weyerhaeuser Company

WIEG, INC.

Second, WIEG is not aware of any cost-benefit study or other research developed by the DNR, the Public Service Commission of Wisconsin or state utilities that is designed to quantify the costs of Clearinghouse Rule 06-104. One study conducted by the Center for Energy and Economic Development in 2005 concluded that going beyond the federal package could lead to thousands of lost jobs and cost Wisconsin utilities over \$700 million per year. To put this in perspective, that is approximately the size of a large new power plant (Alliant's proposed Cassville plant is estimated at just under \$800 million. Wisconsin Public Service Corporation's Weston IV plant will cost \$750 million and their industrial customers received a 7.1% rate increase this year as a direct result).

Wisconsin utilities such as NSP and WPSC received fewer allowances under the Clearinghouse Rule 06-104 (16% and 11% less respectively). Though the exact cost increase is not yet known because the data is uncertified, fewer allowances inevitably means those electricity providers will have to purchase them in a seller's market and the additional cost will be borne by industrial customers. Ratepayers for NSP and WPSC will end up paying millions more as a penalty.

Third, by considering a rule that goes beyond the federal CAIR, the DNR is creating regulatory uncertainty. Wisconsin-only regulations will put our industries at a competitive disadvantage. WIEG believes the DNR should follow state law (2003 Wis. Act 118) and submit rules that follow the EPA's CAIR rule.

The key differences between the federal CAIR and Clearinghouse Rule 06-104 include:

- DNR will allocate fewer of the state's "pot" of allowances by increasing the number of allowances in the set-aside account for future projects.
- The federal rule allocates allowances based on heat input. The state will allocate based on output. This attempt by the state to reward efficiency penalizes older units.
- The state eliminated the federal fuel weighting multiplier which resulted in more allowances for a facility burning coal. This provides increased allocations to natural gas units and significantly penalizes systems with more coal units.
- The DNR plans to update the baseline every 5 years rather than making it permanent (like the baseline in the Acid Rain Law). This adds regulatory uncertainty to the compliance planning process.

Fourth, WIEG also has serious concerns over the Department's stated objective to drive energy policy in Wisconsin by Clearinghouse Rule 06-104. In the staff briefing to the Natural Resources board, the memo states that the rule is designed to promote energy efficiency and encourage renewable energy development. While that is a laudable objective, it should be noted that what the DNR is really promoting is fuel switching away from coal-fired generation toward natural gas-fired generation and renewable sources such as wind.

Becoming more dependent on natural gas and renewable energy is virtually guaranteed to drive up electricity rates and should therefore be given a vigorous cost analysis.

State policy regarding energy efficiency and renewables generally falls under the Public Service Commission and Chapter 196. You may recall that last session Governor Doyle and the Legislature came together on Act 141, a groundbreaking law that all of you voted for. The overall intent of the law was to not only promote energy efficiency and renewables, but to ultimately control or drive down the cost of electricity and natural gas. The authors were very explicit in identifying their concern that the legislation should have a “hold harmless” impact on Wisconsin ratepayers. WIEG was supportive of the new law, and would like to call your attention to 196.374 which directs the PSC and the DNR to coordinate air emissions reductions with respect to energy policy.

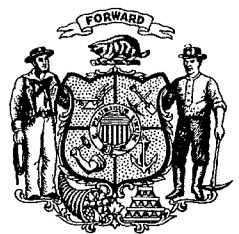
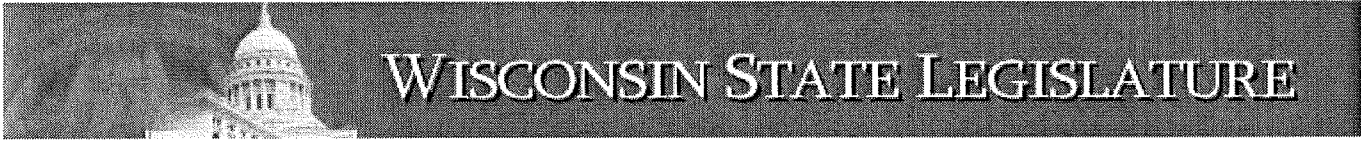
It should also be noted that Act 141 already achieves the policy objective of greater energy efficiency and renewable energy that the DNR wishes to establish through Clearinghouse Rule 06-104. The expanded Renewable Portfolio Standard mandates that utilities need to increase renewable energy usage to meet a 10% standard by 2016. The increase is roughly 2,000 additional megawatts of new renewable power in Wisconsin. For comparison, 2,400 megawatts was the total amount of new wind development for the US in 2005 and total US wind capacity is currently 10,000 megawatts. With the recent approval of We Energies’ Blue Sky-Green Field wind farm, Wisconsin is already on track for meeting this ambitious renewable energy mandate.

In conclusion, some WIEG member companies have monthly energy bills exceeding one million dollars and are extraordinarily sensitive to price changes. They conserve energy not only because it is the right thing to do, but to reduce costs and survive economically. That’s why WIEG advocates for the most cost effective environmental and energy policies in order to mitigate electricity rate increases.

Wisconsin is home to some of the most recognized companies in the nation and the world. Our state is home to over 10,000 manufacturers that support more than 600,000 jobs. As a percentage of total employment, Wisconsin employs the second highest number of manufacturing workers in the US. Energy, economic development and environmental policy are all inextricably linked together. Wisconsin is one of the most dependent states in the nation on coal-fired electricity and therefore our jobs and economic competitiveness are at stake with Clearinghouse Rule 06-104.

WIEG supports the reductions of SO₂ and NO_x emissions required by the federal CAIR proposal. WIEG urges this committee to expeditiously advance a CAIR rule consistent with EPA’s requirements.

Thank you for the opportunity to provide comments on Clearinghouse Rule 06-104.



***TESTIMONY
CONCERNING CLEAN AIR INTERSTATE RULE (CAIR)***

**BEFORE THE
SENATE COMMITTEE
ON ENVIRONMENT AND NATURAL RESOURCES**

*Jason M. Goodwin, P.E.
Director - Environmental, Health & Safety
Calpine Corporation - Eastern Region
717 Texas Avenue, Suite 1000
Houston, Texas 77002
713-570-4795 – Telephone
jason.goodwin@calpine.com*

February 13, 2007

My name is Jason Goodwin. I am Director of Environmental, Health & Safety for Calpine Corporation's Eastern Power Region. I appreciate the opportunity to appear today before the Committee to offer testimony in support of Wisconsin DNR's rulemaking to implement the Clean Air Interstate Rule, or CAIR.

States located in the eastern half of the United States – including Wisconsin – face important decisions pertaining to CAIR, including questions of how to allocate nitrogen oxide (or NOx) emission allowances to individual power generators. These decisions will have far-reaching impacts on air quality planning decisions in Wisconsin that will impact energy policy and the future of power markets in the state. Properly structured air quality programs can encourage states to develop clean energy resources, reward energy efficiency, and meet air quality attainment goals both locally and regionally.

First and foremost, Calpine strongly supports Wisconsin's efforts to develop a state-specific approach to CAIR implementation rather than simply accepting the USEPA's model rule. Calpine believes the DNR's rulemaking will help the state achieve its clean air goals, avoid negative impacts to competition in the state's electric power market, and help to maintain affordable electric rates for business and residents. DNR's rulemaking represents a compelling and progressive example for other agencies to follow in how the CAIR rule is implemented, and we support its adoption without change.

We support the rule's approach to allowance allocations that are: fuel neutral; output-based; are updated regularly; and have synchronized allocation baselines. Experience has shown that emissions reductions can be more cost-effectively achieved through programs that update emission allowance allocations periodically, do not offer perpetual allocations to any facility, and do not differentiate allocation treatment based on the vintage or fuel type of the affected facility.

An air pollution control program should be designed in a way that can adapt to shifting market forces without imparting artificial signals to the market. DNR's CAIR rule implements this type of adaptable and responsive program.

The allocation methodology used in the proposed rule includes periodic updating of the NOx allowance allocation baseline. Such a program properly diverts emission allowances away from facilities that have reduced operation or have been retired, and reallocates the emission allowances to facilities that continue to operate or increase operation over time.

Perpetual allocation penalizes those states, such as Wisconsin, which face a growing demand for power and a corresponding need to maintain affordable electric rates. Locking in emission allocations permanently based upon a one-time baseline period will stifle new competitors that are interested in entering the power sector to

provide lower-cost electric supply options, as well as those generators hoping to deploy new technology, such as coal gasification (or IGCC) generating technology.

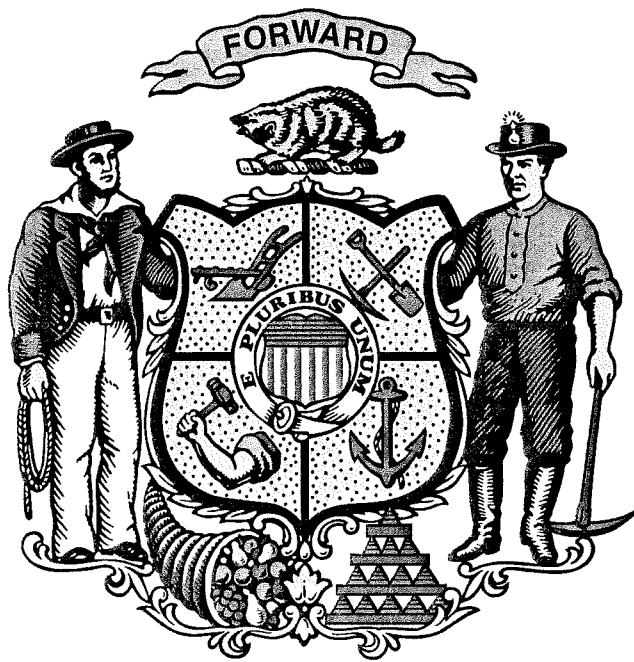
Further, DNR's rule properly supports an orderly and timely migration of newly constructed facilities from the new source allocation pool to the overall pool of allowances. Calpine believes it is extremely important not to preclude the newest sources from receiving allocations as full-participating sources, and we support DNR's recognition that owners of new plants have already made substantial investments in emission controls and efficient generating technology to meet permit requirements.

Fuel-neutral treatment of allocations is another important and positive aspect of DNR's proposed rules. Allocation of emission allowances based on fuel type creates an artificial signal that shields the true cost of emission reductions from sources that have the largest proportion of emissions. In fact, fuel weighting is an unnecessary and inequitable subsidy that ignores the investment that already has been made in newer, cleaner sources. Elimination of fuel adjustment factors, as featured in DNR's rule, will provide an equitable distribution of NOx allowances, allow affected sources to meet the same emissions standard, and avoid artificial influences that would distort the cost of compliance and increase the cost of electricity to Wisconsin consumers.

The allocation of NOx allowances based on electric power output is another crucial aspect of DNR's CAIR rulemaking, and Calpine strongly supports DNR for taking

this positive and progressive stance. The fastest and most effective means for environmental regulatory programs to encourage investment in and use of efficient and low-emitting power generation facilities is to adopt an allocation method that is based on electric output, rather than heat input or fuel consumption. DNR's rule wisely rejects the heat input-based allocation method used in USEPA's model rule, which provides significant rewards through larger shares of allowances provided to those facilities that burn the most fuel – a perverse incentive created by allocations based on fuel burned during the baseline evaluation period.

Calpine supports the DNR's rulemaking to implement the Clean Air Interstate Rule, and we sincerely appreciate the opportunity to provide input to this process. The proposed rule implements concepts for Wisconsin that will allow the true impact of market-based compliance programs to work and cost-effectively achieve local and regional air quality goals. Solutions such as those in the proposed rule that encourage energy efficiency, foster economic development within the state and ease electric rate increases, will benefit the environment, Wisconsin's citizens, and Wisconsin's business community.





Wisconsin Public Service Corporation
(a subsidiary of WPS Resources Corporation)
700 North Adams Street
P.O. Box 19002
Green Bay, WI 54307-9002

Senator Mark Miller, Chair
Committee on Environment and Natural Resources
Room 409 South
State Capital
P.O. Box 7882
Madison, WI 53707-7882

February 13, 2007

Subject: Clearinghouse Rule 06-104
Relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency

Dear Senator Miller:

Thank you for the opportunity to present testimony on behalf of Wisconsin Public Service Corporation (WPS) regarding the proposed NR 432 rules developed by the Department of Natural Resources to implement the federal Clean Air Interstate Rule. These rules are of critical interest to WPS and our customers because of the magnitude of the reductions and associated cost. The rules require over 60% reductions in emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from the company's electric generating units.

First, we appreciate the efforts of the Department in developing this very important rule. We applaud the decision to participate in the CAIR emission trading program. The national cap and trade program provides an opportunity to reduce emissions from our generating units in the most cost effective manner possible. While WPS is pursuing the reduction of emissions from its generation fleet, the option of purchasing emission allowances to supplement periodic shortfalls and cover forced outages or unexpected events is a valuable complement to the company's emission reduction plan. Participating in the federal program also offers an administrative savings to the Department since EPA would administer all of the emissions tracking, reporting, and verification functions.

While Wisconsin Public Service supports the SO₂ and NO_x reductions required by the federal rule, we oppose the "Wisconsin-only" differences in the NO_x allocation process. These differences will result in significant cost to our customers. There are a fixed number of allowances assigned to the state that are part of the state's pool. Each NO_x allowance from the state pool allows a unit to emit 1 ton of NO_x. When comparing the state's proposed allocation process to the federal process, the WPS system is allocated about 1100 allowances less. In a trading program, NO_x allowances that are not needed to cover emissions can be sold. Conversely, if a unit needs more than its allocated share to operate, NO_x allowances can be purchased. Therefore, considering that allowances represent an opportunity cost (buy or sell), having 1100 fewer allowances (table attached) because of the Department's changes may cost WPS customers between \$1.5 and \$2.0 million annually, depending on the future market price. This cost to our ratepayers is in addition to the very significant cost of compliance with the federal program.

In a detailed planning process, utilities evaluate the feasibility of installing controls to reduce NOx emissions versus the option of purchasing allowances. Smaller units, such as a number of units owned by WPS, represent a unique planning challenge, since the cost of installing the best controls for NOx exceeds \$100 million. Other controls achieve less reduction but can typically be installed for under \$10 million. WPS's goal is to achieve compliance and reduce emissions while providing reliable and cost-effective electricity. Therefore, units that are smaller, older, and less efficient may or may not be part of a long range generation plan. However, these plans require significant lead time due to the development and availability of technology, the construction of necessary infrastructure (such as transmission lines), the regulatory approval process, environmental permitting, lead times for equipment orders and outage planning.

By not adopting the federal Model Rule for allocating NOx allowances to existing units, the Department has eliminated some of the critical compliance planning time required for the WPS fleet and has created a system that is discriminatory to customers in northeastern Wisconsin and the Upper Peninsula of Michigan. Specifically, this is the result of several significant deviations from the federal process:

- Use of electrical output instead of heat input,
- Elimination of the fuel adjustment factors
- Inclusion of renewable units as eligible to receive allowances from the main allocation pool

First, the proposed rule changes the allocation basis by using electrical output (megawatts) versus a heat input basis for allocating allowances to existing units. The data availability and quality for heat input as proposed in the federal Model rule is far superior. In fact, the Model Rule's heat input based allocation methodology is supported by over a decade of regulatory experience consistent with Clean Air Act (CAA) Acid Rain Program. CAA Acid Rain provisions require utilities to measure and report on heat input data that is subject to rigorous quality and consistency analysis. There is no comparable CAA requirement to measure or report on output data. The Department's rationale for this change is to reward energy efficiency of electrical generating units. The reality is that utility operations are already driven towards improving energy efficiency due to economics and fuel costs.

Second, the Department has eliminated the fuel adjustment factors in the federal Model Rule. The EPA applied fuel adjustment factors because it represented an equitable market-based approach to reflect the inherently higher emission rate of coal-fired units and consequently the greater financial burden on these units to install controls. The practical impact of the Department's elimination of fuel-weighting is to provide a windfall of allowances to natural gas units at the expense of existing coal generation. On a policy level, this change disfavors energy supply diversity in the state. This rule puts the Department in a position of setting de facto energy policy for the state, which is the purview of the Legislature and Public Service Commission.

Third, in the proposed state rule, renewable units are eligible to receive NOx allocations from the main allocation pool. This is not part of the federal Model rule. In general, renewable technologies will not need NOx allowances to operate and will be able to sell them on the market. Therefore, this is really just a subsidy for certain technologies financed by other technologies. Act 141 was enacted in 2005 and requires Wisconsin utilities to generate

approximately 10% of their electricity using renewable resources by 2015. The company is already increasing renewable generation in accordance with this requirement.

Although not related to how allowances are allocated, the WDNR's rule proposal also requires periodic updating of the allocation baseline, whereas under the Model CAIR Trading Program the baseline is permanent for units in the main allocation pool. To find the most cost-effective emission control compliance strategies, utilities need certainty regarding future allocations. This change creates continuous regulatory uncertainty and discourages utilities from retiring less efficient units because the allowances for a retired unit are eventually lost. The federal Acid Rain program has been very successful and has functioned effectively with baselines established in perpetuity along with occasional adjustments for new units. This enables the long range planning and regulatory approval process faced by state utilities.

In summary, the proposed allocation scheme results in inequities in the allocation of NOx allowances across some utility service territories, which is unfair to ratepayers who will pay more for the cost of compliance than if the state adopted the federal program. WPS is requesting that the rule be changed to incorporate the federal allocation methodology. This will provide regulatory certainty, and contribute to the shared goal of improving air quality in a fair and equitable way.

Thank you for the opportunity to provide comments on the proposed NR 432. Please feel free to contact me at 920-433-1140 if you need additional information or clarification.

Sincerely,



Connie Lawniczak
Director – Environmental Services
Wisconsin Public Service Corporation

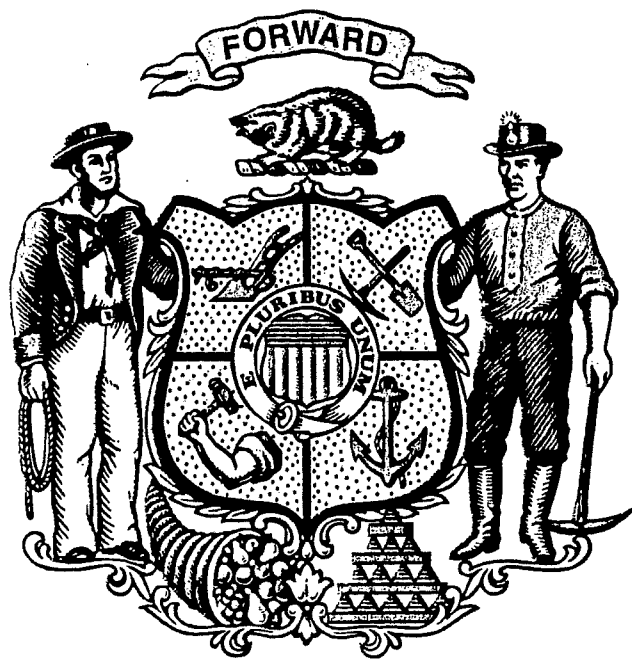
Attach.

Comparison of Federal and DNR Allocations

Owner	FACILITY NAME	UNIT ID	ANNUAL			OZONE SEASON		
			Federal Allocation	DNR Allocation	% DIFF Federal vs. DNR	Federal Allocation	DNR Allocation	% DIFF Federal vs. DNR
WPL & WPSC	Columbia (WPS share = 31.8%)	1	1049	965	-8%	476	447	-6%
WPL & WPSC	Columbia (WPS share = 31.8%)	2	988	929	-6%	459	440	-4%
WPSC	DePere Energy Center	B01	56	123	120%	28	62	121%
WPL & WPSC	Edgewater (4050) (WPS share = 31.8%)	4	499	497	0%	232	235	1%
WPSC	Pulliam	3	144	100	-31%	63	45	-29%
WPSC	Pulliam	4	176	122	-31%	74	53	-28%
WPSC	Pulliam	5	322	265	-18%	135	114	-16%
WPSC	Pulliam	6	466	376	-19%	186	154	-17%
WPSC	Pulliam	7	547	466	-15%	263	221	-16%
WPSC	Pulliam	8	831	759	-9%	338	314	-7%
WPSC	Pulliam	32	*			*		
WPSC	West Marinette	31	0	12		0	5	
WPSC	West Marinette	32	0	9		0	3	
WPSC	West Marinette	33	39	76	95%	16	33	106%
WPSC	Weston	1	387	321	-17%	163	137	-16%
WPSC	Weston	2	611	531	-13%	268	233	-13%
WPSC	Weston	3	2225	2000	-10%	993	849	-15%
WPSC	Weston	4	*			*		
WPSC	Weston	32	23	39	70%	12	19	58%
Totals			8363	7590	-9%	3706	3365	-9%

* Allocations will come from new unit set-aside account.

Total NOx allocation difference Annual = 773
 Total NOx allocation difference Ozone Season = 341
 Total Difference = 1114



Testimony of Kevin Crawford

February 13, 2007

Senate Natural Resources Committee

Comments relating to Clearinghouse Rule 06-104, compliance with the Clean Air Interstate Rule (CAIR)

Good morning Mr. Chairman, and members of the Committee.

My name is Kevin Crawford. I'm the Mayor of the City of Manitowoc, which has Wisconsin's largest municipally owned electric utility, Manitowoc Public Utilities (MPU). I appreciate the opportunity to provide the Committee on Environment and Natural Resources with comments regarding Clearinghouse Rule 06-104. I did submit written testimony to the committee prior to today, and I'm here to summarize the points and answer any questions the committee may have.

Clearinghouse Rule 06-104 relates to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U.S. Environmental Protection Agency. The rule will result in the creation of Chapter NR 432, Allocation of Clean Air Interstate Rule NO_x Allowances.

Wisconsin's federally-mandated Clean Air Interstate Rule (CAIR) was adopted by the Natural Resources Board on January 24th and is pending before this Committee (Legislative Clearinghouse Rule No. 06-104). It has come to my attention that when the Natural Resources Board adopted the NO_x allocations, it was based upon incorrect data for Manitowoc Public Utilities that has now been clarified. This error significantly affects the NO_x allocations to Manitowoc Public Utilities. The corrected data shows that Manitowoc Public Utilities should be entitled to an additional allocation of 55 tons/year for each of its three generating units. Manitowoc Public Utilities total annual NO_x allocation would increase from 252 to 417 tons per year and the ozone season allocation would increase from 114 to 180 tons per year.

Because the allocations are based upon a fixed number of allowances established by the federal government as the state budget (i.e. 40,759 tons in 2009), a change to one electrical generating unit's allocation will affect other units' allocations across the state.

Page 2
CAIR Rule adoption
Clearinghouse Rule 06-104
February 13, 2007

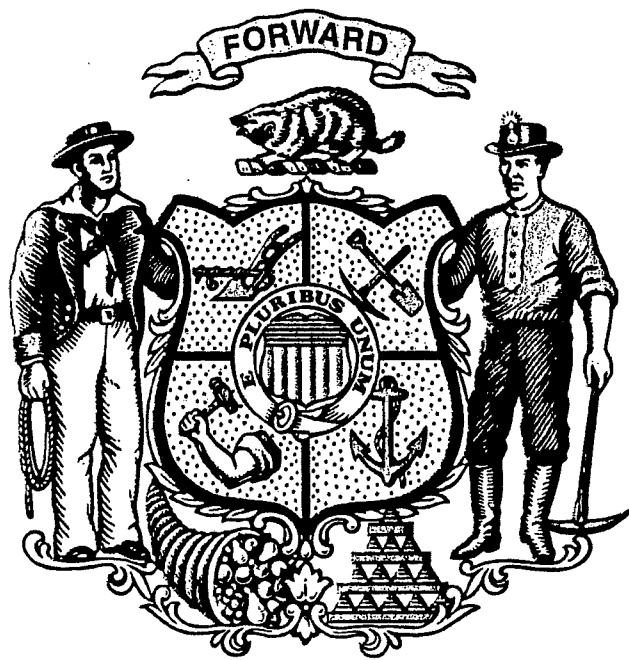
The change is an increase in NOx allocations for Manitowoc (approximately 65%) and a very small decrease (approximately - 0.5%) for the other electrical generating units across the state.

Manitowoc Public Utilities is a municipally owned cogeneration facility. These deficiencies will have significant financial impacts to our utility and ratepayers if not corrected. The proposed rule will "hard wire" the allocations to each affected utility for a period of six years (2009-2014) and we believe we would be unfairly penalized until future corrections would be allowed by the rule.

Manitowoc Public Utilities respectfully requests that your committee direct the Department of Natural Resources to amend the rule to incorporate the corrected allocation of appropriate NOx credits in Clearinghouse Rule 06-104. Our understanding is that the Department of Natural Resources would be amenable to such a request. Although incorporation of the corrected data would have a nearly inconsequential impact on other utilities, it would have a very major impact on Manitowoc Public Utilities. We believe that the rule should reflect accurate and correct data.

Thank you for your consideration of this request. Please feel free to contact me if you need additional information or clarification.

I'd be happy to try and answer any questions you may have at this time.



Clean Air Interstate Rule Testimony
Kevin Kessler, Acting Director, Bureau of Air Management
Department of Natural Resources

Before The
Senate Committee on Environment and Natural Resources
February 13, 2007

Members of the Committee, I thank you for the opportunity to discuss this rule package with you today. I am Kevin Kessler, acting director of DNR's Bureau of Air Management. With me today is Larry Bruss, the Regional Pollutants and Mobile Sources Section Chief with the DNR Bureau of Air Management.

The Clean Air Interstate Rule (or "CAIR") is a federal requirement to reduce the interstate transport of pollutants that significantly contribute to nonattainment of ozone and fine particles (PM_{2.5}) pollution. The program is directed at reducing nitrogen oxides (NO_x) and sulfur dioxide (SO₂) emissions from the electric power sector across a 28-state region of the Eastern United States, including Wisconsin and the District of Columbia. The EPA is requiring these states to revise their state implementation plans (SIPs) to include control measures to reduce emissions of NO_x and/or SO₂ before 2009 and again by the final compliance date in 2015. The EPA estimated that the requirements will result in over 50% reduction of NO_x emissions and over 55% reduction of SO₂ emissions by 2015 resulting in air quality improvements and significant reduction of health effects associated with air pollution.

CAIR establishes an emission budget for each state for SO₂, annual NO_x and ozone season NO_x. The EPA developed a model cap and trade program for the states to achieve the emission budget milestones set by CAIR and will administer a trading program for each of the pollutants. The CAIR SO₂ trading program will be implemented and administered in full by the EPA. States have the discretion to alter the method of allocation of NO_x allowances in the model cap and trade program. Wisconsin exercised this discretion in Clearinghouse rule No. 06-104 to craft an allocation structure that:

- Provides for equal or better environmental protection;
- Is cost effective;
- Improves the ability of the emission market to determine the least cost emission reduction;
- Reduces the burden on the development of new generation;
- Promotes energy efficiency;
- Encourages renewable energy development;
- Simplifies the rule structure; and
- Reduces the administrative burden.

Clearinghouse rule No. 06-104 creates the structure for allocation of NO_x allowances for the annual and the ozone season trading programs. The allocation structure differs from the federal model cap and trade program in the following areas:

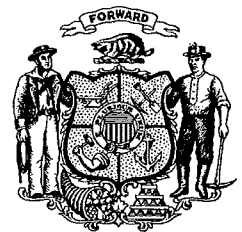
- Clearinghouse rule No. 06-104 allocates to units based on the unit's electricity generated not on the fuel consumed (or heat input).

- Clearinghouse rule No. 06-104 updates the units' baselines every five years, starting in 2011. The federal model cap and trade rule does not update a baseline once the baseline has been established.
- Clearinghouse rule No. 06-104 does not adjust allocations based upon the type of fuel burned (fuel weighting) as is done in the federal model cap and trade program.
- Clearinghouse rule No. 06-104 has a larger new unit set-aside than in the federal model cap and trade program.
- Clearinghouse rule No. 06-104 allocates allowances directly to new renewable units based upon the amount of energy generated once that unit has established five years of operating data. The federal model cap and trade program does not distribute allowances to renewable units.
- Under Clearinghouse rule No. 06-104, combined heat and power units receive credit for 100 percent of useful steam generation. Under the federal model cap and trade program, useful steam generation is discounted.

The major public comments received included:

- Comments both in support and in opposition to the use of generation output for calculation of unit baselines.
- Comments both in support and in opposition to the updating of unit baselines every five years.
- Comments both in support and in opposition to the inclusion of renewable energy in the allocation scheme. One suggested change was to allow new renewable units to receive new unit set-asides that currently are only available to new fossil-fuel fired units.
- Comments both in support and in opposition to using the federal model cap and trade program.
- Comment stating that Clearinghouse rule 06-104 goes beyond EPA requirements. The proposed rule does not go beyond the federal version of CAIR for two reasons. First, the federal CAIR allows for states to have discretion in allocating NO_x allowances. And second, the same number of allowances are available for compliance under the state version as under the federal version and there are no restrictions on interstate trading.

Larry and I would be glad to answer any questions from the Committee. Manitowoc Public Utilities has written to the Committee and it is my understanding that they will testify today regarding the issue of a revision to the allocation tables in the rule based upon corrected data. The Department is supportive of the change and would be able to bring the modification back to the Committee quickly. I'd be glad to answer questions on that issue at this time or following their testimony.





John Muir Chapter

Sierra Club - John Muir Chapter
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February 13, 2007

Senate Committee on Environment and Natural Resources
Testimony on Clearinghouse Rule 06-104
Comments of Sierra Club-John Muir Chapter on the
Proposed DNR Rules to Implement the Clean Air Interstate Rule (CAIR)

Chairmen Miller, members of the Committee for the record my name is Carla Klein, Chapter Director for the Sierra Club's John Muir Wisconsin Chapter. Sierra club is the oldest and largest environmental organization in the country. I'm speaking today on behalf of our 14,000 members in Wisconsin.

Sierra Club is concerned about Wisconsin's air quality and the health of its citizens. One of the largest contributors to air pollution in Wisconsin are old, dirty power plants. Many of these plants were grandfathered in the Clean Air Act Amendments, but have outlived even the most optimistic projections of their life spans. The U.S. EPA's Clean Air Interstate Rule, or CAIR, is a small first step in cleaning up those old, dirty plants. Sierra Club wants to note, however, that CAIR does not solve our air pollution problems and must be significantly supplemented with additional regulations necessary to protect health and welfare of our citizens. CAIR, alone, has limited environmental benefits in Wisconsin. Because CAIR is a cap-and-trade regulatory scheme, CAIR will only reduce emissions down to the codified national "cap." There is no guarantee that any reductions will occur in Wisconsin. There is also no guarantee that the CAIR rules will clean up the Valley power plant in Milwaukee that disproportionately affects poor and minority populations in that city. Therefore, Sierra Club supports the necessary policies proposed by DNR in the CAIR rule package, but cautions that neither DNR nor the legislature should believe that CAIR gets us where we need to go.

Remember to Support the Sierra Club through your workplace giving campaign!
The John Muir Chapter is proud to be a member of




We support several of the key elements in DNR's proposed rule and urged DNR to strengthen other provisions.

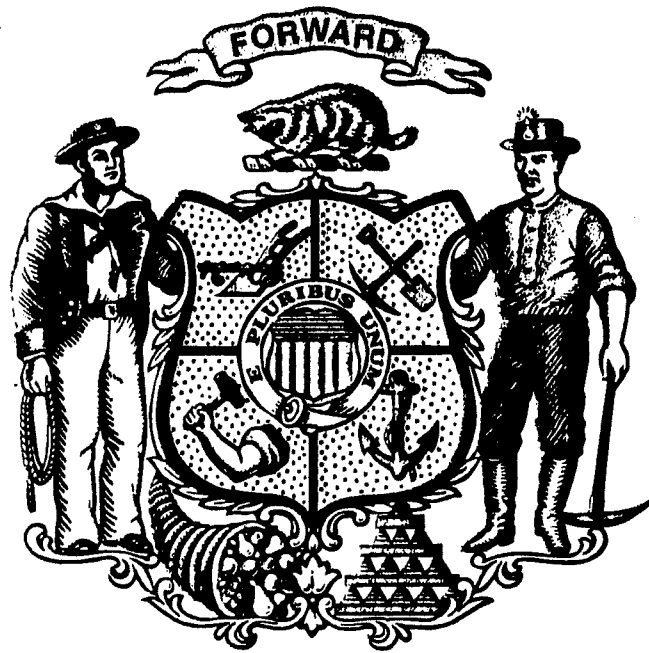
- Sierra Club supports the rules' allocation of pollution credits according to electrical output, rather than heat input for existing units. This proposal rewards efficient production of energy. Alternatives proposed by the utilities would reward plants who produce more pollution for the same amount of electricity.
- Sierra Club also supports the way in which the rules update the baseline—so that allowances are allocated based on the power plants that are actually operating, rather than permanent allocations based on a set point in history.
- Sierra Club also supports the way that all units are treated equally, regardless of fuel type. This approach ensures that there is a strong and ongoing incentive for companies to operate the cleanest and the most efficient units possible. Alternative proposals would reward higher polluting power plants with more credits—subsidizing pollution from coal: the dirtiest fuel.
- Sierra Club supports that the rules will give full credit for energy produced from combined heat and power, or co-generation, units. Sierra Club supports that the rules allocate some credits to renewable energy units. Giving credits to renewable energy begins to put clean, home grown energy resources on a level playing field. However, Sierra Club believes that the rules still favor polluting sources of energy rather than clean renewable energy. For that reason we request the following two changes to the rules:
 - 1) The rules should allow new sources of renewable energy to get credits immediately, like new coal plants do, rather than waiting for many years before receiving credits.
 - 2) The rules should allow older renewable energy units to receive credits, like old coal plants do. The proposed rules limit credits to only new renewable units, while giving free credits to old, dirty coal plants. This is an unfair subsidy to old coal plants.

It is essential that we be moving toward carbon neutral energy production. These changes can help create a level playing field and begin to move Wisconsin in the right direction.

Thank you for your consideration.



Carla Klein Chapter Director
Sierra Club - John Muir Chapter



**Commence Construction Waivers Testimony
Kevin Kessler, Acting Director, Bureau of Air Management
Department of Natural Resources**

**Before The
Senate Committee on Environment and Natural Resources
February 13, 2007**

Members of the Committee, I thank you for the opportunity to discuss this rule package with you today. I am Kevin Kessler, acting director of DNR's Bureau of Air Management. With me today is Jeff Hanson, the Air Permit Section Chief.

Currently, when an air permit is needed for construction, one can not commence construction until the permit is received.

This requirement has been at issue with some projects companies seek to obtain necessary approvals to avoid or recover from difficult situations. Examples of which would include setting footings before ground freezing or getting back into production following a catastrophic occurrence.

2003 Wisconsin Act 118 set forth statutory changes that address this issue in creating 285.60(5m). (5m) required the department to develop regulations that would allow construction to commence in situations where an undue hardship would be placed on the applicant if they had to delay construction while waiting for an air permit.

The package before the committee sets forth criteria for a waiver allowing construction to commence prior to a permit being granted.

Criteria within the rule include:

- A complete construction permit application must be on file.
- A request for waiver contains a demonstration of undue hardship:
 - Weather, catastrophic damage, substantial economic issue that would preclude the project, other case-by-case hardship situations.
 - The project does not required limitations to avoid federal permitting requirements
 - The source is not located with 10 km of a protected area – Rainbow Lake

The department must act on the request for waiver within 15 days

This criteria was based upon department experience, stakeholder input and similar waivers in other states – approximately 6 states have similar regulation

There is a fee for the processing of a waiver request of \$300, which was part of the Governor's budget and carried forward to the regulation

While construction can commence under a waiver, the sources covered can not start emitting until a permit is issued. DNR can rescind the waiver if the applicant is not diligent in responding to department requests for information necessary to complete the permitting process.

Waiver allows for construction to commence – ultimately a permit must still be issued.

We'll be happy to address any questions you may have.