

July 8, 2009

VIA E-MAIL and ELECTRONIC FILING

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Ste. 7
Lansing, MI 48909

Re: MPSC Case No. U-16000; In re Wolverine's Electric Generation Alternatives
Analysis for Proposed Permit to Install No. 317-07

Dear Executive Secretary Kunkle,

The Environmental Law and Policy Center, Natural Resources Defense Council, Citizens Exploring Clean Energy, Great Lakes Environmental Law Center, Lone Tree Council, MidlandCARES, Michigan Energy Alternatives Project, Ecology Center, Clean Water Action, Michigan Land Use Institute, Michigan Environmental Council, and the Sierra Club ("Citizen Groups") hereby comment on the Wolverine Power Supply Cooperative's Electric Generation Alternatives Analysis filing ("EGAA Filing"). As shown in the attached report by Synapse Energy Economics ("Synapse Report"), the EGAA Filing does not even begin to demonstrate a need for Wolverine's proposed Rogers City Coal Plant or a lack of feasible and prudent cleaner alternatives to the Plant. In fact, the available evidence shows that energy demand is flat or even decreasing, and that energy efficiency, renewable energy and existing natural gas capacity can satisfy demand. As a result, the Michigan Public Service Commission ("PSC") should recommend that the Michigan Department of Environmental Quality ("MDEQ") deny the Wolverine air permit application, rather than approving an unnecessary project that would impose undue costs on ratepayers, pollute the air, exacerbate climate change and weaken Michigan's ability to seize the opportunities offered by the green energy economy.

The Citizen Groups appreciate the Michigan PSC providing this and other opportunities for members of the public to voice their questions and opinions regarding the EGAA Filing. Unfortunately, these opportunities have been marred by the fact that much of the basic information that Wolverine purportedly relied on in developing its analysis and the assumptions used therein has not been provided. As such, the opportunity for informed public participation

that is required by law and critical to effective government decision making¹ has not occurred here.

In particular, the June 8 EGAA Filing provided insufficient data and analyses to support its claims and conclusions. Citizen Groups have submitted two separate filings documenting the omissions and requesting necessary information. As the Citizen Groups explained in their July 1 letter, following the June 22 Technical Forum, one of the major omissions, among others, is the failure of Wolverine to provide the workpapers that formed the basis of its EGAA filing. Wolverine has yet to file anything in response to the Citizen Groups' two separate requests. Should Wolverine file anything responsive, we reserve our right to file supplemental comments on that filing.

Furthermore, the PSC docket is not up-to-date. Communications from the PSC indicate that the public docket is not current and therefore it is not possible for citizens to review all filings that have been made part of the docket.² As of the end of the day July 8, 2009, items filed on July 1 and earlier were still not appearing in the docket, despite PSC communications indicating that the docket would be up-to-date by the day's end.³ As such, Citizen Groups reserve their right to file supplemental comments covering any and all items not accessible in a timely manner in the docket. In addition, one of the consultants to the Citizen Groups suffered a serious family medical emergency in which his spouse needed emergency surgery and a lengthy hospital stay. As a result, our consultant was unable to complete his review of and comments on the EGAA filing. Consequently, we will be filing supplemental comments covering that portion of our consultant's review and comments.

In reviewing the issues addressed in the EGAA Filing, it is important that the Michigan PSC keep in mind the relevant legal standards for the needs and alternatives determination. This proceeding requires consideration under two laws – the Michigan Environmental Protection Act (“MEPA”), M.C.L. 324.1701 *et seq.*, and Section 165(a)(2) of the Clean Air Act, 42 U.S.C. § 7475(a)(2).⁴ As the Citizen Groups explained in their January 6 comments on the draft air permit for the Rogers City Plant,⁵ MEPA requires that where, as here, a proposed action would

¹ The Clean Air Act, under which this evaluation of need and alternatives is occurring, “emphasizes the importance of public participation and input into the decision making process,” *In re Knauf*, 8 E.A.D. 121, PSD Permit No. 97-PO-06 (E.A.B. Feb. 4, 1999), by requiring that decisions be made only “after adequate procedural opportunities for informed public participation in the decision making process.” 42 U.S.C. § 7470(5); *see also* 42 U.S.C. § 7475(a)(2); *In re Hadson Power 14*, 4 E.A.D. 258, PSD Appeal No. 92-3, 92-4, 92-5 (E.A.B. October 05, 1992). Such opportunities are critical because public participation encourages better analyses and decision making by government agencies, and helps to ensure that the public is well-informed about the significant decisions that the agency is making. *DuBois v. U.S. Dep’t of Agriculture*, 102 F.3d 1273, 1285-86 (1st Cir. 1996). Opportunities for informed public participation also allow for the “public oversight and scrutiny” of agency action that “is essential to the preservation of a democratic society.” *American Federation of State, County, and Municipal Employees v. Dept. of Mental Health*, 452 Mich. 1, 14-15 (1996).

² “The public access to the e-dockets has not refreshed due to data being moved from old servers to new. I apologize for the delay. We hope the data move will be complete by day’s end.” Email from Debra Berry to Faith Bugel, July 8, 2009.

³ For example, comments filed by Frank Zaski on July 1, 2009 were not appearing in the docket by close of business on July 8, 2009.

⁴ While MDEQ takes the position that this proceeding is only taking place under CAA requirements, the Governor’s Executive Directive on this Need and Alternatives Analysis included MEPA requirements as well.

⁵ These comments have been filed as Docket entry 0003 in this proceeding and are incorporated herein by reference.

“pollute, impair, or destroy” the environment, the polluter must show that there is “no feasible and prudent alternative” that would achieve the objective of the proposed action, and that the project is “consistent with the promotion of the public health, safety, and welfare in light of the state’s paramount concern for the protection of its natural resources from pollution, impairment and destruction.” M.C.L. 324.1703(1). If there are less polluting feasible and prudent alternatives, the proposed project cannot move forward. Similarly, Section 165(a)(2) requires an evaluation of need and alternatives, and authorizes a permitting authority to require additional analyses and impose permit conditions beyond the baseline requirements of the Clean Air Act in order to protect air quality and other environmental values. *In re Prairie State Generating Co.*, PSD Appeal No. 05-05, slip op. at 40 (E.A.B. 2006).

Under these laws, a feasible and prudent alternative cannot be rejected simply because it may cost a little more or is inconsistent with the company’s business plan. Instead, an alternative qualifies as “feasible” so long as it is “likely to work out or be put into effect successfully.” *Wayne County Dept. of Health v. Olsonite Corp.*, 263 N.W.2d 778, 796 (Mich. App. Ct. 1978). Increased cost makes an alternative infeasible only if the alternative is “prohibitively expensive,” which is a cost threshold far in excess of “substantially increase[d] production costs” or costs that are “financially burdensome.” *Id.*, citing *Industrial Union Dept., AFL-CIO v. Hodgson*, 499 F.2d 467, 477-78 (D.C. Cir. 1974). Moreover, whether an alternative is “prudent” does not involve a “comprehensive balancing of competing interests.” *Id.* at 797, citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 411 (1971). An alternative is prudent unless there are “truly unusual factors” that pose “unique problems” or costs that “approach ‘extraordinary magnitude.’” *Id.*

It is clear that Wolverine’s EGAA Filing does not come close to satisfying these standards, or showing that there are not “feasible and prudent alternatives” to the proposed Rogers City Coal Plant. As explained in the Synapse Report, specific shortcomings include the following:

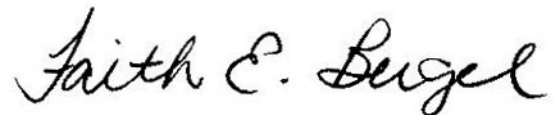
- The least cost planning analyses presented in the EGAA only considered natural gas and coal options. They did not reflect any wind or other renewable resources, any additional energy efficiency, or purchases of energy from existing natural gas-fired plants that could be included as parts of portfolios of alternatives to the proposed Rogers City project;
- Wolverine’s use of a low construction cost for a new coal-fired power plant biases its cost analyses in favor of the coal alternatives;
- Wolverine biased the least cost planning analyses in favor of the baseload coal option by assuming an unreasonably low heat rate;
- Wolverine’s planning analyses and cost comparisons do not include a cost for CO2 emissions;
- Wolverine’s assumption of a very high natural gas price in its Carbon Tax Scenario biases its cost analyses in favor of the coal alternative;

- There is no evidence to support Wolverine's claim that carbon regulation would increase the price of natural gas by 25 percent or more.
- Wolverine's analyses are biased against new wind facilities by the failure to include a wind capacity credit.
- Wolverine unreasonably assumes that its members will not be able to achieve more than 0.2 percent annual incremental energy efficiency savings after the year 2015.
- The EGAA ignores the availability of a substantial amount of under-utilized gas-fired combined cycle and gas turbine capacity that could provide much, if not all, of the energy that would be generated at the proposed Rogers City CFB coal plant.

In short, the EGAA Filing underestimates the costs of coal, overestimates the cost of natural gas, and underestimates of the availability of energy efficiency, renewables, and natural gas to meet demand.

As such, the Michigan PSC should reject the EGAA Filing and recommend that Michigan DEQ deny Wolverine Power's permit application for the Rogers City Coal Plant. Thank you for your consideration of these comments and please contact Faith Bugel at (312) 673-6500 if you have any questions.

Respectfully Submitted,



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