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**Michigan Land Use Institute**  
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**Progress Michigan**  
**Natural Resources Defense Council**  
**Sierra Club**

June 14, 2011

**VIA ELECTRONIC MAIL AND FEDEX**

Governor Rick Snyder  
P.O. Box 30013  
Lansing, Michigan 48909

Dear Governor Snyder,

As you are aware, MDEQ recently reissued the draft permit for Wolverine Power Supply Cooperative's proposed plant in Rogers City, Michigan. Despite the recent additions to the permit record in support of that draft permit, the permit still must be denied. The grounds requiring denial are covered at length in our January 6, 2009 comments submitted during the public comment period on the original draft of the permit and also in our May 19, 2011 comments submitted during the public comment period on the more recent draft of that permit, as well as in comments submitted in between those comment periods. Nothing in the recent decision of the Missaukee County Circuit Court reversing MDEQ's previous permit denial provides differently. While the content of our previous comments will not be repeated here, one point is worth highlighting: MDEQ is required to deny the permit based on unacceptable air quality impacts from a facility for which there is no need.

The State of Michigan is obligated to consider the need for the Wolverine plant in the context of protecting air quality. Wolverine has not demonstrated that the proposed plant is needed to provide additional electricity. In fact, the opposite is true: the Michigan Public Service Commission demonstrated that the plant is not needed. Wolverine has also not justified the significant cost burden the new plant would impose on its members and the significant negative effects that it will have on local air quality.

**a. Introduction.**

Wolverine is asking MDEQ to approve an unnecessary coal-fired power plant that would increase electricity costs to its ratepayers by approximately 60 percent, to over 20 cents per kilowatt-hour. Wolverine failed to establish any need for this permit, and considering the fact

that there are cleaner alternatives to this permit that would minimize or avoid air quality impacts, the permit must be denied.

This permitting process is before the Agency on remand from the Missaukee County Circuit Court's decision regarding MDEQ's previous permit denial. With regard to need and alternatives, the Circuit Court's ruling is a limited one. First, the Circuit Court's decision does not require MDEQ to issue the requested Permit. Rather, the decision only forecloses MDEQ from denying Wolverine's application "based only on need." *Wolverine Power Supply Coop., Inc. v. Mich. Dep't of Natural Res. & Env.*, File No. 10-7686-CE, slip op. at 8 (Mich. Cir. Ct. Jan. 28, 2011). Further, the remand to MDEQ merely requires "further consideration of the PTI" and directs the Agency to "make a determination." The opinion does not include any language stating that the agency must issue the permit. Consequently, nothing in the Circuit Court's decision changes the fact that MDEQ can and must deny Wolverine's permit application because the Proposed Coal Plant does not, on this record, satisfy the applicable requirements of the law. In fact, the Circuit Court points out the grounds on which the statute authorizes MDEQ to deny a permit: "The department may . . . deny . . . a permit issued under this act if any of the following circumstances exist: (a) installation . . . will violate this part, rules promulgated under this part, or the Clean Air Act . . ." *Wolverine Power Supply Coop.* slip op. at 9 (citing MCL 324.5510).

Consequently, the Court's decision does not foreclose MDEQ from denying the permit application based on need when such a basis is specifically tied to air quality concerns or because the proposal fails to satisfy other requirements of the Clean Air Act. In fact, the Court notes that "it is clear that one of the considerations as contained in the Michigan legislation is to consider alternatives to a new source," and that Section 165(a)(2) and Rule 1817(e)(2) "require that there be an evaluation of the need and the alternatives to the need in light of the goals of the Clean Air Act as enacted through NREPA Part 55." *Wolverine Power Supply Coop.*, slip op. at 8, 9. As such, MDEQ is not required to issue the Wolverine permit, and explicitly has the authority to evaluate need and alternatives in the context of protecting air quality in Rogers City and surrounding areas and deny the permit based upon those grounds. *See also In re Prairie State*, 13 E.A.D. at 32. For all the reasons stated in the January 6, 2009 and subsequent Citizen Groups' comments, issuance of this permit will violate the statute, regulations and Clean Air Act and the permit must be denied.

#### **b. Air Quality Impacts.**

Because the Clean Air Act places strict limits on the deterioration of air quality (thereby limiting the number of sources that can be approved in a geographic area), permitting agencies hold the authority to deny a permit even if it would not consume the entire PSD increment. States have wide discretion in how to allocate their increments, *Alabama Power Co. v. Costle*, 636 F.2d 323, 364 (D.C. Cir. 1979), including by denying a permit application. Along these same lines, USEPA has explained that

**[T]he permitting authority has broad discretion in deciding how much, if any, incremental air quality deterioration to apportion to a proposed source meeting BACT.** The legislative history also indicates that a State has discretion to reject a permit application for a proposed source because of impacts the proposed source could have on the character of the community.

U.S. EPA, *Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR)*, 61 Fed. Reg. 38,250, 38,272 (July 23, 1996) (emphasis added). The EAB has cited this discretion over how to distribute the PSD increment in concluding that a state permit agency can decide not to issue a permit based on a lack of need. *In re Prairie State*, 13 E.A.D. at 32.

The air quality impacts of the Proposed Coal Plant are significant. In fact, once appropriate background concentrations are factored in, the Proposed Coal Plant would use up **84%** of the 24-hour PM<sub>10</sub> increment and **65%** of the 24 hour SO<sub>2</sub> increment for this area. MDEQ Public Participation Documents (“2008 PPD”), Appendix 2, at 35, Sept. 23, 2008.<sup>1</sup>

### **c. Lack of Need.**

The evidence in the record confirms that Wolverine has neither demonstrated a need for, nor a lack of feasible and prudent cleaner alternatives to, the Proposed Coal Plant. Where there is no demonstrable need for a project, the State has a responsibility to preserve air quality increments for later projects for which there is a need. It would be bad public policy to negatively impact air quality and consume much of the area’s increment for a plant for which there is no demand.

As the MPSC Staff concluded, Wolverine overestimated the cooperative’s future energy needs, and failed to adequately account for numerous feasible and prudent alternatives to the Proposed Coal Plant. *See generally* MPSC Staff Report to MDEQ, Sept. 9, 2009 (“MPSC Staff Report”). Findings of the MPSC Staff Report include:

- “Wolverine failed to demonstrate the need for the proposed facility as the sole source to meet their projected capacity.” (MPSC Staff Report at 3.)
- “[T]he proposed CFB plant is one alternative out of a range of alternatives that may be used to fill the projected capacity need. Other alternatives that may fill all or portions of the projected capacity need include: energy efficiency and load management; renewable resources; or a combination of a number of alternatives that could include lesser amounts of purchased power.” (*Id.* at 3.)
- “Wolverine’s forecasted demand growth . . . appears questionable, or optimistic, and the risk associated with this uncertainty was not fully addressed.” (*Id.* at 4.)
- “[E]nergy efficiency, demand side options, and purchased power are not among the list of alternatives that was considered.” (*Id.* at 27.)
- “Wolverine’s EGAA does not present an adequate analysis of the costs and benefits of reliance on short-term power supply options to mitigate long-term planning risk.” (*Id.* at 27.)

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<sup>1</sup> These percentages were calculated by dividing the PAI from the Proposed Project figures of 25.3 ug/m for 24-hour PM<sub>10</sub> and 59 ug/m for the 25 hour SO<sub>2</sub> increment by the increments of 30 and 91 ug/m, respectively. Even excluding background concentrations, MDEQ reports that the proposed power plant will consume 41.7 percent and 57.0 percent of available increment for SO<sub>2</sub> (24-hour) and PM<sub>10</sub> (24-hour), respectively. (MDEQ Notice of Wolverine Public Comment Period, Nov. 6, 2008.) In short, the Proposed Coal Plant will have an enormous impact on air quality in the area.

Two developments are noteworthy: Wolverine's purchase of the 340 MW Sumpter plant in late 2009 and Wolverine's purchase of a participation interest in the output of the Ohio Valley Electric Corporation in late 2010.<sup>2</sup> First, in their December 2009 supplemental comments, the Citizens Groups discussed Wolverine's purchase of the 340 MW Sumpter Plant. The Citizens Groups pointed out in those comments that the Sumpter natural gas peaking plant can be converted to a combined cycle plant which would generate approximately 500 MW to meet Wolverine's baseload energy needs and this could be done with fewer negative air quality impacts than constructing the proposed coal plant. Second, in late 2010, FirstEnergy Generation Corporation sold a 6.65 percent participation interest in the output of the Ohio Valley Electric Corporation to a subsidiary of Wolverine. This share represents approximately 150 MW of capacity. In short, between these two purchases, Wolverine has added 490-650 MW of capacity, representing a range of capacity that is almost as much to more than the capacity of the proposed 600 MW plant. In addition, Wolverine already owned five peaking plants consisting of approximately 225 MW, and a 15 MW interest in Campbell 3. Consequently, considering the two purchases, Wolverine now owns generating facilities totaling 730 MW of power. For a coop that only needs approximately 500 MW of power, it is unclear why the members should be walloped by the cost of constructing an additional 600 MW of unnecessary power. Consistent with MPSC's report and MDEQ's decision, this underscores the reality that there is no need for the proposed plant and the permit must be denied in order to avoid the negative air quality impacts that would be caused by an unnecessary plant.

In summary, Wolverine has failed to demonstrate either a need for the Proposed Coal Plant, or the lack of feasible and prudent alternatives to the Plant that would avoid or minimize impacts on air quality. In light of the significant air quality impacts, and pursuant to Section 165(a)(2), Rule 1817(e)(2), Rule 901, and MEPA, MDEQ is required to deny Wolverine's permit application.

#### **d. Cost.**

Wolverine Power Supply Cooperative's Rogers City coal plant would hit members and ratepayers hard in their pocketbooks. The costs of this plant will put a considerable financial burden on Wolverine's 200,000 co-op members. 26% of those members have an income below the poverty line. The co-op members will get burdened with carrying the \$2.43 billion in costs of constructing the plant. This could lead to 60% higher rates for coop members when the power the plant will produce is unnecessary for meeting members' electricity demand. Wolverine severely underestimated the capital cost of the plant when it stated the cost to be \$1.32 billion. The Michigan Public Service Commission, in its report to MDEQ, noted that Wolverine underestimated its costs by more than 30%. MPSC Staff Report at 29. The PSC pointed out that Wolverine's own engineering company, Burns and Roe, estimated the capital costs of the plant to be nearly \$2 billion, \$1.9446 billion to be exact. *Id.*<sup>3</sup> The Michigan Public Service Commission predicted that Wolverine's members' electric bills would increase, on average,

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<sup>2</sup> See Exhibit 6, FirstEnergy Generation Corp., 133 F.E.R.C. P62,259 (F.E.R.C. 2010); and Exhibit 7, [Wolverine Power Supply Coop., Inc., 131 F.E.R.C. P61,184 \(F.E.R.C. 2010\)](#).

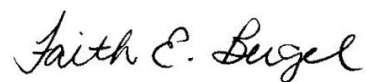
<sup>3</sup> \$3,421 per KW = 3,421,000 per MW x 600 MW = \$1,944,600,000.

approximately \$77 per month if the Rogers City plant were constructed. MPSC Letter to MI Governor J. Granholm, May 21, 2010. The federal Energy Information Administration noted that capital cost estimates for coal and nuclear power plants are 25 to 37 percent above those in 2009, when the PSC report was written.<sup>4</sup> This translates to capital costs of at least \$2.43 billion to build the plant, almost double Wolverine's underestimate.

**e. Conclusion.**

Due to the air quality impacts, lack of need, and exorbitant costs of the proposed plant, among other reasons discussed in Citizen Groups' comments, the Draft Permit to Install, Permit No. 317-07, for the proposed 600 MW Wolverine coal plant must be denied. Allowing Wolverine's expensive, dirty and unnecessary coal plant would hamper the State's economy and set back Michigan's progress in clean energy technology and jobs. This is the right choice for Michigan families, workers and ratepayers!

Sincerely,



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*On behalf of:*

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Michigan Energy Alternatives Project  
Michigan Land Use Institute  
Midland CARES  
Natural Resources Defense Council  
Progress Michigan  
Sierra Club

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<sup>4</sup> Exhibit 8, U.S. Energy Information Agency, "Updated Capital Cost Estimates for Electricity Generation Plants," November 2010.