

E-999/CI-93-583 ORDER MODIFYING ADMINISTRATIVE LAW JUDGE'S FIFTH
PREHEARING ORDER ON THE CONSIDERATION OF SOCIOECONOMIC FACTORS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Quantification of
Environmental Costs Pursuant to Laws of
Minnesota 1993, Chapter 356, Section 3

ISSUE DATE: October 28, 1994

DOCKET NO. E-999/CI-93-583

ORDER MODIFYING ADMINISTRATIVE
LAW JUDGE'S FIFTH PREHEARING
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PROCEDURAL HISTORY

On March 1, 1994, the Commission issued its ORDER ESTABLISHING INTERIM ENVIRONMENTAL COST VALUES. That Order established an interim range of environmental cost values for each of five air emissions commonly associated with electric generation.

On March 3, 1994 the Commission issued its NOTICE AND ORDER FOR HEARING in this docket, which initiated a contested case proceeding to replace the interim cost estimates with more permanent and definitive values.

On May 13, 1994, the Administrative Law Judge (ALJ) issued his Third Prehearing Order, which required each party to file a statement of the issues to determine the precise scope of the proceeding.

On July 7, 1994, the ALJ issued a memorandum to assist parties in preparing their briefs on the appropriate scope of the proceeding as it related to socioeconomic costs and other non-environmental factors. This memorandum was followed on July 13, 1994 by the ALJ's Fourth Prehearing Order, which gave parties until July 29 to submit briefs on whether the proceeding should address socioeconomic factors as described by the ALJ.

On August 24, 1994, the ALJ issued his Fifth Prehearing Order, which, among other things, limited the scope of this proceeding by excluding testimony and arguments relating to non-environmental issues, such as socioeconomic costs and benefits. The ALJ certified this aspect of his Order to the Commission.

The Commission met on October 4, 1994 to consider this matter.

FINDINGS AND CONCLUSIONS

I. ALJ's Decision

The ALJ's Fifth Prehearing Order bars from the record all "testimony and arguments relating to non-environmental issues, such as socioeconomic costs and benefits . . ., [except] for the purpose of creating a record to support or defend constitutional challenges." The ALJ elaborates on this ruling in his accompanying memorandum, stating:

[S]ocioeconomic and other non-environmental evidence will be admitted only as a matter of convenience for the parties and the appellate court. Were it not for the constitutional issues, the Administrative Law Judge would exclude the evidence entirely. . . .

The ALJ reasons that Minn. Stat. §216B.2422, subd. 3 reserves socioeconomic costs for consideration in later resource selection proceedings when environmental externality values are actually applied.¹ The Commission agrees with this analysis as it relates to most of what might be termed "socioeconomic." However, the Commission does not construe the statute to exclude all socioeconomic evidence from consideration.

Some evidence fairly defined as socioeconomic may be relevant to the subject matter of this proceeding. Data on lost work days caused by respiratory problems attributable to NO_x emissions would be one example. Although the ALJ may have considered such evidence "environmental" and not "socioeconomic" as some parties have suggested, this is not clear from his Order. Moreover, any attempt to categorize evidence in this fashion may bring more confusion than clarity to evidentiary decision-making in this case.

Evidence should be assessed on the basis of its probative value in establishing environmental cost values, not on how the evidence may be defined, classified or categorized.

II. Determining Relevance of Socioeconomic Evidence

This proceeding was initiated to implement the Commission's statutory mandate under Minn. Stat. §216B.2422, subd. 3 (Supp. 1993), which provides, in relevant part:

The commission shall, to the extent practicable, quantify and establish a range of environmental costs associated with each method of electricity generation.

Environmental costs as used in the statute reflect the "environmental consequences of electric generation." ORDER ESTABLISHING INTERIM VALUES (March 1, 1994), p. 3. Therefore, the test for admissibility in this case must be the extent to which the evidence helps identify or place a dollar value on these environmental impacts.

A. Socioeconomic Evidence Related to Valuing Environmental Impacts

Environmental effects do not translate easily and automatically into monetary values. These values may be based on estimates of actual damage to the environment (damage cost method). They may also be derived by calculating the cost of controlling emissions or mitigating their effects (control cost and mitigation approaches).² The damage cost model, in particular, may involve looking at both environmental impacts and their socioeconomic manifestations (e.g., identifying atmospheric changes caused by air pollutants and the effects of these atmospheric changes on the economy).

Fossil fuel generation, for example, produces NO_x emissions which affect the environment by contributing to the formation of ozone in the atmosphere. Calculating the monetary cost of ozone in this context may require an assessment of its social and economic impacts (e.g., lost work days due to respiratory illness). Assuming that CO₂ emissions contribute to global

¹ These would include resource plan, bidding and certificate of need proceedings.

² Other methods may be used to estimate the external environmental costs of generating electricity. The Commission does not intend by this Order to preclude or favor the use of any particular methodology.

warming, the monetary value of this warming effect may be determined, in part, by reference to its potential impact on Minnesota's agricultural industry. Similarly, the environmental effects of acid rain and heavy metal emissions could be calculated by looking at their impacts on the state's fishing and tourism industries.

Any attempt to define evidence of these effects as something other than socioeconomic would be strained at best. Yet, clearly this evidence should not be excluded automatically from consideration in this proceeding. Electric generation affects the natural environment and this impact often has socioeconomic consequences. Evidence of these socioeconomic consequences may provide helpful or even necessary measures of environmental impact and should be admitted for that purpose. The weight of the evidence will, of course, depend on its probative value.

B. Socioeconomic Evidence Related to Impact of Applying Environmental Cost Values

A number of parties urge consideration of a broader spectrum of socioeconomic evidence than necessary to measure environmental impact. These parties argue that the Commission should look at the possible social and economic consequences of applying environmental cost values in deciding what those values should be.³ The Commission disagrees.

Environmental externality values should reflect the environmental costs of electric generation, not the socioeconomic implications of considering those costs. The implications of applying environmental values will be examined in resource selection proceedings pursuant to Minn. Stat. §216B.2422, subd. 3. That statute requires utilities and the Commission to weigh non-environmental concerns, directing utilities to use environmental cost values "in conjunction with other external factors, including socioeconomic costs . . ." The statute simply contemplates consideration of these other factors in forums where resources will, in fact, be selected.⁴

The statutory scheme makes sense, since the non-environmental consequences of choosing particular resources can be considered most effectively when specific options have actually been identified. This will happen in resource selection proceedings, where the reliability, rate impact and employment characteristics of resource alternatives will be assessed in concrete terms. A careful look at these and other similar factors will enable parties to fully evaluate the social and economic implications of the resources under consideration.

The Commission recognizes the concern of some that resource selection proceedings may not give sufficient voice to non-environmental concerns. These parties seem to suggest that the mere existence of environmental cost values will trigger resource decisions outside the context of resource selection proceedings where non-environmental factors would otherwise be

³ These parties argue that the socioeconomic ramifications of applying environmental cost values should be considered in deciding whether a range of values proposed in this proceeding would be "practicable." The statute requires the Commission to establish a range of values only "to the extent practicable."

⁴ Minn. Stat. §216B.2422, subd. 3 (a) sets forth this two-stage approach as follows:

The Commission shall, to the extent practicable, quantify and establish a range of environmental costs associated with each method of electricity generation. A utility shall use the values . . . in conjunction with other external factors, including socioeconomic costs, **when evaluating and selecting resource options** in all proceedings before the commission . . . (emphasis added).

addressed. They speculate that some customers will use self-generation or retail wheeling to avoid purchasing power from utilities on the assumption that utility rates will eventually increase once environmental values are applied in resource selection proceedings.

The Commission does not, at this juncture, find this concern sufficiently compelling to justify departure from the two-stage process set forth in the statute, which clearly contemplates the Commission establishing environmental cost values independent from its consideration of the consequences of applying those values. Customers sophisticated enough to consider self-generation are sophisticated enough to understand that the environmental cost values adopted in this docket will not determine electric rates or compel the selection of any particular fuel sources or generation facilities. The values will simply focus attention on resource options that may otherwise be overlooked if only direct costs are considered.⁵

Resource selection proceedings will afford parties and the Commission ample opportunity to evaluate the potential consequences of these alternatives. The estimated environmental costs

⁵ Environmental costs would be represented by the values established in this proceeding. Direct costs are the costs incurred by a utility's in acquiring and using resources to generate electricity (e.g., cost of purchasing and transporting fuel).

will, in combination with the direct costs of generation alternatives, provide the starting point for this evaluation. The full reach of non-environmental concerns must then be considered to ensure the selection of resources consistent with the public interest.

ORDER

1. The ALJ's Order is hereby modified to ensure that socioeconomic evidence is not excluded from consideration in this proceeding if it is relevant to quantifying the impact of electric generation on the natural environment as discussed above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)