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June 11, 2007

Mr. Robert Eckdale
Wisconsin Department of Natural Resources
Bureau of Air Management
P.O. Box 7921
Madison, WI 53707

RE: Comments on Proposed Revisions to Chapters NR 440 and NR 446, AM-32-05
Wis. Adm. Code

Dear Mr. Eckdale,

In response to the DNR's April 10, 2007 Notice of Public Hearings regarding revisions to chapters NR 440 and NR 446, Wis. Adm. Code, relating to provisions for compliance with the Clean Air Mercury Rule, Wisconsin Public Power Inc. (WPPI) offers the following comments.

WPPI is a municipal electric company formed pursuant to Sec. 66.0825, Wis. Stats., and is the wholesale power supplier to its 48 member municipalities. WPPI is the owner of an 8.33% interest (approximately 100 MW) in the Elm Road Generating Station (ERGS), currently under construction in Oak Creek. While WPPI owns approximately 220 MW of Wisconsin combustion turbine generation and approximately 100 MW of coal-fired generation in Minnesota, ERGS will be WPPI's first coal-fired plant in Wisconsin. As such, WPPI has a direct interest in the current rulemaking and appreciates the opportunity to comment on the DNR's proposed rule.

General Approach. Section 446.09(2) of the proposed rule mandates compliance with mercury allowance requirements on either a unit-by-unit or system-wide basis, with no provisions for the transfer of allowances between companies. By restricting the pool of units from which mercury reductions can be made in order to comply with an overall mercury emission cap, the proposed approach would limit flexibility and significantly increase the cost of compliance, with the greatest impact falling on utilities with the least amount of coal-fired generation. Put another way, the rule as proposed provides a substantial competitive advantage for large utilities with a fleet of existing generators as against smaller systems and new entrants. This is not in the public interest.

In addition, the exclusion of provisions for the transfer of allowances between companies will effectively prohibit the construction of a new coal unit by any company that does not currently own or operate one or more coal units in Wisconsin. As provided in Section NR 446.08(4)(b) of the proposed rule, allocations of allowances from the new unit set-aside pool will not be available until the calendar year following the year in which a new unit commences commercial operation. At a minimum, allowances for this first calendar year of operation will have to be provided from another in-state source. A company which does not have one or more existing coal units operating in Wisconsin to which allowances have been allocated would have no ability to obtain the allowances necessary to allow initial operation of a new unit.

If the DNR's objective in declining participation in the federal trading program is to ensure that total mercury emissions from affected units in Wisconsin do not exceed the state mercury budget, this goal may be met in a more flexible and cost-effective manner by implementing an intrastate trading program. An intrastate trading program would in no way compromise the state's objective to meet its emissions budget, but could help alleviate some of the impact of the proposed rule on entities with small systems or limited coal resources. The DNR's proposed approach can only (1) increase the cost of compliance, a cost ultimately borne by consumers, and (2) predetermine the pool of entities that can construct future plants; including some entities and excluding others. No doubt DNR may be concerned with the additional administrative burden associated with an intrastate trading program. However, in practice, the implementation of a system-wide compliance scheme, as proposed, is likely to be equally burdensome given the various jointly-owned units throughout the state. It is essential that any compliance program recognize and provide for joint ownership. The jointly-owned Columbia 1 and 2, Edgewater 4 and 5, and Genoa units represent nearly one third of the proposed initial allowance allocations from the main allocation pool, while the jointly-owned Weston 4 and ERGS 1 and 2 will likely comprise a majority of the requested allocations from the new unit set-aside pool.

Allocation of Allowances from Main Allocation Pool. WPPI supports regulatory policies that encourage improvements in the average efficiency of Wisconsin's coal-fired generating fleet. For this reason, we support the proposed rule's use of energy output as the basis for allocating allowances, rather than heat input as in the Federal model trading rule, as this method will reward efficient generating units.

Determination of Unit Baselines. Unlike the federal model trading rule, the proposed rule would recalculate unit baselines every two years (NR 446.08(1)(b)). As a result, an extended unit outage would result in a reduction in allowances during the allocation period for which the revised baseline is determined. This is problematic as it would penalize an owner for scheduling the extended maintenance outage necessary to make major unit environmental or efficiency upgrades. This issue could be mitigated by determining a baseline using, for example, the highest gross electrical output for any two years during a three year period.

Banking of Allowances. The proposed rule does not provide for the banking of allowances, as does the federal rule. Combined with the lack of provisions for the transfer of allowances between companies, the exclusion of banking provisions will remove any incentive a company might have to make early mercury emission reductions. The DNR should not discourage early action and should reconsider provisions to allow trading and banking that would promote early action.

Allocation of Allowances from New Unit Set-Aside Pool. The proposed rule provides insufficient guidance for the allocation of allowances from the new unit set-aside pool. NR 446.08(4)(d)(1) states that "[t]he department shall establish the maximum amount of new unit set-aside mercury allowances a unit is eligible for based upon a request submitted under par. (b)." The values so determined are then used to calculate the allocations from the new unit set-aside pool. While the rule indicates the circumstances under which a unit is eligible for allowances under the new unit set-aside pool, it does not indicate how the DNR is to determine the maximum number of allowances for which each unit is eligible. One way DNR could address this issue would be to use each new unit's gross generation during the prior calendar year as the basis for allocating allowances from the

new unit set-aside pool for the following calendar year. This method would generally be consistent with the proposed allocation method for existing units from the main allocation pool.

This approach would have the additional benefit of eliminating problems associated with the time of year a unit commences commercial operation, which creates a variable in determining the number of allowances the unit owner must provide. As currently proposed, a unit that begins operation on January 1 would not receive allocations from the new unit set-aside pool until its second year of operation, but would then receive an allocation based on a full year of operation. A unit commencing commercial operation on December 31 would receive an allocation from the new unit set-aside pool for the calendar year beginning on its second day of operation, but this allocation would be very small based on its operation during only one day of the prior calendar year. In both cases, the units would have to obtain allowances from another source to cover the mercury allowances associated with approximately a full year of operation before receiving a full allocation of allowances from the new unit set-aside pool. Using the alternate method proposed above resolves this problem.

WPPI appreciates the opportunity to comment on DNR's ongoing efforts to implement a mercury compliance program in the state. As a non-profit entity, WPPI's goal is to support a framework that improves the environment while also continues our ability to provide low cost power to our member communities. If you have any questions regarding these comments, please contact Andy Kellen at 608-834-4545.

Sincerely,



Nina Plaushin
Assistant Vice President –
Legislative & Regulatory Affairs