



Written by [Joe Wolverton, II, J.D.](#) on November 4, 2011

North Dakota Sues Minnesota Over Anti-Global Warming Law

The law involved in the controversy, Minnesota's [Next Generation Energy Act](#) (NGEA), was passed by the state legislature and signed into law by then-Governor Tim Pawlenty in 2007.

The measure aims at limiting carbon emissions from electricity generated outside of the state, but purchased from providers for use within Minnesota.

North Dakota says the law is unconstitutional.

"Minnesota's Next Generation Energy Act has direct and serious consequences for North Dakota," Attorney General Wayne Stenehjem declared in a press statement accompanying the filing of the complaint in the United States District Court for the District of Minnesota, located in the capital city of St. Paul.



In a fact sheet released to support his assertions, Stenehjem claims:

Because North Dakota is home to significant lignite reserves and lignite-powered energy plants, Defendants' implementation of the NGEA reduces demand for North Dakota lignite and thereby harms North Dakota, its lignite industry and its citizens, as well as the coal-powered electric industry outside of Minnesota.

Among the various co-plaintiffs are North Dakota power plants that sell most of the power they generate to states other than their own, including the North Star State. According to the complaint, the law as applied, "unconstitutionally interferes with North Dakota's energy production, in violation ... of the Commerce Clause" of the United States Constitution.

Regarding Minnesota's alleged contravening of the Commerce Clause, North Dakota claims:

The [Next Generation Energy Act] unduly burdens interstate commerce because the only exception to the above prohibitions, is governed by the [Minnesota Public Utilities Commission] which is statutorily required to "maximize benefits to Minnesota citizens."

The NGEA's regulatory regime interjects Minnesota policy into North Dakota and in doing so burdens North Dakota industries and disrupts interstate commerce. The effect of provisions of the NGEA is to control conduct beyond Minnesota's borders.

Electricity is an inherently interstate commodity, and the NGEA's attempt to regulate its import in a discriminatory manner is unconstitutional.



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As relief from the constitutional violation and its immediate impact on the economy of North Dakota, plaintiffs are requesting that a federal judge declare the statute unconstitutional and issue an injunction preventing its application.

Indicating the urgency of combating the effects of global warming, Governor Pawlenty signed the bill explaining that it was intended to reduce greenhouse gas and foster investment in the development of other, more efficient, sources of energy.

“The best time to have taken action on energy issues would’ve been 30 years ago. The second best time is right now. The nation has been asleep at the switch, but here in Minnesota we are kick-starting the future by increasing our nation-leading per capita renewable fuel use, boosting cost saving measures and tackling greenhouse gas emissions,” declared Pawlenty in a statement released at the time.

Stenehjem said that the true purpose of the law was not so much the elimination of greenhouse gas emissions, but the tilting of the playing field in favor of domestic businesses and energy providers. According to Stenehjem, portions of Subdivisions 5, 6, and 7 of the Energy Act explicitly exclude Minnesota plants from conforming to the standards set forth therein.

For example:

Subdivision 7 of the NGEA expressly exempts from the carbon dioxide emission prohibitions “[a] new large energy facility under consideration by the Public Utilities Commission pursuant to proposals or applications filed with the Public Utilities Commission before April 1, 2007, or to any power purchase agreement related to a facility described in this clause.” This exemption is for Excelsior Energy Inc.’s Mesaba Energy Project, having a proposed location near Taconite, Minnesota.

This preference is unlawful, unconstitutional, and irreversibly damaging North Dakota. That state, reads the complaint,

has become a vital and essential source of electricity for consumers in Minnesota. Power stations in Minnesota generate approximately fifty-five percent of their electricity from coal, all of which is imported. North Dakota’s power plants export the vast majority of the electricity they produce to consumers in other states, including Minnesota.

The precise problem North Dakota sees with the Next Generation Energy Act is that it prohibits power plants in Minnesota from importing energy from any new, large energy facility whose product would increase statewide carbon emissions. Additionally, Minnesota plants are forbidden under terms of the law from entering into long-term contracts that would increase the level of greenhouse gases present in the state’s atmosphere resulting from heightened carbon dioxide emissions.

North Dakota has a couple of problems with these restrictions. First, the law “is premised on the proposition that there is a causal relationship between anthropogenic carbon dioxide emissions [pollution caused by humans] and global warming.” Furthermore:

based on this presumption, [the Act] imposes restrictions on carbon dioxide emissions from out-of-state energy sources as a purely symbolic gesture that could only have negligible impact toward actually achieving the purpose of reducing greenhouse gases on a global scale.

Given the less than scientifically sound track record of the scientists who support this theory, North Dakota seems to have a good point.

The second point made by the complainants is that all the self-serving exemptions in the act and the



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shoddy pseudo-science upon which it is based is discriminatory in its promulgation and in its application, subjecting North Dakota to “onerous regulatory burdens.”

Named plaintiffs that are apparently suffering most severely include,

Lignite Energy of North Dakota,

Basin Electric Power Cooperative,

The North American Coal Corporation,

Missouri River Energy Services, and

Minnkota Power Cooperative, Inc.

among others.

For a defense of the law, the office of Minnesota Attorney General Lori Swanson, directed inquiries to the state’s Public Utilities Commission, which is also named as a defendant in the suit.

Dan Wolf, an assistant executive secretary speaking for the commission, refused to take the buck being passed to him by the AG and declined comment.

Wolf was a bit more forthcoming in a statement distributed via e-mail:

As to Minnesota law, that is established by the Legislature and the governor, as reviewed by the courts. The commission has and will ensure that the public utilities under its jurisdiction comply with the requirements set by these policy makers.

In addition to its recently filed litigation against its neighbor, North Dakota is engaged in a legal battle with the federal government over air quality control regulations passed by the Environmental Protection Agency. These emissions standards will not work and will result in unbearable increases in energy prices for consumers already suffering under crushing financial strains.

At issue in that [case](#) is the EPA’s Regional Haze Program, which requires coal-fired plants in North Dakota (and other states, including Minnesota) to retrofit their facilities with emissions controlling technology. The ultimate goal, according to the EPA, is to “capture more nitrogen oxide emissions and improve visibility at national parks and other wilderness areas.”

The necessity for filing suit against its sister state lies with Minnesota’s Governor according to Attorney General Stenehjem. Earlier this year, Minnesota Governor Drayton vetoed a popular bi-partisan resolution aimed at repealing the NGEA.



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