



ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

October 16, 2009

**FILED WITH
Executive Secretary**

October 16, 2009

IOWA UTILITIES BOARD

Judi Cooper, Executive Secretary
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319-0069

**RE: Docket No. NOI-2009-0002, In re: The American Clean Energy & Security
Act of 2009 (HR 2454)**

Dear Secretary Cooper:

Enclosed please find the Environmental Law and Policy Center's Post-Hearing Comments on the above-captioned matter, as filed today on EFS.

Thank you for the opportunity to submit these comments on the Board Inquiry.

Sincerely,

Robert Kelter
Senior Attorney
Environmental Law and Policy Center



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Executive Secretary**

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IOWA UTILITIES BOARD

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE:

**THE AMERICAN CLEAN ENERGY
AND SECURITY ACT OF 2009**

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DOCKET NO. NOI-2009-0002

**POST-HEARING COMMENTS OF THE ENVIRONMENTAL LAW
AND POLICY CENTER SUBMITTED BY
DAVID SCHOENGOLD AND ROBERT KELTER
OCTOBER 16, 2009**

INTRODUCTION

MidAmerican states that it supports reductions in CO₂, but that it does not support the Waxman-Markey legislation because “there are ways to achieve that goal at costs that are more reasonable for our customers.” Tr. at 97.¹ While such statements sound reasonable MidAmerican’s analysis does not stand up to scrutiny on two fronts. First, the company ignores or distorts pertinent facts. Second, it fails to take reasonable positions consistent with ever achieving the compromise needed to pass legislation.

When the IUB analyzes the positions taken by the parties in this proceeding, it must take in to consideration a number of factors in a very complicated situation. This is not an Iowa issue where Iowa’s interests can be considered in isolation, this is federal issue that has been debated for over two decades. In order to get legislation passed, a bill must garner support from a majority of 50 states with a variety of interests. The states with low emissions invariably take the position that they should not have to pay anything because they have not caused the problem. Under Waxman-Markey the costs, and benefits, are shared in an equitable manner.

MidAmerican’s position that all allowances should be based on emissions is politically untenable. If every state looks out only for its own best interest, there will be no compromise and no legislation. MidAmerican knows this.

The Board states that the purpose of its inquiry is to “gather information from a broad cross-section of Iowa stakeholders on how the provisions of the Waxman-Markey bill could affect Iowa.” ELPC asserts that neither side can claim certainty when it comes to the effects on Iowa ratepayers, but environmental and consumer groups have based their analysis on Energy Information Administration and Environmental Protection Agency data that is more credible

¹ MidAmerican claims that the bill’s impacts on residential customers will be 17-30%. ELPC’s analysis indicates much more limited impacts in the range of \$2-5 per month.

than MidAmerican's analysis. As we have outlined in previous comments, and in our comments below, MidAmerican omits key factors in its analysis and distorts others. Moreover, MidAmerican has not addressed how climate change will affect Iowans if we do nothing to lower emissions. Nor has it addressed the odds of ever getting federal legislation under the criteria acceptable to MidAmerican; which we know is zero.

ARGUMENT

In various places throughout the transcript from the September 18 IUB hearing, MidAmerican President Bill Fehrman argues that other commenters such as ELPC lack credibility because they relied on various studies which did not look in detail at MidAmerican's situation. However, it is MidAmerican's work, not that of ELPC and others which is suspect. As set forth below: MidAmerican makes unsustainable claims about the loss of wholesale sales; MidAmerican takes contradictory positions regarding meeting the caps without the need to utilize trading allowances; MidAmerican fails to analyze the benefits from increasing its efficiency programs on consumers bills; MidAmerican's preferred approach of using just a few emission reduction target points over the years rather than a continuous annual reduction in the emission cap will lead to greater atmospheric GHG loading than would the Waxman-Markey bill.

In contrast, the analysis prepared by ELPC is based on work prepared by the Energy Information Administration whose role is to provide independent objective analysis of studies of bill impacts. The EIA includes all the things MidAmerican missed – changing cost effectiveness of energy efficiency, availability of technologies for emission reduction, the need to continually reduce emissions rather than aim for a few target points, and the working of the allowance

market. The ELPC analysis provides a better picture of the impact on Iowa than that presented by MidAmerican.

1. The Free Allowances for Merchant Plants do not Disadvantage MidAmerican

On page 98 Mr. Fehrman repeats the claim that MidAmerican will be unable to make wholesale sales if they have to include the cost of GHG allowances and their merchant plant competitors have free allowances. According to Mr. Fehrman, the merchant plant competition will be able to undercut MidAmerican on price because of those free allowances. This is incorrect. The merchant plant owners will only receive an allocation of free allowances based on the sales that they are currently making. They will not receive additional allowances to cover new sales. So, if the merchant plant owners want to contract new sales to the wholesale customers who currently buy from MidAmerican, they will have to purchase allowances in the allowance market to cover those new sales. Their allotment of free allowances will already be fully utilized to cover existing sales to current customers. Thus they will have no unfair price advantage over MidAmerican because of the free allowance allotment.

2. MidAmerican Benefits from Early Investment in Renewables

On pages 115-116 Mr. Fehrman argues that the allowance allocation provision penalizes companies that made early investments in renewables (wind). This is incorrect. In fact, MidAmerican benefits from its investment in wind energy by having an already up and functioning source of power which has zero emissions of greenhouse gases. Every kWh generated by the wind farms comes with no emissions of any kind. In addition, because half of

the GHG allowances are allocated to companies based on sales rather than emissions, MidAmerican will receive some free allowances for the power generated by the wind farms.

Furthermore, Mr. Fehrman claims that MidAmerican's investment in wind energy will cost it several hundred thousand allocated allowances per year. However, if the company hadn't invested in wind energy, it would need many more allowances than that to cover the GHG emissions from the fossil-fueled generating plants it would have to run to replace the energy it currently gets from wind.

3. If Natural Gas Prices Influence the Wholesale Market this Helps MidAmerican

On pages 123-124 Mr. Fehrman and Kevin Dodson talk about the market price for wholesale power being typically set on the basis of the cost of natural gas. We have not analyzed the wholesale markets to determine if, in fact, this is the case. However, assuming that it is, it further undercuts the company's argument that the cost of GHG allowances will keep it from being able to compete in the wholesale market. If the market price is being set by gas-fired generation, the price is a function of the cost of natural gas per kWh. Since MidAmerican has mostly low cost coal-fired generation, the operating cost will be much lower than the operating cost for gas-fired generation. This means that MidAmerican will be able to make a fairly large profit on each kWh sold. This profit should be enough to cover the cost of allowances necessary to produce that power.

4. MidAmerican Makes Inconsistent Arguments Regarding the Cap and Allowances

On pages 124-125 Mr. Fehrman claims that the carbon capture and sequestration technologies needed to meet the GHG caps are not yet available for use by utilities. This

contradicts his often repeated comment that MidAmerican can and will meet the caps. If the company truly believes that it will not have the technology available to reduce GHG emissions on its own, then allowing it to drop out of the allowance market and rely on its own devices to reduce GHG emissions makes absolutely no sense at all.

Then on page 126 Mr. Fehrman essentially argues against a market-based approach to GHG reduction and in favor of a command and control approach where the company does all of its required emission reduction on its own system. While this approach could provide the needed level of emission reductions, it would leave MidAmerican unable to make use of off-system options that might be less expensive. For example, another utility which is currently burning expensive coal in an inefficient power plant might switch to burning natural gas in an efficient combined cycle plant and end up with excess allowances. Those allowances might be less expensive than what it would cost MidAmerican to reduce its own emissions. It would be foolish for the company to shut itself off from such sources by cutting itself off from the market.

5. MidAmerican's Stair Step Reduction Approach Produces Less Reductions

On page 140-141 Mr. Fehrman discusses MidAmerican's preference for a stair step cap rather than annual reductions. Under MidAmerican's proposal, the company would not have to meet annual reductions, but would instead have to meet only a few target reduction levels over the years. After meeting each reduction level, it could maintain flat emissions until the next reduction level is called for. In all of the years between reduction targets, the company would be emitting more greenhouse gases than under the Waxman-Markey bill. The result would be to a greater atmospheric GHG loading that would undercut the purposes of the bill.

6. MidAmerican's Analysis is Flawed by its Failure to Consider Increased Efficiency

On page 144 in response to questions from Board Member Hanson concerning the impact of allowance prices on the cost-effectiveness of energy efficiency, Mr. Fehrman says that MidAmerican does not know what additional energy efficiency measures would become cost-effective when the cost of GHG allowances is factored into the company's costs. It is clear that the cost of GHG allowances will increase the cost of coal-fired generation which will make energy efficiency more cost-effective. Since, according to Mr. Fehrman, MidAmerican has not evaluated the impact, the company cannot know how much cost-effective energy efficiency to rely on. This throws their whole analysis of the cost of Waxman-Markey into question.

7. MidAmerican's Price Collar Proposal Creates Risk of Increased Emissions

On pages 147-149 Mr. Fehrman proposes a price collar for GHG allowances. A price collar would set a maximum allowable price for the allowances. If the market price rose above the maximum price, then the government would release additional allowances into the market, essentially raising the cap from what is specified in the current bill. The result would be GHG emissions greater than the level set by the bill's cap, undercutting the bill's purpose.

CONCLUSION

MidAmerican claims to support climate legislation and emissions caps, but the company's opposition to the Waxman-Markey bill contradicts its public position. ELPC's analysis of the affect on Iowa ratepayers more accurately reflects the true costs to Iowa ratepayers than the analysis submitted by MidAmerican. If the IUB weighs in on this issue at the federal level, it needs to consider the totality of the circumstances and the risk of inaction to Iowans who will pay the economic and societal consequences in the future.

Submitted by:

Robert Kelter
Environmental Law and Policy Center

David Schoengold
MSB Energy

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Post-Hearing Comments of the Environmental Law and Policy Center have been served via the Iowa Utility Board's Electronic Filing System. I further certify that I have served the same upon the following individuals via United States mail, this 16th day of October, 2009:

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