FILED WITH
Executive Secretary
October 19, 2009
IOWA UTILITIES BOARD

STATE OF IOWA

BEFORE THE IOWA UTILITIES BOARD

IN RE: **THE AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009**	)))))	**DOCKET NO. NOI-2009-0002**

Comments of the Iowa Department of Natural Resources

On November 13, 2009, MidAmerican Energy Company's (MEC) white paper providing an overview of its proposed alternative compliance program was filed with the Iowa Utilities Board (IUB). This document reiterates many of the points made by MEC at the September IUB workshop hearing. The Department of Natural Resources (DNR) has not had enough time to properly analyze the entire document and offer a comprehensive analysis. However, the following comments are submitted which relate to specific provisions of the document which were addressed by DNR Director Richard Leopold in his statement before the IUB workshop.

Penalties for Noncompliance

In the white paper, MEC describes their proposed penalty for missing a cap:

> "The penalty for non-compliance would not be changed under the alternative compliance mechanism. The same penalties (such as ACES Section 723) would apply for non-compliance regardless of the compliance method selected by the state. However, under the alternative compliance approach, the penalty first falls on the state. If action or inaction by a covered utility is the cause for incurring the penalty, the state can pass the responsibility for payment of the penalty on to the covered utility."

Section 723, referenced above, states that the penalty will be determined by multiplying the number of tons of carbon dioxide equivalent in excess of the cap by twice the allowance auction clearing price. The entity violating the cap would then have to further reduce its emissions the following year to make up for its excess emissions in the current year.

The DNR does not believe that using the same noncompliance penalty for MEC's alternative mechanism as for participants in the cap-and-trade program would be appropriate. By opting out of the cap-and-trade program, MEC is not required to pay for the carbon they emit while other entities are required to do so. These are very different scenarios. MEC is avoiding a business cost by opting out and is avoiding the constant financial pressure of the allowance program which would otherwise provide an incentive to them to reduce emissions dramatically and quickly. Because this market pressure is eliminated, the only substantial incentive for compliance is avoiding a penalty for missing the cap target. Under MEC's scenario, the proposed penalty would likely be trivial compared to the costs they have been allowed to avoid. Therefore, the penalty is not a sufficient incentive for compliance. As stated in Director Leopold's testimony, an appropriate penalty would likely be the cost that MEC avoided by not having to buy allowances under the cap-and-trade program, plus the standard penalty. Because MEC uses multiyear stair-stepped cap targets, a missed target would encompass several years of avoided costs, not just the target year. The result would be a massive penalty which would place the DNR in the position of having to enforce it. It is not at all clear that such a large penalty could ever be enforced due to political realities.

In addition, it is unclear why the state would agree in this situation to become the entity subject to a federal penalty. MEC's language—"If action or inaction by a covered utility is the cause for incurring the penalty…"—leaves a rather large and obvious loophole for them to avoid paying. MEC could simply make the argument that the technology for compliance had not been developed or that they were unable to purchase certain equipment due to supply problems. Neither of these examples is an action or inaction of MEC, and the state would then be stuck paying the penalty or resolving responsibility through the courts.

Waxman-Markey Benefits

MEC states on page 7 of its white paper that the Waxman-Markey allowance allocation for the assistance of low-income people would remain unchanged. It unclear as to why a state, which opted out of the allowance/cap-and-trade program, would be allowed to receive free allowances and the benefits they provide. Effectively that state has said that its utilities, and through them its citizens, do not have to pay into the federal program. It seems unlikely that such a state would then still remain eligible to receive the benefits.

Beyond the issue of low-income allowance benefits, it is crucial to remember that this bill is not just a power plant pollution control program. Climate change is already happening and humanity is already committed to further temperature rise and other effects due to greenhouse gas emissions that have already been emitted but have not yet impacted the climate system. The allowance system in the cap-and-trade program will provide an extremely important source of funding for future climate related efforts. One example of this is natural resources adaptation funding. Because, to an extent, the impacts to our natural resources are now unstoppable, we must undertake adaptation actions to ensure the maintenance of ecosystems and ecosystem services. In many cases, this will cost money, and a funding source is clearly needed. Another example is technological development. Commercially viable carbon capture and sequestration technology for fossil fuel plants is not currently available. Funds for allowance sales will be devoted toward developing this and other important technologies. Again, it is unclear why an entity such as MEC, which opts out of this program, should benefit from these developments, yet it seems unlikely that it could be prevented from doing so, or that preventing it from doing so would even be desirable from an environmental perspective.

The DNR supports the cap-and-trade provisions in the Waxman-Markey bill and does not believe that MEC’s white paper describes an appropriate alternative. MEC has failed to devise an appropriate mechanism for penalizing noncompliance and has not explained why a state which opts out of the cap-and-trade program would still be entitled to the program’s many important benefits.