

Ex Parte Communication Report

Date:

To: Public Ex Parte Communication File

Docket No:

Case Name:

From: PUC Staff:

RE: Permissible Ex Parte Communications Pursuant to Minn. Rules, Part 7845.7400.

1. Type of communication: (Oral or Written)

If written, attach the document.

If oral, Date:

Time:

NOTE: In both instances, please notify the Maker the communication has been submitted for inclusion in the record.

2. Maker of the Communication:

3. Recipient of the Communication:

4. For communications involving the setting of interim rates or the review of compliance filings, the topic was:

5. For all other permissible communications that are prohibited for the Commissioners under Minn. Rules, part 7845.7200, the substance of the communication was:

6. For oral permissible ex parte communications, has a copy of this memo been sent to the assigned Administrative Law Judge? Yes No N/A

Re: Briefing Paper Corrections - CHANGED DUE DATES: LCA Docket 24-352 Agenda Meeting Preparation

From Winner, Danielle (PUC) <danielle.winner@state.mn.us>

Date Tue 1/6/2026 12:25 PM

To Zwick, Ari (COMM) <Ari.Zwick@state.mn.us>; Lieb, Sydnie (She/Her/Hers) (COMM) <Sydnie.Lieb@state.mn.us>

Hi Ari and Sydnie-

I just reviewed the corrections letter you sent over last night. I need to file this as ex parte. It goes beyond simple corrections and discusses the merits of the docket and introduces new information into the record.

Just wanted to give you a heads up,
Danielle

From: Winner, Danielle (PUC) <danielle.winner@state.mn.us>

Sent: Monday, January 5, 2026 5:26 PM

To: Zwick, Ari (COMM) <Ari.Zwick@state.mn.us>

Subject: Re: Briefing Paper Corrections - CHANGED DUE DATES: LCA Docket 24-352 Agenda Meeting Preparation

Thanks, Ari!

From: Zwick, Ari (COMM) <Ari.Zwick@state.mn.us>

Sent: Monday, January 5, 2026 4:39 PM

To: Winner, Danielle (PUC) <danielle.winner@state.mn.us>

Subject: Briefing Paper Corrections - CHANGED DUE DATES: LCA Docket 24-352 Agenda Meeting Preparation

Hi Danielle,

Please see the attached letter for the Department's requested corrections. Let me know if you need a copy of the figure in the letter or any other information. I'm happy to explain the corrections if you need further clarification.

Ari Zwick (*he/him*)

Public Utilities Rates Analyst

Division of Energy Resources

Ari.Zwick@state.mn.us | 651-539-1675

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Minnesota Department of Commerce

85 7th Place East, Suite 280 | Saint Paul, MN 55101



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From: Winner, Danielle (PUC) <danielle.winner@state.mn.us>

Sent: Monday, January 5, 2026 1:42 PM

To: Jesse_Levine@afandpa.org; karbom@api.org; mdaley@carbonsolutionsgroup.com; jaya <jaya@cmpas.org>; erinb@cmpas.org; gdamian <gdamian@cleanenergyeconomymn.org>; bfreese@mncenter.org; lori.olinger@northstar.sierraclub.org; Cory Hetchler <Cory.Hetchler@connexusenergy.com>; Tessa Haagenson <tessa.haagenson@connexusenergy.com>; Tessa Haagenson <tessa.haagenson@connexusenergy.com>; legalintern@curemn.org; Lieb, Sydney (She/Her/Hers) (COMM) <Sydney.Lieb@state.mn.us>; Zwick, Ari (COMM) <Ari.Zwick@state.mn.us>; matthew@mepartnership.org; joshuat@eurekarecycling.org; Ruzycki, Zac GRE-MG <zruzycki@greenergy.com>; kathleen@hpforhc.org; blilliston@iatp.org; jfarrell@ilsr.org; sara@mnipl.org; rep.patty.acomb@house.mn.gov; kpranis@liunagroc.com; stevemorse@mepartnership.org; Schenck, Eric (DNR) <Eric.Schenck@state.mn.us>; kwp@floomenergylaw.com; jpf@floomenergylaw.com; Kohlasch, Frank (He/Him/His) (MPCA) <frank.kohlasch@state.mn.us>; Koudelka, Kirk (He/Him/His) (MPCA) <kirk.koudelka@state.mn.us>; jmcullough@mnpower.com; Jennifer Kuklenski (MP) <jkuklenski@mnpower.com>; Steve Vrchota <Steve@popedouglasrecycle.com>; tsailer@minnkota.com; noelle@MN350.org; sen.nick.frentz@senate.mn; sajorissen@gmail.com; bria.e.shea@xcelenergy.com; Patricia.B.Leaf@xcelenergy.com; Jennifer Berquam <jennifer.berquam@olmstedcounty.gov>; Jensen, Nathan <njensen@otpc.com>; lhaight@pfpi.net; Debbie.Goettel@hennepin.us; Reinhardt, Victoria <victoria.reinhardt@co.ramsey.mn.us>; tmartinson@recyclingandenergy.org; micah.revell@stinson.com; will@votesolar.org; btan@votesolar.org; tradovich@minnesotaforests.com; jeff.schneider@ci.red-wing.mn.us

Subject: CHANGED DUE DATES: LCA Docket 24-352 Agenda Meeting Preparation

Importance: High

Hello-

Updated due dates on LCA agenda meeting preparation. Please take note of the following

- Please continue to send any corrections to briefing papers by email to me today.
- **CHANGE OF DUE DATE:** New and revised decision options are due in the docket by 4:30 pm on ~~Monday, January 5th, 2026~~ Thursday, January 8th, 2026. No comments are needed at this stage.
- **CHANGE OF DUE DATE:** Preferred decision options are due in the docket by 4:30 pm on ~~Wednesday, January 7th, 2026~~ Monday, January 12th, 2026. Please indicate support or oppose for DOs; no comments are needed at this stage. I will assume that any DOs not listed in your preferred decision options will be "no preference."
- Please let me know if and how you plan to attend the January 15th agenda meeting by 4:30 pm on Friday, January 9th, 2026. For each representative of your organization, please let me know their name, preferred title (Mr/Ms/Dr/Senator/etc), email, phone number, and if they plan to attend virtually or in-person.
- If you notice that a contact is missing from this email list, please forward this email to that contact and let me know.

To recap:

January 5th, 2026: Corrections to briefing papers due by email.

January 8th, 2026: New and revised decision options due by docket.

January 9th, 2026: Party representation at Commission meeting due by email

January 12th, 2026: Preferred decision options due by docket

Thank you for your attention to this matter.

Danielle Winner

Rates Analyst | Economic Analysis Unit

Pronouns: She/Her

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From: Winner, Danielle (PUC) <danielle.winner@state.mn.us>

Sent: Friday, December 19, 2025 4:18 PM

To: Jesse_Levine@afandpa.org <jesse_levine@afandpa.org>; karbom@api.org <karbom@api.org>; mdaley@carbonsolutionsgroup.com <mdaley@carbonsolutionsgroup.com>; jaya@cmpas.org <jaya@cmpas.org>; erinb@cmpas.org <erinb@cmpas.org>; jeff.schneider@redwing.mn.gov <jeff.schneider@redwing.mn.gov>; gdamian@cleanenergyeconomymn.org <gdamian@cleanenergyeconomymn.org>; bfreese@mncenter.org <bfreese@mncenter.org>; lori.olinger@northstar.sierraclub.org <lori.olinger@northstar.sierraclub.org>; Cory.Hetchler@connexusenergy.com <Cory.Hetchler@connexusenergy.com>; Tessa Haagenson <tessa.haagenson@connexusenergy.com>; Tessa Haagenson <tessa.haagenson@connexusenergy.com>; legalintern@curemn.org <legalintern@curemn.org>; Lieb, Sydnie (She/Her/Hers) (COMM) <Sydnie.Lieb@state.mn.us>; Zwick, Ari (COMM) <Ari.Zwick@state.mn.us>; matthew@mepartnership.org <matthew@mepartnership.org>; joshuat@eurekarecycling.org <joshuat@eurekarecycling.org>; Ruzycki, Zac GRE-MG <zruzycki@greenergy.com>; kathleen@hpforhc.org <kathleen@hpforhc.org>; blilliston@iatp.org <blilliston@iatp.org>; jfarrell@ilsr.org <jfarrell@ilsr.org>; sara@mnipl.org <sara@mnipl.org>; rep.patty.acomb@house.mn.gov <rep.patty.acomb@house.mn.gov>; kpranis@liunagroc.com <kpranis@liunagroc.com>; stevemorse@mepartnership.org <stevemorse@mepartnership.org>; RHorton@MinnesotaForests.com <rhorton@minnesotaforests.com>; Schenck, Eric (DNR) <Eric.Schenck@state.mn.us>; kwp@floomenergylaw.com <kwp@floomenergylaw.com>; jpf@floomenergylaw.com <jpf@floomenergylaw.com>; Kohlasch, Frank (He/Him/His) (MPCA) <frank.kohlasch@state.mn.us>; Koudelka, Kirk (He/Him/His) (MPCA) <kirk.koudelka@state.mn.us>; jmccullough@mnpower.com <jmccullough@mnpower.com>; Jennifer Kuklenski (MP) <jkuklenski@mnpower.com>; Steve Vrchota <Steve@popedouglasrecycle.com>; tsailer@minnkota.com <tsailer@minnkota.com>; noelle@MN350.org <noelle@MN350.org>; sen.nick.frentz@senate.mn <sen.nick.frentz@senate.mn>; sajorissen@gmail.com <sajorissen@gmail.com>; bria.e.shea@xcelenergy.com <bria.e.shea@xcelenergy.com>; Patricia.B.Leaf@xcelenergy.com <patricia.b.leaf@xcelenergy.com>; Jennifer Berquam <jennifer.berquam@olmstedcounty.gov>; Jensen, Nathan <njensen@otpc.com>; lhaight@pfpi.net <lhaight@pfpi.net>; Debbie.Goettel@hennepin.us <Debbie.Goettel@hennepin.us>; Reinhardt, Victoria <victoria.reinhardt@co.ramsey.mn.us>; tmartinson@recyclingandenergy.org <tmartinson@recyclingandenergy.org>; micah.revell@stinson.com <micah.revell@stinson.com>; will@votesolar.org <will@votesolar.org>; btan@votesolar.org <btan@votesolar.org>

Subject: LCA Docket 24-352 Briefing Papers and Agenda Meeting Preparation

Hello-

Briefing papers have been filed in the LCA docket, 24-352. Please note the following:

- If any corrections to briefing papers are needed, please let me know via email by 4:30 pm on Monday, January 5th, 2026. By corrections, I specifically am looking for: 1) if I misrepresented your opinion on a topic or 2) if I failed to capture a recommended decision option. I will issue corrected briefing papers as soon as possible after January 5th.
- New and revised decision options are due in the docket by 4:30 pm on Monday, January 5th, 2026. No comments are needed at this stage.
- Preferred decision options are due in the docket by 4:30 pm on Wednesday, January 7th, 2026. Please indicate support or oppose for DOs; no comments are needed at this stage. I will assume that any DOs not listed in your preferred decision options will be "no preference."
- I will compile and issue new, revised, and preferred decision options before the agenda meeting date of January 15, 2026. If I capture your preferred decision options incorrectly, please let me know by email, and I will issue a correction.
- Please let me know if and how you plan to attend the January 15th agenda meeting by 4:30 pm on Friday, January 9th, 2026. For each representative of your organization, please let me know their name, preferred title (Mr/Ms/Dr/Senator/etc), email, phone number, and if they plan to attend virtually or in-person.
- If you notice that a contact is missing from this email list, please forward this email to that contact and let me know.

Please note that **I will be out of office and not checking email from December 20th through December 29th** and will be available again on December 30th. If you email me about corrections/contacts during this time, you will get an out-of-office reply, but I will see the information when I return. If you need immediate assistance during this time, please contact Michelle Rebholz at Michelle.Rebholz@state.mn.us or 651-201-2247.

To recap:

January 5th, 2026: Corrections to briefing papers due by email, new and revised decision options due by docket

January 7th, 2026: Preferred decision options due by docket

January 9th, 2026: Party representation at Commission meeting due by email

Thank you all for your participation, and I look forward to seeing you in the new year.

Danielle Winner

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December 5, 2026

Sasha Bergman
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Letter from the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E-999/CI-24-352

Dear Ms. Bergman:

The Minnesota Department of Commerce (Department) submits the following corrections regarding the Briefing Papers filed on December 19, 2025 in Docket No. E-999/CI-24-352. The Minnesota Department of Commerce and Minnesota Pollution Control Agency (MPCA) form the below referenced “Agencies.”

Clarification of Supplemental Comment Positions:

The Briefing Papers state:

On December 11, 2025, the Agencies submitted Joint Responses to Staff IRs, in which the Agencies withdrew their prior support for the proportionate and binary constructs and instead proposed their binary construct with waste wood exemption.¹ [citation omitted]

The Agencies did not withdraw from each respective Agency position from Supplemental Comments. Rather, the Agencies present a new joint position that is preferred by both Agencies. Should the Commission decide not to accept the joint position, each Agency maintains its position from Supplemental Comments.

Clarification of Joint Position:

The Briefing Papers state:

Second, Staff would like to correct an assertion made by the Agencies in their Joint IR Response. The Agencies state that their waste wood construct is one that “is recognized as statutorily permissible by all parties, and which achieves the desired policy outcomes of both agencies.” The proposal is not considered statutorily permissible by all parties; all POG

¹ Briefing Papers at 24.

framework advocates explicitly would not consider such a proposal to be statutorily permissible. A more accurate framing is that the proposed construct is recognized as statutorily permissible by *both agencies*.²
[citation omitted]

Staff comments imply that the Agencies intend to speak on behalf of other intervenors in the current proceeding. While the Department agrees that the Agencies should have said “both parties,” instead of “all parties,” the Department does not support staff’s description of the Agencies’ positions. The Agencies did not reference any other commenters in their joint IR response, nor did they imply discussion or agreement with any other parties. Furthermore, the only two parties who signed the IR response are the MPCA and the Department.

The Briefing Papers should either delete this statement to avoid further confusion, or the Briefing Papers should state:

Second, Staff would like to ~~clarify~~~~correct~~ a ~~statement~~ ~~n-assertion~~ made by the Agencies in their Joint IR Response. The Agencies state that their waste wood construct is one that “is recognized as statutorily permissible by all parties, and which achieves the desired policy outcomes of both agencies.” ~~The proposal is not considered statutorily permissible by all parties; all POG framework advocates explicitly would not consider such a proposal to be statutorily permissible. The Agencies’ position A more accurate framing is that the proposed construct~~ is recognized as statutorily permissible by *both agencies*.

Correction of Proportionate Construct:

While the Department no longer advocates for a proportionate partial compliance framework, the Department provides three corrections.

First, the Briefing Papers do not discuss a proportionate construct compliance mechanism, which was discussed in the Agencies’ Initial Joint Comments. DO 32, which is the only compliance mechanism DO, does not cover the proportionate construct. Specifically, subpart D. of the Department’s compliance framework was removed in the Department’s Reply Comments³ because there are no instances in the binary construct where partial CFS credits can be issued with full EETs credits.⁴ Without a formal compliance mechanism, the proportionate framework is unworkable, and the Department’s revised compliance mechanism in DO 32 does not allow for proportionate construct compliance.

² Briefing Papers at 26.

³ Initial Joint Comments at 3-4.

⁴ The Commission declined to adopt the full compliance mechanism in CFS Round 3 comments. The Department re-introduced the compliance mechanism in 24-352 Reply Comments, however the Department transitioned to the binary construct, and modified the compliance mechanism to operationalize only binary construct compliance.

Second, the Briefing Papers do not differentiate between two separate counterfactuals. The Briefing Papers state:

In contrast to the binary construct, under a proportionate construct a resource could only qualify as 100 percent carbon-free if the CI of the resource is reduced by 100 percent (ie, to a literal value of 0 CO₂e/MWh). Furthermore, under a proportionate construct, a resource that reduces emissions by less than 100 percent would be considered “partially” carbon-free and could count emissions commensurate with that carbon-free percentage. For example, if the results of a counterfactual were 20 CO₂e/MWh and the resource being studied shows 5 CO₂e/MWh, or a 75 percent reduction, then the utility would be permitted to count 75 percent of the resource’s generation towards the CFS.^{5,6}

The first counterfactual is the fuel LCA counterfactual.⁷ If the example is waste to energy, the “Fuel Counterfactual” would be an LCA study of landfill emissions. This counterfactual is not required to implement any fuel LCA construct, but is highly recommended by the Agencies because it accounts for real world emissions as well as consequential emissions. In the binary construct, electricity generation needs to demonstrate 0 Net Emissions⁸ to qualify as carbon-free. In the proportionate construct, there is a second counterfactual, which the below figure identifies as the “CFS Counterfactual,” in the lower blue box, which represents avoided electricity emissions. This second counterfactual is required to calculate the carbon-free allocator, but also operationalizes gas with CCS generation. The CFS Counterfactual⁹ can either be MISO grid emissions, a representative powerplant, such as the MISO CONE powerplant, or represent either of these emissions with a carbon reduction proportionate to the CFS requirement.

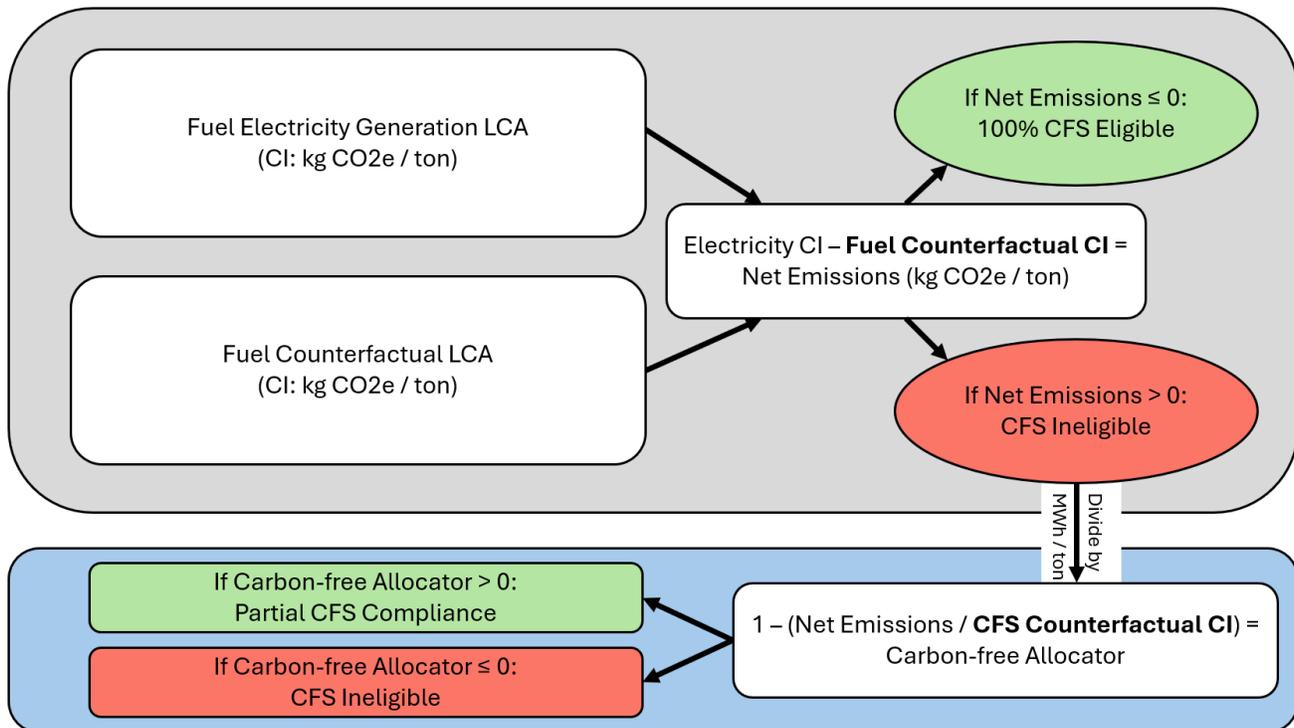
⁵ Briefing Papers at 27-28.

⁶ The units are erroneously listed as CO₂e / MWh, and require a “g” or “kg.” See additional discussion below for further corrections.

⁷ Units are kg CO₂e / Ton Waste.

⁸ Net Emissions in the grey box are kg CO₂e / Ton Waste.

⁹ Units are kg CO₂e / MWh.



The Binary Construct stops within the top box shown in grey. The Briefing Papers also misrepresent the units required for analysis in the top box, where the functional LCA unit is emissions per ton, not emissions per MWh. The Briefing Papers correctly note the disconnect in units, but incorrectly state the functional unit is kg CO₂e / MWh instead of kg CO₂e / Ton Waste. Emissions can only be compared on a per-ton basis because the Fuel Counterfactual does not generate electricity. The CFS eligibility test under the binary construct only requires that Electricity CI is less than or equal to the Fuel Counterfactual CI. Electricity is therefore a carbon-free byproduct.

In order to proceed to the proportionate construct, the analysis moves outside the scope of LCA to an avoided emissions framework. The proportionate emissions construct does not further quantify emissions, and is strictly an EAC credit mechanism. Net emissions per ton are converted to kg CO₂ / MWh, which can then be divided by the CFS Counterfactual CI in kg CO₂e / MWh to quantify the Carbon-free Allocator,¹⁰ which then generates EACs.

Third, the framework discussed in the Briefing Papers appears to imply that partial credit could be granted for the emissions between zero electricity generation emissions and some positive counterfactual emission. This framework would be impractical for a number of reasons. The grey box quantifies actual emissions that result from electricity generation compared to fuel counterfactual that does not generate electricity. Avoided electricity emissions cannot be quantified within an LCA study because the purpose of the CFS is to generate electricity without emitting carbon dioxide. If avoided electricity emissions are included within the LCA and in the credit mechanism, then avoided emissions

¹⁰ Carbon-free allocator is unitless.

would be double counted. The blue box represents a partial compliance framework that allows for CFS credit for electricity generation that emits carbon dioxide. The amount of carbon emitted must be relative to electricity generation, and not to a counterfactual that does not generate electricity. The Commission's described framework attempts to place the Fuel Counterfactual where the CFS Counterfactual is shown. However, this description is wrong because under the proportionate construct, the CFS does not avoid counterfactual emissions, but rather avoids carbon-emitting electricity generation by some percentage. Furthermore, potential issuance of credits based on emissions reductions outside the electricity sector does not comport with the purpose of the CFS. Finally, if the CFS Counterfactual is negative emitting, such as an intact forest that sequesters carbon, there is no way to issue partial credits. Based on this dynamic, the CFS Counterfactual must be positive emissions from some source of electricity generation, and cannot be landfill emissions, forest management, or any other non-electricity generation baseline.

The Department encourages Commission Staff to carefully review the Agencies Initial Joint Comments to ensure that all procedural matters are sufficiently covered by the existing decision options, including the use of partially compliant fuels in a secondary process. The above framework was not described in the Department's Reply comments because the Department transitioned to the binary construct. Finally, the Briefing Papers do not provide any decision options for the CFS Counterfactual emissions under the proportionate construct, which requires a Commission decision.

Correction of Hourly Matching:

The Briefing Papers state:

Staff finds merit in the idea that utilities have options for electricity input assumptions for an LCA. However, as discussed at length in Round 3 of the CFS docket, hourly matching appears to be a premature proposal. In that proceeding, the Department proposed and subsequently withdrew its recommendations that utilities be required to perform hourly matching to demonstrate compliance with the CFS. Commenters discussed many problems with the proposal, among which being that there is no existing hourly credit market; therefore, while utilities might be able to track hourly load, there is no means by which to track and certify that load is matched by hourly carbon-free energy.¹¹

This statement misinterprets the purpose of the hourly matching requirement. First, the hourly matching requirement is for a single power generation facility, as opposed to the entire retail sales of utilities. For this reason, both the scope and scale of hourly matching requirements are substantially different. Second, the feasibility concerns regarding hourly matching only apply to the trading of hourly EACs. Hourly EAC trading is not required for hourly matching and is technically feasible today.

¹¹ Briefing Papers at 43.

Third, and most importantly, zero-emissions claims of electricity can only be fully substantiated with A) marginal carbon-free generation (additionality), and B) hourly matching. If a utility purchases EACs, for example from Texas where EACs are cheap and abundant, and builds a hydrogen electrolyzer, then the MISO marginal unit to supply the electricity is likely to be a fossil generator. An induced capacity factor increase will increase actual emissions, despite the EAC retirement. Even the potential for this outcome completely negates the intent of zero emission electricity claims in lifecycle assessment.

The briefing papers re-affirm this statement:

Electrolysis: Electrolysis uses electricity to split water into hydrogen and oxygen. As noted by CEOs in the CFS docket, this technology can be the lowest-carbon way to make hydrogen, but it can also be the method that produces the most carbon dioxide, depending on where the electricity that powers the electrolysis process comes from. Simply drawing from the grid to power electrolysis will kick on the grid's marginal resource; the Commission's Regional Energy Program Staff identify that in recent years, for the whole MISO footprint, natural gas is the marginal resource 2/3 of the time and coal is the marginal resource 1/3 of the time.¹² [citation omitted]

While the Department agrees that EAC retirements are suitable for CFS compliance, it does not agree that these standards are suitable for LCA emissions accounting, where emissions accounting claims are much more stringent. If a new power plant is added to meet a hydrogen electrolyzer's load, then a reasonable claim can be made for zero emission electricity, however in practice, if the load is not hourly matched, and if the electrolyzer load operates at baseload capacity, it will trigger the MISO marginal unit or trigger renewable curtailment, rather than negate the effect of the load addition with hourly matching. The purpose of the fuel LCA framework is to measure real-world emissions, and the negation of additionality and hourly matching would completely undermine this effort. Given that hydrogen systems can lose half to two thirds of the primary input energy, emissions could substantially increase with normal EAC retirements if guardrails are not in place to prevent this outcome, which would greatly undermine the credibility of carbon-free electricity claims.

Finally, the 45V Hydrogen Tax Credits would not offer incentives without these requirements because of the tenuous emissions claims associated with normal EAC retirements. Normal EAC retirements are premised on the principle that new generation will be built if EAC prices spike, which guarantees no new generation and no carbon reductions. Additionality requirements eliminate hope and replace hope with certainty.

¹² Briefing Papers at 77.

Correction of Hourly Matching Requirements:

The Briefing Papers state:

This recommendation is not only about hydrogen. From Staff's understanding, this would then also apply to electricity inputs such as those used in biomass, WTE, RDF, and RNG facilities, should the Commission find these eligible for CFS compliance. In other words, the utility submitting an LCA involving WTE would need to provide hourly matched data showing that carbon-free energy served the WTE facility's load.¹³ [citation omitted]

This statement is not entirely accurate. This requirement is not a compliance requirement, and does not require compliance filings. The requirement simply requires a utility to prove that it has hourly EAC availability above the CFS requirement at the time of the LCA study. Furthermore, hourly matching would only be required for generation in which a carbon-free electricity claim is required for electricity generation to be carbon-free. Otherwise, the Department's recommendation requires the MISO LRZ 1 grid mix as an input for electricity, which has no EAC availability requirement. The WTE facility referenced above only needs to demonstrate hourly EAC availability at the time of the LCA study with the source of electricity specified, and the electricity could be from existing resources. This requirement does not apply to every resource, and instead only applies to resources that need zero emissions electricity to demonstrate zero carbon status.

Sincerely,

/s/ Sydnie Lieb, Ph.D.
Assistant Commissioner, Office of Regulatory Analysis

¹³ Briefing Papers at 42.