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June 30, 2017

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**VIA E-FILING AND U.S. MAIL**

Mr. Daniel P. Wolf  
Executive Secretary  
MN Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, MN 55101

**Re: In the Matter of the Investigation into Environmental and Socioeconomic Costs  
Under Minn. Stat. § 216B.2422, Subd. 3  
Docket No. E-999/CI-14-643  
OAH Docket No. 80-2500-31888**

Dear Mr. Wolf:

Enclosed for filing please find the following:

1. Minnesota Large Industrial Group's Motion for the Commission to Take Notice or, in the Alternative, to Reopen the Record to Allow Introduction, of Presidential Executive Order on Promoting Energy Independence and Economic Growth Dated March 28, 2017 and June 14, 2017, Public Comments by the White House Office of Information and Regulatory Affairs (OIRA) with Exhibits A and B; and
2. Certificate of service with service list.

Please do not hesitate to contact me should you have any questions or concerns.

Very truly yours,

Stoel Rives LLP

A handwritten signature in black ink, appearing to read "Marc A. Al", is written over a horizontal line.

Marc A. Al

Encl: 8 hard copies

cc: Service List (via e-filing) (with encl.)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

Hon. Nancy Lange	Chair
Hon. Dan Lipschultz	Vice-Chair
Hon. Matthew Schuenger	Commissioner
Hon. John Tuma	Commissioner
Hon. Katie Sieben	Commissioner

In the Matter of the Further Investigation into  
Environmental and Socioeconomic Costs  
Under Minn. Stat. § 216B.2422, Subd. 3

MPUC DOCKET NO. E-999/CI-14-643  
OAH Docket No. 80-2500-31888

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**MINNESOTA LARGE INDUSTRIAL GROUP'S  
MOTION FOR THE COMMISSION TO TAKE NOTICE OR, IN THE ALTERNATIVE, TO  
REOPEN THE RECORD TO ALLOW INTRODUCTION, OF  
PRESIDENTIAL EXECUTIVE ORDER ON PROMOTING ENERGY INDEPENDENCE  
AND ECONOMIC GROWTH DATED MARCH 28, 2017  
AND JUNE 14, 2017, PUBLIC COMMENTS BY THE WHITE HOUSE OFFICE OF  
INFORMATION AND REGULATORY AFFAIRS (OIRA)**

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## INTRODUCTION

The Commission is scheduled to hold a hearing to consider the merits of the motion originally brought by the Clean Energy Organizations approximately 3 years ago to update the values of the environmental cost of CO<sub>2</sub>. The Minnesota Large Industrial Group (“MLIG”) understands and appreciates the extremely difficult task all parties have undertaken in reviewing and developing the record. The length of time this docket has been open is therefore not surprising. Unfortunately, during this three-year period significant developments have taken place that dramatically impact the issue before the Commission. Since the Administrative Law Judge (“ALJ”) issued her [CO<sub>2</sub> Recommendation](#), and since the parties filed their exceptions thereto and their replies to those exceptions, national elections have been held, a new federal administration has been installed, and developments have taken place that are both new and extremely relevant for the decision to be taken by the Commission regarding the potential application of the federal Social Cost of Carbon in the Minnesota regulatory context. Specifically, the President has issued a Presidential Executive Order on Promoting Energy Independence and Economic Growth dated March 28, 2017, (the “Executive Order,” copy attached hereto as **Exhibit A**), as a result of which the Interagency Working Group on Social Cost of Greenhouse Gases (“IWG”) was disbanded, its technical support documents were withdrawn, and the critical premise that the federal Social Cost of Carbon considered during the evidentiary hearing and briefed by the parties will continue to exist and will continue to be updated has shattered. Accordingly, the MLIG now respectfully moves the Commission to take notice of the March 28, 2017, Executive Order and of June 14, 2017, comments by career staff at the White House Office of Information and Regulatory Affairs (OIRA) (copy attached as

**Exhibit B).**<sup>1</sup>

**BACKGROUND TO THE PROCEEDING**

The Commission issued a Notice and Order for hearing on October 15, 2014, advising that it would investigate the appropriate cost value for, *inter alia*, CO<sub>2</sub> and that it believed a contested case proceeding was necessary to fully consider such value. The Commission accordingly directed the Office of Administrative Hearings to hold a hearing to address “[w]hether the Federal Social Cost of Carbon is reasonable and the best available measure to determine the environmental cost of CO<sub>2</sub> under Minn. Stat. § 216B.2422 and, if not, what measure is better supported by the evidence.” (*See* Notice and Order for Hearing at 4-5 (Oct. 15, 2014) (eDocket No. 201410-103872-02)).

The “Federal Social Cost of Carbon” (or “FSCC”) was first estimated in 2010 by the IWG, convened in 2009 by the United States’ Council of Economic Advisers and the OMB, and consisting of scientific and economic representatives experts from the White House and federal agencies, including the Council of Economic Advisers, Council on Environmental Quality, National Economic Council, Office of Energy and Climate Change, Office of Science and Technology Policy, OMB, Environmental Protection Agency, and the Departments of Agriculture, Commerce, Energy, Transportation, and Treasury.<sup>2</sup>

The ALJ issued her Findings of Fact, Conclusions, and Recommendations: Carbon Dioxide Values on April 15, 2016 (the “[Recommendation](#)”), in which she recommended that the

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<sup>1</sup> OIRA is an office within the White House Office of Management and Budget (“OMB”), responsible for managing the federal regulatory process. OIRA was established by Congress in the 1980 Paperwork Reduction Act.

<sup>2</sup> Administrative Law Judge Schlatter’s April 15, 2016, Findings of Fact, Conclusions, and Recommendations: Carbon Dioxide Values at ¶¶61-64 (citations omitted).

FSCC be adopted, with amendments, and that the Commission open an investigation into the questions of how best to measure leakage and whether and how to take leakage into account in other proceedings. ([Recommendation](#) at 123-124.) Numerous exceptions were filed to the [Recommendation](#).

### **MOTION**

The MLIG respectfully moves the Commission to take notice of the Executive Order dated March 28, 2017, because it disbanded the IWG and withdrew the following documents upon which much in this proceeding has been premised:

- the Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive order 12866 (February 2010);
- the Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (May 2013);
- the Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (November 2013);
- the Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (July 2015);
- the Addendum to the Technical Support Document for the Social Cost of Carbon: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide (August 2016); and
- the Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (August 2016) (collectively “the IWG Documents”).

The Executive Order further affects the use of OMB Circular A-4 of September 17, 2003 (Regulatory Analysis), which is at issue in this proceeding as set forth below, (*see, e.g.*,

[Recommendation](#) at ¶¶119, 190, 217), while June 14, 2017, comments by the head of OIRA’s Natural Resources and Environment Branch, Jim Laity, at a National Academy of Sciences seminar on valuing climate change impacts have furthermore made clear that Circular A-4 did, in fact, at all times require the use of a 7% discount rate in evaluations of federal regulations, and that the omission of that rate in the IWG’s actions was “inconsistent with the A-4 guide.” (Ex. B at 1.) Mr. Laity further admitted that the IWG’s calculation of damages on a global scale “was not consistent” with Circular A-4, and that consideration of “global scale damages” is only allowed under Circular A-4 in a “sensitivity” scenario. (Ex. B at 1.)

### STANDARD OF REVIEW

There are several instances of the Commission reopening a record or considering whether to reopen a record on its own motion or the motion of a party. One example occurred in the docket on NSP’s certificate of need for its spent fuel storage at Prairie Island. After the ALJ in that case closed the case record, the Commission reopened the record on its own motion in order to admit several hundred late-filed public comments into the record, citing “the statutory emphasis on soliciting and considering public opinion.”<sup>3</sup> The Commission also took official notice of NSP’s responses to information requests and a report by the NRC on an incident at Prairie Island, because of the report’s relevance to the docket. The Commission based its authority to take official on Minn. Stat. § 14.60, which provides in relevant part that:

Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the

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<sup>3</sup> *Matter of Application of Certificate of Need for Construction of an Independent Spent Fuel Storage Installation*, Docket No. E-002/CN-91-19, Order Notifying Parties of Intention to Take Official Notice of Specific Materials and to Reopen Record to Admit Public Comments at 1-2 (May 5, 1992).

record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

The Commission has in the past held in the context of a rate case that “[t]he goal of the rate case process is to arrive at just and reasonable rates. To do this, the Commission needs the most accurate and reliable information available. The Commission is therefore disinclined to exclude useful information on narrow technical grounds unless its inclusion raises problems of fairness and accuracy.”<sup>4</sup> The same goal of arriving at just and reasonable values is applicable in this proceeding in the interest of, at a minimum, substantive due process, public health, the Minnesota economy, and the financial burdens and benefits bestowed on rate payers as the result of the Commission’s decisions in this Docket.

## CONTEXT

As set forth in the ALJ’s [Recommendation](#), “[i]n 1993, the Minnesota Legislature enacted Minnesota Statute section 216B.2422, subdivision 3, which requires the Commission to ‘quantify and establish a range of environmental costs associated with each method of electricity generation.’” ([Recommendation](#) at ¶2.) “In addition, the statute requires utilities to use the costs ‘when evaluating and selecting resource options in all proceedings before the [C]ommission, including resource planning and certificate of need proceedings.” (*Id.*) “In 1994, the Commission established interim cost values, and in 1997, the Commission established final values, after a contested case proceeding (first Externalities case).” ([Recommendation](#) at ¶3.<sup>5</sup>)

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<sup>4</sup> *In Re Northern States Power Company*, Docket No. E-002/GR-91-1, [Order](#) Affirming Decision of Administrative Law Judge at 2 (June 26, 1991).

<sup>5</sup> The [Recommendation](#) cites *In the Matter of the Quantification of Env'tl Costs Pursuant to Laws of Minn. 1993, Chap. 356, Sec. 3*, PUC Docket No. E-999/CI-93-583, Order Establishing Environmental Cost Values at 1, 33 (Jan. 3, 1997) (*see also* eDocket No. 20148-102561-01) (93-583 PUC ORDER 1); *In the Matter of the Quantification of Env'tl*

“The Commission’s 1997 decision establishing final values was affirmed by the Minnesota Court of Appeals.” (*Id.*<sup>6</sup>) The final values were most recently updated on June 16, 2017. (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=20176-133027-01>.)

“On October 9, 2013, several environmental advocacy organizations filed a motion requesting that the Commission update the cost values for carbon dioxide (CO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions, establish a cost value for particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>), and re-establish a value for sulfur dioxide (SO<sub>2</sub>).” ([Recommendation](#) at ¶3.) “In the motion, the environmental organizations recommended that the Commission adopt the federal government’s Social Cost of Carbon as the cost value for CO<sub>2</sub>.” (*Id.*<sup>7</sup>)

As noted above, the “Federal Social Cost of Carbon” was first estimated in 2010 by the IWG. ([Recommendation](#) at ¶¶61-64 (citations omitted).) The ALJ found that “this group of federal agency representatives was charged with estimating the social cost of carbon so that federal agencies regulating activities affecting carbon emissions could incorporate the benefits of reducing CO<sub>2</sub> emissions, or the costs of increasing CO<sub>2</sub> emissions, into the ‘cost-benefit analyses of regulatory actions that have small, or “marginal,” impacts on cumulative global emissions.’” ([Recommendation](#) at ¶62.<sup>8</sup>) The ALJ further found that “[t]he IWG cautioned that its estimates

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*Costs Pursuant to Laws of Minn. 1993, Chap. 356, Sec. 3*, PUC Docket No. E-999/CI-93-583, Order Affirming In Part And Modifying In Part Order Establishing Environmental Cost Values at 8 (July 2, 1997) (*see also* eDocket No. 201410-103872-02) (93-583 PUC ORDER 2).

<sup>6</sup> The [Recommendation](#) cites *In re Quantification of Envtl Costs*, 578 N.W.2d 794 (Minn. Ct. App. 1998), *review denied* (Minn. Aug. 18, 1998).

<sup>7</sup> The [Recommendation](#) cites *In the Matter of the Investigation into Environmental and Socioeconomic Costs Under Minn. Stat. § 216B.2422, Subd. 3*, PUC Docket No. E-999/CI-00-1636, Memorandum in Support of Clean Energy Organizations’ Motion to Update Externality Values for Use in Resource Decisions at 1-2, 18-19 (Oct. 9, 2013).

<sup>8</sup> The [Recommendation](#) cites Ex. 100, Schedule 2 at 1 (Polasky Direct).



were based on many uncertainties and ‘should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.’ ([Recommendation](#) at ¶64.<sup>9</sup>) “The IWG updated the FSCC in May and November of 2013 and again in July of 2015.” ([Recommendation](#) at ¶65.<sup>10</sup>)

Since issuance of the [Recommendation](#) on April 15, 2016, (i) the FSCC has been further updated by the IWG in August 2016, (ii) the IWG has been disbanded, and (iii) the IWG Documents have been withdrawn. Accordingly, the “Federal Social Cost of Carbon” referenced in this Commission’s October 15, 2014, Notice and Order for Hearing and its issuing governmental entity no longer exist. These are important issues for the Commission to consider, as further updates to the FSCC will no longer be forthcoming, such that one of the critical premises to the proceeding — that adoption of the FSCC will lead to automatic updates to CO<sub>2</sub> cost values — no longer exists. (*Compare* [Recommendation](#) at ¶163 (“the IWG has committed to updating estimates as new information arises.”))

The Executive Order furthermore provides that:

Effective immediately, when monetizing the value of changes in greenhouse gas emissions resulting from regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, agencies shall ensure, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A-4 of September 17, 2003 (Regulatory Analysis), which was issued after peer review and public comment and has been widely accepted for more than a decade as embodying the best practices for conducting regulatory cost-benefit analysis.

(*See* Executive Order at § 5(c).) The ALJ has acknowledged that the IWG did not follow OMB Circular A-4’s requirement that calculating net benefits must include a 7 percent discount rate *in*

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<sup>9</sup> *Id.*

<sup>10</sup> The [Recommendation](#) cites Ex. 800, WMH-3 (Hanemann Direct); Ex. 600, NFM-1, Schedule 2 (Martin Direct).

*addition to* “a lower but positive discount rate” when calculating an intergenerational cost/benefit analysis as was done by the IWG here. ([Recommendation](#) at ¶¶ 119, 190, 217.) Instead, the IWG omitted a 7% discount analysis. (*Id.*)

The parties have submitted various, and opposing, arguments regarding discount rates to the ALJ, in their exceptions to the ALJ’s Recommendation, and in their responses to and replies in support of the exceptions. The ALJ concluded that in her view “the OMB Circular A-4 does not require the IWG to use the seven percent discount rate to calculate the FSCC, because the Circular A-4 is advisory and not mandatory in nature.” ([Recommendation](#) at 117, Conclusion 16.) The MLIG has objected to the ALJ’s conclusion as directly contrary to the clear and unambiguous text of the Circular. (*See* [MLIG Exceptions to ALJ’s CO2 Recommendations](#) at 54-64.)

Regardless of the parties’ positions about the IWG’s authority to ignore the language of Circular A-4 and the ALJ’s Conclusion, however, as set forth above federal law on this point now provides that “agencies shall ensure, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A-4.” (Executive Order at § 5(c).)

The MLIG respectfully submits that it is appropriate that the Commission takes all of these developments into consideration as it determines whether the 2015 version of the Federal Social Cost of Carbon, now withdrawn and no longer updated, “is reasonable and the best available measure to determine the environmental cost of CO<sub>2</sub> under Minn. Stat. § 216B.2422,” (*see* Notice and Order for Hearing at 4-5 (Oct. 15, 2014) (eDocket No. 201410-103872-02)), and accordingly moves the Commission to take notice of the recently issued Executive Order and the admissions by career staff at the White House Office of Information and Regulatory Affairs.

**RESPONSES TO MOTION**

Pursuant to Minn. R. 7829.0410, parties must file written responses to this Motion with the Commission and serve copies on all parties within 14 days of service of the motion filing.

Respectfully submitted,

Dated: June 30, 2017

**STOEL RIVES LLP**

*/s/ Marc A. Al*

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**ATTORNEYS FOR THE MINNESOTA  
LARGE INDUSTRIAL GROUP**

# **EXHIBIT A**



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### The White House

Office of the Press Secretary

For Immediate Release

March 28, 2017

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# Presidential Executive Order on Promoting Energy Independence and Economic Growth

## EXECUTIVE ORDER

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### PROMOTING ENERGY INDEPENDENCE AND ECONOMIC GROWTH

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. (a) It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.

(b) It is further in the national interest to ensure that the Nation's electricity is affordable, reliable, safe, secure, and clean, and that it can be produced from coal, natural gas, nuclear material, flowing water, and other domestic sources, including renewable sources.

(c) Accordingly, it is the policy of the United States that executive departments and agencies (agencies) immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

(d) It further is the policy of the United States that, to the extent permitted by law, all agencies should take appropriate actions to promote clean air and clean water for the American people, while also respecting the proper roles of the Congress and the States concerning these matters in our constitutional republic.

(e) It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.

Sec. 2. Immediate Review of All Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources. (a) The heads of agencies

shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of this order.

(b) For purposes of this order, "burden" means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

(c) Within 45 days of the date of this order, the head of each agency with agency actions described in subsection (a) of this section shall develop and submit to the Director of the Office of Management and Budget (OMB Director) a plan to carry out the review required by subsection (a) of this section. The plans shall also be sent to the Vice President, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality. The head of any agency who determines that such agency does not have agency actions described in subsection (a) of this section shall submit to the OMB Director a written statement to that effect and, absent a determination by the OMB Director that such agency does have agency actions described in subsection (a) of this section, shall have no further responsibilities under this section.

(d) Within 120 days of the date of this order, the head of each agency shall submit a draft final report detailing the agency actions described in subsection (a) of this section to the Vice President, the OMB Director, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality. The report shall include specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production.

(e) The report shall be finalized within 180 days of the date of this order, unless the OMB Director, in consultation with the other officials who receive the draft final reports, extends that deadline.

(f) The OMB Director, in consultation with the Assistant to the President for Economic Policy, shall be responsible for coordinating the recommended actions included in the agency final reports within the Executive Office of the President.

(g) With respect to any agency action for which specific recommendations are made in a final report pursuant to subsection (e) of this section, the head of the relevant agency shall, as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those actions, as appropriate and consistent with law. Agencies shall endeavor to coordinate such regulatory reforms with their activities undertaken in compliance with Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs).

Sec. 3. Rescission of Certain Energy and Climate-Related Presidential and Regulatory Actions. (a) The following Presidential actions are hereby revoked:

- (i) Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change);
- (ii) The Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards);
- (iii) The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment); and
- (iv) The Presidential Memorandum of September 21, 2016 (Climate Change and National Security).

(b) The following reports shall be rescinded:

- (i) The Report of the Executive Office of the President of June 2013 (The President's Climate Action Plan); and
- (ii) The Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions).

(c) The Council on Environmental Quality shall rescind its final guidance entitled "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews," which is referred to in "Notice of Availability," 81 Fed. Reg. 51866 (August 5, 2016).

(d) The heads of all agencies shall identify existing agency actions related to or arising from the Presidential actions listed in subsection (a) of this section, the reports



listed in subsection (b) of this section, or the final guidance listed in subsection (c) of this section. Each agency shall, as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding any such actions, as appropriate and consistent with law and with the policies set forth in section 1 of this order.

Sec. 4. Review of the Environmental Protection Agency's "Clean Power Plan" and Related Rules and Agency Actions. (a) The Administrator of the Environmental Protection Agency (Administrator) shall immediately take all steps necessary to review the final rules set forth in subsections (b)(i) and (b)(ii) of this section, and any rules and guidance issued pursuant to them, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules. In addition, the Administrator shall immediately take all steps necessary to review the proposed rule set forth in subsection (b)(iii) of this section, and, if appropriate, shall, as soon as practicable, determine whether to revise or withdraw the proposed rule.

(b) This section applies to the following final or proposed rules:

- (i) The final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64661 (October 23, 2015) (Clean Power Plan);
- (ii) The final rule entitled "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64509 (October 23, 2015); and
- (iii) The proposed rule entitled "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule," 80 Fed. Reg. 64966 (October 23, 2015).

(c) The Administrator shall review and, if appropriate, as soon as practicable, take lawful action to suspend, revise, or rescind, as appropriate and consistent with law, the "Legal Memorandum Accompanying Clean Power Plan for Certain Issues," which was published in conjunction with the Clean Power Plan.

(d) The Administrator shall promptly notify the Attorney General of any actions taken by the Administrator pursuant to this order related to the rules identified in subsection

(b) of this section so that the Attorney General may, as appropriate, provide notice of this order and any such action to any court with jurisdiction over pending litigation related to those rules, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the administrative actions described in subsection (a) of this section.

Sec. 5. Review of Estimates of the Social Cost of Carbon, Nitrous Oxide, and Methane for Regulatory Impact Analysis. (a) In order to ensure sound regulatory decision making, it is essential that agencies use estimates of costs and benefits in their regulatory analyses that are based on the best available science and economics.

(b) The Interagency Working Group on Social Cost of Greenhouse Gases (IWG), which was convened by the Council of Economic Advisers and the OMB Director, shall be disbanded, and the following documents issued by the IWG shall be withdrawn as no longer representative of governmental policy:

- (i) Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (February 2010);
- (ii) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (May 2013);
- (iii) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (November 2013);
- (iv) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (July 2015);
- (v) Addendum to the Technical Support Document for Social Cost of Carbon: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide (August 2016); and
- (vi) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (August 2016).

(c) Effective immediately, when monetizing the value of changes in greenhouse gas emissions resulting from regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, agencies shall ensure, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A-4 of September 17, 2003

(Regulatory Analysis), which was issued after peer review and public comment and has been widely accepted for more than a decade as embodying the best practices for conducting regulatory cost-benefit analysis.

Sec. 6. Federal Land Coal Leasing Moratorium. The Secretary of the Interior shall take all steps necessary and appropriate to amend or withdraw Secretary's Order 3338 dated January 15, 2016 (Discretionary Programmatic Environmental Impact Statement (PEIS) to Modernize the Federal Coal Program), and to lift any and all moratoria on Federal land coal leasing activities related to Order 3338. The Secretary shall commence Federal coal leasing activities consistent with all applicable laws and regulations.

Sec. 7. Review of Regulations Related to United States Oil and Gas Development. (a) The Administrator shall review the final rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," 81 Fed. Reg. 35824 (June 3, 2016), and any rules and guidance issued pursuant to it, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.

(b) The Secretary of the Interior shall review the following final rules, and any rules and guidance issued pursuant to them, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules:

(i) The final rule entitled "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands," 80 Fed. Reg. 16128 (March 26, 2015);

(ii) The final rule entitled "General Provisions and Non-Federal Oil and Gas Rights," 81 Fed. Reg. 77972 (November 4, 2016);

(iii) The final rule entitled "Management of Non Federal Oil and Gas Rights," 81 Fed. Reg. 79948 (November 14, 2016); and

(iv) The final rule entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation," 81 Fed. Reg. 83008 (November 18, 2016).

(c) The Administrator or the Secretary of the Interior, as applicable, shall promptly notify the Attorney General of any actions taken by them related to the rules identified

in subsections (a) and (b) of this section so that the Attorney General may, as appropriate, provide notice of this order and any such action to any court with jurisdiction over pending litigation related to those rules, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, until the completion of the administrative actions described in subsections (a) and (b) of this section.

Sec. 8. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,  
March 28, 2017.



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# **EXHIBIT B**



## DAILY NEWS

# Despite Trump Bar, OMB Mulls 'Rigorous' Method To Estimate GHG Damages

June 15, 2017

Despite President Donald Trump's bar on the use of the Obama-era social cost of carbon (SCC) metric to estimate climate damages, the administration is "trying to figure out a good, rigorous technical way" of calculating carbon dioxide damages in rules' cost-benefit analysis, a top regulatory review official says.

Jim Laity, chief of the natural resources branch of the White House Office of Information and Regulatory Affairs (OIRA), told a June 14 meeting on future updates to the SCC hosted by the National Academy of Sciences (NAS) that agencies will ultimately use some non-zero figure to assess the issue even though they will not use the SCC metric.

But he signaled that the values would not be as large as what the Obama administration adopted, citing Trump administration policy that requires officials follow Bush-era cost-benefit guidance that uses higher discount rates and focuses primarily on domestic, rather than global, damages when calculating the values.

Trump's March energy executive order formally disbanded an interagency working group (IWG) created by the Obama administration to develop the SCC and withdrew a series of technical reports on the SCC, saying they did not represent official government policy.

But Laity, a career official, says that Trump's order "did not forbid us to work on this or tell us not to think about this." And he added that Trump's order also recognizes that agencies "would need to continue monetizing [greenhouse gas] damages."

The Obama administration's SCC created a series of default values for the damages caused by an incremental ton of CO<sub>2</sub>, which could then be counted as benefits in EPA and other agency measures that reduce GHGs.

Citing industry and Republican criticisms of the SCC tool, Laity said the administration "decided that we needed to have a pause to kind of re-think what we were doing in this area. . . . There was a feeling that these [estimates] should be re-examined in terms of their potential impacts on domestic energy use."

As an "interim measure," Laity said, agencies were directed to use values that are consistent with Bush-era guidance, known as Circular A-4, that outlines basic procedures for cost-benefit reviews.

He noted that agencies under the Trump administration have not yet "issued any rules that require valuation of carbon emissions," though some "may be coming in the not too distant future."

That likely alludes to a proposed EPA rule, currently undergoing OIRA review, that would rescind the Clean Power Plan GHG standards for existing power plants.

Sources say that rule includes a revised economic analysis that reduces what the Obama EPA had calculated as significant net benefits of the rule. In addition, an administration source told *E&E News* the proposal would come with a regulatory impact analysis that considers societal benefits of reducing GHGs in the United States but not globally.

### Circular A-4

Laity highlighted two key issues that SCC critics have raised, agreeing with their assessment that on those issues, the Obama SCC was inconsistent with the A-4 guide.

For instance, A-4 requires agencies to use both 3 and 7 percent discount rates to estimate future benefits into present day values in cost-benefit reviews, while the SCC used 2.5, 3 and 5 percent rates.

The guide does allow for consideration of lower rates when assessing very long-term damages -- as is the case with climate change -- but Laity notes that it specifically requires use of both 3 and 7 percent rates.

Additionally, the guide says that an assessment should focus on domestic costs and benefits. The SCC, however, uses global benefits -- because the climate models used to craft it are based on global damages, and because climate change is an inherently global problem.

Laity said the A-4 guide only allows use of global damages or benefits in a "sensitivity" scenario.

On both of those issues, he said, the SCC "was not consistent" with the Bush-era guidance.

Environmentalists and other SCC backers have noted prior court precedent that says agencies **are required to calculate** the cost of avoided GHG damages in rules, and that the figure cannot be zero. A separate appellate court ruling has also upheld the use of the Obama SCC as "reasonable" in the development of an Energy Department appliance efficiency standard.

Laity's statements suggest that Trump administration officials appear to acknowledge those court rulings and are trying to fashion a "rigorous" approach that still values avoided GHGs while also addressing prior industry concerns about the Obama-era values.

"We are actively working on thinking about the guidance we have been given in the new executive order, and technically how best to implement that in upcoming agency rulemakings," he said.

But environmental attorneys have said the administration will likely face legal hurdles, particularly as it seeks to explain to a court why it has reverted to prior policy that in many ways has been "superseded by new scientific and economic knowledge."

One attorney told *Inside EPA* that "judicial reaction" to the administration's explanation "will depend in no small part on who is the judge and how much deference they choose to afford" to the agencies.

And it is unclear from Laity's remarks if the White House is seeking to put forth a new, softer metric to value CO2 damages, or whether the administration would simply craft guidance for agencies on how to best follow the A-4 guide when developing rules that affect GHGs.

### Outside Researchers

Because Trump has disbanded the IWG, any near-term update will be done by outside researchers.

NAS, for example, hosted the June 14 event to discuss next steps to implement a January report from an NAS panel that offered a suite of recommendations to update the SCC.

And the think tank Resources for the Future (RFF) recently **announced a three-year project**, which would essentially replace any government-led effort.

The IWG "has, at this point, been disbanded. But the need to update estimates of the social cost of carbon . . . is still necessary," RFF President Richard Newell, who chaired the NAS panel, said during the event.

Additionally, RFF's Kevin Rennert noted that the SCC is "not going away," in part because it is starting to be adopted by states, other countries and even some businesses' internal planning decisions. "It really deserves to have the full, most up-to-date science behind it."

RFF hopes to implement a number of key recommendations in the NAS report, including crafting a new model that creates separate "modules" for four key issues necessary to develop the SCC -- long-term future emissions projections, estimates of how such emissions would affect average global temperature, calculations of a host of damages that would occur from that temperature rise, and how to discount those damages to present-day costs.

The group hopes to offer significant transparency when conducting the work, including opportunities for comment from a wide range of stakeholders. Rennert said RFF likely will publish revised SCC figures when the project is complete. But almost as important, he said, RFF hopes to create a process to continually revise the tool that can eventually be incorporated by the federal government.

Regardless of the long-term future of the SCC, however, other observers have warned that the Trump administration's potential use of weaker GHG damage values would aid its climate regulatory rollbacks, given that lower climate-related benefits would make the calculated net costs of rules higher. -- *Lee Logan* ([llogan@iwpnews.com](mailto:llogan@iwpnews.com))

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**CERTIFICATE OF SERVICE**

I, Marc A. Al, hereby certify that I have this day served a true and correct copy of the following document via electronic filing to all persons indicated on the attached service list:

Minnesota Large Industrial Group's Motion for the Commission to Take Notice or, in the Alternative, to Reopen the Record to Allow Introduction, of Presidential Executive Order on Promoting Energy Independence and Economic Growth Dated March 28, 2017 and June 14, 2017, Public Comments by the White House Office of Information and Regulatory Affairs (OIRA) with Exhibits A and B

In the Matter of the Investigation into Environmental and Socioeconomic Costs Under Minn. Stat. § 216B.2422, Subd. 3  
PUC Docket No. E-999/CI-14-643  
OAH Docket No. 80-2500-31888

Dated this 30th day of June, 2017

/s/ Marc A. Al  
Marc A. Al

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