



GREENHOUSE GAS REGULATION

Background

The Clean Air Act requires the Environmental Protection Agency (EPA) to set emission standards for air pollutants “which may reasonably be anticipated to endanger public health or welfare.” In 2007, the U.S. Supreme Court ruled that greenhouse gases (GHGs) are an “air pollutant” and must be regulated under the Clean Air Act if the EPA Administrator determines that GHG emissions endanger public health and welfare. In December 2009, EPA issued its endangerment finding which set in motion a process to regulate GHG emissions, including carbon dioxide (or “CO₂”).

In May 2010, EPA issued its “tailoring rule” for GHG emissions which limits the number of facilities that are subject to certain greenhouse gas regulations. As a result of this rule, GHG regulations would apply to large facilities such as power plants and exempt smaller sources such as hospitals, farms and schools.

Under the GHG regulations, Prevention of Significant Deterioration (PSD) review may be required for new major sources of GHGs or when an existing major source is modified in a way that causes a significant increase in GHG emissions.

Both the endangerment finding and the tailoring rule are currently the subject of multiple lawsuits and administrative actions.

How it Affects Great River Energy

Great River Energy owns and operates electricity generation facilities subject to PSD review. As a result of the tailoring rule, even a relatively small project at a large generation facility may trigger PSD. As a result of PSD review, a facility may be required to install best available control technology (BACT). No BACT has yet been established for GHG emissions.

Great River Energy’s Position

Great River Energy believes that the Clean Air Act was not written to handle pollutants like GHGs and is not the proper mechanism with which to regulate GHG emissions. Even with higher thresholds under the tailoring rule, PSD for GHGs is still easier to trigger for power plants than for conventional pollutants such as SO₂ or NO_x. Great River Energy believes that any policy in this area should be established by Congress, not the EPA. The EPA’s effort to regulate GHG emissions under the Clean Air Act was not contemplated when the act was initially crafted.

January 1, 2012