

# Watt's Up

## A View of the Electric Utility Industry



# Riding the Rails

For years, Wisconsin utilities have pointed to railroad shipping costs driving up energy prices. Now, the U.S. Department of Agriculture has released a study (<http://www.ams.usda.gov/RuralTransportationStudy>) indicating it's seen strong evidence that monopoly rail-service providers have been taking advantage of fuel surcharges to build their bottom line.

The report came just in time for the national Rail Customer Day in Washington, sponsored by Consumers United for Rail Equity (CURE). It included what CURE called "dramatic findings about the cost to American farmers and consumers from the lack of competition in the freight rail industry and 'considerable evidence' that freight rail companies used excessive fuel surcharges to artificially

boost profits."

Among key findings:

- Rail industry consolidation through mergers has decreased routing choices and competition,
- Almost three-fourths of agricultural areas lost rail competition between 1992 and 2007,
- Between 2001 and 2007, fuel surcharges were 55 percent higher than the increase in the cost of fuel, and
- Service problems and high rates directly affect consumers by driving up electricity prices.

CURE Executive Director Robert Szabo said the report demonstrates that the economy is being harmed by "the current lack of protections against monopoly pricing by freight rail companies. ■

## May 5, 2010 Press Release from Senator Herb Kohl's Office.

WASHINGTON – In remarks before the group Consumers United for Rail Equity (CURE), U.S. Senator Herb Kohl vowed to keep up his fight to pass the Railroad Antitrust Enforcement Act, his bipartisan bill to repeal the obsolete antitrust exemptions protecting freight railroads from competition. These exemptions deny rail consumers antitrust protections available to consumers in virtually every other industry. Kohl introduced the legislation in response to concerns that freight railroads are abusing their dominant market power and raising rates for those who rely on them to ship dozens of vital commodities, including coal and agricultural products.

Many industries – known as "captive shippers" — are served by only one railroad. These captive shippers have faced constantly rising rail rates. In many cases the ordinary protections of antitrust law are unavailable to these captive shippers – instead, the railroads are protected by a series of exemptions from the normal rules of antitrust law to which all other industries must abide.

As an example, Dairyland Power in La Crosse serves the electricity needs of more than 575,000 people. Several years ago, Dairyland was hit with a 93% rate increase - resulting in about \$35 million of increased cost. ■

*Reprinted from the June issue of The Wire, a monthly publication put out by Customers First! A coalition to preserve Wisconsin's Reliable and Affordable Electricity.*



Senator Herb Kohl (top photo) and Senator Jay Rockefeller (bottom photo) speak to CURE rally.



# US Not Done With Cap-and-Trade Yet

The massive oil spill in the Gulf of Mexico may bring back to life energy and climate legislation that many considered dead in Congress. President Obama even used his first address from the Oval Office to speak to the nation about the oil spill and called on Americans to “seize the moment” and end our addiction to fossil fuels. But will the disaster in the Gulf be enough to resuscitate the energy debate in Congress?

Little has happened since the House of Representatives narrowly passed the Waxman-Markey climate change bill last year. The bill would mandate an 83-percent reduction of greenhouse gas emissions by 2050 from 2005 levels, establish a renewable energy standard, and - perhaps its most contentious provision - create a carbon cap-and-trade system. The Senate hasn't acted on Waxman-Markey mainly because of disagreement over cap-and-trade.

After a year of letting the issue simmer, a tri-partisan team of Senators John Kerry (D-MA), Joe Lieberman (I-CT), and Lindsey Graham (R-SC) developed a proposal aimed at achieving broader support. It keeps the same carbon-reduction targets as Waxman-Markey but also provides a \$54 billion nuclear loan-guarantee program, allows more offshore drilling, and establishes a cap-and-trade program with price controls. Yet, in a sign of how fragile political alliances can be and the challenge of achieving broad support for energy legislation, Graham withdrew his backing for the bill he put together with Kerry and Lieberman and signed onto a competing bill by Senator Richard Lugar (R-IN) that does not include cap-and-trade.

To make the prospects of anything being done even more daunting, several other proposals are now



Senator Joe Lieberman

Senator John Kerry

floating around the Senate - all of which are vying for the 60 votes needed to break a filibuster. On a parallel track with congressional action, the Environmental Protection Agency (EPA) is set to proceed with its own rules. Last year, the EPA issued a finding that greenhouse gas emissions endanger human health and thus can be regulated under the federal Clean Air Act. The EPA just issued standards limiting greenhouse gas emissions for cars and light trucks but has said that no stationary sources, such as power plants, will be required to get Clean Air Act permits that cover greenhouse gases before January 2011. So, it may not be the oil spill that inspires Congress to act after all, but rather the threat of a government agency setting the nation's energy priorities that does. ■

written by Matt Bromley, Executive Director of the Customers First! Coalition

**See page 4 for a last minute update on this bill and the issue of cap-and-trade.**

## Understanding Cap-and-Trade of Carbon Emissions

Under a “cap-and-trade” plan, Congress would set a national cap on the number of tons of CO<sup>2</sup> emissions that would be allowed each year by the plan. The cap would decline over time. EPA would then develop emissions permits, called allowances, equal to the number of tons allowed annually under the cap. How those allowances are distributed is a key question under any cap-and-trade plan. EPA could auction them to the highest bidders, or give them away for free.

Either way, at the end of every year, each entity that is regulated under the plan would need to submit one allowance to the EPA for every ton of CO<sup>2</sup> they emitted during the year. They could submit allowances they were given by the EPA or bought from the EPA at the auction, or they could buy allowances from another entity with more than it needs to comply with the legislation in a given year.

Alternatively, companies could submit “offsets” to the EPA in lieu of allowances. Offsets are projects, like planting trees, which take CO<sup>2</sup> out of the atmosphere as a way of “offsetting” the emissions added to the atmosphere from a power plant or other source. Finally, if the legislation includes an “economic safety valve” provision, regulated entities could buy additional allowances from the EPA at a fixed maximum price to ensure there is a hard ceiling on the program's costs. ■

---

# Public Service Commission Mulls Plant Retirements

**W**ith a presumably temporary surplus of electric generation capacity in Wisconsin providing the rationale, battle lines have been drawn over the power of state regulators to order the retirement of specific power plants.

In January, the Public Service Commission (PSC) opened a new docket (5-EI-150) for an “Investigation on the Commission’s Own Motion to Review Potential Excess Capacity in Electric Generating Units Owned by Wisconsin Electric Utilities.”

The next recorded action occurred June 10, when the PSC mailed notice of the investigation and a request for comments from affected parties, with a July 8 deadline.

The PSC notice said “various parties” had suggested that mothballing or retirement of “certain existing electric generating plants” could reduce ratepayer costs or become economically prudent in view of anticipated climate- and air-quality regulations.

In comments filed on the July 8 deadline, the Sierra Club, identifying itself as one of the “various parties,” asserted the PSC has authority to order any regulated utility to retire or mothball “certain excess, inefficient units as a condition of receiving construction authority on its other units.”

The Sierra Club said the PSC “should hold technical hearings on the issue of what units can be retired/ mothballed/replaced with energy efficiency, renewable, and high efficiency natural gas units” and then, based on its findings, issue a declara-

tory ruling that would be binding on the state’s investor-owned and municipal utilities, Dairyland Power Cooperative and the American Transmission Company “for subsequent rate or construction cases unless the ruling is modified by the Commission.”

Comments filed by Dairyland Power Cooperative the same day say Dairyland is not a “public utility” and “has not evaluated the Commission’s authority” in the area of ordering unit retirements.

The Dairyland comments go on, however, to point out that the existing surplus capacity appears to be a result of the continuing recession, and “In the event of an economic turnaround, the reduction in electric demand could be quickly reversed.”

The state then could face a need to replace retired generation capacity, and, “Recent history shows that it is difficult, time-consuming, and expensive to site and permit new capacity, even if that capacity is renewable,” the Dairyland comments said.

Comments filed by “the joint utilities,” a group including Dairyland, said the Legislature granted the PSC authority over utilities’ acquisition, construction, and modification of power plants but not over their continuing operation or

shutting them down.

The utilities cite legal precedent dating to 1982, 1961, and 1939 in arguing that the PSC has historically addressed excess capacity through ratemaking, thus undermining claims that “the Commission must have the authority to directly order the shut-down of an electric generating facility or else issues of excess capacity would go unaddressed.”

*Reprinted from the July 23, 2010, issue of the Condenser, a weekly publication distributed since 1956 to provide timely information on matters pertaining to Wisconsin’s non-profit, consumer-owned rural electric cooperatives.*



Steve Crane



7479 REA Road  
PO Box 168  
Oconto Falls WI 54154

## The Last Word on Cap-and-Trade for now...

Page 2 of this publication has an important story on a new bill that was introduced in Congress again trying to promote, among other things, a cap-and-trade program.

Within the past few days, supporters of cap-and-trade have decided they don't have enough votes to pass this bill before Congress adjourns in August so the bill appears to be dead for now.

Instead of pulling the story, I decided to leave it in so that you can understand that no matter how many times cap-and-trade is voted down, I feel it will come up again and again and again. You must remain diligent

in letting your legislators know how you feel about cap-and-trade.

If you believe it is the right thing to do - by all means let Congress know how you feel. Cap-and-trade will significantly increase the cost of power and I, personally, am not convinced that it is going to help our environment.

*Byron Nolde, CEO  
Oconto Electric  
Cooperative*



**Pam Langlay, Editor**

Byron Nolde, CEO

PO Box 168

Oconto Falls, WI 54154

(800) 472-8410

[www.ocontoelectric.com](http://www.ocontoelectric.com)

The Watt's Up is a quarterly publication distributed to keep the public informed of issues affecting the electric utility industry.

If you don't want to receive the Watt's Up quarterly publication, or if you know someone who would like to receive it, contact: Pam Langlay, Oconto Electric Cooperative, PO Box 168, Oconto Falls WI 54154. Or you can email Pam at [planglay@ocontoelectric.com](mailto:planglay@ocontoelectric.com).

You can also request the Watt's Up in an electronic format (pdf) by contacting Pam.