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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2171**

Minnesota Center for Environmental Advocacy,  
Appellant,

vs.

Mark Holsten, in his official capacity as Commissioner,  
Minnesota Department of Natural Resources,  
Respondent,

and

Minnesota Steel Industries, LLC,  
defendant-intervenor,  
Respondent.

**Filed September 22, 2009  
Affirmed  
Halbrooks, Judge**

Itasca County District Court  
File No. 31-CV-07-3338

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Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Harten, Judge.\*

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

On appeal from summary judgment in a declaratory-judgment action brought pursuant to the Minnesota Environmental Policy Act, appellant challenges the adequacy of an environmental-impact statement on the grounds that it failed to address the impact of greenhouse-gas emissions, climate change, and power generation. Because the decision of the Minnesota Department of Natural Resources is not erroneous as a matter of law or arbitrary and capricious and is supported by substantial evidence in this record, we affirm.

## FACTS

Appellant Minnesota Center for Environmental Advocacy (MCEA) challenges the adequacy of an environmental-impact statement (EIS) prepared for a project proposed by respondent Minnesota Steel Industries, LLC, now known as Essar Steel Minnesota, LLC (Minnesota Steel). The \$1.6 billion project involves the reactivation of a taconite mine and tailings basin near Nashwauk, in Itasca County, that have been out of use for more than 20 years. The project also involves the construction of new facilities.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

The Minnesota Department of Natural Resources (DNR) was designated as the responsible governmental unit (RGU) charged with evaluating the project's environmental impact. The DNR and United States Army Corps of Engineers (USACE) decided to prepare a joint state and federal EIS to allow evaluation of the project pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347 (2006), and the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01–.11 (2008).

In February 2007, the DNR and USACE issued a draft EIS. In March 2007, an attorney for MCEA met with representatives of the DNR and the Minnesota Pollution Control Agency (MPCA) to discuss the project's carbon footprint.<sup>1</sup> This meeting resulted in the addition of a carbon-footprint document (Appendix O) to the final EIS. In April 2007, MCEA submitted a comment on the draft EIS. MCEA argued, among other things, that the final EIS must address greenhouse-gas emissions, climate change, and power generation.

On June 8, 2007, the final EIS was made available for public comment. On July 23, 2007, MCEA submitted its comments on the final EIS. Among other things, MCEA argued that the final EIS failed to address the environmental impact of the project's greenhouse-gas emissions, climate change, and the generation of electrical power for the project. MCEA also submitted a memorandum titled "Greenhouse Gas Inventory" as an alternative carbon-footprint document and an MPCA greenhouse-gas inventory.

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<sup>1</sup> The carbon footprint is an estimate of the amount of CO<sub>2</sub> emissions that could potentially be emitted from the project. According to the MPCA, CO<sub>2</sub> comprises approximately 80% of Minnesota's greenhouse-gas emissions.

On August 10, 2007, the DNR commissioner concluded that the final EIS was adequate under Minn. R. 4410.2800, subp. 4 (2007). The DNR's record of decision included responses to MCEA's comments about greenhouse-gas emissions, climate change, and power generation.

On September 12, 2007, MCEA brought a declaratory-judgment action in Itasca County District Court against the commissioner in his official capacity.<sup>2</sup> MCEA challenged the adequacy of the final EIS pursuant to Minn. Stat. § 116D.04, subd. 10. Minnesota Steel filed a notice of intervention.

In June 2008, the DNR, Minnesota Steel, and MCEA filed cross-motions for summary judgment. A hearing on the motions occurred on July 28, 2008. The district court granted the DNR's motion, denied MCEA's motion, and dismissed MCEA's complaint.<sup>3</sup> This appeal follows.

## **D E C I S I O N**

On appeal from summary judgment, this court reviews an agency's determination de novo "to determine if it is unreasonable, arbitrary or capricious." *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn. App. 1999).

MEPA requires that an RGU prepare an EIS before engaging in any major governmental action that creates the "potential for significant environmental effects." Minn. Stat. § 116D.04, subd. 2a. The EIS "shall be an analytical rather than an

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<sup>2</sup> We will refer to the commissioner in his official capacity as "DNR."

<sup>3</sup> The district court did not address Minnesota Steel's motion.

encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated.” *Id.*

MEPA permits a person to seek review of the adequacy of an EIS by a declaratory-judgment action in district court. *Id.*, subd. 10. To succeed on appeal, MCEA must demonstrate that the DNR’s record of decision reflects an error of law, that its findings are arbitrary and capricious, or that its findings are unsupported by substantial evidence.<sup>4</sup> See *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006); see also *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009) (stating that this court “evaluate[s] whether the RGU took a ‘hard look’ at the salient issues, but defer[s] to the RGU’s decision unless the decision reflects an error of law, is arbitrary and capricious, or is unsupported by substantial evidence”); *Pope County Mothers*, 594 N.W.2d at 236 (“A reviewing court will intervene only where there is a combination of danger signals [that] suggest the agency has not taken a ‘hard look’ at the salient problems and has not genuinely engaged in reasoned decision-making.” (alteration in original) (quotation omitted)).

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<sup>4</sup> Substantial evidence is: “1. Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. More than a scintilla of evidence; 3. More than some evidence; 4. More than any evidence; and 5. Evidence considered in its entirety.” *White v. Minn. Dep’t of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), review denied (Minn. Oct. 31, 1997).

An agency ruling is arbitrary and capricious if the agency: (a) relied on factors not intended by the legislature; (b) *entirely* failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

*White*, 567 N.W.2d at 730 (emphasis added) (quotation omitted). “An agency’s decision is arbitrary and capricious if it represents the agency’s will and not its judgment.” *Nat’l Audubon Soc’y v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 215 (Minn. App. 1997), *review denied* (Minn. Dec. 16, 1997).

In reviewing the quasi-judicial decision of an agency, the focus of our review is on the proceedings before the decision-making body and not the district court. *See Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 207 (Minn. 1993).

## I.

MCEA contends that the final EIS does not adequately address the environmental effects of the project’s greenhouse-gas emissions and does not contain an analysis of measures that could minimize or eliminate these effects. We address each of these arguments in turn.

### A. **Consideration of greenhouse-gas emissions**

MCEA argues that the final EIS is inadequate because “it contains no substantive discussion of the potential environmental effect of the project’s likely direct and indirect greenhouse gas emissions.” MCEA also argues that the DNR failed to meet the requirements of Minn. R. 4410.2500 (2007), in determining that it is not within the

current state of the art to provide an analysis of the project-related greenhouse-gas emissions. We disagree.

The DNR clearly considered the impact of the project's greenhouse-gas emissions. Section 4.7.2.7 of the final EIS, titled "Carbon Footprint," acknowledges that the project would contribute CO<sub>2</sub> emissions to the atmosphere. The DNR's responses to comments on the draft EIS also address greenhouse-gas emissions:

The [project] would contribute CO<sub>2</sub> and greenhouse gases to the atmosphere. Minnesota Steel has provided a document titled "Minnesota Steel Industries CO<sub>2</sub> Emission Footprint and Comparison" in an effort to provide information regarding greenhouse gas emissions. A copy of this document is provided under Appendix O of the Final EIS. It should be noted to [MCEA] that currently there are no regulations governing CO<sub>2</sub> or greenhouse gas emissions. When future regulations are promulgated this proposed project as well as other applicable entities would be required to meet those regulations. Note that the integrated design (mining through steel production) and energy choices result in energy conservation and therefore a reduction in the amount of greenhouse gases that would be produced using more traditional, non-integrated methods.

Finally, the DNR found that both the carbon footprint provided by Minnesota Steel and the carbon footprint provided by MCEA "were valid within reason with regard to providing information on the projected carbon emissions from the . . . [p]roject. Regardless of the difference between the estimated CO<sub>2</sub> emissions, it is clear that the [project] will add greenhouse gas emissions to the environment." We therefore cannot conclude that the DNR entirely failed to consider the issue of greenhouse-gas emissions.<sup>5</sup>

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<sup>5</sup> We note that the parties disagree as to whether NEPA, MEPA, or Minn. Stat. § 216H.02, subd. 1 (2008), requires that an EIS include a consideration of the impact of

The DNR then determined that it is not within the current state of the art to provide an analysis of the impact that project-related greenhouse-gas emissions will have on the environment. The DNR has authority to make such a determination if it includes the following information in the EIS:

- A. a statement that the information is incomplete or unavailable and a brief explanation of why it is lacking;
- B. an explanation of the relevance of the lacking information to evaluation of potentially significant environmental impacts and their mitigation and to a reasoned choice among alternatives;
- C. a brief summary of existing credible scientific evidence that is relevant to evaluating the potential significant environmental impacts; and
- D. the RGU's evaluation of such impacts from the project and its alternatives based upon theoretical approaches or research methods generally accepted in the scientific community.

Minn. R. 4410.2500.

We conclude that the DNR met the first requirement by stating that

the DNR finds that it is not within the current state of the art to provide the information that MCEA seeks . . . , which is analysis of the impacts of the [project]-related CO<sub>2</sub> emissions (however calculated) on the environment. . . . [G]eneral information is available that attempts to project climate change effects. However, to determine the specific effect that the . . . project will have on climate change, there needs to be a reliable model that can be used in a fair and consistent manner to evaluate the potential effects. According to the MPCA, there currently are not reliable analytical and

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greenhouse-gas emissions. Under Minn. R. 4410.2300(H) (2007), an EIS must contain “a thorough but succinct discussion of potentially significant direct or indirect, adverse, or beneficial effects,” including “[e]nvironmental, economic, employment, and sociological impacts.” Because the DNR clearly considered the environmental impacts of the project’s greenhouse-gas emissions, we need not address whether the DNR was required to consider these impacts.



modeling tools to evaluate the incremental impact of discrete emissions, such as those from the . . . project, on global and regional climate or on any cascading incremental impacts to natural ecosystems and human economic systems in Minnesota. As stated in the previous response to the Draft EIS, the MPCA believes that the effects of climate change on the environment must be addressed holistically and not just by one individual facility. Given the uncertainty in directly connecting the emissions from an individual facility to the environmental consequences of climate change, it would not be possible to properly and fairly evaluate these potential incremental consequences in the EIS.

This statement clearly explains that the EIS does not contain an evaluation of the project's greenhouse-gas emissions on regional or global climate because a reliable model does not exist.

We conclude that the DNR met the second requirement by explaining that the project will add approximately four million tons of CO<sub>2</sub> per year to the environment and that these emissions will have an environmental effect. The DNR further explained that although the addition of any CO<sub>2</sub> to the environment has an environmental effect, the exact effects of the project's emissions upon regional or global climate cannot be predicted with certainty. Therefore the precise effects of any mitigation measures also cannot be predicted with certainty.

We conclude that the DNR met the third requirement by including the two carbon-footprint studies and the MPCA greenhouse-gas inventory in the final EIS. The greenhouse-gas inventory describes the greenhouse-gas emissions produced by Minnesota Steel. The carbon-footprint studies predict the project's annual greenhouse-gas emissions, describe the sources of the emissions, and compare the quantity of the

project's annual emissions to the estimated global annual emissions. The studies also discuss mitigation measures, including integrated design, biodiesel fuel, commuting by employees, and alternative sources of electricity.

Finally, we conclude that the DNR met the fourth requirement by noting that the state's policy is to "aggressively reduce greenhouse gas emissions in Minnesota during the coming years" and by stating that

Minnesota Steel has incorporated many measures into its project design to mitigate CO<sub>2</sub> emissions. Integration of mining, processing and steel making facilities will reduce energy use and shipping and associated greenhouse gas emissions. Minnesota Steel's use of natural gas rather than coal will further reduce emissions of CO<sub>2</sub>.

These mitigation measures are supported by the carbon-footprint studies included in the EIS.

MCEA's contentions that the DNR failed to consider the impacts of greenhouse-gas emissions and failed to meet the requirements of Minn. R. 4410.2500 are therefore without merit.

## **B. Mitigation and alternatives**

MCEA argues that the final EIS is inadequate because "it contains no analysis of alternatives or mitigation measures that could reduce the new [greenhouse-gas] emissions that will result from the project." We disagree.

Minnesota law provides that an EIS

shall compare the potentially significant impacts of the proposal with those of other reasonable alternatives to the proposed project. The EIS must address one or more alternatives of each of the following types of alternatives or

provide a concise explanation of why no alternative of a particular type is included in the EIS: alternative sites, alternative technologies, modified designs or layouts, modified scale or magnitude, and alternatives incorporating reasonable mitigation measures identified through comments received during the comment periods for EIS scoping or for the draft EIS. . . . Alternatives included in the scope of the EIS . . . that were considered but eliminated based on information developed through the EIS analysis shall be discussed briefly and the reasons for their elimination shall be stated. The alternative of no action shall be addressed.

Minn. R. 4410.2300(G) (2007); *see also* Minn. R. 4410.2300(I) (2007) (stating that an EIS “shall identify those measures that could reasonably eliminate or minimize any adverse environmental, economic, employment, or sociological effects of the proposed project”); *Coon Creek Watershed Dist. v. State Env'tl. Quality Bd.*, 315 N.W.2d 604, 605–06 (Minn. 1982) (“An EIS examines the environmental consequences of an action, explores alternatives, and suggests measures which could be helpful in mitigating any adverse environmental impact caused by the action.”). An RGU “need not consider speculative alternatives.” *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 882 (Minn. App. 1995), *review denied* (Minn. July 28, 1995).

We conclude that the DNR met the alternatives/mitigation requirements of Minn. R. 4410.2300 (2007), with respect to the project’s greenhouse-gas emissions. First, the final EIS stated that the project’s production technology “is much less carbon intensive than a [traditional] blast furnace/coke production process.”<sup>6</sup> Second, the “integrated

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<sup>6</sup> MCEA contends that the purpose of mitigation “is to find ways to reduce or eliminate the environmental impacts of a project *as proposed*” and that mitigation measures cannot be those incorporated into the proposed project. But MCEA cites no legal authority to support this argument, which is contradicted by Minnesota caselaw. *See Minn. Ctr. for*

design”—that is, mining taconite and producing steel on the same site—was discussed as a measure that would “result in energy conservation and therefore a reduction in the amount of greenhouse gases that would be produced using more traditional, non-integrated methods.” Third, the DNR noted that “[a]dditional gains in carbon efficiency may also be achieved related to shipping and electricity use, depending on end markets and fuel sources, respectively.” MCEA’s assertion that the final EIS fails to include any discussion of alternatives to the project or mitigation measures that could reduce the project’s greenhouse-gas emissions is therefore unsupported by the record.

## II.

MCEA argues that the final EIS fails “to assess the impact of likely climate change” on the project’s environmental effects. MCEA also asserts that the DNR has not complied with Minn. R. 4410.2500 in determining that assessment of the impact of climate change is beyond the state of the art.

The DNR’s responses to comments on the draft EIS address the impact of climate change:

Climate change is not accounted for in the data used for the modeling described above. This modeling is done using an existing data set that has undergone review and quality assurance measures and it can not be readily modified to address various projected scenarios due to climate change. The MPCA acknowledges the significance of global warming as a serious environmental problem and believes that it must be addressed holistically and not just by an individual facility.

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*Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002) (approving of agency decision under MEPA where “mitigative measures *have been incorporated into the project design*” (emphasis added)).

To that end, the State of Minnesota is developing strategies for addressing climate change on a statewide basis.

We therefore cannot conclude that the DNR entirely failed to consider the issue of climate change.

The DNR then determined that it is not within the current state of the art to provide the climate-change-related information that MCEA sought. As stated previously, the DNR has authority to make such a determination if it includes the four requirements of Minn. R. 4410.2500 in the EIS.<sup>7</sup>

The first requirement is that the EIS include “a statement that the information is incomplete or unavailable and a brief explanation of why it is lacking.” Minn. R. 4410.2500(A). We conclude that the DNR met this requirement with its statements that “there is not a reliable model to accurately project the effects of climate change on the overall modeled environmental impacts for the project, given the wide range of possible climate responses” and that “the DNR finds that it is not within the current state of the art to provide the information that MCEA seeks.”

The second requirement is that the EIS include “an explanation of the relevance of the lacking information to evaluation of potentially significant environmental impacts and their mitigation and to a reasoned choice among alternatives.” Minn. R. 4410.2500(B). We conclude that the DNR met this requirement by acknowledging that “there is general agreement in the scientific community that global climate change is occurring,” that

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<sup>7</sup> MCEA cites several cases for the proposition that an EIS must address climate change, but these cases do not involve MEPA or Minn. R. 4410.2500.

global warming is “a serious environmental problem,” and that climate change will have an impact “on the local climate in the vicinity of the project area.”

The third requirement is that the EIS include “a brief summary of existing credible scientific evidence that is relevant to evaluating the potential significant environmental impacts.” Minn. R. 4410.2500(C). We conclude that the DNR met this requirement by describing the range of potential impacts of climate change on forests, water resources, and precipitation:

Trees and forests are adapted to specific climate conditions, and as climate warms, forests will change. These changes could include changes in species, geographic extent, and health and productivity.

If conditions also become drier, the current range and density of forests could be reduced and replaced by grasslands and pasture. Even a warmer and wetter climate would lead to changes—trees that are better adapted to warmer conditions, such as oaks and southern pines, would prevail. Under these conditions, forests could become more dense.

These changes could occur during the lifetimes of today’s children, particularly if they are accelerated by other stresses such as fire, pests, and diseases. Some of these stresses would themselves be worsened by a warmer and drier climate.

With changes in climate, the extent of forested areas in Minnesota could change little or decline by as much as 50–70%. . . . Hotter, drier weather could increase the frequency and intensity of wildfires.

Mixed forests better adapted to warmer conditions could replace the unique boreal forests in the northern part of the state and in the Boundary Waters Canoe Area. . . .

Grasslands and savanna eventually could replace much of the forests and woodlands in the state. These changes would significantly affect the character of Minnesota forests and the activities that depend on them.

....

Because evaporation is likely to increase with warmer climate, it could result in lower river flow and lower lake levels, particularly in the summer. In addition, more intense precipitation could increase flooding. If streamflow and lake levels drop, ground water—the primary source of drinking water in Minnesota could also be reduced.

If climate warms, the ice cover on Minnesota's lakes and streams would not last as long as it does today. . . . Reduced summer flows could decrease water quality. Lake surface temperatures would be warmer in the summer . . . . As a result, lake evaporation would increase considerably, perhaps by as much as 20% for a 4°F warmer climate.

Shorter ice-cover seasons and increased lake evaporation could have major effects on Lake Superior. Fresh water flowing into Lake Superior could decrease with global warming, potentially reducing lake levels and degrading water quality.

. . . [S]horelines could be more susceptible to erosion damage from wind and rain. Reduced fresh water in the Great Lakes could negatively affect shipping to and from Duluth . . . . However, this could be offset by a longer ice-free season.

....

Precipitation is projected to increase by around 15% in winter, summer, and fall, with little change projected for spring.

The DNR obtained this information from the United States Environmental Protection Agency.

The fourth and final requirement is that the EIS include “the RGU’s evaluation of such impacts from the project and its alternatives based upon theoretical approaches or research methods generally accepted in the scientific community.” Minn. R. 4410.2500(D). We conclude that the DNR met this requirement by stating:

Although there is general agreement in the scientific community that global climate change is occurring, there is not a consensus on what the specific results of climate change would be on the local climate in the vicinity of the project area. Since the future climate cannot be predicted, the EIS studies, including the cumulative wetland impacts analysis, did not attempt to speculate what the long-term impacts of global climate change would be in the study area. Rather, the analyses focused on valid historical data and reasonably foreseeable events, such as reasonably foreseeable future projects.

In addition, the DNR explained that modeling for the final EIS was done “using an existing data set that has undergone review and quality assurance measures and it [cannot] be readily modified to address various projected scenarios due to climate change.” At oral argument, MCEA conceded that it did not present a climate-change model to the DNR.

We therefore conclude that the DNR has met the requirements of Minn. R. 4410.2500 in determining that assessment of likely climate change on the project’s environmental effects is beyond the state of the art.

### **III.**

MCEA argues that the DNR failed to analyze the environmental impact of the additional power generation required by the project. MCEA also contends that electrical



power generation for the project is a “connected action” and an “indirect effect” of the project. We disagree.

Minn. R. 4410.1700, subp. 9 (2007), provides that “[c]onnected actions and phased actions shall be considered a single project for purposes of the determination of need for an EIS.” A project is “a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly.” Minn. R. 4410.0200, subp. 65 (2007).

Two projects are “connected actions” if a responsible governmental unit determines they are related in any of the following ways:

- A. one project would directly induce the other;
- B. one project is a prerequisite for the other and the prerequisite project is not justified by itself; or
- C. neither project is justified by itself.

*Id.*, subp. 9b (2007). Minn. R. 4410.2300(H) provides: “[F]or the proposed project and each major alternative there shall be a thorough but succinct discussion of potentially significant direct or indirect, adverse, or beneficial effects generated.”

In its responses to the comments on the final EIS, the DNR rejected MCEA’s arguments that the generation of electrical power for the project was a “connected action” and/or an “indirect effect.” MCEA now appears to challenge the following DNR determinations: (1) that the project will not directly cause the construction of a new power plant and (2) that the project will not cause an increase in power production.

MCEA’s argument is premised on the project’s power requirements being met through “additional” energy production—that is, the annual production of 450 megawatts

of electricity that would not otherwise be generated. In support of its argument, MCEA cites two documents from the administrative record.

As its first piece of evidence, MCEA quotes the following sentences from a document referenced by the DNR in its responses to comments on the final EIS: “Because electricity cannot effectively be stored, power plant output must match the collective demand, measured in megawatts (MW), of all the utility customers at any given time. Power plants are brought online or dispatched to meet the load as demand rises.” (Emphases omitted.)

MCEA argues that because the record indicates that electricity cannot be stored, for the DNR to be correct that no new power plant or increased power generation will be required for the project, there must be 450 megawatts “of already-generated electricity either being stored in a huge battery or being wasted in the air or ground that [Minnesota Steel] can tap into freely when the time comes.” But the DNR’s responses to the comments on the final EIS indicate that this is the case:

It is agreed “the generation of electrical energy is not put on a shelf for later purpose”, rather electricity is generated to meet projected demand. . . . In general, power is not generated to address any single industrial user, even a significant one. Rather, power is redistributed to ensure that the demand is met. Some power needs are met by bringing on temporary generating capacity that already exists within the grid (i.e. peaking or intermediate plants). *Base load is generated whether it is needed or not—it is wasted if not used.* From the information provided to the DNR by power system operators, the demand projected for [the project] will not cause the need for system adjustments in the form of increased generation. Available power will be redistributed to meet the new demand.

(Emphasis added.)

The DNR's determination that the project's power "will come from energy currently generated and available for use" has substantial support in the record. First, a letter from Minnesota Steel's Chief Executive Officer indicates that the Mid-Continent Area Power Pool (MAPP) "has the current generating capacity to accommodate the project's estimated power demands. The project will not require the construction of any new power production facilities, nor will the construction of such facilities be the result of our project."

Second, a MAPP report from August 2006 states that the forecasted power surplus is 3,711 megawatts for August 2007 and 6,493 megawatts for December 2008. These surpluses exceed the annual power requirement of the project.

Third, an MPCA office memorandum states that the Nashwauk Public Utilities Commission (NPUC) has "no plans to install any power generation capacity," "that the City of Nashwauk may have power needs in the future that are unrelated to the . . . project, but that the NPUC did not intend [to] propose any power generation, but rather obtain future power from other outside sources as needed," and that the NPUC has no plans "to construct any type of power generating facility or peaking plant to feed the proposed [project]."

Fourth, an e-mail message from Marya White of the Minnesota Public Utilities Commission states that "sufficient (present and proposed) baseload generation should be available to serve a new 450 [megawatt] load at [the project's] approximate location and time, barring any other (presently-unknown) large load additions in that area or

limitations on transmission availability.” White’s e-mail message also states that the project “should not, itself, prompt the need for any new peaking facilities. The reason for this is because the load profile (which is non-fluctuating power use all of the time—24/7/365) for this load would be served by baseload resources rather than peaking resources.”

As its second piece of evidence, MCEA cites the testimony of Jim Girard, a representative of Minnesota Steel, at a March 2007 hearing before the Minnesota House Environment and Natural Resources Committee. Girard testified that the project

will require a great deal of electric energy . . . and that is going to require . . . new power coming into the State of Minnesota or new power in the State of Minnesota to be generated. . . . [This is] probably the largest construction project in the State of Minnesota that’s ever been done . . . [and it] is going to require a good deal of energy and that energy has to come from somewhere.

But the DNR specifically considered Girard’s testimony and found that it was not reliable evidence.

We conclude that there is sufficient evidence to support the DNR’s determinations that (1) the construction of no new power plant will be directly caused by the project and (2) the project will not cause an increase in power production.

Because we affirm the DNR’s record of decision, we do not reach the issue of whether this court has subject-matter jurisdiction over permits for the project.

**Affirmed.**