

The headline news is that Minnesota has adopted a 2040 deadline for a carbon-free grid.

The headline is accurate, but the law in question contains a lot of other interesting features that deserve attention. Despite the law's extremely unglamorous name ("Senate File 4"), this is a big step forward for the state, as well as evidence of how much difference it makes to unified party control of state government. I'll begin by describing those features and then turn to possible legal challenges, including a lawsuit by North Dakota to protect its coal generators.

### **Key Features of the Law**

The first thing to note about the law is that it actually contains two sets of targets. One target is for utilities to get 90% of their power from carbon-free sources by 2035 (and 100% by 2040). The other target is for utilities to procure 55% of their power from "eligible" sources by 2035. If you're wondering how these are different, the answer seems to be that nuclear counts toward the more ambitious target but only renewables count toward the other one. Another way of putting it is that by 2040, utilities must get all their power from zero-emission sources, with no more than 45% from nuclear. It's also worth noting that utilities are allowed to buy clean energy credits to fulfill these obligations.

The bill also contains several other features that are worth noting:

- **Social cost of carbon.** The law requires Minnesota's public utility commission to use EPA's recently proposed estimates of the social cost of carbon, which are substantially higher than the federal government's previous estimates.
- **Inflation Reduction Act.** The commission is allowed to give a preference to technologies produced domestically that receive IRA advanced manufacturing tax credits.
- **Permitting reform.** The law limits the need to consider alternative possible sites for solar farms in the environmental impact statement. It requires the impact statement to take into account a project's beneficial environmental and reliability impacts. And it requires the commission to make a final decision on major transmission lines within 180 days of receiving a complete application.

### **Possible Litigation**

What about litigation? North Dakota is definitely going to sue. It won a lawsuit against a previous Minnesota law limiting coal power, but I don't think that ruling is going to help it much. That ruling from the Eighth Circuit came from a badly fractured panel. One judge thought the previous law banned interstate commerce, in part because the judge didn't

understand the basic physics of the electrical system. Another judge thought it was preempted because it regulated power purchases, and the third judge dissented. The new law is much more carefully drafted to focus on the procurement decisions made by Minnesota utilities. A state commission had also given the earlier law an interpretation that made it more legally vulnerable. Overall, I don't think the earlier precedent is going to do much to help North Dakota this time around.

Putting aside the earlier precedent, the state's law seems to follow very much the same parameters as renewable energy programs across the country. Maybe a few details are subject to attack, but seems unlikely that the courts will overturn the core provisions of the law.