

# **Environmental and Regulatory Update: Opportunities and Challenges for the Renewable Industry in the Midwest**

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# OVERVIEW

- Status of EPA Clean Power Plan; Nationally and in the Midwest
- Implications of the Minnesota Next Generation Act and Sandpiper Pipeline Cases
- Regulatory Topics in Renewable Energy Project Siting and Development

# CLEAN POWER PLAN

- U.S. Supreme Court Stay (February 2016)
- D.C. Circuit Hearing (Tuesday, September 27)
- Many States Have Stopped Formal Work; But Continue Informal Planning
- Effect of Stay in the Midwest

# MN PCA / MN DOC ACTIONS

- Continued Stakeholder Meetings
- Review of Modeling Scenarios
- Analysis of Allowance Allocation Options Under Mass-Based Trading
- Analysis of Emission Rate Credit (ERC) Generation Under Rate-Based System

# MODELING ANALYSES

- No Definite Clear Path for Minnesota
- Key Variables are Type of Trading System and Trading Partners
- Overall Compliance Path Not Too Difficult Given Current Resource Plan Directions
- Key will be Eventual Cost Impacts Resulting from Chosen Path
- Modeling Around the Nation Generally Shows Many States Are Already on Path to Compliance

# WHAT LIES AHEAD?

- Presidential Election
- D.C. Circuit Decision
- New Supreme Court Justice
- Likely U.S. Supreme Court Decision
- Minnesota Response
- Likely Comply With or Without CPP
- Most At Risk is National Carbon Trading System

# NEXT GENERATION ENERGY ACT

- 2007 Minnesota Legislation
- No New Coal Plants
- Banned Importation of Electricity From New Coal Plants in Other States
- One Component of Minnesota's Multi-Pronged Approach to Promote Renewable Energy

# CASE HISTORY

- Challenged By State of North Dakota and Coal Oriented Companies and Utilities
- 2014: U.S. District Court Holds the Importation Ban Unconstitutional Under Dormant Commerce Clause
- June 2016: Eighth Circuit Upholds District Court Decision



# EIGHTH CIRCUIT DECISION

- Three Judge Panel Reaches Same Result for Three Different Reasons:
  1. Dormant Commerce Clause Violation (Loken)
  2. Contravention of Federal Power Act (Murphy)
  3. Conflict with Clean Air Act (Colloton)
- State of Minnesota Decides Not to Petition for U.S. Supreme Court Review

# OVERALL EFFECT

- Interesting Case from Legal Perspective
- Regardless, New Coal Plants Unlikely

# SANDPIPER PIPELINE CASE

- Discussed at Last Year's Seminar
- Minnesota Court of Appeals Decision in 2015 Required Full Environmental Impact Statement Prior to Certificate of Need
- September 2016, Enbridge Withdraws Its Application to the Minnesota Public Utilities Commission
- Reason Cited is Changing Market Conditions

# WHAT CONCLUSIONS TO DRAW?

- Despite the Litigation Outcomes, Other Market and Regulatory Factors Appear More Determinative
- Market Conditions Playing Key Roles:
  1. Tax Credits
  2. Renewable Standards
  3. Other State Regulatory Policies and Decisions
  4. Declining Capital Costs
- For Renewable Energy, Regardless of Fate of the Clean Power Plan, the Market Appears Vibrant in the Near Term

# RENEWABLE PROJECTS STILL FACE CHALLENGES

- MN Community Solar: Local Land Use Permits
- Wind: Wildlife Protection Regulations
- Larger Projects: Comprehensive Environmental Review
- Public Opposition (Statewide and Local)

# CONCLUSIONS

- Energy and Environmental Law Nexus Continues to be Heavily Litigated
- Despite Litigation, Renewable Energy Project Development Appears Robust for Near Term Due to Other Market Factors
- Most Projects Will Encounter Some Regulatory Challenges
- Detailed Planning and Preparation Are Key