

Boilermakers Legislative Update

On August 3th, the United States Environmental Protection Agency (“EPA”) announced the Clean Power Plan (“Plan”) to reduce carbon dioxide emissions from power plants. Last week, on October 23rd, the EPA published the final rule in the Federal Register. The Plan requires each state to reach a specific level of emissions by 2022. Minnesota must submit its initial plan to achieve its emission target by September 6, 2016, and its final plan by September 6, 2018. The EPA will impose plans in states that fail to comply with the federal rule. The Minnesota Pollution Control Agency (“MPCA”) began the rulemaking necessary to develop the state’s plan when it published a Request for Comments in the State Register.

The MPCA and Minnesota utilities have begun examining the Plan’s requirements and the alternative approaches to come into compliance. Minnesota’s examination is not limited to Minnesota plants but, by necessity, is considering energy production and use in neighboring states; particularly North Dakota. Significantly, Minnesota’s major utilities; Xcel, Minnesota Power, and Great River Energy, all operate in both states. So, despite the fact that North Dakota has sued Minnesota challenging the constitutionality of Minnesota’s Next Generation Act’s restrictions on coal-based energy, the two states may look to collaborate on a plan which is permitted under the federal requirements.

Last session, State Senator Dave Brown, R-Becker, and House Representative Jim Newberger, R-Becker, introduced legislation, S.F. 231/H.F. 333 that would have required legislative approval of the state’s plan. In the end, language was included in Chapter 1 of the Special Session, the Omnibus Employment, Economic Development, Jobs and Energy bill (article 3, section 24) that requires by March 15, 2016, the MPCA and Department of Commerce submit the state’s draft plan to the House and Senate energy and environment committees for their review and comment.

The Plan is already receiving considerable attention; but not all favorable. The MPCA has held multiple stakeholder meetings over the last several months. In addition, the Plan has been presented in multiple forums; including before the Environmental Quality Board, the Legislative Energy Commission, and the Minnesota House of Representatives Jobs Growth and Energy Affordability Policy and Finance Committee.

While preliminary review suggests the state is well-positioned to meet federal requirements, the Plan has come under considerable fire from the House Republicans. House Republicans contend that the Plan will simply lead to power plants being closed resulting in a loss of jobs and increased energy costs. A group of 44 House Republicans previously requested Attorney General Lori Swanson and Governor Mark Dayton join a lawsuit filed by fifteen states (including South Dakota and Wisconsin) to stay the enforcement of the Plan. Immediately upon the final rule being published, twenty four states, again including South Dakota and Wisconsin, filed a lawsuit in federal court challenging the rule. North Dakota has filed a separate suit.

Even Congress has become involved. Under the Congressional Review Act, which authorizes Congress to review “major” rules, resolutions have been filed in both Houses of Congress to disapprove the new power plant rule. Importantly, for a rule to be invalidated, the President must sign the joint resolution of disapproval or Congress must override the President’s veto.

While the issue is being debated, impacts from the Plan are already being felt. On October 2nd, as part of its 2010 Resource Plan filed with the Minnesota Public Utilities Commission (E002/RP-10-825), Xcel announced plans to retire two of the three coal fired units at the Sherco plant in Becker, Minnesota. Xcel’s Resource Plan calls for a reduction in carbon emissions through a greater reliance on renewable energy sources like wind and solar. The Resource Plan calls for Xcel’s nuclear plants at Monticello and Prairie Island to continue to operate and expands the use of natural gas at Sherco and in North Dakota.