



## Appeals court knocks down Minnesota coal ban

It's still unknown whether the State of Minnesota will pursue a U.S. Supreme Court hearing for its legislative attempt to bar the sale of fossil-fueled electricity generated in other states, but a successful appeal before the nation's highest judicial authority is what it would take to enforce key provisions of the 2007 law after a second rebuke last month, this one by a unanimous three-judge panel of the 8th Circuit U.S. Court of Appeals.

The three judges on June 15 invalidated Minnesota's New Generation Energy Act, one of them finding that federal law takes precedence and the other two saying the state had assumed powers it doesn't have, to regulate commerce occurring entirely outside its own borders.

The opinion affirms a federal district judge's April 2015 grant of a permanent injunction against Minnesota enforcing central provisions of the law, which prohibited importing any electricity into Minnesota "from a new large energy facility that would contribute to statewide power sector carbon dioxide emissions." The law also banned long-term power purchase

agreements that would have the same result.

Fallout from the ruling could include heightened scrutiny of individual states seeking to influence energy choices made elsewhere by attempting to legislate the sources of electrons that flow through multi-state transmission networks.

The initial legal challenge was brought by several plaintiffs led by the State of North Dakota and including the Basin Electric and Minnkota generation and transmission cooperatives and Missouri River Energy Services, owned by 60 affiliated municipal electric distribution systems.

The latter three organizations provide power for numerous load-serving entities (LSEs)—local distribution

utilities—in Minnesota. But perhaps more to the point, in the view of two of the three appellate judges, all three bid their generation output into the MISO (Midcontinent Independent System Operator) wholesale market, which oversees a 49,000-mile transmission network not just for Minnesota but for 14 other states and a large expanse of central Canada.

The 8th Circuit's opinion makes the point that "MISO generators commit their electricity to be sold to the MISO market [and] LSE buyers take electricity out of the market without regard to its generation source," adding that the Indiana-based MISO controls which generators operate at any given time. Citing an unrelated decision, the

(continued on page 2)

## New CEO carved own path in House career

Incoming National Rural Electric Cooperative Association CEO Jim Matheson served seven consecutive terms in the House of Representatives, building a record of independence along the way.

The national co-op organization announced in mid-June that Matheson—the son of a former two-term Utah governor who held no other political office—would assume the CEO's duties this month, succeeding Jo Ann Emerson, who continues her rehabilitation after being stricken by a severe illness last August.

Matheson had been the sole Democrat in the Utah House delegation and represented the strongest Republican-leaning congressional district held by any member of his party nationwide. First elected in 2000, he served 14 years in Congress, declining to seek re-election in 2014.

Matheson served on the Energy and Commerce Committee and co-chaired the Blue Dog Coalition of fiscally conservative Democrats. In 2013 he joined Wisconsin GOP Congressman Reid Ribble co-sponsoring legislation seeking to overhaul the federal budget process.

He generated comment among the pundit community in 2010 by voting against the Patient Protection and Affordable Care Act three weeks after his brother received a presidential appointment to a federal judgeship in a move some pundits characterized as an effort to secure Matheson's support for the health care law.

He later voted to delay implementation of the health care law's individual mandate, and to strip funding from the program, though he also voted against outright repeal.

In 2013 at the beginning of his final term in Congress, Matheson broke

(continued on page 2)



### Save date for Electric Sector meeting

Cooperative Network's Electric Sector will gather August 9 at the Best Western Kelly Inn, St. Cloud, sharing the venue with the 21st annual MREA Energy Issues Summit.

The Cooperative Network meeting will take place between 3:30 and 5:30 p.m. A full agenda will be distributed via email as the event draws near. This event is at no cost to Cooperative Network members and \$50 for nonmembers. Those planning to attend are asked to please RSVP to [patrick.murray@cooperativenetwork.coop](mailto:patrick.murray@cooperativenetwork.coop).

# High Court signals close call on “waters” rule

A unanimous Supreme Court decision last month hinted that when the Environmental Protection Agency-Army Corps of Engineers “Waters of the United States” (WOTUS) rule reaches its ultimate judicial review, it may face a stiff test potentially affecting the Clean Water Act itself.

The controversial WOTUS rule appears headed for the Supreme Court regardless of how lower-court reviews play out.

Ruling in a separate case last month, the Supreme Court affirmed, 8–0, an 8th Circuit opinion rejecting Corps of Engineers assertions aimed at forestalling judicial review of its jurisdictional claims. In *U.S. Army Corps of Engineers v. Hawkes Co.*, the Corps claimed its “jurisdictional determination” (JD) didn’t constitute final agency action and thus wasn’t reviewable by a court under the Administrative Procedure Act (APA).

Hawkes and two other peat-mining companies planning operations in northwest Minnesota sought a JD from the Corps. Saying “waters of the

United States” exist on the companies’ property because of a “significant nexus” with the Red River of the North, 120 miles away, the Corps decided the companies need permits to discharge material on affected wetlands.

The companies petitioned for APA judicial review. The Corps claimed its JD wasn’t reviewable. Chief Justice John Roberts’ opinion rejected that claim, saying “Parties need not await enforcement proceedings before challenging final agency action where such proceedings carry the risk of ‘serious criminal and civil penalties.’”

For the WOTUS rule, the result is uncertain but ominous: Three justices,

Ginsburg, Kagan, and Kennedy, filed concurrences citing varied reasons for joining the *Hawkes* opinion. In his concurrence, Kennedy wrote that the “notoriously unclear” Clean Water Act “continues to raise troubling questions regarding the Government’s power to cast doubt on the full use and enjoyment of private property throughout the Nation.”

## Bruce’s briefs

...will return with the August edition of *Capsule*

## New CEO (continued from page 1)

ranks with the majority of his party and cast a vote for John Dingell of Michigan rather than California’s Nancy Pelosi in the minority caucus’ largely symbolic vote for Speaker of the House.

In November 2012, Matheson narrowly won re-election over Mia Love, who was seeking to become the first Black Republican woman elected to the House. Later, when Matheson announced he wouldn’t seek an eighth term, the *Washington Post* quoted Love saying, “Congressman Matheson has served our state with passion and has been a dedicated public servant during his tenure in Congress,” adding that she wished him “the very best.”

Love ran again and won the seat in 2014.

In January 2015, Matheson accepted a position with the Washington lobbying firm of Squire Patton Boggs. *The Hill* reported the move as part of the firm’s effort to “rebuild its roster of lobbying heavyweights” after the departure of several top lobbyists to competing firms. The story characterized Matheson as “a Democrat who pressed for regulatory reform.”

NRECA President Mel Coleman noted that in addition to his congressional career, Matheson has experience in the energy business as a project development manager in the independent power industry and with two consulting companies including his own firm, providing services to large energy consumers.

## Coal ban

(continued from page 1)

panel noted that “any electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce.”

Last spring the district court ruled, among other things, that the Minnesota law violated the U.S. Constitution’s Commerce Clause because it would “compel out-of-state cooperatives to conduct their out-of-state business according to Minnesota’s terms because they cannot ensure that out-of-state coal-generated electricity they inject into the MISO grid will not be used to serve their Minnesota members.” The 8th Circuit agreed.

## Job market

**Master Electrician**—Agralite Electric Cooperative seeks Minnesota-licensed electrician to join Member Services Team. Position requires excellent written and oral communication skills. Must have strong working knowledge of National Electrical Code. Class A Master license preferred, or Class A Journeyman’s license with prerequisites under MN 3800.3520 Subpart 5. Must be familiar with commercial, industrial, residential, and agricultural wiring methods and applicable codes, irrigation equipment, variable frequency drives, and stand-by generators. Must have familiarity working with utility systems and equipment, especially load management devices. Applicant must

understand utility distribution systems and have experience or training working with low-voltage utility equipment. Should be familiar with energy efficiency principles, basic plumbing principles, basic lighting principles, basic HVAC principles. Competitive wage, excellent benefits, challenging work environment. Co-op headquarters are in Benson, west-central Minnesota. Agralite is an Equal Opportunity Employer. Applications accepted until position filled. Send confidential resume with recent salary history and three professional references to: Yusef Orest, Agralite Electric Cooperative, 320 E Hwy 12, P.O. Box 228, Benson, MN 56215.



Prepared monthly to provide timely information on matters pertaining to Minnesota’s non-profit, consumer-owned rural electric cooperatives.

### Cooperative Network

145 University Ave. West, Suite 450  
St. Paul, MN 55103-2044  
(651) 228-0213  
[www.cooperativenetwork.coop](http://www.cooperativenetwork.coop)