EMLF ENERGY & Mineral Law Foundation

Chapter 2

CITE AS
37 *Energy & Min. L. Inst.* 2 (2017)

Staying Afloat in Turbulent Waters: Considerations in the Sale of a Coal-Fired Power Plant

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Synopsis

§ 2.01. Introduction.

The regulatory space in which coal-fired power plants and associated facilities operate has changed dramatically in recent years. In 2011, the U.S. Environmental Protection Agency (EPA) enacted a set of stringent emis-

sions standards of mercury and other pollutants from fossil fuel-fired power plants.[1] In 2015, EPA published rulemaking that imposes a number of location, design, operating, monitoring and closure requirements for coal combustion residual (CCR) impoundments and landfills.[2] Later in 2015, EPA finalized its controversial Clean Power Plan (CCP), which directs states to develop regulatory plans to significantly curb emissions of carbon dioxide from fossil fuel-fired power plants.[3] EPA has also published tightened wastewater discharge effluent limitations from coal-fired power plants.[4]

Although the writing is far from being etched onto their firebox walls, coal-fired power plants undoubtedly face an uncertain and challenging future due to these and other relatively new regulatory constraints spanning multiple environmental media that, in turn, have begun to produce an unfavorable economic landscape for their continued operation. Indeed, a number of such facilities have shut down in recent years, particularly in anticipation of what many in the industry have dubbed as a "war on coal."[5] Several other facilities have arrived at, exceeded, or are nearing their projected life of service and are due for retirement.[6] Although much of the above-described rulemaking applies to fossil fuel-based power generation facilities, coal-fired units will likely bear significantly greater compliance costs as compared to their oil- and natural gas-fired counterparts.

The nexus of these regulatory, economic, technological and practical issues has led to increasing interest in the sale of coal-fired power plants, support facilities, and associated real property. The disposition of such large and complex facilities, however, can be a process rife with pitfalls and liabilities. This chapter discusses many considerations that owners and operators of coal-fired power plants should take into account when navigating through a sale of their facilities to effectively manage the risks inherent

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1 77 Fed. Reg. 9304 (February 16, 2012), codified at 40 C.F.R. 63 Subpart UUUUU.

2 80 Fed. Reg. 21302 (hereinafter "CCR Rule").

3 80 Fed. Reg. 64662 (October 23, 2015), codified at 40 C.F.R. 60 Subpart UUUU.

4 80 Fed. Reg. 67838 (November 3, 2015), codified at 40 C.F.R. 423.10 – 423.17.

5 *See, e.g.*, American Energy Alliance, "The War on Coal in One Map," January 15, 2015 (available at http://americanenergyalliance.org/2015/01/15/war-coal-one-map/).

6 U.S. Energy Information Administration, "AEO2014 projects more coal-fired power plant retirements by 2016 than have been scheduled," U.S. Dept. of Energy, February 14, 2014 (available at http://www.eia.gov/todayinenergy/detail.cfm?id=15031).

in the disposition process. Section 2.02 provides background on the nature of coal-based power generation and covers in greater detail the regulatory drivers behind a potential sale of a facility, and how they may govern the scope of a transaction. Section 2.03 discusses the perspectives of a buyer and a seller negotiating the conveyance of these facilities and the basic components of the transaction. Finally, Section 2.04 presents several environmental considerations that sellers should take into account in developing the terms of the transaction.

§ 2.02. Characterizing a Typical Coal-Fired Power Plant and Regulatory Considerations in Arriving at the Initial Decision to Sell.

Coal-fired power plants are expansive and highly complex facilities that have historically served important functions in maintaining grid reliability.[7] However, the domestic fleet of coal-fired power plants is diverse in terms of age, location, capacity, and the types of combustion mechanisms implemented at each plant. Virtually all coal-fired power plants, though, share certain common features. To better understand the potential environmental considerations discussed in this chapter, a brief discussion on the basic components of a coal-fired power plant follows below.

As suggested by their name, coal-fired power plants feed coal into a boiler firebox where it is combusted. The released heat from combustion imparts thermal energy to water pumped into boiler pipes, causing it to convert to high-pressure steam. Emissions generated from coal combustion are released through a combustion stack. The steam generated from the boiler pushes turbine blades, ultimately converting the thermal energy from coal combustion to mechanical energy by rotating the turbine shaft. Rotation of the turbine in turn rotates a connected generator unit, which generates electricity by rotating within opposing magnetic fields that large magnets placed in proximity to the generator create. The generated electricity then flows to the switchyard, which in turn is distributed to power lines within the regional grid. The condenser collects steam converted to water follow-

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7 J. Gellici, "The Reliability and Resilience of the U.S. Existing Coal Fleet," National Coal Council, November 5, 2014 (available at http://www.pennenergy.com/articles/pennenergy/2014/11/the-reliability-resilience-of-existing-u-s-coal-power-fleet.html).