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State Renewable Energy Policy and the Dormant Commerce Clause:
A Proposal for an Economically Inclusive Regional Compact for the Mid-Atlantic Coastal States

In an attempt to mitigate the effects of climate change, promote renewable energy sources, and spur economic development, several states have enacted legislation that promotes in-state generation of renewable energy. While such laws benefit the home state, these 'home-grown green energy' efforts may have economic consequences for free market and may run afoul of the Dormant Commerce Clause. Policy makers have been slow to recognize the potential ramifications when drafting legislation, and several state laws (e.g. Massachusetts & Rhode Island) are embroiled in litigation over their 'green', albeit economic protectionist policies.

Regional compacts, or interstate agreements, offer a platform to assist policy-makers in avoiding prospective Dormant Commerce Clause litigation while encouraging development of region-specific sources of renewable energy. As a model, I will propose a regional compact for the states of Delaware, Maryland, Virginia, and New Jersey. By capitalizing on the powerful wind resource of the mid-Atlantic bight, these four coastal states in the PJM Interconnection region can achieve economies of scale and avoid duplicative infrastructure development. Further, such an approach has the potential to mitigate ratepayer cost increases and encourage large-scale regional investment.

My presentation will briefly review the concepts of the Dormant Commerce Clause and Regional Compacts, will discuss the alternatives paths for implementation of state 'green' energy laws, and will focus on the outline for my tentative thesis. I will argue that a regional compact can mitigate potential Dormant Commerce Clause litigation, and that a Congressionally ratified regional compact will encourage renewable energy development and spur job creation for the mid-Atlantic coastal states.