

Energy Law: Month in Review - April 2024

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Welcome to Dorsey's Energy Law: Month in Review. We provide this update to our clients to identify significant developments in the previous month. Please reach out to any of the authors, listed above, to discuss these issues.

Litigation and Disputes

Hawaiian Electric Wildfire Shareholder Litigation – On April 8, 2024, a shareholder of Hawaiian Electric Industries, Inc., filed a derivative suit on behalf of the company against company officers and directors in federal court in Hawaii. The lawsuit alleges the individual defendants failed to implement practices to mitigate risks associated with wildfires. The suit also alleges the defendants misled the public in their securities filings about the company's commitment to environmental, social, and governance matters.

PG&E Faces Additional Forest Damage Litigation Related to 2021 Dixie Fire – On April 10, 2024, owners of portions of the Collins Almanor Forest, including timber interests, sued Pacific Gas and Electric Company (PG&E) in state court for damages arising out of the 2021 Dixie Fire. The plaintiffs allege damages due to the destruction of hundreds of thousands of acres of the forest in northern California. The lawsuit alleges various causes of action, including inverse condemnation, private and public nuisance, trespass, and violation of various utility and health and safety codes. Plaintiffs allege damages in excess of \$225 million.

Federal Circuit Court Affirms EPA's California Zero Emission Vehicles Waiver – On April 9, 2024, the D.C. Circuit upheld the U.S. Environmental Protection Agency's (EPA) reinstatement of its prior waiver under Section 209(b) of the federal Clean Air Act authorizing California's comprehensive Advanced Clean Cars Program. Under the program, all passenger vehicles sold in the state are to be zero-emission vehicles by 2035.

Related Capabilities

- Energy & Natural Resources
- Electric Power
- Environmental, Social, Governance (ESG)

Connecticut Supreme Court Affirms State PURA Decision Denying Use of RUB – A closely divided Connecticut Supreme Court affirmed the Connecticut Public Utilities Regulatory Authority’s decision denying a landlord’s request to recover utility costs from tenants based on variable “ratio utility billing” (RUB). RUB is used when units in a multi-unit building are not individually metered. The RUB under consideration charged customers based on a formula that accounted for the square footage, number of occupants, and type of rooms in each unit. While the opinion acknowledged states like Minnesota and Oregon have passed statutes authorizing such RUB recovery provisions, the majority of the court concluded that Connecticut law meant to protect tenants prohibits this approach.

Regulatory and Statutory Developments

EPA Announces Suite of Final Rules for Power Plants, including GHG Final Rule –

On April 24, 2024, EPA announced a suite of final rules addressing power plant operations. In addition to the long-awaited rule setting forth greenhouse gas emission standards for power plants, EPA announced its final rules (i) amending national emission standards for hazardous air pollutants from coal and oil-fired power plants, (ii) revising wastewater effluent guidelines and limitations for steam electric power generating units, and (iii) updating minimum criteria for existing and new coal combustion residual landfills and impoundments.

DOE Issues Final Permitting Reform Rule to Streamline Transmission Line

Approvals – On April 25, 2024, the U.S. Department of Energy (DOE) issued its final rule for coordinating federal agency reviews of regionally or nationally significant electric transmission projects. The rule establishes the Coordinated Interagency Transmission Authorizations and Permits Program. Under the program, if a project sponsor elects to participate, DOE will coordinate with the relevant federal agencies and expedite environmental reviews necessary in connection with the proposed transmission project, including required reviews under the National Environmental Policy Act (NEPA). If the proponent complies with the process set out, DOE states it will coordinate work to ensure environmental review is completed within two years.

DOE Issues Final Rule On NEPA Categorical Exclusion for Transmission Project –

On April 24, 2024, the DOE issued a final rule, proposed in November 2023, that (i) adds a new categorical exclusion under DOE’s implementation of NEPA for certain types of energy storage systems proposed to be sited in pre-disturbed areas, and (ii) revises the existing DOE categorical exclusions for photovoltaic solar systems located in pre-disturbed areas and for upgrading and rebuilding existing transmission lines.

FERC Approves PJM’s Cost Allocation Report for Regional Transmission

Expansion Plan – On April 8, 2024, the Federal Energy Regulatory Commission (FERC) approved PJM’s proposed cost allocations for PJM’s updated regional transmission expansion plan, allocating over \$5 billion in estimated costs associated with various planned transmission projects and upgrades in the region (187 FERC ¶ 61,012, FERC docket ER24-843). In approving PJM’s cost allocation plan, FERC rejected arguments from Maryland ratepayer advocates that Virginia ratepayers should have assumed a

larger portion of the costs because certain transmission projects are attributable to load growth in Virginia driven by data centers encouraged by state incentives.

Department of Interior Updates Regulations for Offshore Wind on Outer

Continental Shelf – On April 24, 2024, the U.S. Department of the Interior (DOI) announced its final rule updating regulations for renewable energy development on the U.S. Outer Continental Shelf (OCS). Also on April 24, DOI announced its new OCS offshore wind five-year leasing schedule. The updated five-year schedule contemplates four lease sales later this year in the Central Atlantic, Gulf of Maine, Gulf of Mexico and Oregon OCS regions (notice here).

PacifiCorp Commits to CAISO Extended Day Ahead Market – On April 26, 2024, the California ISO and PacifiCorp announced the signing of an implementation agreement through which PacifiCorp becomes the first entity to formally commit to the CAISO's regional Extended Day Ahead Market (EDAM), the ISO's intended expansion of its existing regional real-time "energy imbalance market" (WEIM). Several other entities have signaled an intent to join EDAM. EDAM is scheduled to go live in 2026. Separately, Southwest Power Pool (SPP) continues to progress with its planned "Markets+" regional day-ahead and real-time market for the Western Interconnection (FERC Docket ER24-1658). SPP is planning to launch Markets+ in 2027.

Maryland Expected to Become First State to Mandate Vehicle-to-Grid Technologies

– The Maryland General Assembly passed and delivered to the Governor landmark legislation requiring investor-owned utilities in the state to allow electric vehicles with bidirectional chargers to interconnect to the distribution grid. The governor is expected to sign the legislation.

Deals and Transactions

New York Authority Closes Third Offshore Wind Solicitation Without Awarding Contracts; New Solicitations Planned in New York and New Jersey

– In April the New York State Energy Research and Development Authority closed its third offshore wind solicitation, cancelling earlier provisional awards to three proposed offshore wind projects in October 2023, due to a failure to reach commercial terms. NYSERDA continues to negotiate terms for two proposed offshore wind projects selected in March 2024 following the agency's fourth offshore wind solicitation released in November 2023, with negotiations targeted for completion by early summer. A fifth offshore wind solicitation is planned for later this summer, with a request for information issued April 23, 2024, soliciting feedback to inform its issuance. On April 23, 2024, NYSERDA also released New York's first solicitation targeting development of the offshore wind supply chain. New York's Climate Act requires the installation of 9,000 MWs of offshore wind by 2035. Also this month, on April 30, 2024, the New Jersey Board of Public Utilities announced the state's fourth offshore wind solicitation, with bids due July 10, 2024.