

Energy Law: Month in Review - December 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.

Table of Contents

- Judge Rules 2023 Law Giving Incumbent Indiana Utilities Right of First Refusal to Transmission Projects Likely Unconstitutional
- Supreme Court Allows Coal-Ash Regulations to Go Into Effect
- FERC Approves \$6.6 Million Settlement Following Fraudulent Recommendation to Repair Local Transmission Line
- U.S. Treasury Releases Final Regulations for Clean Energy Investment Tax Credit
- MISO Approves \$21.9B Transmission Plan
- Illinois Commission Approves 3-year Grid Plans Costing Over \$1.5 Billion to Meet State Law to Increase Clean Energy Supply

Related Capabilities

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

- NERC Adopts New Standards to Address Extreme Weather and Cybersecurity
- Office of the U.S. Trade Representative Increases Tariffs up to 50% on Chinese Solar Energy Components
- FERC Rejects PJM Proposal to Alter Planning Process for Expanding Transmission Facilities
- DOE Considers Funding and Expediting Expansion in 3 Electric Transmission Corridors

LITIGATION AND DISPUTES

Judge Rules 2023 Law Giving Incumbent Indiana Utilities Right of First Refusal to Transmission Projects Likely Unconstitutional

A federal judge in Indiana concluded that Indiana's law giving preference to incumbent utilities for new transmission projects likely impermissibly discriminates against out-of-state economic interests in violation of the U.S. Constitution's dormant commerce clause. The Indiana law allows companies that already own transmission facilities physically in Indiana to avoid competition when constructing or upgrading transmission lines. The court reasoned that the law functionally requires transmission developers to become Indiana "residents" by establishing in-state presences before being able to compete for new projects awarded by the Midcontinent Independent System Operator (MISO). The judge's decision prevents the Indiana Utility Regulatory Commission from implementing the law while the litigation proceeds.

Supreme Court Allows Coal-Ash Regulations to Go Into Effect

The U.S. Supreme Court recently denied a request to stay the effectiveness of Environmental Protection Agency (EPA) coal-ash regulations while the Court considers challenges to the regulations. The D.C. Circuit upheld the regulations on November 1. The new rules regulate legacy coal-ash leachate, requiring owners of inactive facilities to monitor groundwater and take remedial measures, even after the ash itself has been removed. The Court did not elaborate on its reasons for denying the stay.

FERC Approves \$6.6 Million Settlement Following Fraudulent Recommendation to Repair Local Transmission Line

The Federal Energy Regulatory Commission (FERC) approved a \$6.6 million settlement with Public Service Electric & Gas (PSE&G) due to PSE&G fraudulently misrepresenting the need to rebuild a transmission line. Although the transmission line was one of the oldest in the area and had valid needs for replacement to ensure enhanced capacity, PSE&G exaggerated the presence of steel loss caused by corrosion and deliberately concealed other information from PJM to bolster its recommendation for the \$546 million project. FERC determined that the project was still justified given the age of the line and projected demands in the area but that PSE&G should face penalties for misleading PJM and violating FERC rules requiring participants to provide “accurate and factual information.”

REGULATORY DEVELOPMENTS

U.S. Treasury Releases Final Regulations for Clean Energy Investment Tax Credit

In accordance with the Inflation Reduction Act, the U.S. Treasury Department issued its final update to the regulations for Internal Revenue Code Section 48, which provides a tax credit equal to between 6% and 30% of a qualifying renewable energy project's value. The most notable change in the regulations is the broadening of the definition of “energy property” to allow innovative renewable energy technologies to qualify for the credit. Revised after public comment on the proposed rules released in November 2023, this definition will allow costs spent on essential upgrades to be considered in the calculation of the Section 48 credit. The final regulations also: (1) broaden the definition of “energy project” so multiple parties who own part of a large project can qualify for the credit, (2) clarify that owners of underground geothermal coils may claim the credit if they own at least one heat pump, and (3) allow owners of offshore wind farms to claim the credit for subsea cables.

MISO Approves \$21.9B Transmission Plan

The MISO board approved “Tranche 2.1,” a \$21.9 billion long-range transmission plan centered on a 1,800 mile 765-kV backbone across the Midwest region and estimated to produce \$23-\$72 billion in net benefits over the next 20 years. The plan builds on the \$10.3 billion Tranche 1 plan, approved in mid-2022, and currently advancing through state permitting processes. Tranche 2.1 is intended to improve congestion, handle load growth, avoid capacity costs, and improve reliability with shifting generation resources. MISO also approved \$6.7 billion in local projects and new joint interconnection projects with the Southwest Power Pool.

Illinois Commission Approves 3-year Grid Plans Costing Over \$1.5 Billion to Meet State Law to Increase Clean Energy Supply

On December 19, the Illinois Commerce Commission (ICC) approved a 2024-2027 grid plan for Commonwealth Edison (ComEd), which included \$1.5 billion in distribution-system investments and an 11% rate increase. The ICC also approved a plan for Ameren Illinois (Ameren), which included \$83 million in distribution-system investments and a 7% rate increase. ComEd and Ameren filed these plans in compliance with a 2021 Illinois law requiring the state's largest investor-owned electric utilities to file grid plans proposing distribution-system investments designed to accelerate progress towards state

clean energy goals. The utilities' initial proposals were rejected in 2023 after the ICC found they did not meet consumer affordability and effectiveness requirements.

NERC Adopts New Standards to Address Extreme Weather and Cybersecurity

The North American Electric Reliability Corp. (NERC) adopted two new standards to improve extreme-weather reliability by requiring transmission-planning entities to meet 11 requirements to prepare for extreme-temperature events and mandating that balancing authorities perform energy-reliability assessments to plan for energy emergencies. NERC also updated standards to strengthen cybersecurity for critical infrastructure and improve risk identification. All standards are subject to regulatory approval from FERC.

Office of the U.S. Trade Representative Increases Tariffs up to 50% on Chinese Solar Energy Components

Starting January 1, the Section 301 tariff rate increased from 25% to 50% for solar wafers and polysilicon imported from China and from 0% to 25% for certain tungsten products. The tariff hikes are one of a series of increases from the Biden Administration, who described the tariffs as responding to harmful Chinese forced technology transfer practices like cyber theft and industrial espionage while also complementing domestic investments made for clean energy supply chains.

FERC Rejects PJM Proposal to Alter Planning Process for Expanding Transmission Facilities

FERC rejected a proposal by PJM and PJM transmission owners to alter the planning processes for expanding transmission facilities by granting transmission owners more control over planning. FERC stated that the amendment would have impermissibly reduced PJM's independence from transmission owners in violation of FERC's Order No. 2000. State regulators had protested that the change would have given transmission owners veto power over Federal Power Act Section 205 filings and resulted in transmission owners having undue influence over PJM's planning processes. One FERC Commissioner stated that he would support moving the planning process out of its current location in the operating agreement but that PJM still needed to have exclusive responsibility over the protocol.

DOE Considers Funding and Expediting Expansion in 3 Electric Transmission Corridors

The Department of Energy (DOE) began accepting public comment on its efforts to designate three new National Interest Electric Transmission Corridors (NIETCs) to prevent power outages that would harm consumers through increased federal funding and expedited grid expansion. The three corridors are the Lake Erie-Canada Corridor primarily in Pennsylvania, the Southwestern Grid Connector Corridor primarily in Colorado and New Mexico, and the Tribal Energy Access Corridor in the Dakotas, Nebraska, and five Tribal Reservations. DOE identified a need for federal support in these corridors to support interconnection with Canada, meet future demand and generation growth, and facilitate clean energy and economic development.