

Energy Law: Month in Review - November 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.

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LITIGATION

Florida State Court Affirms Rate Increases for Extreme Weather Resiliency Grid Upgrades

Related Capabilities

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

On November 14, 2024, the Florida Supreme Court affirmed the Florida Public Service Commission's (FPSC) approval of proposed electricity rate hikes associated with grid resiliency upgrades, stating the increases are in the public interest. The upgrades were proposed to comply with a 2019 Florida law that requires power companies to file 10-year storm protection plans (SPPs) to enhance their electricity systems in the face of severe weather. The court stated the FPSC does not need to do a "prudence review" of the SPPs when evaluating whether they are in the public interest.

Virginia State Court Rules Withdrawal from Regional Carbon Emissions-Trading Program Requires Legislative Approval

On November 18, 2024, a Virginia state court ruled that Virginia Governor Glenn Youngkin's Executive Order directing the Virginia Department of Environmental Quality to repeal its regulation joining the Regional Greenhouse Gas Initiative (RGGI) was unlawful. The court reasoned that Virginia cannot withdraw from the RGGI without first securing legislative approval because, in 2020, the state legislature ordered participation through the RGGI Act.

Ohio State Court Rules Herbicide Use Along Power Lines is Allowable

The Ohio Supreme Court reversed a lower court's ruling preventing Ohio Edison Company from using herbicide in powerline right of ways. The court took a broad interpretation of the utility easements at issue, stating the language of the easements "unambiguously" allowed the utility to "trim, cut and remove" any vegetation or other obstructions that may interfere with or endanger the utility's infrastructure or operations; the court stated the word "remove" broadly includes the use of herbicides. Two justices dissented, noting the ability to remove vegetation does not confer a right to *prevent* future growth of vegetation with herbicides.

Supreme Court Affirms Ninth Circuit Order Dismissing Youth Climate Suit

On November 12, 2024, the U.S. Supreme Court denied a writ of mandamus asking the Court to reverse the Ninth Circuit Court of Appeals' order directing a district court judge to dismiss a youth climate suit based on lack of standing. The youth plaintiffs (the Juliana plaintiffs) accused the federal government of endangering their futures with policies that exacerbate climate change. An earlier appeal and ruling in the case allowed the Juliana plaintiffs to amend their complaint to emphasize declaratory, not injunctive, relief. The Ninth Circuit determined that the Juliana plaintiffs' injuries were not redressable because Article III courts could not "step into [the] shoes" of the legislative and executive branches. The Supreme Court did not provide any reasoning in its refusal to revive the suit.

Seventh Circuit Reverses Preliminary Injunction Decision in Upper Mississippi

The Seventh Circuit Court of Appeals recently questioned whether a challenge to a land swap in a transmission line project was moot. Conservation groups had challenged a land swap and federal approval for the 345 kV 102-mile Cardinal-Hickory Creek Transmission Line because it crossed the Upper Mississippi River National Wildlife and Fish Refuge, an important flyway for birds. The project was halted under a preliminary injunction. In May, however, the Seventh Circuit stayed the injunction. Co-owning utilities

ITC Midwest and Dairyland Power Cooperative subsequently proceeded with the land exchange and completed construction. With the line now built, the Seventh Circuit reversed the preliminary injunction and directed a lower court to determine if conservation groups' request for permanent relief is moot.

REGULATORY DEVELOPMENTS

FERC Revises Order No. 1920

The Federal Energy Regulatory Commission (FERC) approved changes to its sweeping regional transmission planning policies this month in response to legal challenges and concerns raised against the initial rule, Order No. 1920. The revised order, Order No. 1920-A, requires transmission owners to incorporate state input into long-term transmission planning and submit to FERC any cost allocation plans that states have agreed to, even if the state plan is not the transmission owners' preferred plan. FERC clarified that it is then free to select the state's plan if it complies with Order No. 1920 and cost-allocation principles. The revised rule also relaxes implementation timelines and eliminates the requirement to use certain economic and reliability cost factors as part of the planning evaluation process, although transmission owners may still use those factors voluntarily.

FERC Approves MISO & SPP Joint Targeted Interconnection Queue Transmission Projects

FERC approved proposed revisions to the Midcontinent Independent System Operator (MISO)'s and SPP's tariffs and joint operating agreements to bring 29 GW of renewable energy generation online starting in 2031. Together, the filings implement MISO's and SPP's Joint Targeted Interconnection Queue (JTIQ) framework, a collection of five 345 kV transmission projects that received a \$464.5 million grant in 2023 from the U.S. Department of Energy's Grid Resilience and Innovative Partnerships Program. FERC's approval allows for the allocation of all initial JTIQ transmission costs to interconnecting customers and does not impose any cost caps.

FERC Approves PJM Plan to Omit Energy Efficiency Resources from Capacity Auctions

FERC recently approved PJM Interconnection (PJM)'s proposal to stop including energy efficiency resources in its capacity auctions. PJM filed the proposal in response to a complaint filed this summer. FERC concluded PJM's load forecasting methodology "reasonably account[ed] for energy efficiency measures on the demand side" and, therefore, that it did not need to include such resources on the supply side to achieve just and reasonable rates.

DOE Approves Hydrogen Hubs and 45V Tax Credits

The Department of Energy (DOE) awarded up to \$2.2 billion for the Gulf Coast Hydrogen Hub and Midwest Hydrogen Hub. Hydrogen will be produced or derived through renewable energy and natural gas at the hubs. The Gulf Coast Hydrogen Hub aims to become the largest of the seven in the nation. DOE approved funding for the Appalachian, California, and Pacific Northwest Hydrogen Hubs earlier this year.

As Load Demand for Data Centers Rises, Indiana Stakeholders Agree to Tariff Modifications

On November 22, 2024, Indiana Michigan Power (I&M), the Indiana Office of Utility Consumer Counselor, Citizens Action Coalition of Indiana, Amazon Data Services, Google, Microsoft, and the Data Center Coalition reached and filed a settlement agreement outlining the terms for new interconnections to serve large-load customers (70 MW at an individual plant or 150 MW on an aggregated basis). The agreement will modify I&M's Industrial Power Tariff (Tariff I.P.) and was negotiated in response to the planned construction of three new data centers (Amazon, Google, and Microsoft) in the northeastern part of the state. I&M plans to seek an additional "clean energy transition" tariff by October 2025 if the utility commission approves the agreement.

Pennsylvania PUC Approves Rate Change Settlements

On November 21, 2024, the Pennsylvania Public Utilities Commission (PAPUC) approved FirstEnergy Electric's Distribution Services Settlement, which scaled back a proposed rate change by 55%. The overall change in base rates was approximately \$225 million annually down from the requested \$502 million per year. The PAPUC also approved a settlement with Duquesne Light Company for a small rate change on November 7, 2024. The Duquesne settlement resulted in a nearly 50% reduction from Duquesne Light's initial request, and included terms that will increase accessibility in the company's customer assistance programs and incentivize electric vehicle mobility, through approval of a time-of-use rate structure, in the Pittsburgh Region.

DEALS AND TRANSACTIONS

Salt River and APS Sign Up for 300 MW of Storage from EDP Renewables and Strata Clean Energy

Arizona is already a leader in energy storage installations, which will continue with two recently announced transactions. Salt River Project (SRP) and Arizona Public Service (APS) have entered deals for a total of 300 MW of energy storage that could produce 1,200 MWh per full discharge in Arizona. SRP intends to buy Tesla battery storage from an EDP Renewables North America Project, and APS has agreed to buy from a Strata Clean Energy project.

PNM Plans to Join CAISO's Extended Day-Ahead Market

California ISO (CAISO) plans to launch its extended day-ahead market, EDAM, in 2026. Public Service Company of New Mexico (PNM) recently decided it will join the market beginning in 2027, instead of SPP's competing planned day-ahead market, Markets+. PNM already participates in CAISO's Western Energy Imbalance Market (WEIM), which the utility says has generated about \$99 million in economic benefits for its customers since it joined in 2021. The benefits to EDAM are driven by the market's increased opportunities to execute market-to-market transactions.