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Energy Law: Month in Review - September 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

North Carolina Court of Appeals Upholds Revised Net Metering Rates
A panel of the Court of Appeals of North Carolina upheld an Order of the North Carolina Utilities Commission that had established revised net metering rates. The court concluded that the Utilities Commission had been mistaken in concluding that it did not have to conduct an investigation of the costs and benefits of customer-sited generation before adopting the new rates, but nonetheless upheld the Commission's rates because it concluded that the Commission had performed a de facto investigation when it opened a relevant docket and reviewed evidence submitted by the interested parties. The court's opinion is available online.

U.S. District Court Grants Summary Judgment to TVA in NEPA Case Involving Gas

Related Capabilities

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

CT Units

In the U.S. District Court for the Middle District of Tennessee, Chief Judge William J. Campbell Jr. granted summary judgment to the Tennessee Valley Authority ("TVA") in a National Environmental Policy Act ("NEPA") challenge brought by the Sierra Club arising out of TVA's plans to build 550 MWs of gas-fired aero combustion turbine units. TVA had quantified potential annual carbon dioxide emissions and monetized those emissions using social cost of carbon values. Sierra Club challenged TVA's environmental assessment including its selection of alternatives (including the decision not to treat solar plus batteries as an alternative), the approach to considering climate impacts, and TVA's approach to upstream methane emissions. The Court rejected Sierra Club's arguments concluding that TVA had adequately studied the potential climate impacts of the project. A copy of the opinion is available online.

San Diego Gas & Electric Sued for Wood Waste Runoff

The Ecological Rights Foundation and San Diego Coastkeeper have filed suit in the United States District Court for the Southern District of California against San Diego Gas & Electric claiming that the utility's storage and use of a wood mixture that allegedly contains contaminants that washes off in stormwater runoff. One of the plaintiffs brought a similar suit against Pacific Gas & Electric in 2018, which resulted in a consent decree.

REGULATORY AND STATE POLICY

FERC Rejects Complaint Regarding PJM Interconnection's Rules

FERC denied a Complaint brought by CPower that had challenged portions of PJM's tariff requiring curtailment service providers to provide hourly kWh information from advanced metering infrastructure ("AMI") meters and only allowed for the submission of statistical sampling data if the distribution utility had not adopted AMI metering. CPower pointed to the wide adoption of AMI metering and contended that curtailment service providers are unable to obtain the AMI data from utilities. In dismissing the Complaint, FERC concluded that CPower had not actually shown that it was unable to get data from utilities. The Commission did indicate an openness to considering the issue again if it is shown evidence that utilities are unable or unwilling to share data with curtailment service providers. The relevant order is available online.

Treasury Proposes Expanded Tax Credit for EV Charging Infrastructure

The Department of the Treasury issued a Notice of Proposed Rulemaking for a proposed rule that would allow for tax credits of up to $1,000 (for individuals) and $100,000 (for businesses) for installation of either EV charging equipment or equipment for use in refueling using clean burning fuels such as hydrogen. Under the proposed rule, the credit is only available in low- income census tracks and non-urban census tracks; however, the Department states that approximately two-thirds of the U.S. population lives in such areas. The Notice of Proposed Rulemaking is available online.

FERC to Consult with Tribes on Electric Market Issues

On October 28 and November 4, 2024, FERC will hold two virtual meetings during which it will consult with tribal governments regarding a possible expedited rulemaking to revise the pro forma Large Generator Interconnection Procedures to address specific issues related to Tribal Energy Organizations. The Alliance for Tribal Clean Energy petitioned for the proposed rulemaking seeking to allow tribal energy organizations to defer payment of commercial readiness deposits for generation interconnection until large energy interconnection agreements are executed. According to FERC Chairman Willie Phillips, this will be the first time FERC consults with tribes regarding electric market issues. FERC's notice of the consultation meetings is available online.

FERC Issues Proposed Rule Regarding Cyber Supply Chain

FERC issued a Notice of Proposed Rulemaking for a proposed rule that would direct the North American Electric Reliability Corporation ("NERC") to develop and submit for FERC approval reliability standards regarding supply chain risks to grid-related cybersecurity systems. The proposed rule would also have NERC extend its supply chain standards to cover protected cyber assets. The proposed rule is available online.

California Commission Sets New Energization and Capacity Upgrade Timelines

The California Public Utilities Commission issued a Decision establishing new energization timelines that apply to Pacific Gas and Electric, San Diego Gas & Electric and Southern California Edison. Those three large investor-owned electric utilities are now required to prioritize work to meet timelines, have to report on their compliance, and face remedial measures if the targets are exceeded. In addition to energization timelines, the PUC also established maximum periods for capacity upgrades to the distribution system that are required because of new service requests. The decision is available online.