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FERC Updates Policy for Recovering Construction Labor Wages in Utility Rates

April 1, 2024 | *Scott H. Strauss*

At its March Open Meeting, the Federal Energy Regulatory Commission (FERC) unanimously voted to issue its Policy Statement titled Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates (89 Fed. Reg. 21,503 (published Mar. 28, 2024)), which received broad support from commenters. This Policy Statement clarifies the evidence necessary for jurisdictional entities to include wages consistent with project-area wage standards in cost-of-service rates filed with the Commission.

Firm Partner Scott Strauss and Associate Anree Little provided strategic advice in this matter to a national labor union in the construction sector.

Under the new policy, FERC will find the inclusion of labor wages consistent with project-area wage standards in cost-of-service rates presumptively just and reasonable, where the applicant demonstrates that it has or will pay such wages. The Policy adds that FERC will accept as sources of project-area wage standards: (1) applicable collective-bargaining agreements or Project Labor Agreements; (2) Davis-Bacon Act local prevailing wage determinations; (3) state prevailing wage determinations; or (4) other evidence demonstrating the prevailing wages paid in the relevant locale(s), such as an industry-accepted database used in construction cost estimates. While allowing for the use of other sources where appropriate, the Commission further clarified that it will "look to applicable collective-bargaining agreements or Project Labor Agreements as an appropriate default source of project-area wage standards." In all cases, entities invoking the policy must "maintain and preserve records, including books of account or records for work performed by employees, contractors or subcontractors, sufficient to demonstrate that claimed project-area wages were actually paid."

FERC's Policy Statement joins a broader trend in federal policy aimed at protecting local wages for construction workers. For example, in 2022, President Biden signed Executive Order 14063, 3 C.F.R. 14,063 (2022), mandating U.S. agencies to require the use of Project Labor Agreements on large federal construction projects. In a recent rulemaking updating prevailing wages determinations under the Davis Bacon Act, the Department of Labor observed that "[b]y requiring the payment of minimum prevailing wages, Congress sought to 'ensure that Government construction and federally assisted construction would not be conducted at the expense of depressing local wage standards.'" 88 Fed. Reg. 57,526, 57,526 (citing Determination of Wage Rates Under the Davis-Bacon & Serv. Cont. Acts, 5 Op. O.L.C. 174, 176 (1981)).

Related Practices and Services

- Utility Workforce

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