SPIEGEL & MCDIARMID LLP

Energy Industry Transformation



The energy industry is going through a period of unprecedented change, led in part by federal, state, and customer policies favoring the development of a renewables-heavy resource mix and a modernized transmission grid. The firm has been front and center in proceedings that are shaping the industry's future. Recent examples of such representations before various fora include:

Proceedings Before the U.S. Supreme Court and Federal Courts of Appeals

- The ratepayer advocates for the District of Columbia, Delaware, Maryland and New Jersey in a challenge to PJM Interconnection, L.L.C.'s proposed "focused" minimum offer price rule ("MOPR"), which is intended to accommodate the participation of state?supported resources in PJM's capacity auction. The Federal Energy Regulatory Commission had deadlocked, and PJM's proposal took effect by operation of law. The court affirmed FERC's ruling. *PJM Power Providers Grp. v. FERC,* 96 F.4th 390 (3d Cir. 2023), *application for cert. pending*. We briefed and presented argument in support of the Commission.
- The Chair and Commissioners of the New York State Public Service Commission in their defense of the zero-emission credit (ZEC) component of New York's "Clean Energy Standard" against preemption and dormant Commerce Clause challenges. As New York urged, the district court dismissed the complaint, the Second Circuit affirmed that decision, and the Supreme Court declined to review. *Coalition for Competitive Electricity v. Zibelman*, 272 F. Supp. 3d 554 (S.D.N.Y. 2017), *aff'd*, 906 F.3d 41 (2d Cir. 2018), *cert. denied sub nom. Elec. Power Supply Ass'n v. Rhodes*, 139 S. Ct. 1547 (2019). We briefed and argued the case before the District Court and the Second Circuit, and served as "counsel of record" in the Supreme Court.
- The New Jersey Division of Rate Counsel in a D.C. Circuit challenge to FERC's authorization of a natural gas pipeline expansion that New Jersey considered unneeded and that ran contrary to state laws requiring reduced natural gas demand and lower greenhouse gas emissions. *N.J. Conserv. Found. v. FERC*, 111 F.4th 42 (D.C. Cir. 2024). We briefed and argued the case for Rate Counsel before the D.C. Circuit, which vacated and remanded FERC's orders. We are opposing the pipeline's petition for rehearing en banc and are representing Rate Counsel in remand

proceedings before FERC.

- The New Jersey Division of Rate Counsel in opposing the grant of a certificate of public convenience and necessity for the proposed PennEast Pipeline. *PennEast Pipeline, LP*, 162 FERC ¶ 61,053, *reh'g denied*, 164 FERC ¶ 61,098 (2018), *appeal dismissed sub nom.*, *Del. Riverkeeper Network v. FERC*, No. 18-1128 *et al.* (D.C. Cir. Feb. 8, 2022). We represented Rate Counsel in proceedings before FERC and the D.C. Circuit. In the face of mounting opposition, the company abandoned pursuit of the pipeline project.
- Prince George's County, Maryland, in federal court litigation claiming that the County's local zoning plans were preempted by Maryland and federal law and could not be enforced with respect to a proposed intrastate liquefied natural gas peaking facility. *Washington Gas Light Co. v. Prince George's County*, 711 F.3d 412 (4th Cir. 2013). We briefed and argued the case for the County before the District Court and the Fourth Circuit.
- The Maryland Public Service Commission in an appeal of court decisions striking down on preemption grounds a PSC order aimed at ensuring service reliability and supporting development of new renewable generation facilities. *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014), *aff'd sub nom. Hughes v. Talen Energy Mktg. LLC*, 136 S. Ct. 1288 (2016). We briefed and argued the case in both the Supreme Court and the Fourth Circuit.

Proceedings Before the Federal Energy Regulatory Commission

- Consumer advocates and consumer-owned utilities in New York and New England in FERC proceedings focused on proposals to revamp the design of the buyer-side market power mitigation protocols in place in the markets administered by the New York Independent System Operator and Independent System Operator?New England. The changes, which were approved by FERC, remove barriers to entry and facilitate participation of renewable and clean energy resources. *Y. Indep. Sys. Operator, Inc.,* 179 FERC ¶ 61,102 (2022); and *ISO New England Inc.*, 179 FERC ¶ 61,102 (2022).

- The Massachusetts Municipal Wholesale Electric Company and Anbaric Development Partners in efforts before FERC to challenge the determination of ISO New England's Internal Market Monitor (IMM) that a proposed storage resource seeking to enter the Forward Capacity Market must bid at a level higher than requested. MMWEC and Anbaric argued that the IMM's actions failed to account for the project's unique competitive advantages and constituted an unjust barrier to entry. *ISO New England Inc.*, 178 FERC ¶ 61,050 (2022).
- The Transmission Access Policy Study Group (TAPS), in (1) participating in the North American Electric Reliability Corporation (NERC) development of Version 1 of the Extreme Cold Weather Preparedness and Operations reliability standard, which requires generators to protect against freezing, subject to non-compliance penalties; (2) filing comments supporting NERC's request for FERC approval of the proposed standard; and (3) (with the American Public Power Association (APPA)) submitting the only reply comments responding to generators' requests for guaranteed recovery of their compliance costs. In arguing that the generators' requests were beyond the scope of the proceeding, TAPS and APPA emphasized that generators selling at market-based rates are entitled only to the opportunity to recover their costs: depending on market forces, they may reap significant profits at some times, while under-recovering at others. In its order approving the standard, as confirmed on rehearing, FERC found cost recovery outside the scope

of the proceeding. *N. Am. Elec. Reliability Corp*., 182 FERC ¶ 61,094 (2023); 183 FERC ¶ 61,222 (2023).

- Homeowners on Toronto, Inc. (HOOT, a not-for-profit entity representing owners of property surrounding Toronto Reservoir, one of three reservoirs within the Swinging Bridge Hydroelectric Project, FERC No. 10482) in the ongoing relicensing of the Swinging Bridge Project and two other related hydro projects in Sullivan and Orange Counties, NY. Stakeholders including HOOT reached a settlement with the license applicants, currently pending before FERC, that proposes a water budget methodology to allocate water among the various beneficial uses of the resource. *See* Notice of Availability of Environmental Assessment (Sept. 28, 2022), eLibrary No. 20220928-3009.
- Florida Municipal Power Agency (FMPA) in opposing Duke Energy Florida's rejection of transmission service requests intended to enable FMPA and its members to access solar generation from NextEra's 75 MW Poinsett Solar Facility. *Florida Municipal Power Agency v. Duke Energy Florida, LLC*, 167 FERC ¶ 61,138 (2019).
- The city of Burlington, VT, with respect to its acquisition of a run-of-river hydroelectric resource as part of the city's multi-year efforts to become the first U.S. city 100% powered by renewable energy. *Winooski One Partnership*, 148 FERC ¶ 62,169 (2014); *City of Burlington, Vt.*, 145 FERC ¶ 61,121 (2013).
- Joint action agencies, municipal utilities, and cooperatives regarding their obligations under the Public Utility Regulatory Policies Act ("PURPA"). The firm has worked with clients to develop PURPA implementation plans, fulfil obligations under FERC's updated PURPA regulations, and apply to FERC for waiver or termination of certain PURPA obligations. *See, e.g.*, WPPI Energy, Docket No. QM23-5-000, Letter Order (Aug. 15, 2023), eLibrary No. 20230815-3021; Kentucky Municipal Energy Agencies, Docket No. EL21-67-000 (Nov. 4, 2021), eLibrary No. 20211104-3013.

Proceedings Before State Utility Commissions

- The State of Maryland in proceedings addressing the proposed merger between Exelon Corporation and Constellation Energy. We helped to achieve a settlement agreement including a package of benefits for Maryland, the City of Baltimore, and Baltimore Gas & Electric customers totaling more than $1 billion. Exelon's settlement commitments included developing 285-300 megawatts of new generation in Maryland, contributing $32 million to offshore wind research and development, and providing $50 million to weatherize and provide energy-conservation measures for 12,500 low-to-moderate income homes. *In re the Merger of Exelon Corp. & Constellation Energy Group, Inc.*, Case No. 9271, Order No. 84,698, 295 P.U.R.4th 183 (Md. Pub. Serv. Comm'n 2012).
- The Office of the People's Counsel for the District of Columbia (DC OPC) in a proceeding to determine the D.C. Public Service Commission's authority to direct electrification, which would replace technologies that use fossil fuels (such as natural gas home heating) with technologies that use electricity. DC OPC submitted briefs arguing that the District's ambitious climate laws necessitate increased electrification. *In the Matter of the Implementation of Electric and Natural Gas Climate Change Proposals*, Formal Case No. 1167 (D.C. Pub. Serv. Comm'n).
- The D.C. Government in a proceeding addressing the proposed acquisition of Washington Gas. Following an evidentiary hearing, the proceeding was resolved through a settlement that, among other things, (1) $20.5 million in bill credits for residential customers and $5.4 million in bill credits for non-residential ratepayers, (2) $4.2 million in energy efficiency and conservation initiatives for low and limited-income customers, (3) a commitment to build 10 MW of storage or renewable resources, (4) and development of a business plan to support the District of Columbia's 2050

climate goals. *In re the Merger of AltaGas Ltd. & WGL Holdings, Inc.*, Order No. 19396, Formal Case No. 1142 (D.C. Pub. Serv. Comm'n June 29, 2018).

Other Representations

- The Transmission Access Policy Study Group (TAPS) in North American Electric Reliability Corporation (NERC) initiatives related to the reliability obligations of inverter-based resources such as solar, battery storage, and most wind generation. TAPS successfully advocated for improvements to the NERC registration criteria for the owners and operators of inverter-based resources, to reduce confusion regarding which entities must comply with NERC reliability standards. TAPS has also developed and submitted a Standard Authorization Request, supported by a coalition of other trade associations, proposing to develop additional defined terms to enhance clarity regarding which inverter-based *facilities* are subject to NERC compliance.
- A group of municipal utilities in forming a new joint action agency. The newly-established Kentucky Municipal Energy Agency aims to enable its members to take advantage of opportunities to develop green energy infrastructure and also source cheaper, greener power from the Midcontinent Independent System Operator and other neighboring Regional Transmission Organizations.