SPIEGEL & MCDIARMID LLP

# Sixth Circuit Sides with Consumers, TDUs in Denial of Adder to Ohio Utilities

*February 11, 2025* | *Cynthia S. Bogorad, David E. Pomper, Jeffrey M. Bayne, Lauren L. Springett*

Spiegel & McDiarmid LLP attorneys achieved a significant victory for consumers and transmission-dependent utilities in a recent decision by the Sixth Circuit Court of Appeals. The decision found four Ohio transmission owners ineligible to include a 50-basis point increase or "Adder" to the return on equity component of their transmission rates because of their participation in a regional transmission organization (RTO). The court held that as, under federal statute and regulation, the Adder is to be an *incentive* for utilities that join an RTO voluntarily, the Adder should not be awarded where Ohio law already requires Ohio utilities to participate in an RTO.

The decision affirmed in part, and vacated in part, orders from the Federal Energy Regulatory Commission that had found two of the Ohio transmission owners ineligible to include the Adder in their transmission rates, but allowed the two others to maintain their current rates.

Spiegel attorneys Cindy Bogorad, David Pomper, Jeff Bayne, and Lauren Springett represented Buckeye Power, Inc., an Ohio-based non-profit generation and transmission cooperative, arguing that none of the Ohio utilities are eligible to charge the Adder. Jeff Bayne argued the case before the Sixth Circuit as an intervenor, successfully challenging FERC's decision to allow the two Ohio utilities to keep the Adder.

A copy of the decision is linked here.

## Related Practices and Services

- Electric
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