

Third Circuit Victory Marks Precedent for How the Filed Rate Doctrine Applies to Auctions

News

March 12, 2024

The Third Circuit agreed with our argument that the Federal Energy Regulatory Commission cannot retroactively change the rules of an electric capacity auction after those rules have been applied. The victory represents a precedential ruling about how the filed rate doctrine applies to such auctions.

Auction rules produce the ultimate rates set, and the filed rate doctrine forbids retroactive changes. But in this case, the grid operator that held the auction, PJM Interconnection, LLC, discovered after accepting bids that applying its auction rules would produce a cost increase for some customers. PJM delayed announcing results, and sought FERC's approval to retroactively amend the rules to produce a different result. In 2023, FERC approved PJM's change, ruling that the auction results had not officially been announced, so its approval did not violate the filed rate doctrine.

Independent power producers, including client Constellation Energy Corp., challenged FERC's order. In oral argument in January, Partner Matt Price told the Third Circuit that FERC couldn't retroactively change the rules. The filed rate doctrine, he said, is an "impenetrable shield" that cannot be breached even to achieve lower rates.

"Once you begin chipping away at it and making exceptions, the whole edifice falls apart," he said.

On March 12, 2024, the Third Circuit vacated FERC's order.

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In its opinion, the panel highlights that predictability was important to Congress, and that is why it adopted a rule forbidding retroactive changes to tariffs. "FERC has no authority to disregard Congress's will, and neither do we," the opinion says.

The opinion explains that "stable markets depend on stable rules" and that, by changing the auction rules, FERC "creates unpredictability in the markets."

“Under FERC’s interpretation of the filed rate doctrine, suppliers must submit binding offers ‘with no assurance about what rules may eventually be applied.’ Auction rules would become, at best, a ‘moving target.’ By eroding confidence in the markets, FERC may ultimately harm consumers who buy electricity in those markets.”

In addition to Matt, the team representing Constellation included Partner Zach Cohen, Special Counsel Anand Viswanathan, Associates Juliana Brint and Arjun Ramamurti, and Senior Paralegal Cheryl Olson and Paralegal Adam Weidman. Partners Ian Gershengorn, Jessie Amunson, and Ishan Bhabha provided invaluable moot courts.

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