

**GODFREY  KAHN<sup>S.C.</sup>**

# **Federal Energy Law Update**

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# Congressional Legislation

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- Of the 21 bills proposed in the current (114<sup>th</sup>) Congress, only one (the Keystone XL Pipeline Approval Act) has passed both houses of Congress
- President Obama vetoed the bill on February 24, 2015

# Areas of Congressional Interest

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- Crude oil exports
  - Chairperson of the Senate Committee on Energy and Natural Resources Lisa Murkowski (R-AK) has expressed interest in relaxing regulations
- Action on energy efficiency
  - Continued work on Shaheen-Portman bill that failed in Senate last fall
- Yucca Mountain
  - Recent report (applauded by Chairperson Murkowski) suggests Yucca Mountain is capable of compliance with NRC for foreseeable future

# Areas of Presidential Interest

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- In February, the President announced a Clean Energy Investment Initiative at the Department of Energy summit which seeks to achieve \$2 billion of private sector investment in solutions to climate change
- In January, the President announced a goal to cut methane emissions by 40-45 percent from 2012 levels by 2015

# Recent Federal Decisions

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- *South Carolina Public Service Authority v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)
  - Upheld FERC Order 1000 regarding regional planning and development for transmission facilities.
  - Basis for competition for transmission project.

# Recent Federal Decisions

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- *Electric Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014)
  - In 2-1 opinion, vacated FERC's final rule on compensation for demand response resources in wholesale energy markets
  - Majority held rule was indirect regulation of retail electric market
  - FERC's petition for review filed with Supreme Court on January 15, 2015

# Recent Federal Decisions

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- *Metropolitan Edison Co. v. Penn. Pub. Util. Comm'n*, 767 F.3d 335 (3rd Cir. 2014)
  - Split panel affirmed a district court order dismissing public utilities' complaint against state regulatory agency.
  - The majority held that plaintiffs were barred by issue preclusion from seeking to overturn in federal court a commonwealth court of appeals decision that upheld the agency's ruling to deny rate recovery of \$250 million wholesale "line loss" charges.

# Recent Federal Decisions

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- *Illinois Commerce Comm'n v. FERC*, 756 F.3d 556 (7th Cir. 2014)
  - Five years ago, Judge Posner remanded a FERC order that allocated the cost of high-voltage transmission across all of PJM without any consideration of principles of cost causation.
  - The case returned with basically the same allocation in place (a region-wide post-stamp cost allocation which Posner dubs “FERC-speak”) and no additional satisfactory explanation.
  - Once again Judge Posner remanded the order.



# FERC Update

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- *Public Service Comm'n of Wisconsin v. MISO*, Docket Nos. EL14-34-0001 (Feb. 19, 2015) (order on reh'g)
  - FERC reaffirmed PSCW complaint order finding MISO's SSR *pro-rata* cost allocation to be unreasonable
  - MISO directed to file a new study method to identify entities that benefit from SSR generation

# FERC Update

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- *Transmission Customers v. MISO*, Docket No. EL14-12
  - Large commercial and industrial customers' complaint alleging that the ROE for MISO transmission owners is too high
  - Asking FERC to reduce transmission owners' ROE to 9.15%, to cap debt-equity ratio to no more than 50% equity, and to eliminate ROE adders for ITC Transmission and Michigan Electric Transmission Co.
  - Matter set for hearing

# FERC Update

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- *MISO Transmission Owners v. FERC*, No. 14-2153, et al. (7th Cir. filed 5/23/2014)
  - Order on Midwest ISO compliance with transmission planning and cost allocation requirements of Order No. 1000 rulemaking. *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013), *order on reh'g & compliance*, 147 FERC ¶ 61,127 (2014). FERC Docket No. ER13-187, et al.

# Recent Major Utility Air Cases

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- *EPA v. EME Homer Generation*, 134 S. Ct. 1584 (2014)
  - Court upheld EPA’s consideration of cost in CSAPR and upheld EPA’s FIP process
- *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014)
  - Court held that once a source is required to obtain a PSD or Title V permit for conventional pollutants, EPA can require BACT for GHGs

# Upcoming Major Utility Air Cases

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- *National Mining Ass'n v. EPA*, No. 14-49 (U.S.)
  - Appeal from D.C. Circuit's 2014 decision on the Utility MACT in *White Stallion Energy Center v. EPA*, 748 F.3d 1222
  - Scheduled for oral argument March 25, 2015
  - Issue: EPA's authority to consider costs in deciding to regulate mercury pollution from power plants

# EPA Major Regulatory Actions

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- Clean Power Plan
  - Proposed 111(b) rule for new power plants
  - Proposed 111(d) rule for existing power plants
    - Comment period ended Dec. 1, 2014
    - Proposal has already attracted legal challenges
    - EPA plans to finalize in June 2015
- Coal Ash Regulations
  - Finalized on Dec. 19, 2014
  - Establishes technical requirements for landfills and surface impoundments accepting coal ash under RCRA

# Thank You

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