Phil Lookadoo in Law360 on Biggest Energy Rulings of 2017

By Phil Lookadoo | December 15, 2017

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Law360 quoted Haynes Boone Partner Phil Lookadoo on some of the biggest energy-related rulings of 2017.

Law360 reported that climate change played a starring role in major energy rulings this year, as courts ordered the Federal Energy Regulatory Commission to more closely study pipeline greenhouse gas emissions, backed states' use of nuclear plant subsidies to decrease GHG emissions and thwarted the Trump administration's efforts to roll back climate-friendly energy and environmental regulations finalized during the Obama administration.

Among the cases cited: *Sierra Club et al. v. FERC*, case number 16-1329, in the U.S. Court of Appeals for the District of Columbia Circuit.

Law360 reported that FERC has consistently said that it isn't obligated to evaluate the climate change impacts of the gas pipelines it reviews because the impacts are too speculative. The courts have largely backed that approach, until a D.C. Circuit panel said in August that FERC should have evaluated the downstream GHG impacts of the $3.5 billion Southeast Markets project feeding gas-fired power plants, the centerpiece of which is the Sabal Trail pipeline running from Alabama to Florida.

"That's a major change and I don't think that FERC necessarily thought it had to look at what a downstream gas user does," said Lookadoo, a Haynes Boone energy partner. "That could have major effects, depending on what they have to do to respond." ...

The report also said that state clean energy policymakers received a double boost in a two-week span in July, when federal judges in Illinois and New York upheld those states' plans to subsidize struggling nuclear power plants and rejected claims from a coalition of independent power producers that the subsidies usurp FERC's exclusive jurisdiction over wholesale electricity markets under the Federal Power Act.

U.S. District Judges Manish S. Shah and Valerie Caproni each said that so-called zero-emission credits offered by Illinois and New York to Exelon Corp. nuclear plants within each state's borders were legitimate uses of state authority to tackle climate change. The judges also said the ZECs don't directly affect wholesale electricity prices, unlike subsidies offered by Maryland for construction of new gas-fired power plants that were struck down by the U.S. Supreme Court last year in *Hughes v. Talen Energy Marketing LLC*. ...

The rulings have been appealed to the Second and Seventh circuits. Regardless of how those appeals turn out, Lookadoo said it's going to put more pressure on FERC to follow through on its pledge to figure out how to harmonize state clean energy policies with the regional electricity markets it oversees.

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"The only way you resolve it is to say, 'OK, FERC, you need to have a federal position,' " Lookadoo said.

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