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Cryptocurrency Miners I-“rate” At Energy Rate Decision

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A Washington state federal court recently addressed claims relating to rates that cryptocurrency mining companies pay for electricity in Grant County, Washington. The court rejected all of the miner’s legal claims. The dispute focused on the rate classification that this utility applied to crypto miners as explained below. Due to various risks, the electric utility assigned the miners to a newly created rate class referred to as “Evolving Industries,” resulting in a higher rate class for the miners. The miners were I-“rate” with this decision.

This decision is just one facet of the interplay between energy companies and blockchain technology, including crypto mining. Through a collaboration of our Blockchain Team and our Energy practice, we have previously addressed other aspects of blockchain and the electricity industry here and here.

A recent report predicted that the share of blockchain technology in the energy sector will grow at over 50% CAGR. Assuming this prediction holds, we will likely see more energy-related blockchain cases.

Background

Electricity rate schedules define various classes of users that exhibit common characteristics—whether in terms of electricity usage or otherwise, such that they can be effectively grouped together for cost allocation and rate setting purposes. Common examples of “customer classes” include “residential” and “industrial” classes. The customer class that an entity falls into determines which rate schedule is applicable to them, thereby setting the rate that they will pay for electricity.

Prior to 2017, the District had fifteen distinct rate schedules, each schedule pertaining to a different customer class. In the summer of 2017, the District claims that it experienced a large influx of requests for power service from cryptocurrency miners, who were attracted to the District’s low electric rates. The District alleged that requests from cryptocurrency miners in 2017 totaled 1,500 MW of new load, which constituted more than twice the District’s average load of 600 MW. Plaintiffs dispute the “influx” of service requests from cryptocurrency miners, arguing that the District inflated this number and did not take appropriate measures to get a realistic estimate of cryptocurrency miners interested in Grant County.

Regardless of the actual number of cryptocurrency mining companies interested in Grant County, the District analyzed how the District could satisfy the new demand, primarily from cryptocurrency miners, while simultaneously servicing existing customers. After public hearings, it developed a new rate schedule, “RS 17,” and a new customer class known as the “Evolving Industries” class. To decide if an industry falls into the Evolving Industries class, it used a test focused on certain risk factors presented by the industry in question.

These risks are:

- Regulatory Risk – Risk of detrimental changes to regulation with the potential to render the industry inviable within a foreseeable time horizon

- Business Risk – Potential for cessation or significant reduction of service due to a concentration of business risk, in an evolving or unproven industry, in the value of the customer’s primary output.

- Concentration Risk – Potential for significant load concentration with Grant’s service territory resulting in a meaningful aggregate impact and corresponding future risk to Grant’s revenue stream. Evaluation would begin to occur when industry concentration of existing and service request queue customer loads exceeds 5% of Grant’s total load.

The District argued that these risks are significant for the purposes of rate setting in part, because if an industry requiring a large percentage of the district’s power fails, numerous costs related to infrastructure or contracts with other power companies will be passed on to the remaining customers in the District. As retail load increases, the utility undertakes an obligation under its Power Sales Contract to purchase additional energy permanently. That increased commitment to purchase power remains even if the Evolving Industries’ customers leave the District’s power system, resulting in surplus power. To the extent that the sale of this surplus results in a loss, these costs will be borne by remaining customers.

Additionally, the District reasoned that the expansion of Evolving Industries, which by definition requires a relatively large percentage of the District’s power, likely will necessitate the development of additional infrastructure. Thus, if an Evolving Industry relocated to another district, or failed, the remaining customers would be forced to bear the costs of infrastructure upgrades necessitated by that Evolving Industry.

The Lawsuit and Decision

On December 19, 2018, Plaintiffs (which were cryptocurrency mining entities with operations in Grant County) filed a complaint, challenging the District’s new rate schedule under federal and Washington state law.

Plaintiffs alleged nine causes of action against the District, premised on the U.S. and Washington State Constitutions, and federal and state laws. Plaintiffs claim that the District violated the Commerce Clause of the Federal Constitution, the Due Process Clause of the Fifth and Fourteenth Amendments, Section 20 of the Federal Power Act (16 U.S.C. § 813) by creating an unfair and discriminatory rate schedule and Washington ratemaking law, the Due Process Clause of the Washington State Constitution, and the Privileges and Immunities Clause of the Washington State Constitution.

The following is a brief summary of how the court addressed each of these claims.

Substantive due process - Because Plaintiffs have not identified a viable property interest protected by substantive due process, they cannot demonstrate that they have been deprived of such an interest without due process.

Procedural Due Process - The Commission has broad discretion to set rates, the Plaintiffs have not demonstrated that they have a legitimate claim of entitlement to a fair and nondiscriminatory rate under Washington law and thus, no protected property interest exists to support Plaintiffs’ procedural due process claim.

Ratemaking as a Legislative Act - the court agrees with Defendants argument that setting rates is a legislative act (not a judicial act as Plaintiff argued), to which procedural due process does not apply - thus, even if Plaintiffs could point to a valid property interest their procedural due process claim fails as a matter of law.

Dormant commerce clause claim – The Dormant Commerce Clause does not protect an industry's profit margin, structure, or even its existence. Rather, it ensures that states and local governments do not enact laws that protect in-state industry by burdening interstate commerce and Plaintiffs have shown no such burden.

Federal Power Act Claim - Plaintiffs argued that Section 20 of the Federal Power Act prevents the District from charging unreasonable, discriminatory, and unjust electric rates. Section 20 of the Federal Power Act states: "When said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee ... shall be reasonable, nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are prohibited and declared to be unlawful." Defendants raised several arguments that they claim foreclose Plaintiffs' Federal Power Act Claim. The court addressed them as follows:

- *Interstate Commerce* - The District argued that Section 20 does not apply because the power in question did not enter into interstate commerce. Plaintiffs counter that Section 20 applies to the District because the District holds a federal hydroelectric license and because electricity from that project enters interstate commerce. They argue that, once power enters any interstate grid, it immediately becomes interstate power subject to the provisions of Section 20. The Court was skeptical of Plaintiffs' argument, noting that the electricity in this case was generated by a local dam and provided to county customers by a local public utility district. However, given the lack of briefing and clear guidance on this point, the Court assumed, without finding, that the electricity is interstate, and proceeded with its analysis based on this assumption.
- *Retail Sales* - The District also argued that Section 20 does not apply to retail sales. Although the Court found no cases applying Section 20 to retail sales, the Court was hesitant to issue a finding on this point. Instead, the Court noted that because its decision does not depend on this point, it would assume for the purposes of its analysis, without finding, that Section 20 applies to retail sales.
- *Plaintiffs' Cause of Action under Section 20 of the Federal Power Act* - Defendants asserted that Section 20 does not create a private cause of action that allows customers to challenge electricity rates. The court noted that the federal statute through which the plaintiff brings its claim must create both a private right and a private remedy. The Court found that because Section 20 does not provide Plaintiffs with a private right or a private remedy, Plaintiffs have no cause of action under that statute.

CLAIMS UNDER 42 U.S.C. § 1983 - Plaintiffs allege Section 1983 claims against the Commissioners for the alleged violations of their constitutional rights. The Court found that because the Court concluded that Plaintiffs' constitutional and federal law claims failed as a matter of law, thus Plaintiffs Section 1983 claims against the Commissioners also fail as a matter of law.

STATE LAW CLAIMS - The Court dismissed the state law claims, without prejudice, on procedural grounds. Because the Court granted summary judgment in favor of Defendants on the federal claims, the Court declined to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.

Check back for future updates on blockchain issues.

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