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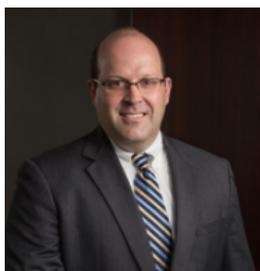


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Volume 5, Issue 23

● [Welcome](#)



Welcome to Volume 5, Issue 23 of *Currents*. We hope you are liking our new bi-weekly schedule. We believe publishing every two weeks will give us a better opportunity to focus on hot topics affecting our clients and why those topics are important. Ultimately, this helps ensure the content we deliver to you is as valuable as possible.

If you have any suggestions regarding topics, timing, or any other input on how best to get you information, please [let us know](#). Thank you for reading.

[Nicholas S. Preservati](#)
Co-Chair, Spilman's [Energy Practice Group](#)

● [Why the American Jobs Plan Would Benefit Coal-Heavy Utility Stocks](#)

"A close look at some of the utilities publicly supporting a federal CES, which would require utilities to increase their share of carbon-free energy over time, reveals utilities like Exelon or PSEG heavy on nuclear and renewables were first to support the plan."

Why this is important: The American Jobs Plan may help coal-fired utilities switch to renewables according to Forbes. The Jobs Plan has a goal of 100 percent clean energy and to reduce CO2 emissions 80 percent by 2035. A new study by Morgan Stanley believes this mandate will improve the performance of coal heavy utilities and returns to their shareholders as rate regulators allow a reasonable return rate on the expenses to make this transition. Using American Electric Power as an example, the study notes it

has plans to add 16,600 MW of renewables while shutting down 8,000 MWs of coal-fired electrical generation. The \$13.8 billion cost would result in an increased return on investment for the utilities shareholders as the changes would be required by U.S. law and policy. --- [Mark E. Heath](#)

● [Maine Joins Debate Over How to Define Environmental Justice](#)

"A new law directs the state to develop a specific legal definition for terms including 'environmental justice' and 'frontline communities,' as well as methods to incorporate equity into decision-making at state agencies."

Why this is important: Maine, like Virginia and numerous other states, has enacted legislation that requires the state to consider the impact of pollution and climate change on vulnerable communities. While there is generally universal agreement on the importance of environmental justice, defining it in a way that can be applied in practice has proven difficult. In an effort to define these terms, Maine tasked the Governor's Office of Policy Innovation and the Future -- rather than the Public Utilities Commission -- to spend up to eight months to define terms such as "environmental justice," "frontline communities" and other terms in a way that takes into account Maine's population and extensive coastline. The outcome of this endeavor could inform other states' efforts to define environmental justice for their own vulnerable populations. --- [Carrie H. Grundmann](#)

● [Supreme Court Calls Into Question Efforts to Address Climate Change Impacts Through State Courts](#)

"The Baltimore suit claims that when other people use these energy companies' products, namely fossil fuels, the resulting carbon emissions has led to climate change, rising sea-levels and flooding in Baltimore, a port city."

Why this is important: Recently, several state attorneys general and municipalities have brought state law nuisance claims seeking to hold fossil fuel companies liable for costs allegedly resulting from climate change. The questions that have resulted include whether the Clean Air Act preempts the state law claims and whether it is proper to hear these claims in state courts, as opposed to federal courts. The Supreme Court's decision widens the spectrum of arguments fossil fuel companies can make to ensure the claims are decided in federal courts, a decidedly more favorable venue than state courts. --- [Joseph C. Unger](#)

● [Ohio Consumer Watchdog Asks Regulators to Revisit Coal Plant Bailouts](#)

"The Ohio Consumers Counsel, which represents residential ratepayers in utility issues, asked the Public Utilities Commission of Ohio to revisit its subsidy approvals granted to American Electric Power and Duke Energy in 2018."

Why this is important: An Ohio consumer group wants to revisit a rider granted by Ohio to pay Ohio Valley Electric Corp ("OVEC") for running two coal-fired plants at a loss. The rider for running the Clifty Creek and Kyger Creek coal-fired electric generation plants until 2030 will raise \$700 million for the utilities that own OVEC -- American Electric Power, Duke Power and Dayton Power and Light. The consumer groups believe the charge to support the plants should be ended, which means they would be replaced by natural gas or wind or solar generation. --- [Mark E. Heath](#)

● [PJM Board Approves New MOPR Plan in Effort to Placate States, FERC](#)

"PJM's plan, which will need to be approved by federal regulators, aims to accommodate state policies, mitigate buyer side market power and be a long-lasting, resilient solution, according to officials."

Why this is important: Following a December 2019 decision from the FERC, PJM expanded its Minimum Offer Price Rule ("MOPR") to raise the minimum bid price for its forward looking capacity markets. The purpose of this expanded MOPR rule was to address resources that were state subsidized and had the effect of creating arbitrarily low clearing prices in the capacity market. A consequence of the rule, however, was a potential impact on state's renewable energy procurement, which resulted in significant backlash with some states threatening to leave PJM. In light of the upheaval, the FERC issued an ultimatum to PJM that it address the issues with the expanded MOPR by December 2021 or FERC would step in. After employing an accelerated stakeholder process, PJM has reached a plan to mitigate the impact of the expanded MOPR. The issue is not over; the proposal remains subject to FERC approval, and some parties have already criticized the proposal. --- [Carrie H. Grundmann](#)

● [Gulf Coast Ready to Develop Carbon Storage Hub](#)

"The stage is set for a new carbon storage economy to emerge along the Gulf Coast, according to a new study, with the region offering ample opportunities to capture and store carbon, and recent state and federal incentives giving an added push to get started."

Why this is important: Carbon capture and storage ("CCS") has many benefits. The captured CO2 can be used for enhanced oil recovery, which allows companies to get more oil out of depleted reservoirs by pumping in CO2. This, of course, will be a market driver in the Gulf Coast. CCS technology is also promising in the production of hydrogen. "Blue hydrogen" is derived from natural gas through the process of steam methane reforming, a process that is the most common and economic way to produce hydrogen. However, CO2 is produced during the process, which makes blue hydrogen less desirable than its more expensive, but low-CO2, counterpart "green hydrogen." Capturing the CO2 will allow for cheap, low-impact hydrogen while green hydrogen technology becomes more economically viable. --- [Joseph C. Unger](#)

● [Groups Ask Congress for First-of-Its-Kind Cost Analysis of RTOs Amid Market Expansion Debate](#)

"The effort comes in the midst of rising debate in traditionally regulated, vertically integrated utility regions about whether forming or joining a regional transmission organization could save customers money and accelerate the transition to clean energy."

Why this is important: At present, approximately half of the United States does not participate in a regional transmission organization ("RTO"). The request that the federal government commission a study on the benefits of an RTO comes on the heels of the power outages in Texas from February 2021. The federal government is not the only entity evaluating the benefits of an RTO. A study commissioned by utilities in the southeast found benefits to developing an RTO in the southeast (which is not presently part of an RTO), and South Carolina recently enacted legislation to consider, among other things, RTO participation. --- [Carrie H. Grundmann](#)

● [Australia Plans Additional 527 Million tpy Coal Mining Capacity](#)

"The expansions mostly take advantage of existing infrastructure and are relatively low-cost additions."

Why this is important: As pressure mounts to reduce the use of thermal coal for electrical generation, Argus Media finds Australia has the ability to increase its coal production by 527 million tons a year. The increases are primarily to existing mines and will add primarily thermal coal to world markets. About 97 million tons to be added will be metallurgical coal used for steel making. The 527 million tons includes 26.2 million tons from committed expansions, 359 million tons in feasible additions to existing mines and 102 million tons in publicly announced projects. All come as pressure mounts to reduce the use of coal for electric generation due to global warming. --- [Mark E. Heath](#)

● [California PUC Opens 'Mother of All Proceedings' to Prepare the Grid for New Wave of DERs](#)

"The commission intends, through the proceeding, to provide a framework that will allow distributed solar, storage, electric vehicles and other DERs to better integrate into the grid, improve distribution system planning — especially around EV charging infrastructure — and enable better grid investments that take into account DER siting plans and resiliency considerations."

Why this is important: Distributed Energy Resources ("DER") are the wave of the future, but these resources present issues for regulators, utilities and the grid. The California Public Utility Commission's decision to open a docket to consider the future of DER and its impact on traditional utility systems could well inform efforts by other states to incorporate greater renewable resources and to transition towards a carbon free economy. --- [Carrie H. Grundmann](#)

● [Energy Question of the Week](#)

Last Issue's Question and Results

How familiar are you with China's "Belt & Road" infrastructure program?

Very familiar - 29.9%
Moderately familiar - 33.3%
Not at all familiar - 36.8%

How familiar are you with the "social cost of carbon" concept?

Very familiar

Select

Moderately familiar

Select

Not familiar at all

Select

● [EIA Energy Statistics](#)

Here is a round-up of the latest statistics concerning the energy industry.

PETROLEUM

This Week in Petroleum

Weekly Petroleum Status Report

NATURAL GAS

Short-Term Energy Outlook - Natural Gas

Natural Gas Weekly Update

Natural Gas Futures Prices

COAL

Short-Term Energy Outlook - Coal

Coal Markets

Weekly Coal Production

RENEWABLES

Short-Term Energy Outlook

Monthly Biodiesel Production Report

Monthly Densified Biomass Fuel Report

What are your areas of interest? If there are particular industries or issues that you would like to hear about, [email us!](#) We have a large number of attorneys willing to weigh in on the issues that impact you and your business.

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