Spiegel & McDiarmid LLP

# D.C. Circuit Vacates FERC's Methodology for Calculating Returns on Equity

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The D.C. Circuit vacated and remanded Federal Energy Regulatory Commission ("FERC") Opinions No. 569 and 569-A, which had established a new way to set the allowed profit (return on equity, or "ROE") for electric transmission investment in the extensive Midcontinent Independent System Operator ("MISO") area.

Spiegel partner David Pomper argued the ROE methodology issues on behalf of our clients (Mississippi and Missouri state regulators and municipal transmission customers) and a broad coalition of other customer representatives. Judge Walker, writing for a unanimous panel, agreed with his argument that FERC arbitrarily relied on a Risk Premium model to set ROEs after previously (and forcefully) rejecting that model. Because the Risk Premium model was integral to the challenged methodology, the court vacated FERC's decision.

The matter now goes back to FERC, which will have to re-evaluate its ROE methods. The result should be a further ROE reduction, beyond the substantial reduction already ordered by FERC using its flawed methodology. Because FERC has used this case to establish ROE methods for all public utilities and gas pipelines, this legal victory should have a positive impact on ratepayers nationwide.

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