



Appellate Update

Northern Neck/FTR Forfeiture Rule

Thomas DeVita, PJM Legal

MIC

August 9, 2023



- Argued:
 - Commission’s order lacked substantial evidence that the application of the Transmission Constraint Penalty Factor (“TCPF”) was unjust and unreasonable.
 - TCPF worked as intended by accelerating the reconductoring project in the Northern Neck area.
 - FERC failed to provide reasoned explanation for its departure from precedent by suspending the TCPF despite Order No. 844.

- Held:
 - Affirms the Commission’s orders suspending the application of TCPF in the Northern Neck area.
 - Denies Citadel’s petition for review.



XO Energy MA, LP v. FERC, Case No. 22-1096 (D.C. Cir.)

- Argued:
 - Commission erred as a matter of law in declining to issue refunds to market participants who incurred forfeitures under the unapproved interim Rule.
 - Commission’s approval of the revised 2021 Rule was arbitrary and capricious because the Rule captures competitive transactions and burdens legitimate hedging activities in ways that do not deter potentially manipulative transactions – failed to require that the RTO consider traders’ entire FTR portfolios and whether a transaction is “leveraged,” (whether it creates net profit for the FTR holder).
- Held:
 - Affirms the Commission’s orders denying refunds.
 - Remands for further explanation of the Commission’s decision to exclude consideration of “leverage” as a required element of the Rule.

Facilitator:
Foluso Afelumo
Foluso.Afelumo@pjm.com

Secretary:
Amanda Martin
Amanda.Martin@pjm.com

SME/Presenter:
Thomas DeVita
Thomas.DeVita@pjm.com



Member Hotline

(610) 666 – 8980

(866) 400 – 8980

custsvc@pjm.com

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