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Not So Fast, Ohio: FERC Weighs In On Wholesale Energy

David Doot, Joseph Fagan, James Blackburn and Patrick Gerity wrote an article published in *Law360* entitled "Not So Fast, Ohio: FERC Weighs In On Wholesale Energy." The article discusses efforts by Ohio utilities, with the blessing of their state regulators, to enter into power purchase agreements (PPAs) that would increase revenues above the usual market revenues in order to maintain the economic viability and continued operation of certain of their affiliated (nuclear and coal-fired) power plants in Ohio. The utilities sought to avoid Federal Energy Regulatory Commission (FERC) approval of the PPAs by relying on a prior FERC waiver, but, in response to industry complaints, the FERC stepped in, explained that it would not allow the waiver to be applied here, and asserted its exclusive role in ensuring just and reasonable rates for wholesale sales of electric energy and capacity. The Ohio utilities are exploring alternatives to advance their goals (shared by Ohio) of providing above-market financial support to certain generators without invoking FERC's jurisdiction. If these efforts are successful, other states may also seek to advance their public policy initiatives through similar creative mechanisms that impose higher costs on captive retail customers in the near term in ways designed not to avoid federal review. Such efforts are sure to be controversial and subject to regulatory and judicial challenges.

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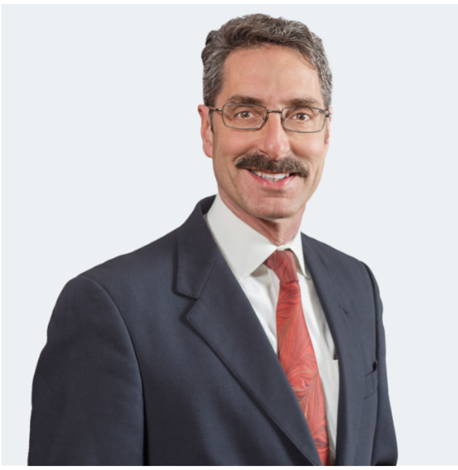

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