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Federal Regulatory Update

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Major Court Decisions in 2020

United States Forest Service v. Cowpasture River Preservation Association, 140 S.Ct. 1837 (2020).

- Supreme Court rules that US Forest Service has authority to grant easement for natural gas pipeline construction crossing the Appalachian Trail
- Overturns 4th Circuit decision finding that Appalachian Trail became a national park when administration was delegated to National Park Service

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Major Court Decisions in 2020

Federal Energy Regulatory Commission v. Powhatan Energy Fund, LLC, 949 F.3d 891 (4th Cir. 2020).

- Affirmed US District Court finding that time for FERC to file an enforcement action in US District Court starts when:
 - FERC issues penalty assessment order AND
 - Accused party fails to pay within 60 days
- Statute of limitations does not start to run on a potential violation until this time

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Major Court Decisions in 2020

In re First Energy Solutions, 945 F.3d 431 (6th Cir. 2019).

- Bankruptcy court can enjoin FERC from ordering a debtor to perform under an executory power purchase contract
- FERC must be invited to participate in the bankruptcy and can give an opinion
- Business-judgment standard does not apply, but adjusted standard that considers public interest

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Major Court Decisions in 2020

NARUC v. FERC, 964 F.3d 1177 (DC Cir. 2020).

- Upheld FERC’s Order No. 841 on Battery Storage
- Found that FERC’s rule did not usurp state regulatory jurisdiction by prohibiting states from barring battery storage on distribution systems from participating in federally-regulated markets
- States still retain regulatory jurisdiction over safety, reliability, and permitting of battery storage on distribution systems

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Major Court Decisions in 2020

Allegheny Defense Project v. FERC, 964 F.3d 1 (DC Cir. 2020).

- FERC’s use of “tolling orders” does not prevent judicial challenge under NGA
- Under NGA, FERC has 30 days to act on a request for rehearing
- After 30 days, FERC can revise decision, but judicial review will commence

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