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Court of Appeals Remand SEEM Back to FERC

On July 14, 2023, the Court of Appeals for the District of Columbia (“D.C. Circuit”) issued an order remanding back to FERC various orders related to the establishment of the Southeast Energy Exchange Market (“Southeast EEM”) by the Southeast EEM Members. The D.C. Circuit also vacated the orders in which FERC accepted tariff rates added to FERC-jurisdictional Members’ open access transmission tariffs to provide the new transmission service necessary to facilitate Southeast EEM transactions (“Tariff Rates”). Today, on September 19, 2023, the D.C. Circuit formally remanded the case back to FERC for further proceedings, and the D.C. Circuit’s decision to vacate those orders accepting the Tariff Rates became effective.

To eliminate confusion and to ensure transparency, the SEEM Members confirm that SEEM continues to operate pending further action from FERC. While the D.C. Circuit vacated FERC’s orders, it did not disturb the Tariff Rates. Consistent with prior FERC and court precedent, once the Tariff Rate went into effect, a court cannot change it—only FERC can do so. *See, e.g. ISO New England Inc.*, 161 FERC ¶ 61,031 at PP 26-27 (2017) (citing *Burlington N. Inc. v. United States*, 459 U.S. 131, 141 (1982)).

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