Could State Subsidies for Renewable Energy Face Legal Challenges?

In a Maryland case, the U.S. Supreme Court rejected the state's effort to offer incentives for new gas fired power plants, ruling that the subsidies impermissibly encroached on the Federal Energy Regulatory Commission's authority under the Federal Power Act, writes **Hugh E. Hilliard**, a senior counsel with **O'Melveny & Myers**. But the Court left open the broader issue of whether states have the power to offer other forms of energy incentives.

"Now several cases before the courts are raising just that question, with potentially far-reaching implications for nuclear and renewable energy, although recent decisions in those cases have upheld state subsidies that are not directly tethered to sales of electric energy at wholesale, which are subject to FERC's exclusive jurisdiction," according to Hilliard.

He writes that the latest developments in federal courts indicate that state subsidies for renewable energy, including renewable-energy portfolio standards and mandated procurement programs, are safe from challenges, at least for now.

Read the article.