UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Maryland Public Service Commission v. Federal Energy Regulatory Commission

394 U.S. App. D.C. 187 (D.C. Cir. 2011) · No. 09-1296 · Decided February 8, 2011

SUMMARY

The United States Court of Appeals for the District of Columbia Circuit denied Maryland and New Jersey's petition challenging electricity rates established under the Federal Energy Regulatory Commission's Reliability Pricing Model. The court held that FERC adequately explained why the rates were just and reasonable and that substantial evidence supported its conclusion that price increases resulted from transmission constraints and legitimate market factors rather than supplier market power.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Rogers, Circuit Judge; Griffith, Circuit Judge; Edwards, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	February 8, 2011
DOCKET	09-1296
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of Federal Energy Regulatory Commission orders adopting and approving the Reliability Pricing Model for electricity-capacity pricing.
STANDARD OF REVIEW	The court reviewed FERC's orders under the arbitrary-and-capricious standard and applied highly deferential review to rate-design judgments. FERC's factual findings were conclusive if supported by substantial evidence.
PRECEDENTIAL VALUE	published
PARTIES	Maryland Public Service Commission, New Jersey Board of Public Utilities v. Federal Energy Regulatory Commission

TOPICS

judicial review of agency action | administrative law | standard of review | appellate procedure

PRACTICE AREAS

administrative law | energy regulation | electricity rate regulation | appellate procedure

QUESTIONS PRESENTED

1. Whether FERC adequately determined that the challenged electricity-capacity rates were just and reasonable.
2. Whether substantial evidence supported FERC's finding that the challenged price increases resulted from legitimate factors, including transmission constraints and incentives for new capacity, rather than supplier market power.
3. Whether FERC's adoption and application of the Reliability Pricing Model was arbitrary and capricious.

HOLDINGS

1. FERC adequately explained why the challenged rates were just and reasonable; it was not limited to finding merely that the Reliability Pricing Model's provisions had been followed.
2. Substantial evidence supported FERC's conclusion that the price increases were attributable to legitimate causes, not the exercise of market power by electricity-capacity suppliers.
3. FERC's orders adopting and applying the Reliability Pricing Model were not arbitrary and capricious and should be upheld.
4. A petitioner challenging a rate need not propose an alternative rate that is itself just and reasonable; determining and fixing the replacement rate is FERC's responsibility.

KEY QUOTATIONS

> *"Because issues of rate design are fairly technical and, insofar as they are not technical, involve policy judgments that lie at the core of the regulatory mission, our review of whether a particular rate design is just and reasonable is highly deferential."* (632 F.3d at 1286)

> *"It is the Commission's job—not the petitioner's—to find a just and reasonable rate."* (632 F.3d at 1286 n.1)

FACTUAL BACKGROUND

PJM, the regional transmission organization for thirteen mid-Atlantic states and the District of Columbia, proposed replacing its existing capacity-pricing model because it did not sufficiently encourage investment in generating capacity. FERC adopted the Reliability Pricing Model, which used advance auctions, mitigation measures for supplier market power, and pricing that accounted for transmission constraints. Petitioners challenged higher rates in auctions occurring before the model's full three-year advance-delivery mechanism was available, contending that suppliers had used market power to inflate prices.

PROCEDURAL HISTORY

FERC found PJM's preexisting capacity-pricing model unjust and unreasonable, approved a modified Reliability Pricing Model, and later clarified the scope of its approval. Maryland and New Jersey challenged higher rates produced by the new model, arguing that the rates were not shown to be just and reasonable and that suppliers had exercised market power. The D.C. Circuit denied the petition for review.

DISPOSITION

denied

CASES CITED

- PJM Interconnection, L.L.C., 115 FERC ¶ 61,079 (2006)
- PJM Interconnection, L.L.C., 117 FERC ¶ 61,331 (2006)
- PJM Interconnection, L.L.C., 119 FERC ¶ 61,318 (2007)
- FPL Energy Maine Hydro LLC v. FERC, 287 F.3d 1151, 1160 (D.C. Cir. 2002)
- Public Utilities Commission v. FERC, 254 F.3d 250, 254 (D.C. Cir. 2001)
- Sithe/Independence Power Partners v. FERC, 165 F.3d 944, 948 (D.C. Cir. 1999)
- Blumenthal v. FERC, 552 F.3d 875, 885 (D.C. Cir. 2009)
- Tennessee Gas Pipeline Co. v. FERC, 860 F.2d 446, 454 (D.C. Cir. 1988)

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