14-623 CPV MARYLAND V. PPL ENERGYPLUS

DECISION BELOW: 753 F.3d 467

LOWER COURT CASE NUMBER: 13-2419, 13-2424

QUESTION PRESENTED:

Under the Federal Power Act, 16 U.S.C. §§824 et seq., States retain authority over electricity and capacity purchases by local utilities. They cannot, however, impose the rates for those purchases; only the Federal Energy Regulatory Commission (FERC) can regulate interstate wholesale rates. Seeking a new power plant, Maryland conducted a competitive procurement and directed its local utilities to enter into long-term contracts with the successful bidder, providing the stable revenue needed to induce the developer's investment and support the costs of construction. Under those contracts, if the developer's accepted bid price exceeds what the developer earns by selling the plant's capacity in the FERC-supervised auction, the utility pays the difference to the developer; if auction revenue exceeds the bid price, the developer rebates the difference to the utility. The payment or rebate is passed on to retail ratepayers.

1. Where, as a result of a state-directed procurement, the contract price to build and operate a power plant is the developer's bid price, and may result in payments beyond what the developer earns selling the plant's capacity in the FERC-supervised auction, is the program "field preempted" as a State's attempt to set interstate wholesale rates?

2. Is a state-directed contract to support construction of a power plant "conflict preempted" because its long-term pricing structure provides incentives different from the incentives provided by prices generated in the FERC-supervised yearly capacity auction?

CONSOLIDATED WITH 14-614 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/19/2015