

14-614 HUGHES V. TALEN ENERGY MARKETING

DECISION BELOW: 753 F.3d 467

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

QUESTION PRESENTED:

The Federal Power Act (FPA) splits authority among states, utilities, and the Federal Energy Regulatory Commission (FERC). States regulate generation facilities and retail utility power purchases, but may not set wholesale rates. Wholesale energy sellers set their own rates. FERC has exclusive jurisdiction to review them and determine their legality.

In much of the country, independent system operators run multi-state transmission systems and wholesale energy markets. PJM Interconnection LLC (PJM), an operator whose region includes Maryland, procures by auction the generation capacity it expects the region to need for a one-year period beginning three years later. Looking beyond that horizon and concerned that facility retirements could degrade reliability, Maryland decided it needed new generation. It solicited offers, and required retail utilities to accept the winning bid. The resulting contracts obligate the bidder to build a plant and make it available to PJM for twenty years, while the retail utilities pay (or receive) the difference between the contract and PJM auction prices. The Fourth Circuit held Maryland's actions field and conflict preempted-contrary to the FPA's structure and decisions of this Court, the D.C. Circuit, and FERC.

The questions presented are:

1. When a seller offers to build generation and sell wholesale power on a fixed rate contract basis, does the FPA field-preempt a state order directing retail utilities to enter into the contract?
2. Does FERC's acceptance of an annual regional capacity auction preempt states from requiring retail utilities to contract at fixed rates with sellers who are willing to commit to sell into the auction on a long-term basis?

CONSOLIDATED WITH 14-623 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/19/2015