

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - PENNSYLVANIA**

### **Metropolitan Edison Co. v. Pennsylvania Public Utility Com'n**

**United States Court of Appeals, Third Circuit - September 16, 2014 - F.3d - 2014 WL 4548859**

Electric utility companies commenced action against Pennsylvania Public Utility Commission (PUC) and its commissioners in their official capacities, alleging violation of filed rate doctrine under Federal Power Act (FPA), confiscatory taking under Fourteenth Amendment, and federal pre-emption of Pennsylvania Electric Competition Act (ECA), and seeking declaratory judgment and injunctive relief to recoup from their customers more than \$250 million in costs associated with "line losses," i.e., energy that was lost when electricity travels over power lines, and interest related to those costs.

The District Court held that companies' unsuccessful pursuit of relief in state proceeding precluded their effort to claim relief in federal court. Companies appealed.

The Court of Appeals held that:

- Companies waived issue for consideration on appeal of whether ECA as applied to them was pre-empted;
- Issue preclusion applied to bar claim alleging confiscatory taking;
- Prior review of PUC decision by Commonwealth Court of Pennsylvania regarding classification of line-loss costs for retail billing purposes was judicial in nature;
- Companies could not avoid application of issue preclusion bar on basis of application of alleged incorrect standard of review by Commonwealth Court in prior review of public utilities commission order;
- Congress did not divest state utility agencies or state courts of jurisdiction to hear cases requiring adjudication of scope filed rate doctrine;
- PUC in its classification of line-loss costs for retail billing purposes, and Commonwealth Court in its affirmation of that decision, had arguable basis for jurisdiction; and
- PUC in its classification of electricity line-loss costs for retail billing purposes, and Commonwealth Court in its affirmation of that decision, was not collateral attack on decision by Federal Energy Regulatory Commission.