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PUBLIC UTILITIES - CALIFORNIA

California Public Utilities Commission v. Federal Energy Regulatory Commission

**United States Court of Appeals, Ninth Circuit - January 8, 2018 - F.3d - 2018 WL 31557518
Cal. Daily Op. Serv. 239**

California Public Utilities Commission (CPUC) petitioned for review of Federal Energy Regulatory Commission's (FERC) determination that utility whose participation in regional transmission organization was involuntary and mandated by state law was eligible for an incentive adder for remaining a member of regional transmission organization.

The Court of Appeals held that:

- FERC's determination that its order authorized FERC to grant incentive adder to utility whose participation in transmission organization was involuntary and was mandated by state law was plainly erroneous;
- FERC's interpretation of order as authorizing it to grant incentive adder to utility whose participation in transmission organization was involuntary and was mandated by state law constituted post hoc rationalization of the order on review;
- FERC order permitted challenges to incentives awards granted by FERC on ground that they would not induce continuing participation in transmission organizations;
- FERC's award of incentive adder to utility whose participation in transmission organization was involuntary and mandated by state law was arbitrary and capricious;
- Award constituted impermissible generic adder; and
- CPUC's challenge to award was not prohibited collateral attack on original order as would violate Federal Power Act (FPA).