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City of Clarksville, Tennessee v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - April 24, 2018 - F.3d - 2018 WL 1915066

City in Tennessee petitioned for review of orders of the Federal Energy Regulatory Commission (FERC), asserting Natural Gas Act (NGA) jurisdiction over transportation and sale of natural gas for resale from city to city in Kentucky.

The Court of Appeals held that:

- City had constitutional standing to challenge orders, and
- FERC lacked authority under NGA to regulate city's sales.

City, which operated natural gas facilities, had constitutional standing to challenge orders of Federal Energy Regulatory Commission (FERC), which asserted NGA jurisdiction over city's transportation and sale of natural gas for resale to city in neighboring state; FERC's orders subjected city to data retention requirement under FERC regulations.

City was acting as a municipality when it sold natural gas to city in neighboring state, and thus Federal Energy Regulatory Commission (FERC) lacked authority under NGA to regulate such sales; city acted only within its state of incorporation with respect to its sales to other city, as other city owned and operated pipeline that crossed state border.