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PUBLIC UTILITIES - CALIFORNIA

San Diego Gas & Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - January 15, 2019 - F.3d - 2019 WL 190306

Public utility that provided energy services in California petitioned for review of Federal Energy Regulatory Commission (FERC) declaratory order applying FERC's cancelled or abandoned electricity transmission facilities incentive, which encouraged new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, only prospectively, to investment that had yet to occur, and declining to apply the incentive to \$31 million in costs that the utility had already incurred over four-year period, prior to the obtaining the declaratory order.

The Court of Appeals held that:

- Utility was aggrieved by FERC's declaratory order, and thus Court of Appeals had jurisdiction to review utility's petition challenging the declaratory order, and
- FERC's declaratory order was consistent with FERC's incentive rule and supported by substantial evidence.

Public utility that provided energy services in California was aggrieved by declaratory order of Federal Energy Regulatory Commission (FERC), that FERC's cancelled or abandoned electricity transmission facilities incentive, which encouraged new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, did not apply to \$31 million in costs that utility already incurred on project, and thus Court of Appeals had jurisdiction to review utility's petition challenging the declaratory order; even though abandonment of the project might never occur, FERC's determination made the utility's project a less attractive investment for outside funders and partners, increasing costs to the utility.

Federal Energy Regulatory Commission's (FERC) declaratory order that public utility failed to establish requisite nexus between abandonment incentive, which encourages new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, and \$31 million in costs utility already incurred before it sought declaratory order, was consistent with FERC's incentive rule and supported by substantial evidence; order aligned with FERC's longstanding policy that rate incentives must be prospective and that there must be a connection between the incentive and the conduct meant to be induced, and there was no evidence that the utility's four years' worth of investment in the project was beneficially affected by any assurance provided through the abandonment incentive.