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PUBLIC UTILITIES - PENNSYLVANIA

Transource Pennsylvania, LLC v. DeFrank

United States Court of Appeals, Third Circuit - September 5, 2025 - F.4th - 2025 WL 2554133

Electric utility brought action against Pennsylvania Public Utility Commission (PUC) seeking declaratory judgment that PUC's order denying utility's siting applications to build transmission lines, as part of project selected through a federal process aimed at identifying and relieving regional transmission congestion, was preempted under federal law and violated the dormant Commerce Clause.

The United States District Court for the Middle District of Pennsylvania granted utility's motion for summary judgment and denied PUC's cross-motion for summary judgment. PUC appealed.

The Court of Appeals held that:

- Issue preclusion did not apply to preclude litigation of preemption claim;
- PUC's order was preempted as posing obstacles to accomplishing federal objectives in regulating electricity industry; and
- Regional transmission organization (RTO) did not wield eminent-domain power under Pennsylvania law.

Pennsylvania Public Utility Commission's (PUC) order denying electric utility's siting applications to build transmission lines, as part of project selected through a federal process aimed at identifying and relieving regional transmission congestion, posed obstacles to accomplishing federal objectives in regulating the electricity industry, and thus PUC's order was preempted by federal law; Federal Energy Regulatory Commission (FERC) determined that the benefit-cost methodology used by regional transmission organization (RTO) for selecting project was a just and reasonable means by which to measure whether an economic-based enhancement or expansion should be included in a regional transmission expansion plan, and PUC's rejection of that measure arose from PUC's disagreement with constructing project.

Pennsylvania Public Utility Commission's (PUC) order denying electric utility's siting applications to build transmission lines, as part of project selected through a federal process aimed at identifying and relieving regional transmission congestion, was preempted as posing an obstacle to accomplishing federal objectives in regulating the electricity industry, despite argument that PUC's independent determination of public need for project was necessary to prevent a wasteful and counterproductive project due to decrease in congestion in years since project was approved; task of reevaluating need based on changing congestion patterns belonged with RTO and not with PUC since the need determination fell in the first instance to RTO.

Regional transmission organization (RTO) that was responsible for maintaining the bulk electricity transmission system of a 13-state region did not wield eminent-domain power of a public utility under Pennsylvania law when RTO identified areas of transmission congestion and proposed transmission-line construction project as solution to reduce congestion; RTO was not a public utility,

and any utility was required to prevail in a condemnation action at the court of common pleas before private property could be condemned.

Even after the Pennsylvania Public Utility Commission (PUC) authorizes an electric utility to exercise the power of eminent domain, a condemnation is far from final; rather, the utility must still prevail in a condemnation action at the court of common pleas.

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