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PUBLIC UTILITIES - CALIFORNIA

Winding Creek Solar LLC v. California Public Utilities Commission

United States District Court, N.D. California., San Francisco Division - February 10, 2014 - F.Supp.2d - 2014 WL 558673

LLC that was owner and developer of planned solar project brought action for declaratory and injunctive relief against California Public Utilities Commission (CPUC), contending that CPUC's policies governing wholesale price of energy bought from small facilities such as that planned by LLC violated Public Utilities Regulatory Policies Act (PURPA) and thus were preempted by Federal Power Act (FPA). CPUC moved to dismiss.

The District Court held that:

- LLC failed to establish its Article III standing;
- Johnson Act did not apply to complaint;
- Eleventh Amendment immunity barred action;
- Owner-developer did not have statutory standing to bring private enforcement action under PURPA; and
- Owner-developer stated plausible claim that CPUC's process to determine rate at which electric utilities could offer to buy power from qualified small producers violated PURPA and its implementing regulations.

PURPA does not require that a state commission adopt a specific rate or rate scheme for purchases by electric utilities from qualifying small power production facility, and state commission may implement PURPA by issuing regulations, resolving disputes on a case-by-case basis, or by adopting any other means that reasonably give effect to regulations promulgated by Federal Energy Regulatory Commission (FERC). In addition, regulations promulgated by FERC pursuant to PURPA afford state commissions a wide degree of latitude in determining how to implement PURPA. As long as an implementation plan is consistent with federal law, FERC does not second-guess the state commission.

Owner-developer of planned solar project did not aver facts showing actual or imminent injury not contingent on future events, and thus failed to establish its Article III standing to sue CPUC to challenge CPUC's policies governing wholesale price of energy bought from small facilities. Owner-developer averred that its planned project had received all required approvals needed for construction, making it a fair reading of complaint that neither construction nor power production had commenced at facility, and owner-developer did not aver in complaint that it could not secure financing for facility absent long-term power purchase agreement, although it made such assertion in opposing motion to dismiss.

Owner-developer argued that CPUC's rate calculation would amount to unconstitutional taking of property without compensation as rhetorical device, and did not actually assert takings claim. Therefore Johnson Act, which barred district courts from enjoining, suspending, or restraining

operation of, or compliance with, order affecting rates chargeable by public utility and made by state administrative agency or rate-making body of state political subdivision when statutory requirements were met did not apply to owner-developer's complaint.

Eleventh Amendment immunity applied to bar owner-developer's action, as underlying statutory scheme did not establish CPUC's constructive waiver of immunity, Congress did not make receipt of federal funds to implement PURPA conditional upon waiver of sovereign immunity, and complaint did not seek prospective relief only against CPUC's commissioners.

Neither its planned facility nor filing of its self-certification form satisfied requirements of provision of PURPA allowing "electric utility, qualifying cogenerator, or qualifying small power producer" to bring action to enforce regulatory scheme, and therefore owner-developer did not have statutory standing to bring private enforcement action under PURPA against CPUC.

Owner-developer alleged plausible claim that process used by CPUC to determine rate at which electric utilities could offer to buy power from qualified small producers violated PURPA and its implementing regulations by asserting that periodic market-based pricing adjustments made pursuant to CPUC's process did not reflect utilities' avoided costs. However, the court concluded that the briefing was simply too underdeveloped at this point to decide the issue. The CPUC, therefore, had not met its burden to show the complaint presented no plausible claim for relief.