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PUBLIC UTILITIES - MARYLAND

PPL EnergyPlus, LLC v. Nazarian

United States Court of Appeals, Fourth Circuit - June 2, 2014 - F.3d - 2014 WL 2445800

Utility companies brought action against the Commissioner of the Maryland Public Service Commission (PSC), challenging the PSC's order directing Maryland utilities to enter into a contract for differences with new power generation plant to incentivize the construction of the plant. The District Court entered judgment for the utilities. The PSC appealed.

The Court of Appeals held that:

- The PSC's order was preempted under field preemption, and
- The PSC's order was preempted under conflict preemption.

Under the Federal Power Act, Congress intended that the Federal Energy Regulatory Commission (FERC) occupy the field of wholesale sales of energy in interstate commerce, thus field preempting PSC's order, as the PSC order had the effect of functionally setting the rate that the new facility would receive in capacity auctions overseen by FERC.

Maryland PSC's order directly conflicted with the FERC's regulation of the wholesale sale of energy in interstate commerce under the Federal Power Act (FPA), and thus the PSC order was preempted on conflict grounds by the FERC. The PSC's order had the potential of disrupting the FPA's goal of using price signals in capacity auctions to incentivize new generation sources, and the PSC's 20-year contract for difference incentive greatly exceeded the three years provided by the FPA for such incentives.