

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - NEW JERSEY**

### **PPL Energyplus, LLC v. Solomon**

**United States Court of Appeals, Third Circuit - September 11, 2014 - F.3d - 2014 WL 4454999**

Dissatisfied with the stock and reliability of power-generating facilities in New Jersey, the state adopted the Long Term Capacity Pilot Program Act. The Act-known as LCAPP-instructed New Jersey's Board of Public Utilities to promote the construction of new power-generating facilities in the state. Rather than pay for the construction of these plants directly, the Board of Public Utilities crafted a set of contracts, called Standard Offer Capacity Agreements, that assured new electric energy generators fifteen years of revenue from local utilities and, ultimately, New Jersey ratepayers. LCAPP guaranteed revenue to new generators by fixing the rates those generators would receive for supplying electrical capacity, that is, the ability to make energy when called upon.

Energy producers and sellers brought action seeking to have LCAPP declared unconstitutional. The District Court granted judgment for plaintiffs. New Jersey's Board of Public Utilities and contractor under LCAPP appealed.

The Court of Appeals held that LCAPP was preempted by the Federal Power Act.

FPA occupied field of interstate rates for electricity, and therefore LCAPP - which provided incentives for construction of new power plants by regulating rates that new electric generators would receive for their capacity through Standard Offer Capacity Agreements - intruded into area reserved exclusively for federal government and was preempted, since LCAPP compelled participants in federally-regulated marketplace to transact capacity at prices other than price fixed by marketplace. Even if reasonableness of Agreements' rates would be within exclusive jurisdiction of FERC to review, Agreements could not set capacity prices in the first place.