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Western Minnesota Mun. Power Agency v. Federal Energy Regulatory Com'n

United States Court of Appeals, District of Columbia Circuit - November 20, 2015 - F.3d - 2015 WL 7423719

The Western Minnesota Municipal Power Agency ("Western Minnesota") submitted an application pursuant to the Federal Power Act ("FPA") for a preliminary permit for a hydroelectric project in Polk County, Iowa. A private developer, FFP Qualified Hydro 14, LLC ("FFP"), also submitted a permit application for the same project on the same day. Despite Western Minnesota's status as a municipality, the Federal Energy Regulatory Commission concluded that the municipal preference under Section 7(a) of the FPA applies only to municipalities "located in the vicinity" of the water resources to be developed.

FFP was awarded the permit and Western Minnesota appealed.

The Court of Appeals held that Federal Power Act (FPA) unambiguously provided preference to preliminary hydroelectric permit applications by states and municipalities without any geographic restriction.

There was no statutory language qualifying or restricting which states or municipalities were to be favored, use of phrase "shall give preference" indicated a mandatory directive to Federal Energy Regulatory Commission (FERC), FPA's notice provision did not limit the scope of the municipal preference, legislative history suggested that Congress did not intend for FERC to have discretion in picking among states and municipalities, and there was nothing patently unreasonable in favoring all municipalities over private applicants.