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Oklahoma Gas and Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - July 1, 2016 - F.3d - 2016 WL 3568086

The Federal Energy Regulatory Commission (FERC) accepted, subject to modifications, regional transmission organization's (RTO) filing to comply with local and regional transmission planning and cost allocation requirements and granted in part and denied in part requests for rehearing.

RTO and its members petitioned for judicial review, and various parties intervened.

The Court of Appeals held that requirement that RTO members remove rights of first refusal to construct transmission facilities from their membership agreement did not violate *Mobile-Sierra* doctrine.

Federal Energy Regulatory Commission's (FERC) order requiring that members of regional transmission organization (RTO) remove rights of first refusal to construct transmission facilities from their membership agreement did not violate *Mobile-Sierra* doctrine, pursuant to which freely-negotiated wholesale-energy contracts were presumed to be just and reasonable unless found to seriously harm public interest. FERC reasonably determined that rights of first refusal did not promote competition, but instead created pre-existing barrier to entry for nonincumbent transmission owners, which created disincentives for non-incumbents to identify and commit resources to cost-effective solutions to transmission needs.