

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - CALIFORNIA**

### **California Public Utilities Commission v. Federal Energy Regulatory Commission**

**United States Court of Appeals, District of Columbia Circuit - December 17, 2021 - F.4th - 2021 WL 5979312**

California Public Utilities Commission (CPUC) filed petition to review Federal Energy Regulatory Commission's (FERC) approval of California Independent System Operator Corporation's (CAISO) proposed revision to compensation structure for its Capacity Procurement Mechanism (CPM), as voluntary program designed to provide electric capacity necessary to maintain grid reliability within CAISO's network.

The Court of Appeals held that:

- FERC did not engage in reasoned decision-making when it approved CAISO's proposed revision to compensation structure for its CPM, and
- Substantial evidence did not support FERC's approval of CAISO's proposed revision to compensation structure for its CPM.

Federal Energy Regulatory Commission (FERC) did not engage in reasoned decision-making when it approved proposed revision by California Independent System Operator Corporation (CAISO) to compensation structure for its Capacity Procurement Mechanism (CPM), as voluntary program designed to provide electric capacity necessary to maintain grid reliability within CAISO's network, which resulted in variable, resource-specific and uncapped maximum rate intended to compensate particular resources, by relying on prior order approving soft-offer cap, which included 20% adder, that produced fixed, resource-agnostic maximum rate meant to facilitate competitive bidding process among many resource classes, and therefore approval was arbitrary and capricious in violation of Administrative Procedure Act (APA), since FERC did not discuss their material differences, and, instead, invoked sort of "consistency" rationale, and left it at that.

Substantial evidence did not support Federal Energy Regulatory Commission's (FERC) approval of California Independent System Operator Corporation's (CAISO) proposed revision to compensation structure for its Capacity Procurement Mechanism (CPM), as voluntary program designed to provide electric capacity necessary to maintain grid reliability within CAISO's network, and therefore approval was arbitrary and capricious in violation of Administrative Procedure Act (APA), since neither CAISO nor FERC relied on findings supporting conclusion that 20% adder for above-cap resources would be just and reasonable mechanism to provide opportunity for sufficient recovery of fixed costs plus return on capital to facilitate incremental upgrades and improvement by resources.