

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **PUBLIC UTILITIES - DISTRICT OF COLUMBIA**

### **City and County of San Francisco v. Federal Energy Regulatory Commission**

**United States Court of Appeals, District of Columbia Circuit - January 25, 2022 - F.4th - 2022 WL 211363**

City petitioned for review of multiple orders by the Federal Energy Regulatory Commission (FERC) denying its complaints against utility, and denying city's requests for rehearing regarding delivery of electricity to end users, challenging utility's refusal to offer secondary-voltage service and provide service to certain delivery points under terms of open-access tariff.

The Court of Appeals held that:

- Petitions were not moot;
- FERC's decisions were arbitrary and capricious;
- FERC's decision that utility did not unduly discriminate was not based on reasoned decision-making; and
- FERC's decision that utility complied with grandfathering provision was arbitrary and capricious.

City's petitions for review of decisions by the Federal Energy Regulatory Commission (FERC) denying city's complaints against electrical utility, alleging that utility violated distribution agreement by refusing to offer secondary-voltage service to some end-users within the city, were not rendered "moot" by utility's proposed revised changes to the distribution agreement, which were accepted by FERC, where retrospective relief for prior violations was still available to city.

Federal Energy Regulatory Commission (FERC) decision, finding that electrical utility retained discretion to determine what level of service was most appropriate for customers, and denying city's complaint challenging utility's refusal to offer secondary-voltage service to city, was arbitrary and capricious, in violation of the Federal Power Act (FPA); FERC's decision was conclusory and vague, it made only passing reference to relevant factors, such as safety, reliability, and engineering challenges, and it failed to identify specific risks and challenges arising from providing secondary-voltage service to city.

Federal Energy Regulatory Commission (FERC) decision, finding that electrical utility did not unduly discriminate against city by providing service to retail customers at higher voltages than it provided to city, did not amount to reasoned decision-making, as required by the Federal Power Act (FPA), absent specific explanation as to how utility's retail customers were not similarly-situated to city.

Federal Energy Regulatory Commission (FERC) decision, that electrical utility's refusal to provide city with new interconnections for secondary-voltage distribution services unless the total electricity demand was less than 75 kilowatts did not violate terms of secondary-voltage tariff, was arbitrary and capricious in violation of Federal Power Act (FPA); FERC failed to explain specific justifications for the 75-kilowatt numerical guidepost, which was not set forth in the tariff itself.

Decision of the Federal Energy Regulatory Commission (FERC), finding that electrical utility

complied with grandfathering provision of Federal Power Act (FPA) by providing secondary-voltage service to limited number of delivery points, was arbitrary and capricious; FERC departed from its own interpretation of its precedent, without providing reasoned analysis indicating how and why its prior policies and standards were being changed.