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California Public Utilities Commission v. Federal Energy Regulatory Commission

United States Court of Appeals, Ninth Circuit - March 17, 2022 - 29 F.4th 454 - 22 Cal. Daily Op. Serv. 2913 - 2022 Daily Journal D.A.R. 2667

California Public Utilities Commission (CPUC) and other state agencies petitioned for review of Federal Energy Regulatory Commission's (FERC) decisions, awarding to three California-based public utilities upward adjustments, or "incentive adders," to their rate of return on equity, over CPUC's objection that utilities should not receive awards as their participation in California independent system operator (CAISO) was involuntary and mandated by state law, so adder could not induce utilities to remain members of CAISO.

The United States Court of Appeals for the Ninth Circuit granted petitions and remanded. On remand, FERC determined that utilities' membership in CAISO was voluntary under California law, so incentive adders were warranted. CPUC and other California agencies petitioned for review of remand orders.

The Court of Appeals held that:

- FERC's remand orders did not violate mandate rule;
- *Erie* doctrine did not apply to require FERC to defer to California's interpretation of California law; and
- FERC reasonably interpreted California law as allowing utilities to voluntarily leave CAISO.

Federal Energy Regulatory Commission (FERC) did not violate mandate rule, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity because their participation in California independent system operator (CAISO) was voluntary and not mandated by California law; on remand FERC did not decide issue that Court of Appeals had already decided, as court did not definitively hold that California law prevented utilities from leaving CAISO without approval, or deviate from court's mandate that remanded case for further proceedings and instructed FERC to inquire into utility's specific circumstances as to whether it could unilaterally leave CAISO and, thus, whether incentive adder could induce utility to remain in CAISO.

Federal Energy Regulatory Commission's (FERC) conclusion, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity because their participation in California independent system operator (CAISO) was voluntary and not mandated by California law, that Erie doctrine did not apply, was not arbitrary, capricious, or contrary to law, since incentive adder and requirement that utility be voluntary member of CAISO to qualify for adder arose from federal law, and federal law as source of right sued upon did not change merely because California law dictated whether membership in CAISO was voluntary.

Court of Appeals would apply de novo review, rather than according deference, to Federal Energy Regulatory Commission's (FERC) interpretation of California law, in remand orders reaffirming

award of incentive adders to public utilities' rate of return on equity because their participation in California independent system operator (CAISO) was voluntary and not mandated by California law, since FERC was not interpreting its own electricity regulations and instead was interpreting California law and public policy, in which FERC lacked specific expertise, and Congress had not assigned FERC task of interpreting state statutes.

Under California law, as predicted by Court of Appeals, Federal Energy Regulatory Commission's (FERC) interpretation, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity, that utilities' participation in California independent system operator (CAISO) was voluntary and not mandated by California law, was not arbitrary, capricious, or contrary to law, under Administrative Procedure Act (APA); California failed to identify any California Code provision mandating CAISO membership, statutory provisions that California relied on merely directed creation of CAISO and encouraged utilities to join, and California courts would not defer to prior administrative decision suggesting the contrary, as it was inconsistent with relevant California statute.

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