

Bond Case Briefs

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PUBLIC UTILITIES - FEDERAL

Belmont Municipal Light Department v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - June 17, 2022 - F.4th - 2022 WL 2182810

Municipal electric utilities, state entities, and environmental groups petitioned for review of orders of Federal Energy Regulatory Commission (FERC) accepting tariff revisions by Independent System Operator for New England (ISO-NE), under Federal Power Act (FPA), to compensate generators for maintaining inventory of energy during upcoming winter months, and approving Inventoried Energy Program (IEP), under which ISO-NE would provide additional payments to generators to maintain up to three days' worth of fuel on-site and convert it into electricity and denying rehearing.

The Court of Appeals held that:

- Municipal electric utilities group had standing;
- State entities had standing;
- FERC's approval of portion of IEP that included coal, nuclear, biomass, and hydroelectric generators was arbitrary and capricious; and
- Portion of IEP that included coal, nuclear, biomass, and hydroelectric generators was severable and warranted vacatur.

Group of municipally-owned electric utilities had standing, under Article III and FPA, to challenge order of Federal Energy Regulatory Commission (FERC), approving Inventoried Energy Program (IEP), under which Independent System Operator for New England (ISO-NE) would provide additional payments to generators to maintain up to three days' worth of fuel on-site and convert it into electricity; group established imminent injury-in-fact by representing electrical utilities that would be expected to pay ISO-NE's designated rates under IEP, group's injuries were traceable to FERC's approval of IEP, and granting group's petition, vacating FERC's approval of ISO-NE's tariff provisions implementing IEP, and remanding to FERC would redress those injuries.

New Hampshire Office of Consumer Advocate, New Hampshire Public Utilities Commission (PUC), and Massachusetts Attorney General had standing, under Article III and FPA, to challenge order of Federal Energy Regulatory Commission (FERC), approving Inventoried Energy Program (IEP), providing additional payments to generators to maintain up to three days' worth of fuel on-site and convert it into electricity; state entities established imminent injury-in-fact by representing interests of states in protecting their citizens and electric ratepayers in traditional government field of utility regulation, injuries were traceable to FERC's approval of IEP, and granting state entities' petition, vacating FERC's approval of tariffs implementing IEP, and remanding to FERC would redress those injuries.

Federal Energy Regulatory Commission's (FERC) order, approving Inventoried Energy Program (IEP), under which Independent System Operator for New England (ISO-NE) would provide additional payments to generators to maintain up to three days' worth of fuel on-site and convert it

into electricity, lacked adequate reasoning as to challenge that IEP added \$40 million per year in new payments to nuclear, coal, biomass, and hydroelectric resources that were unlikely to change their behavior; FERC summarily accepted ISO-NE's contention that IEP's broad eligibility appropriately provided similar compensation for similar service, which completely disregarded challengers' argument, that IEP was overly inclusive and would give windfall payments to those resources, and ignored FERC's past precedents.

Federal Energy Regulatory Commission's (FERC) order, approving Inventoried Energy Program (IEP) under which Independent System Operator for New England (ISO-NE) would provide additional payments to generators to maintain up to three days' worth of fuel on-site and convert it into electricity, was severable and would be vacated as to arbitrary and capricious approval of IEP provisions concerning coal, nuclear, biomass, and hydroelectric generators that would not change their behavior in response to incentives thereby resulting in windfall payments to those resources; there was no substantial doubt that FERC would have adopted IEP without inclusion of nuclear, coal, biomass, and hydroelectric generators on its own, and remaining IEP provisions functioned sensibly without vacated portion.