

Energy: United States Supreme Court Upholds Federal Energy Regulatory Commission Order 745

Arkansas Environmental, Energy, and Water Law Blog



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The United States Supreme Court ("Court") issued an opinion today upholding Federal Energy Regulatory Commission ("FERC") Order 745 ("745"). See *Federal Energy Regulatory Commission v. Electric Power Supply Association, et al.*

The Court by a 6 to 2 margin vacated the Court of Appeals for the District of Columbia decision that had held:

... FERC lacked authority to issue the Order because it directly regulates the retail electricity market, and holding in the alternative that the Rules' compensation scheme is arbitrary and capricious under the Administrative Procedures Act.

The ruling is relevant to the United States electricity grid and the wholesale electricity market.

In summarizing 745, the Court stated that the rule:

... requires market operators to pay the same price to demand response providers for conserving energy as to generators for producing it, so long as a "net benefits test," which ensures that accepted bids actually save consumers money, is met. The Rule rejected an alternative compensation scheme that would have subtracted from LMP the savings consumers receive from not buying electricity in the retail market, a formula known as LMP-G. The Rule also rejected claims that FERC lacked statutory authority to regulate the compensation operators pay for demand response bids.

In upholding 745, the Court stated that the Federal Power Act ("FPA") provides FERC with the authority to regulate wholesale market operators' compensation of demand response bids. Its analysis included three parts stating:

- The practices at issue directly affect wholesale rates
- FERC has not regulated retail sales (concluding that 745 complies with FPA's plain terms)
- The contrary view would conflict with the FPA's core purposes

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