

Appeals Court Sides With PPL, Upholding Lower Court's Decision to Invalidate Maryland Order Subsidizing Power Plant Construction

PPL Corporation

The U.S. Court of Appeals for the Fourth Circuit ruled unanimously Monday (6/2) that the Maryland Public Service Commission overstepped its bounds in an order subsidizing development of new natural-gas-fired generation in the state.

The three-judge panel found that the Commission infringed on the Federal Energy Regulatory Commission's exclusive authority to regulate the wholesale sale of electricity in interstate commerce by "circumventing and displacing federal rules."

The decision affirmed a U.S. District Court ruling in October invalidating the PSC order. The commission subsequently appealed the ruling.

"We're pleased with the U.S. Court of Appeals decision, which affirms the lower court, upholds the integrity of competitive generation markets, and protects consumers who would have unnecessarily been forced to assume the financial risk of new power plant construction," said Robert J. Grey, executive vice president, general counsel and secretary for PPL Corporation.

The PSC order, issued April 12, 2012, required utilities to enter into long-term power supply contracts with CPV Maryland, LLC, a developer chosen by the PSC to build a gas-fired power plant in Maryland. In doing so, the order essentially guaranteed that the developer would receive subsidized energy and capacity prices when it sold its output, giving it an unfair advantage over other generators and allowing it to bid in artificially low prices into PJM's annual capacity auction.

PPL generating and marketing companies joined other merchant generators in filing a lawsuit seeking to block the action.

PPL has long argued that state programs that subsidize power plant development ultimately wind up costing consumers more, create barriers to future investment and unnecessarily shift the financial risk of new construction from developers to ratepayers. The company believes in allowing well-structured, properly regulated competitive markets to work and send price signals to developers instead.

Because of competitive markets, gas-fired generation is being built in PJM without state subsidies, and there are ample supply resources in the wholesale electricity market to meet the state's and region's energy needs.

PPL's generating and marketing companies argued that the PSC order was unconstitutional because it infringed on the Federal Energy Regulatory Commission's exclusive authority to regulate the wholesale sale of electricity in interstate commerce. In its ruling, the U.S. Circuit Court of Appeals agreed with PPL and the lower court.

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