

Public Utility Regulatory Policies Act: Federal Appellate Court Addresses Subject Matter Jurisdiction



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The United States Court of Appeals for the 10th Circuit (“10th Circuit”) addressed in a June 28th Opinion an issue involving the Public Utility Regulatory Policies Act (“PURPA”). See *Solar v. City of Farmington*, No. 20-2028, 2021 WL 2640542 (10th Cir. 2021).

The question was whether the federal district court (“district court”) had jurisdiction over an action alleging a failure to implement Federal Energy Regulatory Commission (“FERC”) rules.

The City of Farmington in 2017 enacted an ordinance that imposed additional charges on customers generating their own electricity. It argued that the charge was intended to reflect the true costs these customers cause the electric grid to incur.

An advocacy group and some affected customers (collectively “Plaintiffs”) objected. They argued that it constituted price discrimination in violation of the FERC rules. Affected customers included homeowners that had installed solar panels.

Section 210 of PURPA establishes a jurisdictional scheme for the enforcement of the anti-price discrimination requirement. This statutory provision provides state courts jurisdiction over challenges to the implementation of any requirement of a rule under Section 210(a). Courts have interpreted these as “as-applied” challenges

In the alternative, Section 210(h) allows small power producers to request that the FERC enforce a utility’s obligation to implement its rules under Section 210(f). If the FERC does not do so, the small power producer can bring suit in federal district court to enforce those requirements. This has been interpreted as an “as-implemented” claim.

The Plaintiffs requested that the FERC enforce the PURPA anti-price discrimination requirement. They subsequently filed suit in district court. They argued the suit was an “as-implemented” claim.

In response, Defendant characterized the action as an “as-applied” challenge.

The 10th Circuit describes the district court as taking a “unique, unprecedented stance” when it dismissed Plaintiffs’ cause of action for failure to state a claim. The district court concluded that because Plaintiffs did not argue that Defendant made no effort to implement FERC’s price discrimination rules, the claim was outside the jurisdiction of the federal courts.

The district court's reasoning was described as "novel." It was so characterized because PURPA was interpreted by this court as providing jurisdiction only if a utility defendant fails to make any reasonable effort to implement a FERC rule.

The 10th Circuit focused its analysis on the meaning of the word "implement." This word fixes the scope of federal courts in PURPA claims. For example, section 210(h)(2) gives federal courts the power to "enforce the requirements of subsection (f)," which states that utilities "shall, after notice and opportunity for public hearing, implement [FERC's] rule[s]."

The district court asserted that implementation of a rule only requires a reasonable effort to incorporate the rule. Plaintiffs responded that it requires the utility to act or regulate consistently with the rule.

After an analysis of the dictionary definition and federal appellate court decisions, the 10th Circuit emphasized the importance of the statutory text in interpreting the phrase "implement." As a result, it concluded Section 210(h)(2) requires facial consistency with FERC rules and the case was properly brought in federal district court.

Judgment was reversed and the case was remanded back to the district court for further proceedings.

A copy of the Opinion can be downloaded [here](#).