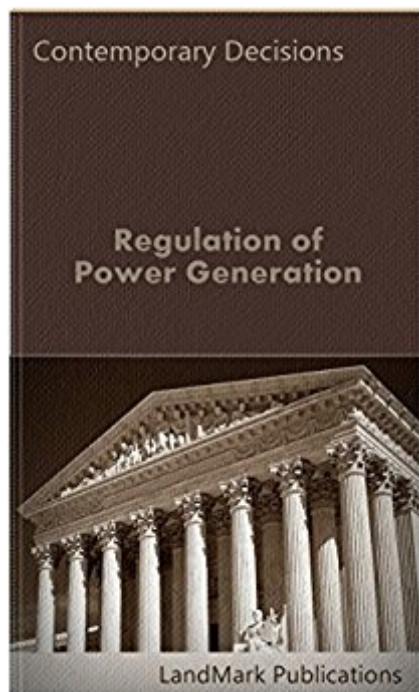


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# Regulation Of Power Generation (Litigator Series)



## Synopsis

THIS CASEBOOK contains a selection of 32 U. S. Court of Appeals decisions that analyze and discuss regulation of the sale and transmission of electric power by the Federal Energy Regulatory Commission. The selection of decisions spans from 2011 to the date of publication. The Commission is charged under the Federal Power Act ("FPA") with regulating the sale and transmission of electric energy, primarily ensuring that energy is provided at a just and reasonable rate. 16 U.S.C. § 824d(a). The Commission has jurisdiction over such sale and transmission, but states retain the right to regulate the facilities responsible for the generation of electric energy. *Id.* § 824(b). In exercising its duty to oversee the wholesale electricity market, FERC has undertaken to regulate capacity markets, which dictate the amount of electricity available for production and transmission when needed. See *Connecticut Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 479 (D.C.Cir. 2009). At the foundation of FERC's current regulatory scheme of the electric market stands Order No. 888. (fn. omitted.) In Order No. 888, FERC undertook to promote wholesale competition through open access and nondiscriminatory transmission services. As part of that undertaking, FERC "encouraged the formation of independent system operators (ISOs) to administer transmission services and new markets for wholesale electricity transactions."

*Sithe/Independence Power Partners, LP v. FERC*, 285 F.3d 1, 2 (D.C.Cir.2002). The regulatory scheme contemplates that the ISOs will "adopt transmission (and ancillary services) pricing policies to promote the efficient use of, and investment in, generation, transmission, and consumption" of wholesale electric power in specific energy capacity systems. *Id.* *New England Power Generators Ass'n v. FERC*, 757 F. 3d 283 (DC Cir. 2014).\* \* \*In the nearly eight decades since the FPA was enacted, technological advances have revolutionized the way electric power is generated and transmitted. Transmission grids are now largely interconnected, which means that "any electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce." *New York*, 535 U.S. at 7, 122 S.Ct. 1012. In addition to making the transfer of electricity over long distances more efficient, the development of a national, interconnected grid has made it possible for a generator in one state to serve customers in another, thus opening the door to potential competition that did not previously exist. *Id.* at 8, 122 S.Ct. 1012. Public utilities still retain ownership over transmission lines, however, and so, until recently, had the ability to stifle competition from new generators by "refus[ing] to deliver energy produced by competitors or [by] deliver[ing] competitors' power on terms and conditions less favorable than those they apply to their own transmissions." *Id.* at 8-9, 122 S.Ct. 1012. Congress changed this with two pieces of legislation – the Public Utility Regulatory Policies Act of 1978 ("PURPA"), Pub.L. 95-617, and the Energy

Policy Act of 1992, Pub.L. 102-486. Respectively, those two statutes obligated traditional utilities to purchase electricity from "nontraditional facilities," and authorized FERC to order utilities to provide transmission services to independent generators. New York, 535 U.S. at 9, 122 S.Ct. 1012. In 1996, FERC issued a landmark ruling [Order No. 888] requiring the "functional unbundling" of wholesale generation and transmission services, and requiring utilities to provide open, nondiscriminatory access to their transmission facilities. *New Jersey Bd. of Public Utilities v. FERC*, *ibid.*

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This is a VERY detailed review of the legislation about power generation in the United States. Not light reading, but good material for litigators and researchers. If your practice includes electrical power generation or distribution, this is one of the best resources available, and the price is great! Highly Recommended for those with a narrow focus...

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