



## Tenth Circuit Avoids Circuit Split in PURPA Dispute, Revives Federal Suit

Jun 30, 2021

Reading Time : 1 min

Passed by Congress in 1978 to promote renewable energy resources, PURPA directs the Federal Energy Regulatory Commission (FERC) to promulgate rules prohibiting utilities from engaging in price discrimination against small generating facilities called Qualifying Facilities (QFs<sup>1</sup>) and further directs state public utility commissions to implement FERC's rules.<sup>2</sup>

PURPA provides both a federal and state enforcement mechanism.<sup>3</sup> Over the years, courts have settled on a distinction between "as-applied" and "as-implemented" challenges, with the former falling under state jurisdiction and the latter falling under federal jurisdiction. An "as-applied" claim involves an allegation that a state or utility's implementation of PURPA is unlawful as applied to the complaining person or persons, while "as-implemented" claims contend that a state or utility failed to implement the FERC rule lawfully.

In this case, the city of Farmington imposed additional charges on electric customers who produce their own power. A group of rooftop solar owners challenged the ordinance in federal district court in New Mexico, arguing that it violated FERC's antiprice discrimination rules implementing PURPA.

Departing from the as-applied versus as-implemented framework, the district court had determined that it lacked jurisdiction over the dispute because federal courts can only address whether a state "outright fail[ed] to implement a rule," not whether the implementation was consistent with the FERC rule. Only state courts, according to the district court, have jurisdiction to ensure that a state or utility's procedures actually comply with FERC's regulations. If upheld on appeal, this interpretation of PURPA would have created a circuit split.

In Monday’s ruling, the 10th Circuit reversed. Looking primarily at the plain meaning of the word “implement,” the 10th Circuit reasoned that “it seems to us a non sequitur to claim that a utility can ‘implement’ a rule by issuing a regulation that is inconsistent with that rule.” Accordingly, the 10th Circuit reversed the district court’s judgment and remanded for further proceedings. On remand, the district court will evaluate the merits of the plaintiffs’ complaint regarding price discrimination.

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<sup>1</sup> 16 U.S.C. §§ 824a-3(a)-(b).

<sup>2</sup> Id. § 824a-3(f).

<sup>3</sup> Id. §§ 824a-3(g)-(h).

## Categories

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