



The Fourth Circuit Affirms District Court Decision Finding Maryland's Contract for Differences Unconstitutional

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The court further concluded that the Maryland PSC order is conflict preempted by federal law. While the court recognized the “inevitable” state/federal jurisdictional tensions under the Federal Power Act, the court concluded that the order could seriously distort PJM price signals, thereby interfering with the manner by which the FPA was designed to meet its goals.

The court expressly noted that its holding was limited to the Maryland program, and that it was not offering an opinion on other state efforts to incentivize new generation, either through direct subsidies or tax rebates. While the court concluded that, “[o]bviously, not every state regulation that incidentally affects federal markets is preempted,” the decision does not provide much additional guidance as to where the boundaries for acceptable state programs should be drawn.

¹ *PPL Energyplus, LLC v. Nazarian*, 974 F. Supp. 2d 790 (D. Md. 2013).

² *PPL Energyplus, LLC v. Nazarian*, 2014 U.S. App. LEXIS 10155.

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