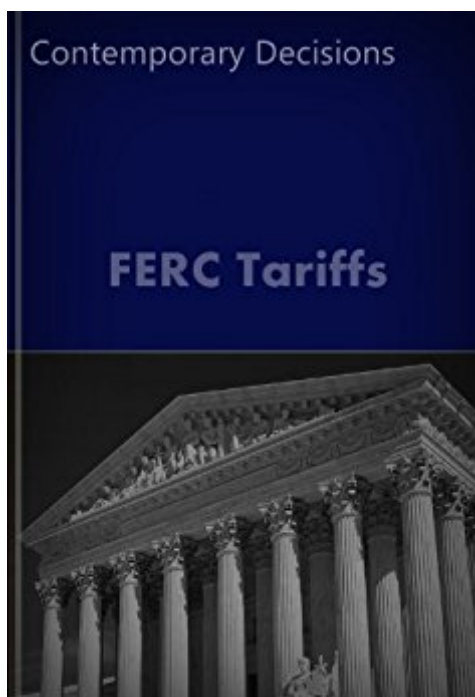


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FERC Tariffs: Contemporary Decisions (Public Utility Series)



Synopsis

This casebook contains a selection of 119 Federal Court of Appeals decisions that review FERC tariff rulings. The decisions span from 2001 to the date of publication. The opinions are organized by year and are listed in the Table of Contents in the order of frequency of citation. The most cited decisions are listed first. Under the Federal Power Act ("the Act"), utilities must file tariff schedules with FERC, and FERC must determine that the rates the utility plans to charge are just, reasonable, and lawful. 16 U.S.C. §§ 824d, 824e. Traditionally, utilities and FERC rely on a cost-based pricing model when assessing the reasonableness of rates. But merchant transmission developers are unlike ordinary utilities. Transmission projects have no preexisting transmission network in which costs can be determined—they seek to create a network, not operate within one—and no captive pool of customers from which they can recoup those costs. For these reasons, FERC allows transmission developers to request permission to charge reasonable negotiated rates, rather than cost-based rates. To do so, a transmission project developer must meet a set of criteria designed to ensure that the negotiated rate authority will not lead to unjust rates: among other things, the developer must have no captive customers, must not have the ability to exercise monopoly power, and must bear the full market risk of the project failing. *Occidental Permian Ltd. v. FERC*, 673 F. 3d 1024 (DC Cir. 2012) When an agency erroneously contends that Congress' intent has been clearly expressed and has rested on that ground, we remand to require the agency to consider the question afresh in light of the ambiguity we see. We do so because [], we examine whether the agency has reasonably exercised its discretion. But when the agency's decision was not based on [its] own judgment but rather on the unjustified assumption that it was Congress' judgment that such [an outcome is] desirable or required, the agency has not exercised that discretion at all. The same analysis applies to FERC's interpretation of a tariff. Because discretion must be exercised through the eyes of one who realizes she possesses it, we must remand to permit the Commission to determine "whether [it] wishes to retain [its interpretation] knowing that other options are permissible. *PSEG Energy Resources & Trade LLC v. FERC*, 665 F. 3d 203 (DC Cir. 2011)

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