

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 13-4330 & 13-4501

PPL Energy Plus, LLC, et al. v. Solomon, et al.
(D.N.J. No. 3-11-cv-00745)

ORDER

The parties, interveners, and amici in this consolidated action dispute the constitutionality of New Jersey's Long Term Capacity Pilot Program Act, N.J. Stat. §§ 48:3-51, 48:3-98.2-4. The plaintiffs contend that New Jersey's Long Term Capacity Pilot Program impermissibly interferes with the federal prerogative to regulate the "transmission and sale of electric energy." *See* Federal Power Act, 16 U.S.C. § 824(a). The District Court accepted that argument and declared New Jersey's law invalid. (District Court Opinion, App'x 89.) The District Court concluded that New Jersey's legislation both intruded into a field regulated exclusively by the federal government and also conflicted with existing federal law. (*See* App'x 80-86.)

Because this appeal concerns the nature and extent of federal authority over the transmission and sale of electric energy, we invite the United States through the Attorney General of the United States to address the following question:

Does the Federal Power Act preempt New Jersey's
Long Term Capacity Pilot Program Act?

If the United States wishes to file a brief as amicus curiae responding to this order, it is granted leave to do so pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. The brief should be filed at least seven days before the oral argument in this case, currently scheduled for March 27, 2014. The brief should also comply with the formatting and type-volume limitations set forth in Rules 29(d) and 32(a)(7) of the Federal Rules of Appellate Procedure. Our phrasing of the question presented does not prevent the United States from reformulating the question, or from considering any other issues presented in the parties' briefs.

For the Court,
s/ Marcia M. Waldron
Clerk

Dated: February 21, 2014

cc: All counsel of record
Attorney General of the United States