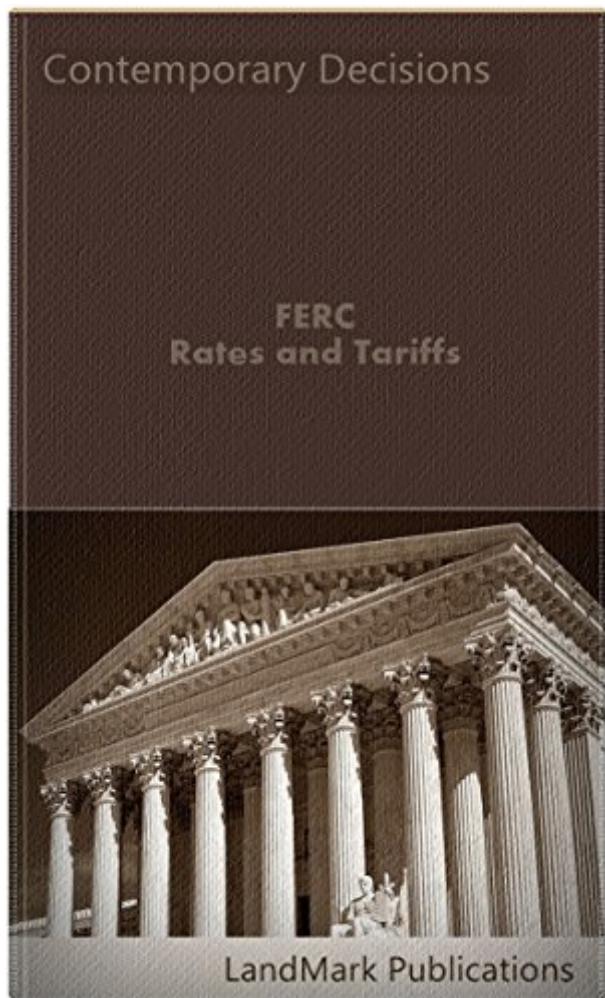


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FERC Rates And Tariffs (Public Utility Series)



Synopsis

THIS CASEBOOK contains a selection of 145 decisions of the U. S. Court of Appeals that analyze and discuss issues stemming from FERC rate and tariff rulings. The selection of decisions spans from 2007 to the date of publication.[F]iled tariffs are "the equivalent of a federal regulation," and therefore a suit to enforce them arises under federal law. *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488 (7th Cir.1998). FERC has exclusive jurisdiction over their subject matter under the filed rate doctrine. The Supreme Court has made clear that in passing the Federal Power Act, 16 U.S.C. § 824(b), Congress made a bright line distinction between state and federal jurisdiction, giving FERC plenary and exclusive authority over interstate wholesale [electric] rates. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966, 106 S.Ct. 2349, 90 L.Ed.2d 943 (1986). [] Under the filed rate doctrine, no seller of energy may collect a rate other than the one filed with and approved by FERC, and no court may substitute its own judgment for that of FERC. *Id.* *City of Osceola, Ark. v. Entergy Arkansas, Inc.*, 791 F. 3d 904 (8th Cir. 2015). The authority to determine whether rates are just and reasonable is vested solely in FERC. *Ak. La. Gas Co. v. Hall*, 453 U.S. 571, 577, 101 S.Ct. 2925, 69 L.Ed.2d 856 (1981). *City of Osceola, Ark. v. Entergy Arkansas, Inc.*, *ibid*. FERC may permissibly rely on economic theory alone to support its conclusions so long as it has applied the relevant economic principles in a reasonable manner and adequately explained its reasoning. See, e.g., *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C.Cir.2010) (holding that FERC appropriately made findings based on "'generic factual predictions' derived from economic research and theory ... given that it explained and applied the relevant economic principles in a reasonable manner" (quoting *Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 688 (D.C.Cir.2000))); *Wis. Pub. Power Inc. v. FERC*, 493 F.3d 239, 260-61 (D.C.Cir.2007) (holding that FERC's prediction that a given formula for allowing electricity suppliers to recover fixed costs in setting prices would "provide an efficient incentive to invest" was a "reasonable predictive judgment that warrants judicial deference"); *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1008 (D.C.Cir.1987) (stating that courts should not set aside an agency's "reliance on generic factual predictions merely because they are typically studied in the field called economics"). [Courts] consider whether FERC reasonably applied sound economic principles and articulated an adequate explanation for how those principles justified its conclusion. *Central Hudson Gas & Elec. Corp. v. FERC*, 783 F. 3d 92 (2nd Cir. 2015). [The DC Circuit] give[s] "special deference" to FERC's expertise in ratemaking cases, reviewing the Commission's decision only to determine whether it "has examined the relevant data and articulated a rational connection between the facts found and the choice made." *BP W. Coast Prods., LLC v. FERC*, 374 F.3d 1263, 1282 (D.C.Cir. 2004). The

Commission, however, must still "cogently explain why it has exercised its discretion in [the] given manner." Id. (quoting Exxon Corp. v. FERC, 206 F.3d 47, 54 (D.C.Cir.2000)) . . .

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