

Spiegel Attorneys Argue Before U.S. Supreme Court in Case with Significant Implications for Renewables

March 29, 2016 | *Peter J. Hopkins, Jeffrey A. Schwarz, Scott H. Strauss*

Case Could Define Boundary Between State and Federal Control Under the Federal Power Act

Scott Strauss appeared before the United States Supreme Court on February 24, 2016, to argue a case that could impact states' efforts to foster the development of new and needed generation, including renewable resources. Scott, joined by partners Peter Hopkins and Jeff Schwarz, represented the State of Maryland, which sought to encourage the construction of a new power plant to address anticipated resource shortages over the long-term.

Maryland conducted a competitive solicitation for new generation facilities and directed the state's distribution utilities to enter into "contracts for differences" with the winning bidder. Under those contracts, the bidder was to sell the new plant's power into PJM's markets and pass the revenues through to the distribution utilities.

The question before for the Court is whether Maryland's use of that contract structure was a preempted intrusion into the Federal Energy Regulatory Commission's wholesale-rate authority under the Federal Power Act. Maryland argued that it was not.

A decision in the case, *Hughes v. Talen Energy Mktg. LLC*, No. 14-614, is expected in the next few months.

For more background on the case, see Robert Walton's article in *Utility Dive*, "[In Supreme Court's Second Power Case of 2016, Renewable Energy Advocates Are on Edge: How the Justices Rule on a Natural Gas Contract in Maryland Could Have Wider Implications for Clean Energy Development Nationwide](#)." You may also read the briefs and argument transcript via SCOTUSblog (<http://www.scotusblog.com/case-files/cases/nazarian-v-ppl-energyplus-llc/>).

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