

U.S. COURT OF APPEALS OVERTURNS FEDERAL ELECTRICITY REGULATORY COMMISSION ORDER

FTI Consulting's William Hogan advised the lead petitioner, the Electric Power Supply Association, and examined alternative pricing models, such as dynamic pricing, and analyzed the Rule's implications for consumers. FTI Consulting played a critical role in explaining how the FERC's demand response compensation framework would overcompensate demand response providers at the expense of other electricity market participants.

Situation

- The U.S. Court of Appeals overturned Federal Energy Regulatory Commission (FERC) Order No. 745, issuing an order vacating and remanding the Order on the basis that FERC does not have jurisdiction to regulate demand response.
- The Court noted that even if FERC did possess jurisdiction to regulate demand response, the compensation ordered by FERC is arbitrary and capricious.
- Due to the disconnect between wholesale and retail prices in the electricity market and the absence of retail price signals, retail consumers do not adjust their demand during peak-usage periods. To disincentivize consumption of electricity during peak hours, the FERC established the Final Rule (Order No. 745) to stimulate a "demand response".
- Our client, Electric Power Supply Association, filed a petition for review of the FERC Final Rule Order No. 745 in the U.S. Court of Appeals for the District of Columbia Circuit.

"The Court's jurisdictional ruling was its focus. But the Court would still vacate the Rule if we engaged the Petitioners' substantive arguments. In the long-run, electricity markets would be better if the substantive arguments about efficient pricing are embraced as FERC's policy."

-William Hogan
Senior Consultant
FTI Consulting, Inc.

FTI Consulting's Role

- FTI Consulting's William Hogan, PhD advised the lead petitioner, the Electric Power Supply Association, and examined alternative pricing models, such as dynamic pricing, and analyzed the Rule's implications for consumers.
- FTI Consulting played a critical role in explaining how the FERC's demand response compensation framework would over-compensate demand response providers at the expense of other electricity market participants.

Outcome

- On May 23, 2014 the U.S. Court of Appeals for the District of Columbia Circuit overturned FERC Order No. 745, issuing an order vacating and remanding the Order on the basis that FERC does not have jurisdiction to regulate demand response.
- Additionally, the Court noted that even if FERC did possess jurisdiction to regulate demand response, the compensation ordered by FERC is arbitrary and capricious.

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About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.

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