

THE SUPREME COURT SIDES WITH CONSUMERS AND CLEAN ENERGY IN CASE SUPPORTED BY OPC

D.C. People's Counsel Sandra Mattavous-Frye welcomed the January 25, 2016 Supreme Court decision affirming the authority of the Federal Energy Regulatory Commission (FERC) to regulate "demand response" in the wholesale energy markets. This authority will allow FERC to continue establishing incentives for electricity consumers to be compensated for reducing their electric consumption. The Office of the People's Counsel (OPC), which actively supported FERC's case, praises the Supreme Court's decision as a big win for ratepayers and the District of Columbia's sustainability plan.

What is Demand Response?

Demand response refers to the practice of electricity customers reducing or temporarily shutting off their use of energy during periods of high (or peak) electricity demand. Customers who respond to the peak demand by curtailing their energy usage help prevent outages that result from high demand.

In 2011, FERC issued a rule, Order 745, which set rates for demand response in the wholesale electricity markets. Electricity grid operators, such as PJM Interconnection, which serves the District of Columbia and 13 states spanning the Mid-Atlantic region, were thereafter required to pay customers, who bid their demand response in the markets, the same way they paid suppliers of traditional energy resources such as coal, oil and natural gas. This was groundbreaking as it enabled demand response to compete in the wholesale electricity market with conventional generation resources. Demand response providers generally include universities, shopping malls and other large businesses but could also include aggregated residential customers.

What led to the Supreme Court's decision?

The Electric Power Supply Association (EPSA) – an organization that represents energy generators – brought a lawsuit against FERC, claiming that the federal agency did not have authority to regulate demand response. EPSA claimed that demand response was purely a retail level product, and therefore, beyond the scope of FERC's jurisdiction. The U.S. Court of Appeals for the D.C. Circuit agreed with EPSA in a 2-1 decision. FERC, however, appealed the decision to the Supreme Court. OPC and numerous groups from a broad range of sectors--including environmental organizations, utility regulators and consumer advocacy groups--backed FERC in its petition to the higher court.

How was OPC involved?

OPC was actively involved in supporting FERC's Supreme Court appeal. The People's Counsel joined with the Sierra Club, Natural Resources Defense Council, Environmental Defense Fund and other noted environmental organizations in filing an amicus brief (or friend of the court

brief) in February 2015. We argued, “The D.C. Circuit’s decision appears to deny FERC’s authority to pursue measures it has long recognized as ‘essential to the success of competitive wholesale markets’ . . .and jeopardizes a wide array of benefits – for the Nation’s consumers, and the health of its citizens and the environment – that derive, as Congress recognized, from demand response participation in wholesale markets.” OPC continued its advocacy on behalf of District consumers by joining with the National Association of State Utility Consumer Advocates (NASUCA) in a second amicus brief in July 2015.

What did the Supreme Court decide?

The Court ultimately sided with FERC, upholding Order 745 and FERC’s authority to regulate demand response. It maintained that demand response can be regulated on both the retail and the wholesale levels and customers promising to reduce usage, and getting compensation for doing so, should be paid the same price for conserving energy as the price paid to generators for producing energy because demand response provides the same value to the grid during periods of peak demand.

What is the impact of this decision? How will it affect the District?

This is an important decision for several reasons. First, the ruling will help consumers save money and keep energy prices lower. Treating demand response as an energy-saving vehicle in the wholesale markets reduces the need for utilities to purchase more power during critical peak demand periods and reduces the need for utilities to invest in new power plants at consumers’ expense. Second, the decision bolsters the nation’s efforts to address climate change. The reduction of energy usage leads to a reduction of carbon emissions and other pollution from coal, gas and oil generators used to create electricity. Third, the decision advances efforts to achieve a more reliable grid. Demand response has been essential to keeping the lights on and preventing outages during severe weather events. In fact, during the Polar Vortex of 2013/2014, demand response was critical to reducing electricity usage when gas and coal energy suppliers failed to start their plants and provide power.

For the District of Columbia, the Supreme Court decision has come at just the right time. As the District continues to be a nationwide leader in sustainability, the ability to be compensated in the regional energy marketplace will greatly enhance our efforts to be a clean energy city.

Specifically, the Supreme Court decision opens doors for the DC Sustainable Energy Utility to potentially participate in PJM’s demand response program. As the entity responsible for the District’s energy efficiency and renewable energy programs, the DCSEU could serve as an aggregator for local commercial, institutional and residential energy consumers who seek compensation for conserving energy. Additionally, the decision now provides an opportunity for energy stakeholders to design and propose a viable dynamic pricing program for review by the D.C. Public Service Commission.