

High court upholds government's energy conservation program

By **SAM HANANEL** Jan. 25, 2016 4:11 PM EST



FILE - In this June 30, 2014 file photo, the Supreme Court building in Washington.

WASHINGTON (AP) — In a win for the Obama administration and environmental groups, the Supreme Court on Monday upheld a 5-year-old federal program that pays large electric customers to save energy during times of peak demand.

The justices ruled 6-2 that the Federal Energy Regulatory Commission had the authority to issue regulations aimed at conserving energy and preventing blackouts.

Supporters of the plan say it has saved billions in energy costs, improved reliability of the power grid and reduced air pollution since it was put in place in 2011. A coalition

of utility companies, which have lost millions of dollars in profits under the rule, argued it was too generous and trampled state rights over retail electricity sales.

A federal appeals court ruled last year that the plan intrudes on state power because it affects the purchasing decisions of retail customers.

But the Supreme Court said the commission acted within its authority to regulate wholesale markets and was not attempting to regulate retail sales, which are governed by states.

Writing for the court, Justice Elena Kagan said even utility companies don't dispute that the plan curbs prices and enhances overall electric reliability, a key purpose of the Federal Power Act. The fact that retail sales are affected doesn't matter, she said.

"The commission's rule addresses — and addresses only — transactions occurring on the wholesale market," Kagan said.

The demand response program pays large electricity customers like retailers, schools and office buildings to reduce energy consumption on hot summer days and other times of peak demand. The reduction in power use means electric utilities don't need to turn on backup power plants, which cost more to run and boost electricity prices.

White House spokesman Frank Benenati called the ruling "good news for consumers, clean energy, reliability and the overall economy."

"This decision allows us to continue realizing billions in annual savings from innovative incentives and business models that ensure we use our electricity system efficiently, as we integrate more energy efficiency and renewable energy onto the power grid," he said.

The rule won wide praise from environmental groups because it curbed the need for utilities to build expensive and air-polluting power plants. The demand response program saved customers in the mid-Atlantic region nearly \$12 billion in 2013, according to PJM Interconnection, which manages the wholesale power supply for all or part of 13 states.

"Today's decision is a victory for customer freedom, customer choice and the vibrant market for low cost clean energy," said Vicki Patton, general counsel for the Environmental Defense Fund.

But the rule has meant millions in lost profits for utilities. Those companies argued

that the program impermissibly targets retail customers.

The regulation itself has remained in effect while the Supreme Court considered whether it was valid.

Justice Antonin Scalia dissented, saying the program does in fact regulate retail electricity sales "which are indisputably matters subject to regulation by the states and therefore off-limits to FERC." He was joined in dissent by Justice Clarence Thomas.

Justice Samuel Alito took no part in deciding the case. His most recent financial disclosure indicates he owns stock in Johnson Controls, Inc., which has a subsidiary, EnergyConnect, Inc., that is part of a group defending the commission's regulation.

One utility group critical of the plan, the American Public Power Association, said it supports demand response, but is against federal agencies overstepping their authority. Joe Nipper, a senior vice president of the group, said members object to "the inappropriate payment of the full wholesale energy price for demand response."

This story corrects the age of the program to five years, not four.