The Federal Energy Regulatory Commission (FERC) has been called the most important environmental agency that no one has heard of. At the end of last week, the D.C. Circuit decided two undramatic FERC cases that illustrate FERC's environmental significance. One involved a bailout to coal and nuclear plants, the other involved water quality.

The first case, *Turlock Irrigation District v. FERC,* involved FERC's role in approving licensing and relicensing of hydroelectric dams. It also raised an important issue about the role of state government in approving federal projects and licenses.

Under the Clean Water Act, dam owners need to get certifications from state authorities that the dam will not harm water quality. States can approve, disapprove, or approve with conditions. The *Turlock* case involved an issue about the timing of certifications that has proved vexing. Congress allowed states to have only one year to act on a certification request. One year may not be enough time if the application fails to provide important information. If the state takes no action within a year, the certification requirement is waived. States previously tried to extend the response time by entering into agreements for applicants to temporarily withdraw certification requests and resubmit them later. However, the courts ruled out this approach, viewing it as a blatant evasion of the one-year deadline.

In the *Turlock* case, the state of California instead denied two incomplete applications without prejudice, meaning new applications could be filed. The incomplete applications were resubmitted the following year without change and were again dismissed without prejudice. The applications were submitted a third time but then withdrawn. At that point, California decided that if it ignored the withdrawn applications, that might count as taking no action, thereby waiving the state's right to have a voice in the process. To avoid this result, California granted the certification requests but with 45 additional requirements. The issue before the court was whether these certifications were still timely under the one-year rule. The court's answer was yes, since the earlier denials and the final approval all took place within one year of each application.

The applicant had argued that a rejection has to be based on violation of state water quality standards to count, so a rejection for having an incomplete application wouldn't count under the one-year rule. The upshot is that denials of incomplete applications still amount to actions by the state and therefore satisfy the one-year requirement. Otherwise, the court pointed out, an applicant could avoid the certification entirely by submitting a blatantly incomplete application, which would

give the state the options of either granting its certification despite the incompleteness or waiving its certification power. The effect of the Court's ruling was to keep alive an important protection for state water quality.

The second case, *Belmont Municipal Light Co. v. FERC*, involved the New England grid operator, ISO-NE. New England faces serious energy challenges in the winter, which the grid operator has been trying to address. Its most recent effort involves the reward of a rate bump for power generators that maintain a three-day supply of fuel onsite. The problem is that generators using hydropower, nuclear, coal, and biomass already do that. This amount to a de facto subsidy for these generators, which was especially unfortunate in subsidizing coal generators. The D.C. Circuit, quite understandably, reversed FERC for failing to explain why it was "incentivizing" these generators to keep fuel onsite when they were going to do so anyway.

Neither of these cases is likely to get even an inch of newspaper coverage outside of the localities affected. Let's face it, however. FERC rarely does anything dramatic, which is why its role is little known. But little known doesn't mean unimportant.