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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**NEW YORK ET AL. v. FEDERAL ENERGY
REGULATORY COMMISSION ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

No. 00–568. Argued October 3, 2001—Decided March 4, 2002*

When the Federal Power Act (FPA) became law in 1935, most electric utilities operated as separate, local monopolies subject to state or local regulation; their sales were “bundled,” meaning that consumers paid a single charge for both the cost of the electricity and the cost of its delivery; and there was little competition among utility companies. Section 201(b) of the FPA gave the Federal Power Commission (predecessor to respondent Federal Energy Regulatory Commission (FERC)) jurisdiction over “the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce”; §205 prohibited, among other things, unreasonable rates and undue discrimination “with respect to any transmission or sale subject to the [Commission’s] jurisdiction”; and §206 gave the Commission the power to correct such unlawful practices. Since 1935, the number of electricity suppliers has increased dramatically and technological advances have allowed electricity to be delivered over three major “grids” in the continental United States. In all but three States, any electricity entering a grid becomes part of a vast pool of energy moving in interstate commerce. As a result, power companies can transmit electricity over long distances at a low cost. However, public utilities retain ownership of the transmission lines that their competitors must use to deliver electricity to wholesale and retail customers and thus can refuse to deliver their competitors’ en-

*Together with No. 00–809, *Enron Power Marketing, Inc. v. Federal Energy Regulatory Commission et al.*, also on certiorari to the same court.

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ergy or deliver that power on terms and conditions less favorable than those they apply to their own transmissions. In Order No. 888, FERC found such practices discriminatory under §205. Invoking its §206 authority, FERC (1) ordered “functional unbundling” of wholesale generation and transmission services, which means that each utility must state separate rates for its wholesale generation, transmission, and ancillary services, and must take transmission of its own wholesale sales and purchases under a single general tariff applicable equally to itself and others; (2) imposed a similar open access requirement on unbundled *retail* transmissions in interstate commerce; and (3) declined to extend the open access requirement to the transmission component of bundled retail sales, concluding that unbundling such transmissions was unnecessary and would raise difficult jurisdictional issues that could be more appropriately considered in other proceedings. After consolidating a number of review petitions, the District of Columbia Circuit upheld most of Order No. 888. Here, the petition of New York et al. (collectively New York) questions FERC’s assertion of jurisdiction over unbundled retail transmissions, and the petition of Enron Power Marketing, Inc. (Enron), questions FERC’s refusal to assert jurisdiction over bundled retail transmissions.

Held:

1. FERC did not exceed its jurisdiction by including unbundled retail transmissions within the scope of Order No. 888’s open access requirements. New York insists that retail transactions are subject only to state regulation, but the electric industry has changed since the FPA was enacted, at which time the electricity universe was neatly divided into spheres of retail versus wholesale sales. The FPA’s plain language readily supports FERC’s jurisdiction claim. Section 201(b) gives FERC jurisdiction over “electric energy in interstate commerce,” and the unbundled transmissions that FERC has targeted are made such transmissions by the national grid’s nature. No statutory language limits FERC’s *transmission* jurisdiction to the wholesale market, although the statute does limit FERC’s *sales* jurisdiction to that market. In the face of this clear statutory language, New York’s arguments supporting its contention that the statute draws a bright jurisdictional line between wholesale and retail transactions are unpersuasive. Its argument that the Court of Appeals applied an erroneous standard of review because it ignored the presumption against federal pre-emption of state law focuses on the wrong legal question. The type of pre-emption at issue here concerns the rule that a federal agency may pre-empt state law only when it is acting within the scope of congressionally delegated authority. Because the FPA unambiguously gives FERC jurisdiction over the

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“transmission of electric energy in interstate commerce,” without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC’s exercise of this power is valid. New York’s attempts to discredit this straightforward statutory analysis by reference to the FPA’s legislative history are unavailing. And its arguments that FERC jurisdiction over unbundled retail transmissions will impede sound energy policy are properly addressed to FERC or to the Congress. Pp. 14–22.

2. FERC’s decision not to regulate bundled retail transmissions was a statutorily permissible policy choice. Contrary to Enron’s argument, FERC chose not to assert jurisdiction over such transmissions, but it did not hold itself powerless to claim jurisdiction. Indeed, FERC explicitly reserved decision on that jurisdictional issue, and the reasons FERC supplied for doing so provide valid support for that decision. Having determined that the remedy it ordered constituted a sufficient response to the problems it had identified in the wholesale market, FERC had no §206 obligation to regulate bundled retail transmissions or to order universal unbundling. This Court also agrees with FERC’s conclusion that regulating bundled retail transmissions raises difficult jurisdictional issues. Pp. 22–26.

225 F. 3d 667, affirmed.

STEVENS, J., delivered the opinion of the Court, Parts II and III of which were unanimous, and Parts I and IV of which were joined by REHNQUIST, C. J., and O’CONNOR, SOUTER, GINSBURG, and BREYER, JJ. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SCALIA and KENNEDY, JJ., joined.