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*Order 888: Has the Federal Energy Regulatory Commission
Invaded the States' Jurisdictional Territory?*

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Abstract by Aurora Hartwig De Heer

The author discusses the three main schools of thought concerning Federal Energy Regulatory Commission's (FERC) Order 888: one, from state regulatory commissions who generally oppose FERC's expanded jurisdiction; another, claims made by transmission-dependant utilities and companies finding that FERC impermissibly limited its jurisdiction; and finally, FERC's own interpretation of its role under Order 888.

The Comment focuses on the conflict between state and federal jurisdiction over electrical power transmissions in light of Order 888, culminating with the Supreme Court decision of March 2002 in *New York v. FERC*. Although the author agrees with FERC's strict reading of its statutory jurisdiction, as well as the Supreme Court decision, she opines that FERC should turn its focus towards improving the consistency of regulation within its existing jurisdiction and implement further standards curtailing continuing discriminatory practices, without further jurisdictional expansion.

Part I of the Comment sets out how the Federal Power Act has been interpreted to give FERC the power to regulate energy transmissions. Part II outlines the purpose and components of Order 888 as an instrument of FERC's regulatory power. Part III lists the main criticisms of FERC's jurisdictional interpretation, along with FERC's defenses and how FERC's interpretation is ultimately upheld by the Supreme Court. Part IV gives recommendations for future interpretation of Order 888 provisions and FERC's role in the energy market.