

CONSTITUTIONAL LAW QUESTION

State A, a leader in wind energy, recently enacted the “Green Energy Act” (“the Act”).

Section 1 of the Act requires that 50% of the electricity sold by utilities in the state come from “environmentally friendly energy sources.” Wind energy, which is produced in State A, is classified by the Act as an “environmentally friendly energy source.” Natural gas, which is not produced in State A, is not classified by the Act as environmentally friendly. The preamble of the Act contains express findings that the burning of natural gas releases significant quantities of greenhouse gases into the atmosphere and requires the diversion of scarce water resources for use in gas-burning thermoelectric plants.

Section 2 of the Act prohibits the Public Service Commission of State A from approving any new coal-burning power plants in the state, unless it finds that “the construction of the plant is necessary to meet urgent energy needs of this state.” A public utility in neighboring State B has applied for a permit to build a coal-burning power plant on property it owns across the border in State A. The Commission has denied the utility’s application based on its finding that there is no evidence of any urgent energy needs in State A. The State B utility presented undisputed evidence of severe energy shortages in State B, but the Commission rejected this evidence as irrelevant to the statutory exception.

Section 3 of the Act requires State A, whenever possible, to buy goods and services only from “environmentally friendly vendors located within the state.” To qualify as an “environmentally friendly vendor,” a firm must meet specified standards concerning energy efficiency, chemical use, and use of recycled materials. A vendor located outside of State A meets all the standards to qualify as an environmentally friendly vendor. The vendor has sought to sell goods and services to State A. The relevant State A agencies have refused to purchase from this vendor, pointing out that the Act requires them to purchase, if possible, only from “environmentally friendly vendors located within the state,” of which there are several.

There is no federal statute or regulation relevant to this problem.

Which provisions, if any, of the Green Energy Act unconstitutionally burden or discriminate against interstate commerce? Explain.