

SUPREME JUDICIAL COURT OF MAINE

Competitive Energy Services LLC v. Public Utilities Commission, 2003 ME 12

818 A.2d 1039 (Me. 2003) · Decided January 30, 2003

SUMMARY

The Maine Supreme Judicial Court affirmed the Public Utilities Commission's approval of Bangor Hydro-Electric Company's reorganization and affiliation with Emera Energy Services, Inc., a competitive electricity provider. The court held that 35-A M.R.S.A. § 3206-A(2)(A) did not prohibit the affiliate from selling electricity in Maine because it was created after the acquisition of Bangor Hydro. The court dismissed as moot the challenge to an employee lease agreement because the agreement had been terminated.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Levy, J.; Saufley, C.J.; Clifford, J.; Rudman, J.; Calkins, J.
JURISDICTION	Maine
DECIDED	January 30, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Competitive Energy Services LLC and the Public Advocate appealed a Maine Public Utilities Commission order approving Bangor Hydro-Electric Company's reorganization and affiliation with Emera Energy Services, Inc. Competitive Energy Services separately appealed approval of an employee lease agreement. The appeals were consolidated.
STANDARD OF REVIEW	The court determines de novo whether a statute administered by an agency is ambiguous or unambiguous. If ambiguous, the court reviews the agency's construction for reasonableness and affords great deference; if unambiguous, the court construes the statute plainly. Commission decisions generally are reviewed to determine whether the agency's conclusions are unreasonable, unjust, or unlawful in light of the record.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Maine.

PARTIES

Competitive Energy Services LLC, Public Advocate v. Public Utilities Commission, Bangor Hydro-Electric Company, Central Maine Power Company

TOPICS

judicial review of agency action

statutory interpretation

administrative law

appellate jurisdiction

mootness

PRACTICE AREAS

administrative law

public utilities

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the prior dismissal of the appeal from the Commission's January 8 order prevented review of the Commission's interpretation of 35-A M.R.S.A. § 3206-A(2) in the appeal from the later final order.
2. Whether 35-A M.R.S.A. § 3206-A(2) prohibits a competitive electricity provider created after the acquisition of a transmission and distribution utility from affiliating with that utility and selling electricity in Maine.
3. Whether the appeal challenging approval of the employee lease agreement was moot after the Commission approved termination of the agreement, and whether any exception to mootness applied.

HOLDINGS

1. The January 8 order was not a final judgment because it resolved only a threshold legal issue, approved none of the specific requests in Bangor Hydro's petition, and left further Commission action necessary. Accordingly, the statutory interpretation issue could be reviewed in the appeal from the March 21 final order.
2. Section 3206-A(2)(A) prohibits a competitive electricity provider from selling or offering generation service to Maine retail consumers when the provider was a related entity of a purchasing entity at the time the purchasing entity purchased 10% or more of a transmission and distribution utility. Because EES was created after Emera acquired Bangor Hydro, EES was not a related entity subject to subsection (A)'s prohibition.
3. Competitive Energy Services' challenge to the employee lease agreement was moot because the Commission had approved termination of the agreement, leaving no real, substantial, and live controversy capable of resolution by specific appellate relief. None of the recognized exceptions for collateral consequences, great public concern, or an issue capable of repetition but evading review applied.

KEY QUOTATIONS

"Ambiguous language is described as language that 'is reasonably susceptible of different interpretations.'"
(818 A.2d at 1046)

“Subsection (A) prohibits a competitive electricity provider from selling or offering for sale generation service to retail consumers of electric energy in Maine if the competitive electricity provider was a "related entity" to a "purchasing entity" at the time of the latter's purchase of a T & D utility.” (818 A.2d at 1049)

“If a case does not involve a real, substantial, and live controversy that can be resolved by specific relief from an appeal, then the case is moot.” (818 A.2d at 1049)

FACTUAL BACKGROUND

Maine's Restructuring Act required investor-owned electric utilities to divest generation assets while retaining transmission and distribution functions. Emera acquired Bangor Hydro, and afterward formed Emera Energy Services, Inc. as a competitive electricity provider. Bangor Hydro petitioned the Commission for approval of its reorganization and affiliation with EES and for approval of an employee lease agreement under which a Bangor Hydro employee worked full-time for EES. The Commission approved the reorganization and lease, but later approved termination of the lease.

PROCEDURAL HISTORY

The Commission first issued a January 8, 2002 order interpreting 35-A M.R.S.A. § 3206-A(2) as not barring Emera's subsequently created affiliate from selling electricity in Maine. An earlier appeal from that order was dismissed as untimely. The Commission later approved Bangor Hydro's reorganization and the employee lease agreement with conditions in a March 21, 2002 order. After the Commission approved termination of the lease agreement on June 11, 2002, the Law Court held the lease challenge moot and otherwise affirmed the March 21 order.

DISPOSITION

other

CASES CITED

- Mech. Falls Water Co. v. Pub. Utils. Comm'n, 381 A.2d 1080 (Me. 1977)
- Murphy v. Maddaus, 2002 ME 24, 789 A.2d 1281
- Hazzard v. Westview Golf Club, Inc., 217 A.2d 217 (Me. 1966)
- Guilford Transp. Indus. v. Pub. Utils. Comm'n, 2000 ME 31, 746 A.2d 910
- Portland Valve, Inc. v. Rockwood Sys. Corp., 460 A.2d 1383 (Me. 1983)
- Mar. Energy v. Fund Ins. Review Bd., 2001 ME 45, 767 A.2d 812
- Darling's v. Ford Motor Co., 1998 ME 232, 719 A.2d 111
- Lewiston Daily Sun v. Sch. Admin. Dist. No. 43, 1999 ME 143, 738 A.2d 1239
- Monroe v. Town of Gray, 1999 ME 190, 743 A.2d 1257
- Halfway House, Inc. v. City of Portland, 670 A.2d 1377 (Me. 1996)
- Sordyl v. Sordyl, 1997 ME 87, 692 A.2d 1386

- Taxpayers for the Animas-La Plata Referendum v. Animas-La Plata Water Conservancy Dist., 739 F.2d 1472 (10th Cir. 1984)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/maine-supreme-judicial-court-of-maine/2003/competitive-energy-services-llc-v-public-utilities-3g88yb34>