SUPREME COURT OF TEXAS

Oncor Electric Delivery Company LLC v. Public Utility Commission of Texas

507 S.W.3d 706 (Tex. 2017) · No. 15-0005 · Decided January 6, 2017

SUMMARY

The Supreme Court of Texas reviewed a utility ratemaking dispute involving Oncor Electric Delivery Company LLC and the Public Utility Commission of Texas. The court held that PURA's discount for certain state educational facilities did not apply to transmission and distribution utilities in deregulated areas, that the former tax provision did not require Oncor to adopt a corporate structure allowing consolidated-return treatment, and that the evidence supported certain municipal franchise charges as reasonable and necessary expenses. The court affirmed in part, reversed in part, and remanded to the Commission.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Chief Justice Nathan L. Hecht
JURISDICTION	Texas
DECIDED	January 6, 2017
DOCKET	15-0005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitions for review from a ratemaking proceeding and judicial review of a Public Utility Commission of Texas order.
STANDARD OF REVIEW	Agency action is reviewed under the substantial-evidence and arbitrary-or-capricious standards; statutory interpretation is reviewed de novo. The court will defer to an agency's interpretation only when the statute is ambiguous and the interpretation is reasonable and consistent with the statutory text.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Texas.
PARTIES	Oncor Electric Delivery Company LLC, State of Texas v. Public Utility Commission of Texas

TOPICS

public utilities administrative law judicial review of agency action statutory interpretation plain meaning rule

PRACTICE AREAS

administrative law public utilities statutory interpretation utility ratemaking taxation

QUESTIONS PRESENTED

1. Whether PURA section 36.351 requires a transmission and distribution utility in a deregulated area to discount charges associated with electricity delivered to state college and university facilities.
2. Whether former PURA section 36.060(a) required Oncor's income-tax expense to be calculated as though it filed a consolidated federal income-tax return with its affiliates.
3. Whether negotiated municipal franchise charges were reasonable and necessary operating expenses that could be included in Oncor's rates.

HOLDINGS

1. PURA section 36.351 does not require transmission and distribution utilities in deregulated areas to discount their charges because those utilities provide service and charge regulated delivery rates to retail electric providers, not directly to retail customers.
2. Former PURA section 36.060(a) did not require Oncor's income-tax expense to be calculated as though it filed a consolidated return because, after its ownership change, Oncor was not a member of an affiliated group eligible to file a consolidated return.
3. PURA section 33.008 permits utilities and municipalities to negotiate franchise charges different from the statutory per-kilowatt-hour charge, and such charges may be included in rates if the utility demonstrates that they are reasonable and necessary operating expenses.

KEY QUOTATIONS

> *"We do not agree that Section 36.351 is ambiguous."* (at 710)

> *"Section 36.060(a) very plainly applies only to a utility that "is" a member of an affiliated group eligible to file a consolidated tax return, not a utility that could be."* (at 714)

> *"Section 33.008(f) does not restrict renegotiated franchise charges to only those agreed to on the expiration of franchise agreements existing on September 1, 1999."* (at 723)

FACTUAL BACKGROUND

Oncor is a transmission and distribution utility regulated by the Public Utility Commission of Texas. In 2008, it sought a comprehensive rate increase, and the PUC approved a smaller increase after considering projected expenses, including income taxes and municipal franchise charges. The proceeding also concerned whether Oncor had to discount charges for state university facilities under PURA section 36.351 and whether its tax expense had to be calculated as though it filed a consolidated return with affiliates. After Oncor's ownership structure changed in November 2008, it was treated as a partnership for federal tax purposes and did not elect corporate treatment.

PROCEDURAL HISTORY

Oncor initiated a comprehensive ratemaking proceeding before the PUC. The State and other parties sought judicial review of the PUC's order in the trial court. The trial court agreed with the PUC on the income-tax issue but disagreed on the statutory-discount and municipal-franchise-charge issues. The Third Court of Appeals affirmed the PUC on the discount and franchise-charge issues but reversed on the income-tax issue. The Supreme Court of Texas granted three petitions for review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded to the Public Utility Commission of Texas for proceedings consistent with the opinion.

CASES CITED

- In re TXU Electric Co., 67 S.W.3d 130 (Tex. 2001) (per curiam)
- Thompson v. Texas Department of Licensing & Regulation, 455 S.W.3d 569 (Tex. 2014)
- Railroad Commission of Texas v. Texas Citizens for a Safe Future & Clean Water, 336 S.W.3d 619 (Tex. 2011)
- State v. Public Utility Commission, 883 S.W.2d 190 (Tex. 1994)
- Public Utility Commission v. GTE-Southwest, Inc., 901 S.W.2d 401 (Tex. 1995)
- Cities of Corpus Christi v. Public Utility Commission, No. 03-06-00585-CV, 2008 WL 615417 (Tex. App.—Austin Mar. 5, 2008, no pet.) (mem. op.)
- Suburban Utility Corp. v. Public Utility Commission of Texas, 652 S.W.2d 358 (Tex. 1983)
- State v. Public Utility Commission, 344 S.W.3d 349 (Tex. 2011)
- Gulf States Utilities Co. v. Public Utility Commission, 947 S.W.2d 887 (Tex. 1997)