

COMMONWEALTH COURT OF PENNSYLVANIA

Respond Power, LLC v. Pennsylvania Public Utility Commission

No. 260 C.D. 2020 (Pa. Commw. Ct. Feb. 9 2021) (mem.) (Commonwealth Court of Pennsylvania 2021) · No. 260 C.D. 2020 · Decided February 9, 2021

SUMMARY

The Pennsylvania Commonwealth Court affirmed Pennsylvania Public Utility Commission orders dismissing Respond Power, LLC's complaints challenging clawback charges imposed under electric distribution companies' purchase-of-receivables programs. The court addressed claims involving section 316 preclusion, retroactive ratemaking, and due process, concluding that Respond Power had notice and an opportunity to participate in the underlying proceeding and that the charges were not impermissibly retroactive.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Patricia A. McCullough; Mary Hannah Leavitt, President Judge; Patricia A. McCullough, Judge; Michael H. Wojcik, Judge
JURISDICTION	Pennsylvania
DECIDED	February 9, 2021
DOCKET	No. 260 C.D. 2020
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respond Power petitioned for review of Pennsylvania Public Utility Commission orders dismissing its formal complaints challenging clawback charges imposed under electric distribution companies' purchase-of-receivables programs.
STANDARD OF REVIEW	Under 2 Pa.C.S. § 704, the Court may reverse a Commission order only for findings unsupported by substantial evidence, an error of law, or violation of constitutional rights. Legal questions are reviewed de novo, factual findings are reviewed for substantial evidence, and the Commission's interpretations of the Public Utility Code and its regulations receive great deference unless clearly erroneous.
PRECEDENTIAL VALUE	unpublished
PARTIES	Respond Power, LLC v. Pennsylvania Public Utility Commission

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QUESTIONS PRESENTED

1. Whether section 316 of the Public Utility Code barred Respond Power's complaints as an unlawful collateral attack on the Commission's prior order approving the clawback-charge provisions.
2. Whether the clawback charge constituted impermissible retroactive ratemaking.
3. Whether Respond Power was denied due process because it allegedly lacked adequate notice and an opportunity to participate in the proceeding approving the clawback charge.

HOLDINGS

1. Section 316 of the Public Utility Code barred Respond Power from relitigating the reasonableness and validity of the clawback-charge provisions because the Commission had approved them in an earlier proceeding in which Respond Power received notice and had an opportunity to participate.
2. Respond Power received constitutionally adequate notice and an opportunity to be heard regarding the proposed clawback charge, and its decision not to participate did not establish a due process violation.
3. The clawback charge did not constitute impermissible retroactive ratemaking because it was not a rate within the meaning of section 102 of the Public Utility Code.

KEY QUOTATIONS

“To satisfy due process, notice must be reasonably calculated to apprise interested parties of the proposal and afford them an opportunity to present their objection.” (18)

“Since the Clawback Charge provision is not a rate, any prohibition concerning retroactive ratemaking is not applicable to the clawback provisions.” (23)

FACTUAL BACKGROUND

Respond Power is a licensed electric generation supplier that participated voluntarily in purchase-of-receivables programs administered by Penelec and West Penn Power. Those programs initially required the utilities to purchase suppliers' receivables without recourse, but the Commission later approved a clawback charge based on participating suppliers' write-off percentages and pricing. After receiving invoices totaling \$484,797.69 for charges based on uncollectible accounts from September 1, 2015, through August 31, 2016, Respond Power challenged the charges as impermissible retroactive ratemaking and a denial of due process.

PROCEDURAL HISTORY

Respond Power filed formal complaints under section 701 of the Public Utility Code challenging the validity and application of clawback charges assessed by Pennsylvania Electric Company and West Penn Power Company. An administrative law judge granted judgment on the pleadings in part, later recommended dismissal after an evidentiary hearing, and the Commission dismissed the complaints on June 13, 2019. The Commission denied reconsideration on February 6, 2020, and the Commonwealth Court affirmed both Commission orders.

DISPOSITION

affirmed

CASES CITED

- Chester Water Authority v. Pennsylvania Public Utility Commission, 868 A.2d 384, 389 (Pa. 2005)
- Retail Energy Supply Association v. Pennsylvania Public Utility Commission, 185 A.3d 1206, 1220 (Pa. Cmwlth. 2018)
- Popowsky v. Pennsylvania Public Utility Commission, 910 A.2d 38, 48 (Pa. 2006)
- Bethlehem Steel Corp. v. Pennsylvania Public Utility Commission, 713 A.2d 1110, 1113-14 (Pa. Cmwlth. 1998)
- NRG Energy, Inc. v. Pennsylvania Public Utility Commission, No. 58 C.D. 2019 (Pa. Cmwlth. June 2, 2020) (unreported)
- Popowsky v. Pennsylvania Public Utility Commission, 706 A.2d 1197, 1203 (Pa. 1997)
- McCloskey v. Pennsylvania Public Utility Commission, 127 A.3d 860, 871 (Pa. Cmwlth. 2015)
- City of Lancaster (Water) v. Pennsylvania Public Utility Commission, 769 A.2d 567 (Pa. Cmwlth. 2001)
- Emporium Water Co. v. Pennsylvania Public Utility Commission, 955 A.2d 456, 463 (Pa. Cmwlth. 2008)
- Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, 663 A.2d 281 (Pa. Cmwlth. 1995)
- Brockway Glass Co. v. Pennsylvania Public Utility Commission, 437 A.2d 1067 (Pa. Cmwlth. 1981)
- State Farm Fire & Casualty Co. v. PECO Energy Co., 54 A.3d 921 (Pa. Super. 2012)
- Stiteler v. Bell Telephone Co. of Pennsylvania, 379 A.2d 339 (Pa. Cmwlth. 1977)
- Shenango Township Board of Supervisors v. Pennsylvania Public Utility Commission, 686 A.2d 910, 914 (Pa. Cmwlth. 1996)
- Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission, 578 A.2d 600 (Pa. Cmwlth. 1990), appeal denied, 602 A.2d 863 (Pa. 1992)
- Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950)
- Zucker v. Pennsylvania Public Utility Commission, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979)
- Kentucky-West Virginia Gas v. Pennsylvania Public Utility Commission, 721 F. Supp. 710 (M.D. Pa. 1989), aff'd, 899 F.2d 1217 (3d Cir. 1990)
- Snyder Brothers, Inc. v. Pennsylvania Public Utility Commission, 224 A.3d 450 (Pa. Cmwlth. 2020)
- Penn-Harris Hotel Co. v. Pennsylvania Public Utility Commission, 71 A.2d 853 (Pa. Super. 1950)
- County of Chester v. Pennsylvania Public Utility Commission, 408 A.2d 552 (Pa. Cmwlth. 1979)
- Pittsburgh & Shawmut R.R. Co. v. Pennsylvania Public Utility Commission, 14 A.2d 903 (Pa. Super. 1940)

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