SUPREME COURT OF OHIO

In re Application of Ohio Edison Co.

146 Ohio St. 3d 222, 2016-Ohio-3021 (Ohio 2016) · No. 2013-0513 · Decided May 18, 2016

SUMMARY

The Supreme Court of Ohio affirmed the Public Utilities Commission of Ohio’s approval of FirstEnergy’s electric-security plan under R.C. 4928.143. The court held that the commission may consider pricing and qualitative terms and conditions when comparing an electric-security plan with a market-rate offer, and that appellants failed to demonstrate prejudice from administrative notice or alleged application deficiencies.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, Chief Justice; Pfeifer; O'Donnell; Lanzinger; Kennedy; French; O'Neill
JURISDICTION	Ohio
DECIDED	May 18, 2016
DOCKET	2013-0513
DISPOSITION	affirmed
PROCEDURAL POSTURE	NOPEC and ELPC appealed to the Supreme Court of Ohio from the Public Utilities Commission of Ohio's order approving FirstEnergy's electric-security plan and denying rehearing.
STANDARD OF REVIEW	Under R.C. 4903.13, the court reverses, vacates, or modifies a PUCO order only if it is unlawful or unreasonable. Factual determinations will not be disturbed when supported by sufficient probative evidence and not manifestly against the weight of the evidence. The appellant bears the burden of showing that the decision is against the manifest weight of the evidence or clearly unsupported by the record. The court independently reviews questions of law but may rely on agency expertise on highly specialized issues. The court reviews the PUCO's projection of rider values for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Northeast Ohio Public Energy Council, Environmental Law and Policy Center v. Public Utilities Commission of Ohio, FirstEnergy

Companies

TOPICS

administrative law | judicial review of agency action | statutory interpretation | standard of review | appellate procedure

PRACTICE AREAS

administrative law | public utilities | energy regulation | environmental law

QUESTIONS PRESENTED

1. Whether R.C. 4928.143(C)(1) permits the PUCO to consider qualitative benefits, as well as quantitative pricing benefits, when determining whether an electric-security plan is more favorable in the aggregate than an expected market-rate offer.
2. Whether the PUCO erred in comparing the Delivery Capital Recovery Rider with hypothetical distribution-rate-case recovery and in projecting the rider's value.
3. Whether the PUCO abused its discretion by taking administrative notice of evidence from the MRO and ESP 2 proceedings.
4. Whether the PUCO properly approved the partial stipulation under the serious-bargaining, ratepayer-benefit, and regulatory-principle test.
5. Whether FirstEnergy's allegedly incomplete ESP 3 application required reversal of the PUCO's order absent a showing of prejudice.

HOLDINGS

1. R.C. 4928.143(C)(1) does not limit the PUCO to a strict price comparison; the PUCO may consider pricing and all other terms and conditions, including qualitative benefits, in determining whether an electric-security plan is more favorable in the aggregate than an expected market-rate offer.
2. The PUCO did not err by considering hypothetical distribution-rate-case recovery in comparing the ESP with an MRO or by limiting its projection of the Delivery Capital Recovery Rider to the period it selected.
3. The PUCO's administrative notice of specified evidence from the MRO and ESP 2 proceedings did not warrant reversal because NOPEC failed to demonstrate prejudice.
4. The PUCO properly rejected NOPEC's challenge to the partial stipulation because the record did not establish that the stipulation lacked serious bargaining, failed to benefit ratepayers and the public interest, or violated an important regulatory principle or practice.
5. An allegedly incomplete ESP application does not require reversal of the PUCO's order when the appellant fails to show that the alleged deficiency caused prejudice.

KEY QUOTATIONS

> *"R.C. 4928.143(C)(1) "does not bind the commission to a strict price comparison. On the contrary, * * * the statute instructs the commission to consider 'pricing and all other terms and conditions' " in evaluating whether the ESP is more favorable in the aggregate than an expected MRO."* (¶ 22)

> *"There is neither an absolute right for nor an absolute prohibition against the commission taking administrative notice of facts outside the record of a case."* (¶ 29)

> *"We will not reverse an order of the commission unless the party seeking reversal shows that it has been or will be harmed by the order."* (¶ 49)

FACTUAL BACKGROUND

FirstEnergy's ESP 3 application sought to extend its existing electric-security plan through May 31, 2016, and included various pricing mechanisms, cost-recovery riders, and customer benefits. During the PUCO proceedings, the commission took administrative notice of specified exhibits and testimony from earlier MRO and ESP 2 proceedings. The PUCO found that ESP 3 was more favorable in the aggregate than an expected market-rate offer and approved the plan.

PROCEDURAL HISTORY

FirstEnergy applied to the PUCO for approval of an electric-security plan extending its existing plan through May 31, 2016. The PUCO approved the plan, granted the applications for rehearing for further consideration, and later denied rehearing while affirming its approval. NOPEC and ELPC appealed to the Supreme Court of Ohio.

DISPOSITION

affirmed

CASES CITED

- In re Application of Columbus S. Power Co., 134 Ohio St. 3d 392, 2012-Ohio-5690, 983 N.E.2d 276
- In re Application of Columbus S. Power Co., 128 Ohio St. 3d 402, 2011-Ohio-958, 945 N.E.2d 501
- Monongahela Power Co. v. Pub. Util. Comm., 104 Ohio St. 3d 571, 2004-Ohio-6896, 820 N.E.2d 921
- AK Steel Corp. v. Pub. Util. Comm., 95 Ohio St. 3d 81, 765 N.E.2d 862
- In re Application to Modify, in Accordance with R.C. 4929.08, the Exemption Granted to E. Ohio Gas Co., 144 Ohio St. 3d 265, 2015-Ohio-3627, 42 N.E.3d 707
- Canton Storage & Transfer Co. v. Pub. Util. Comm., 72 Ohio St. 3d 1, 647 N.E.2d 136 (1995)
- Allen v. Pub. Util. Comm., 40 Ohio St. 3d 184, 532 N.E.2d 1307 (1988)
- Office of Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 592 N.E.2d 1370 (1992)
- Time Warner AxS v. Pub. Util. Comm., 75 Ohio St. 3d 229, 661 N.E.2d 1097 (1996)
- Constellation NewEnergy, Inc. v. Pub. Util. Comm., 104 Ohio St. 3d 530, 2004-Ohio-6767, 820 N.E.2d 885
- Buckeye Energy Brokers, Inc. v. Palmer Energy Co., 139 Ohio St. 3d 284, 2014-Ohio-1532, 11 N.E.3d 1126