SUPREME COURT OF OHIO

In re Complaint of Toliver v. Vectren Energy Delivery of Ohio, Inc.

2015-Ohio-5055 (Ohio 2015) · No. 2013-1807 · Decided December 8, 2015

SUMMARY

The Supreme Court of Ohio affirmed Public Utilities Commission orders requiring a customer who voluntarily left the Percentage of Income Payment Plan while maintaining utility service and later reenrolled within 12 months to make up missed PIPP installments, less payments made at standard rates. The court rejected the appellant’s arguments concerning HEAP and HWAP eligibility, regulatory interpretation, evidentiary rulings, posthearing exhibits, agency jurisdiction, and counsel designation.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	French, J.; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Kennedy, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	December 8, 2015
DOCKET	2013-1807
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from orders of the Public Utilities Commission of Ohio dismissing Toliver's complaint against Vectren and denying rehearing.
STANDARD OF REVIEW	Under R.C. 4903.13, a Public Utilities Commission order may be reversed, vacated, or modified 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 court independently reviews questions of law, while it may rely on agency expertise concerning highly specialized issues.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Ohio.
PARTIES	Nancy S. Toliver v. Public Utilities Commission of Ohio

TOPICS

judicial review of agency action · administrative law · agency adjudication · standard of review · consumer protection

PRACTICE AREAS

administrative law · public utilities regulation · consumer protection · appellate procedure

QUESTIONS PRESENTED

1. Whether a customer who voluntarily leaves PIPP, remains connected to utility service, and reenrolls within 12 months must make up missed PIPP installments, less payments made at the standard rate.
2. Whether Ohio Adm.Code 4901:1-18-12(D)(2)(b), concerning missed PIPP payments and arrearages for customers disconnected from service, limited Toliver's obligation.
3. Whether the commission's Energy Assistance Resource Guide required a different result.
4. Whether the commission lacked jurisdiction to enforce PIPP requirements or reverse incentive credits.
5. Whether the commission erred by permitting testimony without qualifying the witness as an expert and by declining to impose sanctions.
6. Whether the commission abused its discretion by striking exhibits submitted after the evidentiary hearing.
7. Whether Vectren's counsel violated Ohio Adm.Code 4901-1-08(F), now Ohio Adm.Code 4901-1-08(E).

HOLDINGS

1. A PIPP customer who voluntarily leaves the program, maintains utility service, and reenrolls within 12 months must make up the PIPP installments that would have been due during the period outside the program, less payments made at the utility's standard rate.
2. Ohio Adm.Code 4901:1-18-12(D)(2)(b), including its limitation concerning the customer's arrearage, applies to missed PIPP payments incurred while the customer was disconnected from gas service and does not govern a customer who voluntarily left PIPP while remaining connected.
3. Toliver failed to demonstrate that the commission's orders were unlawful or unreasonable, against the manifest weight of the evidence, or unsupported by the record.
4. Rules governing expert testimony did not apply because the commission did not qualify Vectren's witness as an expert, and Ohio Adm.Code 4901-1-26(A) makes prehearing conferences discretionary rather than mandatory.
5. The commission did not abuse its discretion by striking exhibits submitted with Toliver's posthearing brief after the evidentiary hearing had ended.

KEY QUOTATIONS

> *"R.C. 4903.13 provides that a [Public Utilities Commission] order shall be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable."* (¶ 14)

> *"if a customer leaves PIPP, maintains service from the utility, and then chooses to reenroll at a later time, then that "customer must pay the difference between the amount of [PIPP] installments and customer payments before re- joining [PIPP].""* (¶ 26)

> *"She has not carried that burden in this appeal. Therefore, we affirm the commission's orders."* (¶ 38)

FACTUAL BACKGROUND

Toliver participated in Ohio's Percentage of Income Payment Plan, under which eligible customers generally pay a fixed percentage of monthly income rather than the actual cost of energy service. In April 2012, she voluntarily left PIPP because she was approximately $180 behind on required installments, but she continued receiving gas service from Vectren at its standard rate. She reenrolled seven months later, and Vectren required her to pay the missed PIPP installments less payments made at the standard rate. The Public Utilities Commission concluded that the governing rules required the missed installments to be made up and dismissed her complaint.

PROCEDURAL HISTORY

Toliver voluntarily left the Percentage of Income Payment Plan while retaining natural-gas service at Vectren's standard rate. After reenrolling seven months later, Vectren required her to make up missed PIPP installments, reduced by payments made at the standard rate. Toliver filed a complaint with the Public Utilities Commission, which ruled for Vectren, dismissed the complaint, and later denied rehearing. Toliver appealed to the Supreme Court of Ohio, which affirmed the commission's orders.

DISPOSITION

affirmed

CASES CITED

- Montgomery Cty. Bd. of Commrs. v. Pub. Util. Comm., 28 Ohio St.3d 171, 503 N.E.2d 167 (1986)
- In re Commission's Review of Chapters 4901:1-17 and 4901:1-18, Pub. Util. Comm. No. 08-723-AU-ORD, 2008 Ohio
- Constellation NewEnergy, Inc. v. Pub. Util. Comm., 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶ 50
- Monongahela Power Co. v. Pub. Util. Comm., 104 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶ 29
- Ohio Edison Co. v. Pub. Util. Comm., 78 Ohio St.3d 466, 469, 678 N.E.2d 922 (1997)
- Consumers' Counsel v. Pub. Util. Comm., 58 Ohio St.2d 108, 110, 388 N.E.2d 1370 (1979)
- In re Complaint of Wilkes v. Ohio Edison Co., 131 Ohio St.3d 252, 2012-Ohio-609, 963 N.E.2d 1285, ¶ 10
- Waterville Gas Co. v. Mason, 93 Ohio App.3d 798, 639 N.E.2d 1240 (6th Dist. 1994)
- Util. Serv. Partners, Inc. v. Pub. Util. Comm., 124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 1038, ¶ 39
- In re Application of Columbus S. Power Co., 129 Ohio St.3d 271, 2011-Ohio-2638, 951 N.E.2d 751, ¶¶ 14-17
- Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision, 76 Ohio St.3d 13, 16-17, 665 N.E.2d 1098 (1996)