SUPREME COURT OF OHIO

Ohio Consumers' Counsel v. Public Utilities Commission

110 Ohio St. 3d 394 (2006) · Decided September 27, 2006

SUMMARY

The Ohio Supreme Court affirmed the Public Utilities Commission of Ohio's approval of a settlement concerning Dayton Power & Light Company's recovery of costs associated with consolidated billing-system changes. The court held that the settlement was reasonable and lawful, including provisions shifting certain costs to DP&L customers and allowing recovery of out-of-pocket costs resulting from a competitive retail electric service provider's default. The court also concluded that the PUCO could modify its prior order in an R.C. 4905.26 complaint proceeding without requiring a formal rate-increase application under R.C. 4909.18.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Donnell, J.; Moyer, C.J.; Resnick, J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	September 27, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Ohio Consumers' Counsel appealed the Public Utilities Commission of Ohio's approval of a multiparty settlement concerning Dayton Power & Light Company's recovery of billing-system costs and costs arising from a competitive retail electric service provider's default. The PUCO denied the Consumers' Counsel's application for rehearing.
STANDARD OF REVIEW	Under R.C. 4903.13, a PUCO order may be reversed, vacated, or modified only if it is unlawful or unreasonable. Factual determinations will not be disturbed unless manifestly against the weight of the evidence or so unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. The court exercises complete and independent review of questions of law, while it may rely on agency expertise concerning highly specialized issues.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Ohio.

PARTIES	Ohio Consumers' Counsel v. Public Utilities Commission of Ohio

TOPICS

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

PRACTICE AREAS

administrative law · utility regulation · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. Whether the PUCO reasonably approved the 2004 settlement under the three-part test governing PUCO-approved settlements.
2. Whether the PUCO lawfully declined to consider an unfiled and unapproved 2000 sidebar agreement.
3. Whether the PUCO could modify its earlier order concerning recovery of DP&L's billing-system costs.
4. Whether the settlement was invalid because it was not processed under the statutory procedures applicable to a formal utility rate-increase application.
5. Whether the Consumers' Counsel preserved its challenge to the default-recovery mechanism for appellate review.
6. Whether the PUCO lawfully and reasonably approved a mechanism allowing DP&L to recover certain out-of-pocket costs from customers of a defaulting CRES provider.

HOLDINGS

1. A PUCO-approved settlement is reasonable when it results from serious bargaining among capable and knowledgeable parties, benefits ratepayers and the public interest as a package, and does not violate important regulatory principles or practices. The settlement satisfied that test.
2. The PUCO may refuse to consider a financial arrangement between a public utility and consumers that was not filed with and approved by the PUCO.
3. The PUCO may change or modify an earlier order when it justifies the change, and it was not unlawfully bound to preserve an earlier cost-recovery arrangement that created anticompetitive barriers.
4. The PUCO may change utility rates in an R.C. 4905.26 complaint proceeding without requiring the utility to file an application under R.C. 4909.18 and without applying the additional procedural requirements applicable to a formal rate-increase proceeding.
5. The PUCO lawfully and reasonably may approve a mechanism allowing an electric distributor to recover from a CRES provider's customers the distributor's out-of-pocket costs resulting from the provider's default, even absent an express statute or rule specifically authorizing that mechanism.
6. The Consumers' Counsel properly preserved its challenge to the default-recovery mechanism because it raised the issue in its application for rehearing and the PUCO addressed it.

KEY QUOTATIONS

> *"This court applies a three-part test when evaluating the reasonableness of settlements approved by the PUCO: whether the settlement is a product of serious bargaining among capable, knowledgeable parties; whether the settlement, as a package, benefits ratepayers and the public interest; and whether the settlement package violates any important regulatory principles or practices."* (at 396)

> *"We have repeatedly held that utility rates may be changed by the PUCO in an R.C. 4905.26 complaint proceeding such as this, without compelling the affected utility to apply for a rate increase under R.C. 4909.18."* (at 400)

FACTUAL BACKGROUND

Dayton Power & Light incurred $18.8 million in costs to reprogram its computer systems so that it could provide consolidated, unbundled bills after Ohio deregulated retail electricity generation. DP&L initially charged competitive retail electric service providers between $1.56 and $1.90 per bill, prompting complaints that the charges were excessive and impeded competition. The parties reached a settlement under which DP&L would charge providers $0.20 per bill, recover approved billing-system costs from all customers, and recover certain out-of-pocket costs from customers of a defaulting provider. The PUCO approved the settlement over the Consumers' Counsel's objection.

PROCEDURAL HISTORY

Dominion Retail and the Miami Valley Communications Council filed complaints with the PUCO challenging Dayton Power & Light Company's charges for consolidated-billing services. After hearings, the parties other than the Consumers' Counsel reached a settlement, which the PUCO approved in February 2005. The PUCO denied rehearing, and the Consumers' Counsel appealed to the Supreme Court of Ohio, which affirmed.

DISPOSITION

affirmed

CASES CITED

- 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, 12 O.O. 3d 115, 388 N.E.2d 1370 (1979)
- Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 126, 592 N.E.2d 1370 (1992)
- AK Steel Corp. v. Pub. Util. Comm., 95 Ohio St. 3d 81, 82-83, 765 N.E.2d 862 (2002)
- Constellation NewEnergy, Inc. v. Pub. Util. Comm., 104 Ohio St. 3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶¶ 14-15
- Cookson Pottery v. Pub. Util. Comm., 161 Ohio St. 498, 505, 53 O.O. 374, 120 N.E.2d 98 (1954)
- Consumers' Counsel v. Pub. Util. Comm., 10 Ohio St. 3d 49, 50-51, 10 O.B.R. 312, 461 N.E.2d 303 (1984)

- Lucas Cty. Commrs. v. Pub. Util. Comm., 80 Ohio St. 3d 344, 347, 686 N.E.2d 501 (1997)
- Allnet Communications Servs., Inc. v. Pub. Util. Comm., 32 Ohio St. 3d 115, 117, 512 N.E.2d 350 (1987)
- Ohio Util. Co. v. Pub. Util. Comm., 58 Ohio St. 2d 153, 157, 12 O.O. 3d 167, 389 N.E.2d 483 (1979)
- AT & T Communications of Ohio, Inc. v. Pub. Util. Comm., 88 Ohio St. 3d 549, 555, 728 N.E.2d 371 (2000)