SUPREME COURT OF VIRGINIA

Appalachian Voices v. State Corporation Commission

Appalachian Voices v. State Corporation Commission · No. Record No. 220130 · Decided October 27, 2022

SUMMARY

The Supreme Court of Virginia affirmed the State Corporation Commission's approval of Virginia Electric and Power Company's rate-adjustment clause for projected costs of purchasing Regional Greenhouse Gas Initiative carbon allowances. The court held that the costs were necessary to comply with applicable environmental laws and regulations under Code § 56-585.1(A)(5)(e), and rejected Appalachian Voices' argument that the Commission was required to determine whether lower costs could be achieved by reducing emissions.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice D. Arthur Kelsey; Powell; Kelsey; McCullough; Chafin; Russell; Mann; Mims, S.J.
JURISDICTION	Virginia
DECIDED	October 27, 2022
DOCKET	Record No. 220130
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appalachian Voices appealed the State Corporation Commission's order approving Virginia Electric and Power Company's petition for a rate-adjustment clause to recover projected costs of purchasing carbon-dioxide allowances under Virginia's participation in the Regional Greenhouse Gas Initiative.
STANDARD OF REVIEW	The court reviewed whether the State Corporation Commission applied the correct legal standard under Code § 56-585.1(A)(5)(e); the opinion treated the issue as one of statutory interpretation and reviewed the Commission's legal application de novo while affirming the Commission's factual and regulatory determination.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion; precedential
PARTIES	Appalachian Voices v. State Corporation Commission, et al.

TOPICS

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

PRACTICE AREAS

administrative law | environmental law | utility regulation | statutory interpretation | appellate procedure

QUESTIONS PRESENTED

1. Whether Code § 56-585.1(A)(5)(e) requires the State Corporation Commission to determine that projected allowance costs are necessary to comply with Virginia's RGGI regulations, or instead requires the Commission to require the utility to pursue the lowest possible costs by reducing emissions before recovering allowance costs from ratepayers.
2. Whether the State Corporation Commission applied the correct statutory necessity standard when it approved VEPCO's RGGI rate-adjustment clause.

HOLDINGS

1. Under Code § 56-585.1(A)(5)(e), the relevant necessity is the necessity of the utility's costs to comply with applicable environmental laws or regulations. The statute does not require the Commission to determine that the utility selected the lowest possible allowance costs by first reducing emissions from existing power plants.
2. The State Corporation Commission did not misunderstand or fail to apply the legal standard governing RGGI rate-adjustment petitions and properly approved VEPCO's projected allowance costs.

KEY QUOTATIONS

> *"It is thus the necessity to comply with applicable laws or regulations that matters."* (5)

> *"In sum, the SCC did not misunderstand or fail to apply the legal standard governing RGGI-Rider petitions filed pursuant to Code § 56-585.1(A)(5)(e)."* (9)

FACTUAL BACKGROUND

Virginia's Department of Environmental Quality adopted regulations establishing a CO2 Budget Trading Program requiring covered electric utilities to purchase an allowance for each short ton of carbon dioxide emitted by qualifying power plants. Virginia Electric and Power Company sought approval of a rate-adjustment clause to recover projected allowance-purchasing costs, including a contingency bank of allowances, while continuing to operate existing power units supporting the PJM regional electric grid. The State Corporation Commission approved the requested rider, and Appalachian Voices argued that the Commission should have required VEPCO to reduce plant output and pursue the lowest possible allowance costs before finding the costs necessary.

PROCEDURAL HISTORY

Virginia Electric and Power Company filed a petition with the State Corporation Commission in November 2020 under Code § 56-585.1(A)(5)(e). The Commission approved the petition in November 2021 over Appalachian Voices' objection. The Supreme Court of Virginia reviewed the Commission's order and affirmed.

DISPOSITION

affirmed

CASES CITED

- McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 414 (1819)
- Carter v. Nelms, 204 Va. 338, 346 (1963)
- Tvardek v. Powhatan Vill. Homeowners Ass'n, 291 Va. 269, 278 (2016)
- Sprietsma v. Mercury Marine, 537 U.S. 51, 63 (2002)