SUPREME COURT OF FLORIDA

Duke Energy Florida, LLC v. Gary F. Clark, etc., et al.

Duke Energy Florida · No. SC20-1601 · Decided July 7, 2022

SUMMARY

The Supreme Court of Florida reviewed a Florida Public Service Commission order denying Duke Energy Florida recovery of approximately $16 million in replacement power costs. The court held that the evidence did not establish that Duke’s imprudent operation of a steam turbine before 2012 caused the 2017 outage and derating, reversed the Commission’s order, and remanded for an order granting cost recovery.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Lawson, J.; Muñiz, C.J.; Canady, J.; Polston, J.; Labarga, J.; Couriel, J.; Grosshans, J.
JURISDICTION	Florida
DECIDED	July 7, 2022
DOCKET	SC20-1601
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Duke Energy Florida, LLC appealed a final order of the Florida Public Service Commission denying recovery of approximately $16 million in replacement-power costs. The Supreme Court of Florida reviewed the Commission's order and reversed.
STANDARD OF REVIEW	An agency may reject or modify an administrative law judge's factual findings only if it determines with particularity that the findings are not supported by competent substantial evidence or that the proceedings violated an essential requirement of law. Legal conclusions may be rejected or modified only upon a finding that the agency's conclusion is more reasonable and a particularized explanation. Appellate courts may not reweigh the evidence, but they may reverse when an agency's factual conclusions are contrary to the evidence.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent, subject to the court's fact-specific application of the governing standards.

PARTIES	Duke Energy Florida, LLC v. Gary F. Clark, etc., Florida Public Service Commission, Office of Public Counsel, Florida Industrial Power Users Group

TOPICS

judicial review of agency action · administrative procedure act · administrative law · standard of review · commercial litigation

PRACTICE AREAS

administrative law · utility regulation · appellate procedure · commercial litigation

QUESTIONS PRESENTED

1. Whether the Commission properly denied Duke Energy recovery of replacement-power costs based on allegedly imprudent operation during an earlier period when the evidence did not establish that the earlier operation caused the later outage and derating.
2. Whether the Commission's adoption of factual causation conclusions was supported by competent substantial evidence.
3. Whether Duke Energy preserved its challenge to the ALJ's causation-related factual conclusions through its exceptions to the recommended order.

HOLDINGS

1. An earlier imprudence finding cannot support denial of cost recovery when the earlier operation did not cause the later outage and derating, and the utility otherwise proved that the costs were incurred notwithstanding its prudent operation after the earlier period.
2. The Commission erred in accepting causation conclusions that were factually contrary to the evidence.
3. Duke sufficiently preserved its challenge to the causation discussion by taking exception to the numbered legal conclusions containing the challenged factual assertions, even though it did not separately challenge every factual finding.

KEY QUOTATIONS

> *"Given that the evidence can only support a finding that DEF's Period 1 operation did not cause the Period 5 outage and derating, the Period 1 imprudence finding cannot serve as the basis for denying cost recovery, as held by the ALJ and the Commission."* (at 16)

> *"Because DEF did prove that the costs were incurred notwithstanding its prudent operation of the plant after Period 1, the cost recovery should have been allowed."* (at 17)

FACTUAL BACKGROUND

Duke Energy operated a steam turbine at its Bartow plant in a configuration that produced electricity above the turbine's 420-megawatt nameplate capacity. The turbine blades experienced repeated damage and were replaced several times between 2012 and 2017; after the 2017 failure, Duke installed a pressure plate that derated the unit to 380 megawatts, causing approximately $16 million in replacement-power costs. The ALJ and Commission found that Duke had operated imprudently during the initial period before 2012, but the evidence showed no damage to turbine components other than the replaced blades and no evidence that the pre-2012 operation caused the 2017 outage or later blade damage.

PROCEDURAL HISTORY

The Commission referred confidential factual issues to the Division of Administrative Hearings for an evidentiary hearing before an administrative law judge. The ALJ recommended denying cost recovery, and the Commission adopted that recommendation in a final order. Duke Energy timely appealed, challenging the Commission's treatment of causation and its denial of recovery.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for entry of an order granting Duke Energy Florida's requested cost recovery.

CASES CITED

- Sierra Club v. Brown, 243 So. 3d 903, 908 (Fla. 2018)
- S. All. for Clean Energy v. Graham, 113 So. 3d 742, 750 (Fla. 2013)
- In re Nuclear Cost Recovery Clause, Docket No. 110009-EI, Order No. PSC-11-0547-FOF-EI, 2011 WL 5904236, at 26 (Fla. Pub. Serv. Comm'n 2011)
- S. All. for Clean Energy v. Graham, 113 So. 3d 742, 752 (Fla. 2013)
- Heifetz v. Dep't of Bus. Regul., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)
- Comm'n on Ethics v. Barker, 677 So. 2d 254, 257 (Fla. 1996)