SUPREME COURT OF OHIO

In re Application of Columbus Southern Power Co. for Approval of Its Program Portfolio Plan

129 Ohio St. 3d 46, 2011-Ohio-2383 (2011) · No. 2010-1533 · Decided May 24, 2011

SUMMARY

The Supreme Court of Ohio upheld the Public Utilities Commission's order approving Columbus Southern Power Company's energy-efficiency and peak-demand-reduction program portfolio plan. The court rejected challenges concerning the revenue-decoupling mechanism, rate-impact analysis, peak-demand-reduction methods, and the exclusion of a benchmark-comparison method for mercantile customers. The court concluded that any error in the commission's reasoning was harmless and affirmed the order.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.
JURISDICTION	Ohio
DECIDED	May 24, 2011
DOCKET	2010-1533
DISPOSITION	affirmed
PROCEDURAL POSTURE	Industrial Energy Users-Ohio appealed the Public Utilities Commission of Ohio's order modifying and approving a stipulated three-year program portfolio plan and revenue-decoupling mechanism for Columbus Southern Power Company.
STANDARD OF REVIEW	The Supreme Court of Ohio reviews PUCO orders to determine whether they are lawful and reasonable. It applies deferential review to discretionary agency decisions and will not reverse absent an abuse of discretion. Issues not raised on rehearing before the commission are outside the court's jurisdiction.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	Industrial Energy Users-Ohio v. Public Utilities Commission of Ohio, Columbus Southern Power Company

TOPICS

judicial review of agency action · administrative law · statutory interpretation · harmless error · preservation of error

PRACTICE AREAS

administrative law · public utilities regulation · energy regulation · appellate procedure

QUESTIONS PRESENTED

1. Whether R.C. 4928.66(D) or Ohio Adm.Code 4901:1-39-07(A) required Columbus Southern Power to present cost-of-service evidence before the commission could approve a revenue-decoupling mechanism.
2. Whether the commission's evidentiary reasoning concerning a contested stipulation required reversal or remand.
3. Whether the commission failed to consider overall rate impacts on Ohio customers.
4. Whether Columbus Southern Power's peak-demand-reduction plan was unlawful or whether the commission abused its discretion by rejecting IEU's preferred, allegedly less expensive method.
5. Whether the commission erred by rejecting the benchmark-comparison method for mercantile-customer exemptions.

HOLDINGS

1. R.C. 4928.66(D) and Ohio Adm.Code 4901:1-39-07(A) do not require a utility to prove its cost of service before the commission may approve a revenue-decoupling mechanism. The statute does not absolutely prohibit recovery of potentially forgone revenue merely because the utility's cost of service is unknown.
2. When the commission reviews a contested stipulation, its findings must remain supported by record evidence. However, the commission's erroneous reasoning did not warrant reversal or remand because IEU did not challenge the legality of the specific decision to shorten the decoupling mechanism and did not show that the law required further action; the error was harmless.
3. The commission adequately considered the overall rate impacts on Ohio customers.
4. IEU forfeited its argument that the plan was not designed to achieve the statutory mandates because it failed to raise that argument on rehearing before the commission. The commission did not abuse its discretion by declining to adopt IEU's preferred method because R.C. 4928.66 does not require the least-cost method and the commission could consider benefits and other concerns in addition to cost.
5. The commission did not commit reversible error by rejecting the benchmark-comparison method and was not required to accept the parties' stipulation or develop the specific exemption standards before approving the portfolio plan.

KEY QUOTATIONS

> *“When the commission reviews a contested stipulation, the requirement of evidentiary support remains operative.”* (¶ 19)

> *“The agreement of some parties is no substitute for the many procedural protections reinforced by the evidentiary-support requirement.”* (¶ 19)

> *“While the commission may have erred in its reasoning, that error is harmless.”* (¶ 20)

FACTUAL BACKGROUND

AEP's operating companies, including Columbus Southern Power, proposed a three-year portfolio of programs intended to increase energy efficiency and reduce peak demand as required by Ohio law. The proposal included a revenue-decoupling mechanism intended to recover revenue potentially lost through those programs. IEU opposed the stipulation and presented evidence, while the commission approved the plan but shortened the decoupling mechanism because the utilities' distribution rates had not been reviewed for many years.

PROCEDURAL HISTORY

Columbus Southern Power Company and Ohio Power Company applied to the Public Utilities Commission of Ohio for approval of a three-year energy-efficiency and peak-demand-reduction program portfolio plan. After a hearing, the commission modified and approved the stipulation, shortening the revenue-decoupling mechanism to end January 1, 2011; it denied IEU's application for rehearing. IEU appealed to the Supreme Court of Ohio, which affirmed the commission's order.

DISPOSITION

affirmed

CASES CITED

- Natural Resources Defense Council, Inc. v. Herrington, 768 F.2d 1355, 1414 (D.C. Cir. 1985)
- Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 126, 592 N.E.2d 1370 (1992)
- Duff v. Pub. Util. Comm., 56 Ohio St. 2d 367, 379, 384 N.E.2d 264 (1978)
- Elyria Foundry Co. v. Pub. Util. Comm., 114 Ohio St. 3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 38
- Constellation NewEnergy, Inc. v. Pub. Util. Comm., 104 Ohio St. 3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶ 49
- AK Steel Corp. v. Pub. Util. Comm., 95 Ohio St. 3d 81, 83, 765 N.E.2d 862 (2002)
- Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St. 3d 559, 563, 629 N.E.2d 423 (1994)
- Ohio Partners for Affordable Energy v. Pub. Util. Comm., 115 Ohio St. 3d 208, 2007-Ohio-4790, 874 N.E.2d 764, ¶ 15
- Payphone Assn. v. Pub. Util. Comm., 109 Ohio St. 3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 25
- Ohio Consumers' Counsel v. Pub. Util. Comm., 114 Ohio St. 3d 340, 2007-Ohio-4276, 872 N.E.2d 269, ¶ 16
- Toledo Coalition for Safe Energy v. Pub. Util. Comm., 69 Ohio St. 2d 559, 560, 433 N.E.2d 212 (1982)

- State ex rel. Kroger Co. v. Morehouse, 74 Ohio St. 3d 129, 133, 656 N.E.2d 936 (1995)

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