COURT OF APPEALS OF MARYLAND

Accokeek, Mattawoman, Piscataway Creeks Community Council, Inc. v. Public Service Commission of Maryland, et al.

Accokeek, Mattawoman, Piscataway Creeks Community Council, Inc. v. Public Service Commission of Maryland, 451 Md. 1 (2016) · No. No. 26, September Term, 2016 · Decided December 16, 2016

SUMMARY

The Maryland Court of Appeals reviewed the Public Service Commission's issuance of a Certificate of Public Convenience and Necessity for Dominion Cove Point LNG's proposed electric generating station. The court held that conditions requiring payments to greenhouse-gas-reduction and low-income energy-assistance programs were valid regulatory measures rather than unauthorized taxes. It also held that the Commission made adequate findings regarding economic benefits and that substantial evidence supported its decision.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Alan M. Wilner, Senior Judge, specially assigned; Barbera, C.J.; Greene, J.; Adkins, J.; McDonald, J.; Watts, J.; Getty, J.; Wilner, Senior Judge, specially assigned
JURISDICTION	Maryland
DECIDED	December 16, 2016
DOCKET	No. 26, September Term, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	AMP sought judicial review of the Maryland Public Service Commission's order granting Dominion a Certificate of Public Convenience and Necessity subject to approximately 200 conditions. The Circuit Court for Baltimore City affirmed, the Court of Special Appeals affirmed, and the Court of Appeals granted certiorari.
STANDARD OF REVIEW	The court reviewed the agency's decision directly rather than the decisions of the reviewing courts. Under Public Utilities Article § 3-203, a PSC order is prima facie correct and will be affirmed unless shown to be unconstitutional, outside the Commission's authority or jurisdiction, unlawfully procedurally made, arbitrary or capricious, affected by legal error, or unsupported by substantial evidence in a contested proceeding. Questions of law are reviewed independently,

	while factual determinations receive substantial deference when a reasoning mind could reach the agency's conclusion.
PRECEDENTIAL VALUE	published, precedential
PARTIES	Accokeek, Mattawoman, Piscataway Creeks Community Council, Inc. v. Public Service Commission of Maryland, Dominion Cove Point LNG, LP, et al.

TOPICS

judicial review of agency action · administrative law · standard of review · environmental law · tax

PRACTICE AREAS

administrative law · environmental law · public utility regulation · statutory interpretation · tax classification

QUESTIONS PRESENTED

1. Whether CPCN Conditions J-3 and J-4, requiring Dominion to make payments or contributions to Maryland energy-assistance and greenhouse-gas-reduction programs, were unauthorized taxes rather than permissible regulatory conditions.
2. Whether PSC's failure to state a precise dollar amount or range for the positive economic benefits of the generating station violated statutory requirements or deprived AMP of due process.
3. Whether substantial evidence supported PSC's findings concerning the generating station's positive economic impact.

HOLDINGS

1. Conditions J-3 and J-4 were primarily regulatory measures, not taxes, and PSC had authority to impose them as conditions of the CPCN.
2. PSC complied with its statutory obligation to state the grounds for its decision, and its findings did not deprive AMP of due process.
3. Substantial evidence supported PSC's findings, and the Commission acted within its discretion in evaluating the available evidence concerning the generating station's economic impact.

KEY QUOTATIONS

> *"Accordingly, we hold that the exactions imposed by the two Conditions were primarily regulatory rather than revenue measures and did not constitute taxes."* (451 Md. at 17-18)

> *"It was one that fell within the discretion of PSC, guided by its expertise, to make, and we shall defer to it."* (451 Md. at 22-23)

FACTUAL BACKGROUND

Dominion owned and operated an LNG terminal at Cove Point and sought authorization to expand it into a bidirectional import-export facility. Because the expansion included a 130-megawatt electric generating station, Maryland PSC approval through a CPCN was required. PSC granted the CPCN subject to approximately 200 conditions, including contributions to low-income energy assistance and greenhouse-gas-reduction programs. AMP, an environmental organization that intervened in the proceeding, challenged those conditions and the Commission's findings concerning the project's economic benefits.

PROCEDURAL HISTORY

The Public Service Commission granted Dominion's CPCN for construction of an electric generating station supporting expansion of its Cove Point liquefied natural gas facility. AMP intervened in the administrative proceeding and then sought judicial review. The Circuit Court for Baltimore City and the Court of Special Appeals affirmed the Commission's order; the Court of Appeals affirmed the judgment of the Court of Special Appeals.

DISPOSITION

affirmed

CASES CITED

- Accokeek, Mattawoman & Piscataway v. Public Service Commission, 227 Md. App. 265, 133 A.3d 1228 (2016)
- Hollingsworth v. Severstal Sparrows Point, 448 Md. 648, 654, 141 A.3d 90, 93 (2016)
- CWA v. Public Service Commission, 424 Md. 418, 36 A.3d 449 (2012)
- Easton v. Public Service Commission, 379 Md. 21, 30, 838 A.2d 1225 (2003)
- Cashcall & Reddam v. Commissioner of Financial Regulation, 448 Md. 412, 426, 139 A.3d 990, 998-99 (2016)
- Baltimore Gas & Electric v. Public Service Commission, 305 Md. 145, 170, 501 A.2d 1307, 1320 (1986)
- People's Counsel v. Maryland Public Service Commission, 355 Md. 1, 14, 733 A.2d 996, 1003 (1999)
- Eastern Diversified v. Montgomery County, 319 Md. 45, 570 A.2d 850 (1990)
- Merchant v. State, 448 Md. 75, 100, 136 A.3d 843, 858 (2016)
- Sugarloaf v. Department of Environment, 344 Md. 271, 287, 686 A.2d 605, 614 (1996)
- Mid-Atlantic v. Public Service, 361 Md. 196, 204-06, 760 A.2d 1087, 1091-92 (2000)
- Blue Bird Cab v. Department of Employment Security, 251 Md. 458, 466, 248 A.2d 331, 335 (1968)
- Overpak v. Baltimore, 395 Md. 16, 40, 909 A.2d 235, 249 (2006)

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