

SUPREME COURT OF VIRGINIA

Appalachian Power Co. v. State Corp. Comm'n, 284 Va. 695

733 S.E.2d 250 (2012) · No. Record No. 120394 · Decided November 1, 2012

SUMMARY

The Supreme Court of Virginia reviewed the State Corporation Commission’s interpretation and application of Code § 56-585.1(A)(5)(e), governing rate adjustment clauses for environmental compliance costs incurred by an electric utility. The Court held that Appalachian Power Company could recover unrecovered actual environmental-compliance costs directly incurred in 2009 and 2010, even when the related projects had been included in base-rate calculations. The Court affirmed the denial of recovery for environmental costs allegedly embedded in capacity equalization charges because the evidence did not establish those costs as actual costs, and remanded the case.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Elizabeth B. Lacy; Chief Justice Kinser; Justice Lemons; Justice Millette; Justice McClanahan; Justice Powell; Senior Justice Russell; Senior Justice Lacy
JURISDICTION	Virginia
DECIDED	November 1, 2012
DOCKET	Record No. 120394
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appalachian Power Company appealed under Virginia Rule 5:21(a) from the State Corporation Commission's order partially denying its petition for a rate adjustment clause to recover environmental compliance costs.
STANDARD OF REVIEW	Statutory construction is reviewed de novo. Factual findings by the State Corporation Commission will not be reversed unless contrary to the evidence or without evidentiary support. Commission decisions exercising its expertise receive a presumption of correctness, depending on the nature of the decision under review.
PRECEDENTIAL VALUE	Published and precedential opinion of the Supreme Court of Virginia.
PARTIES	Appalachian Power Company v. State Corporation Commission, Old Dominion Committee for Fair Utility Rates, Office of the Attorney

TOPICS

statutory interpretation administrative law judicial review of agency action agency adjudication
environmental law

PRACTICE AREAS

administrative law utility regulation environmental law statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether Code § 56-585.1(A)(5)(e) permits recovery through a rate adjustment clause of actual environmental compliance costs that were not recovered through base rates, even when the projects generating those costs were included in the utility's base-rate calculation.
2. Whether APCO presented sufficient evidence of actual environmental compliance costs embedded in affiliate capacity equalization charges to support recovery under Code § 56-585.1(A)(5)(e).
3. What standard of review applies to the Commission's construction and application of Code § 56-585.1(A)(5)(e) and to its factual determination concerning the proof of actual costs.

HOLDINGS

1. Code § 56-585.1(A)(5)(e) allows recovery of actual or projected costs of environmental compliance projects necessary to serve a utility's native load obligations when the statutory conditions are met, even if the projects were included in the utility's base rates. The statute does not impose an additional condition that the costs could not have been included in base rates.
2. APCO was not entitled to recover environmental compliance costs allegedly embedded in capacity equalization charges because the evidence did not sufficiently identify or quantify those costs as actual costs.
3. The Commission's construction and application of Code § 56-585.1(A)(5)(e) is a question of law reviewed de novo; the Commission's interpretation is not automatically decisive merely because the Commission administers the statute.

KEY QUOTATIONS

“The statute quoted above clearly states the intent of the legislature. It states that the Commission “shall” approve a utility’s petition for a rate adjustment clause filed pursuant to Code § 56-585.1(A)(5)(e) if the three conditions set out in the statute are met” (at 13-14)

“For these reasons, we hold that Code § 56-585.1(A)(5)(e) allows recovery of unrecovered costs incurred by a utility for environmental compliance projects necessary to serve the utility’s native load obligations even if the projects which incurred those costs were included in the utility’s base rates.” (at 16)

“Accordingly, we will remand the case to the Commission for further proceedings consistent with this opinion. Reversed in part, affirmed in part and remanded.” (at 19-20)

FACTUAL BACKGROUND

Appalachian Power Company incurred costs in 2009 and 2010 for projects necessary to comply with state and federal environmental requirements applicable to generation facilities serving its native load. APCO sought recovery of those costs through a statutory rate adjustment clause, asserting that they had not been recovered and could not be recovered through base rates. It also sought recovery of environmental compliance costs allegedly embedded in capacity equalization charges paid to affiliates, but the evidence consisted of estimates and competing calculations rather than a specific quantification of actual embedded costs.

PROCEDURAL HISTORY

APCO filed an initial review petition in 2009, and the Commission approved adjusted rates effective in August 2010. In March 2011, APCO sought recovery of approximately \$77 million in actual 2009 and 2010 environmental compliance costs under Code § 56-585.1(A)(5)(e). After hearings, a hearing examiner recommended recovery of \$63.3 million, but the Commission authorized approximately \$30 million and denied the balance, including costs associated with projects included in base rates and costs allegedly embedded in affiliate capacity equalization charges. The Supreme Court of Virginia reversed the denial of directly incurred unrecovered costs, affirmed the denial of costs embedded in capacity equalization charges, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the State Corporation Commission for further proceedings consistent with the opinion, including allowing APCO to seek recovery of actual directly incurred environmental compliance costs not recovered through base rates while continuing to deny recovery of costs allegedly embedded in capacity equalization charges absent sufficient proof of actual costs.

CASES CITED

- Potomac Edison Co. v. State Corp. Comm'n, 276 Va. 577, 667 S.E.2d 772 (2008)
- Christian v. State Corp. Comm'n, 282 Va. 392, 718 S.E.2d 767 (2011)
- Piedmont Envtl. Council v. Virginia Elec. & Power Co., 278 Va. 553, 684 S.E.2d 805 (2009)
- Appalachian Voices v. State Corp. Comm'n, 277 Va. 509, 675 S.E.2d 458 (2009)
- Commonwealth v. Appalachian Elec. Power Co., 193 Va. 37, 68 S.E.2d 122 (1951)
- Davenport v. Little-Bowser, 269 Va. 546, 611 S.E.2d 366 (2005)
- Superior Steel Corp. v. Commonwealth, 147 Va. 202, 136 S.E. 666 (1927)
- Beck v. Shelton, 267 Va. 482, 593 S.E.2d 195 (2004)
- Browning-Ferris, Inc. v. Commonwealth, 225 Va. 157, 300 S.E.2d 603 (1983)

- Halifax Corp. v. First Union Nat'l Bank, 262 Va. 91, 546 S.E.2d 696 (2001)
- Brown v. Lukhard, 229 Va. 316, 330 S.E.2d 84 (1985)
- BBF, Inc. v. Alstom Power, Inc., 274 Va. 326, 645 S.E.2d 467 (2007)
- SIGNAL Corp. v. Keane Fed. Sys., 265 Va. 38, 574 S.E.2d 253 (2003)
- Mutual Sav. & Loan Ass'n v. Commonwealth, 212 Va. 557, 186 S.E.2d 13 (1972)

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