

SUPREME COURT OF PENNSYLVANIA

HIKO Energy, LLC v. Pennsylvania Public Utility Commission

No. 39 EAP 2017, Supreme Court of Pennsylvania (June 5, 2019)

SUMMARY

HIKO Energy challenged a \$1.8 million penalty imposed by the Pennsylvania Public Utility Commission as grossly disproportionate, raising an excessive fines clause claim under the Pennsylvania and U.S. Constitutions. The Supreme Court of Pennsylvania granted allocatur on the constitutional issue, but the majority disposed of the appeal on waiver grounds without reaching the merits. The dissenting opinion argues that the Court should have decided the excessive fines issue of first impression rather than shifting to the waiver question not encompassed in the allocatur grant. Key topics: excessive fines, constitutional law, penalty proportionality, waiver, and Pennsylvania Public Utility Commission enforcement.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Donohue
JURISDICTION	Pennsylvania
DECIDED	June 5, 2019
DOCKET	39 EAP 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Commonwealth Court's order affirming the PUC's penalty order.
PRECEDENTIAL VALUE	published
PARTIES	HIKO Energy, LLC v. Pennsylvania Public Utility Commission

TOPICS

[constitutional law](#)[administrative law](#)[appellate procedure](#)[waiver](#)

PRACTICE AREAS

[public utilities](#)[constitutional law](#)

QUESTIONS PRESENTED

1. Whether the \$1,836,125.00 penalty was so grossly disproportionate to the penalties the Commission has approved for similar or more egregious conduct as to violate the Excessive Fines Clause of the Pennsylvania and U.S. Constitutions.

KEY QUOTATIONS

“(1) Whether the \$1,836,125.00 penalty was so grossly disproportionate to the penalties the Commission has approved for similar or more egregious conduct as to violate the Excessive Fines Clause of the Pennsylvania and U.S. Constitutions.”

“I must therefore dissent, as I am of the view that this Court should proceed to decide the constitutional issue on its merits by published opinion.”

FACTUAL BACKGROUND

The Pennsylvania Public Utility Commission imposed a \$1,836,125.00 penalty on HIKO Energy for conduct not described in this dissenting opinion. The penalty was affirmed by the Commonwealth Court.

PROCEDURAL HISTORY

The Pennsylvania Public Utility Commission imposed a \$1,836,125.00 penalty on HIKO Energy. HIKO appealed to the Commonwealth Court, which affirmed. The Supreme Court granted allocatur on three issues, including whether the penalty violated the Excessive Fines Clause. The Supreme Court affirmed, holding that the constitutional issue was waived.

DISPOSITION

affirmed

CASES CITED

- HIKO Energy, LLC v. Pennsylvania Pub. Util. Comm'n, 176 A.3d 235 (Pa. 2017)

OPINION

PER CURIAM.

[J-66-2018] [MO: Mundy, J.] IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT HIKO ENERGY, LLC,: No. 39 EAP 2017 Appellant: Appeal from the Order of: Commonwealth Court entered on: June 8, 2017 at No. 5 CD 2017 v.: affirming the Order entered on: December 3, 2015 by the: Pennsylvania Public Utility PENNSYLVANIA PUBLIC UTILITY: Commission at No. C-2014-2431410 COMMISSION,: ARGUED: September 26, 2018 Appellee: DISSENTING OPINION JUSTICE DONOHUE DECIDED: June 5, 2019 I dissent.

This Court granted allocatur to address three issues, including the following: (1) Whether the \$1,836,125.00 penalty was so grossly disproportionate to the penalties the Commission has

approved for similar or more egregious conduct as to violate the Excessive Fines Clause of the Pennsylvania and U.S. Constitutions. *HIKO Energy, LLC v. Pennsylvania Pub. Util.*

Comm'n, 176 A.3d 235 (Pa. 2017). This issue presents a constitutional question regarding the excessive fines clauses of the Pennsylvania and federal constitutions. In my view, this issue must be addressed and decided by this Court in our resolution of this appeal. Rather than resolving the legal issue presented, the Majority shifts the focus to an entirely different legal issue, namely whether HIKO waived the constitutional issue below.

This Court did not, however, grant allocatur to consider this issue of waiver, and we did not do so despite our full knowledge that the PUC had contested whether HIKO had preserved the constitutional issue in the Commonwealth Court and that the waiver issue was a central issue in that court's disposition of the case.

The Commonwealth Court is well suited to address issues of waiver, for which there is already a well-established and comprehensive body of case law. In contrast, this Court is best suited to resolve the constitutional issue of first impression on which we granted allocatur. If the Court had intended to decide the issue of waiver, we could have granted allocatur to review it.

We did not. The waiver issue is not encompassed within our grant of allowance of appeal and is not an issue before the Court in this appeal. I must therefore dissent, as I am of the view that this Court should proceed to decide the constitutional issue on its merits by published opinion. Chief Justice Saylor joins this dissenting opinion. [J-66-2018] [MO: Mundy, J.] - 2