SUPREME COURT OF OHIO

Elyria Foundry Co. v. Public Utilities Commission

114 Ohio St. 3d 305 (Ohio 2007) · No. 05-704-EL-ATA; 05-1125-EL-ATA; 05-1126-EL-AAM; 05-1127-EL-UNC · Decided August 29, 2007

SUMMARY

The Ohio Supreme Court reviewed Public Utilities Commission orders approving FirstEnergy's rate-certainty plan, including deferrals of distribution expenses and increased fuel costs. The court upheld the accounting deferral for distribution expenses against Elyria's challenges, while concluding that allowing generation-related fuel costs to be recovered through future distribution rates or used to reduce distribution deferrals violated R.C. 4928.02(G)'s prohibition on anticompetitive subsidies.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; Moyer, C.J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	August 29, 2007
DOCKET	05-704-EL-ATA; 05-1125-EL-ATA; 05-1126-EL-AAM; 05-1127-EL-UNC
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeals as of right from Public Utilities Commission of Ohio orders approving FirstEnergy's rate-certainty plan and denying Elyria's and WPS's applications for rehearing.
STANDARD OF REVIEW	Under R.C. 4903.13, a PUCO order may be reversed, vacated, or modified only if unlawful or unreasonable. Factual determinations are upheld when supported by sufficient probative evidence and not manifestly against the weight of the evidence. The appellant bears the burden of demonstrating that the order is against the manifest weight of the evidence or unsupported by the record. Questions of law are reviewed independently, although the court may rely on agency expertise concerning highly specialized issues.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential

PARTIES Elyria Foundry Company, WPS Energy Services, Inc. v. Public Utilities Commission of Ohio

TOPICS

judicial review of agency action · administrative law · statutory interpretation · standard of review · appellate procedure

PRACTICE AREAS

administrative law · public utility regulation · electric utility regulation · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. Whether the PUCO exceeded its authority under R.C. 4905.13 by authorizing FirstEnergy to capitalize and defer distribution expenses as a regulatory incentive.
2. Whether the PUCO's findings of exigent circumstances and the need for infrastructure improvements were supported by the record as required by R.C. 4903.09.
3. Whether the PUCO properly considered the long-term effects of the rate-certainty plan and whether the plan benefited ratepayers and the public interest.
4. Whether the PUCO's authorization of deferred increased fuel costs recoverable through future distribution rates, or its alternative use of excess fuel-cost revenues to reduce distribution deferrals, violated R.C. 4928.02(G)'s prohibition on anticompetitive cross-subsidies.
5. Whether the fuel-cost deferrals violated R.C. 4905.35(A) or R.C. 4905.22.
6. Whether the PUCO abused its discretion by failing to adjust shopping credits or eliminate shopping-credit caps.

HOLDINGS

1. The PUCO did not violate R.C. 4905.13 by authorizing FirstEnergy to capitalize and defer distribution expenses, including infrastructure and reliability-related expenses, because the accounting order did not immediately affect distribution rates and the recoverability of the deferred expenses remained subject to review in future rate proceedings.
2. The PUCO violated R.C. 4903.09 by finding that exigent circumstances justified departing from ordinary accounting practices without identifying a factual basis in the record for the asserted need for significant and costly infrastructure improvements.
3. The unsupported finding did not require reversal of the accounting order as to Elyria because Elyria failed to demonstrate present prejudice; current rates were unaffected, future recoverability remained unresolved, and the PUCO established procedures for reviewing the necessity and reasonableness of deferred expenses.

4. The PUCO reasonably considered the plan's long-term implications and was not required to reject the plan based on speculative future costs; Elyria failed to show that the commission's conclusion that the stipulation benefited ratepayers and the public interest was unlawful, unreasonable, or against the manifest weight of the evidence.
5. The PUCO violated R.C. 4928.02(G) by authorizing FirstEnergy to defer increased fuel costs for generation service and later recover them through distribution-rate cases, or alternatively to use excess fuel-cost recovery to reduce deferred distribution expenses.
6. WPS's claims that the fuel-cost deferrals violated R.C. 4905.35(A) and R.C. 4905.22 were without merit because the ultimate effect of the deferrals was speculative, future rate proceedings remained available for review, and WPS failed to show prejudice.
7. The PUCO did not abuse its discretion by declining to adjust shopping credits beyond the adjustments provided in the rate-certainty plan.
8. The PUCO did not abuse its discretion by declining to eliminate shopping-credit caps in this proceeding.

KEY QUOTATIONS

> *"In short, each service component was required to stand on its own."* (at 316)

> *"Accordingly, we hold that the commission violated R.C. 4928.02(G) when it gave FirstEnergy authority to collect deferred increased fuel costs through future distribution rate cases, or to alternatively use excess fuel-cost recovery to reduce deferred distribution-related expenses."* (at 317)

> *"Orders affirmed in part and reversed in part, and cause remanded."* (at 321)

FACTUAL BACKGROUND

FirstEnergy proposed a rate-certainty plan to mitigate the effects of increased fuel costs following the end of its market-development period, maintain stable distribution rates, and defer certain infrastructure and reliability expenditures. The PUCO approved the plan, including mechanisms allowing FirstEnergy to defer increased fuel costs and distribution expenses and later recover them through future distribution-rate proceedings. Elyria challenged the distribution-expense deferrals, while WPS challenged the fuel-cost deferrals, alleged subsidies, shopping credits, and shopping-credit caps.

PROCEDURAL HISTORY

FirstEnergy proposed a rate-certainty plan as an alternative to a generation-charge adjustment rider. After an evidentiary hearing, the PUCO approved the plan, which authorized deferral and later recovery of specified fuel and distribution expenses. The PUCO partially granted FirstEnergy's rehearing application and denied the rehearing applications of Elyria and WPS. Elyria and WPS appealed to the Supreme Court of Ohio.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

Remand to the PUCO for further consideration and modification of the rate-certainty plan to remedy the violation of R.C. 4928.02(G), specifically the provisions allowing deferred increased fuel costs to be recovered through future distribution-rate cases or allowing excess fuel-cost recovery to reduce deferred distribution expenses. All other aspects of the PUCO orders were affirmed.

CASES CITED

- Constellation NewEnergy, Inc. v. Pub. Util. Comm., 104 Ohio St. 3d 530, 2004-Ohio-6767, 820 N.E.2d 885
- Monongahela Power Co. v. Pub. Util. Comm., 104 Ohio St. 3d 571, 2004-Ohio-6896, 820 N.E.2d 921
- Ohio Edison Co. v. Pub. Util. Comm., 78 Ohio St. 3d 466, 469, 678 N.E.2d 922 (1997)
- Consumers' Counsel v. Pub. Util. Comm., 58 Ohio St. 2d 108, 110, 12 O.O. 3d 115, 388 N.E.2d 1370 (1979)
- Consumers' Counsel v. Pub. Util. Comm., 32 Ohio St. 3d 263, 271, 513 N.E.2d 243 (1987)
- Payphone Assn. of Ohio v. Pub. Util. Comm., 109 Ohio St. 3d 453, 2006-Ohio-2988, 849 N.E.2d 4
- Columbus v. Pub. Util. Comm., 10 Ohio St. 3d 23, 24, 10 OBR 175, 460 N.E.2d 1117 (1984)
- Consumers' Counsel v. Pub. Util. Comm., 6 Ohio St. 3d 377, 378-379, 6 OBR 428, 453 N.E.2d 673 (1983)
- Dayton Power & Light Co. v. Pub. Util. Comm., 4 Ohio St. 3d 91, 104, 4 OBR 341, 447 N.E.2d 733 (1983)
- Consumers' Counsel v. Pub. Util. Comm., 63 Ohio St. 3d 522, 524-525, 589 N.E.2d 1267 (1992)
- MCI Telecommunications Corp. v. Pub. Util. Comm., 32 Ohio St. 3d 306, 312, 513 N.E.2d 337 (1987)
- Cleveland Elec. Illum. Co. v. Pub. Util. Comm., 76 Ohio St. 3d 163, 166, 666 N.E.2d 1372 (1996)
- Tongren v. Pub. Util. Comm., 85 Ohio St. 3d 87, 92, 706 N.E.2d 1255 (1999)
- Holladay Corp. v. Pub. Util. Comm., 61 Ohio St. 2d 335, 15 O.O. 3d 426, 402 N.E.2d 1175 (1980)
- Cincinnati v. Pub. Util. Comm., 63 Ohio St. 3d 366, 588 N.E.2d 775 (1992)
- Migden-Ostrander v. Pub. Util. Comm., 102 Ohio St. 3d 451, 2004-Ohio-3924, 812 N.E.2d 955
- Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St. 3d 384, 2006-Ohio-5853, 856 N.E.2d 940
- Ohio Consumers' Counsel v. Pub. Util. Comm., 109 Ohio St. 3d 328, 2006-Ohio-2110, 847 N.E.2d 1184
- Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St. 3d 300, 2006-Ohio-5789, 856 N.E.2d 213