

SUPREME COURT OF PENNSYLVANIA

Pennsylvania Public Utility Commission v. Andrew Seder/The Times Leader; Pennsylvania Public Utility Commission v. Scott Kraus/The Morning Call

PUC v. Seder · No. 52 MAP 2015; 53 MAP 2015 · Decided May 25, 2016

SUMMARY

This is a dissenting opinion by Chief Justice Saylor of the Supreme Court of Pennsylvania in consolidated appeals concerning disclosure obligations under Section 335(d) of the Public Utility Code. The dissent argues that the statute does not require public disclosure of an anonymous tip letter and an investigative file that were not relied upon by the Public Utility Commission in taking official action on a settlement. Justice Dougherty joined the dissent.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Saylor
JURISDICTION	Pennsylvania
DECIDED	May 25, 2016
DOCKET	52 MAP 2015; 53 MAP 2015
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from Commonwealth Court orders reversing Office of Open Records orders in proceedings concerning disclosure of PUC settlement-related records.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	Andrew Seder/The Times Leader, Associated Press, Calkins Media Inc., Lancaster Newspaper Inc., PA Media Group, Philadelphia Media Network, LLC, Pocono Mountains Media Group, Reading Eagle Company, Times News, LLC, Scott Kraus/The Morning Call v. Pennsylvania Public Utility Commission

TOPICS

statutory interpretation

administrative law

judicial review of agency action

legislative intent

standard of review

PRACTICE AREAS

administrative law

statutory interpretation

right to know law

public utility regulation

open government

QUESTIONS PRESENTED

1. Whether Section 335(d) of the Public Utility Code requires disclosure of an anonymous tip letter and a Bureau of Investigation and Enforcement investigative file when those materials were not relied upon by the Commissioners in approving a conditional settlement agreement.
2. Whether Section 335(d)'s reference to the Commission's entry into a settlement agreement applies to subordinate administrative action by the PUC's investigative arm or only to official action by the Commissioners.

HOLDINGS

1. The dissent would hold that Section 335(d) does not require the anonymous tip letter and Bureau of Investigation and Enforcement investigative file to be included in the record of approval of the settlement agreement or released publicly when those materials were not relied upon by the Commissioners.
2. The dissent would interpret “commission,” in the context of Section 335(d), to mean the Commissioners when only the Commissioners are empowered to take the relevant official action, rather than the PUC as a whole or its investigative arm.

KEY QUOTATIONS

“I&E’s entry into a settlement agreement plainly is not the type of activity subject to the terms of the Sunshine Act’s open-meetings requirement, because it is a form of routine administrative action by an executive arm per preexisting authority” (-3)

“The Legislature’s underlying purpose was to ensure that the public record associated with official action (such as the Commissioners’ approval of the I&E/PPL settlement) transparently reflects the basis for the associated decision-making.” (-4)

“In summary, I respectfully dissent, as I would hold that Section 335(d) does not require that the anonymous tip letter and I&E investigative file be made part of the record of the approval of the I&E/PPL settlement agreement and released publicly.” (-6)

FACTUAL BACKGROUND

The Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement entered into a conditional settlement agreement with PPL Electric Utilities Corporation, subject to subsequent approval by the Commissioners. The dispute concerned whether an anonymous tip letter and the Bureau's investigative file had to be disclosed under Section 335(d) of the Public Utility Code as part of the record supporting approval of the

settlement. The dissent viewed the Bureau's entry into the conditional settlement as administrative action rather than official action by the Commissioners.

PROCEDURAL HISTORY

The Office of Open Records entered orders on November 4 and November 20, 2013. The Commonwealth Court reversed those orders on December 3, 2014, in separate appeals. The matters were appealed to the Supreme Court of Pennsylvania and argued on November 18, 2015, then resubmitted on January 20, 2016. The provided text is Chief Justice Saylor's dissenting opinion.

DISPOSITION

other

CASES CITED

- PUC v. Seder, 106 A.3d 193, 199 (Pa. Cmlwth. 2014)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/pennsylvania-supreme-court-of-pennsylvania/2016/pennsylvania-public-utility-commission-v-andrew-seder-the-vhjli1pn>