

Bond Case Briefs

Municipal Finance Law Since 1971

UTILITIES - WEST VIRGINIA

Jefferson County Citizens for Economic Preservation v. Public Service Commission of West Virginia

Supreme Court of Appeals of West Virginia - November 2, 2018 - S.E.2d - 2018 WL 5780248

Petitioners including group of citizens and public sewage corporation sought review of Public Service Commission's order that county public service district could indefinitely delay a project to upgrade its sewer service.

The Supreme Court of Appeals held that:

- District's failure to upgrade service in sewer system did not equate to a failure to meet its customers' needs;
- Adequate evidence supported Commission's findings that improvements to area of wastewater collection were slated to move forward, thus supporting Commission's decision authorizing delay; and
- Commission's decision was not substantively improper.

A certificate of public convenience and necessity merely authorized, rather than mandated, a public utility to construct a sewer facility and, thus, county public service district's failure to upgrade service in sewer system in connection to which certificate was issued did not equate to a failure to meet its customers' needs.

Adequate evidence supported Public Service Commission's findings that improvements to area of wastewater collection were slated to move forward, thus supporting Commission's decision authorizing delay of county public service district's project to upgrade sewer service; district, county commission, and city's utility board stated that they would cooperate to provide the planned sewer improvements and evidence showed that district had taken steps to preserve funding sources for the project and that board had consulted with an engineering firm as to the most efficient way to move forward with the planned sewer improvements.

Public Service Commission's decision to allow time for public service district, county commission, and city's utility board to combine sewer improvements was not substantively improper; efforts by district, county commission, and board to keep up with growing customer demand was inefficient when they operated separate sewer systems, original plan for sewer improvements contained inefficiencies and received more than 35 objections, and engineering firm reported that combining the sewer improvements was feasible, would increase efficiency of services, and would not diminish the scope of improvements and that the cost would likely go from \$6,900,000 to \$5,415,000.