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PUBLIC UTILITIES - OHIO

In re Ohio Power Company

Supreme Court of Ohio - November 27, 2018 - N.E.3d - 2018 WL 6332903 - 2018 -Ohio-4697

Office of Ohio Consumers' Counsel and manufacturers' association sought judicial review of a decision of the Public Utilities Commission approving an electric-security plan (ESP).

The Supreme Court of Ohio held that:

- Office failed to demonstrate actual harm or prejudice to ratepayers, as required for reversal;
- Court would decline to consider claims of imminent or future harm to ratepayers;
- Association failed to show harm to ratepayers; and
- Association failed to show prejudice to its appellate rights.

Office of Ohio Consumers' Counsel failed to demonstrate that ratepayers suffered actual harm or prejudice from Public Utilities Commission's decision to approve an electric-security plan (ESP), as basis for seeking reversal of the order; Office failed to explain how the Commission's consideration of costs and benefits of a power purchase agreement (PPA) rider would have compelled the Commission to reject the ESP under statutory test for evaluating such plans, any harm caused by Commission's alleged failure to consider the impact of the rider in ESP proceeding was cured by Commission's consideration of rider's impact in separate proceeding regarding the rider, and Office did not explain how consumers were necessarily harmed by the rider, even if it was an unlawful charge.

Supreme Court would decline to consider a contention asserted by Office of Ohio Consumers' Counsel and manufacturers' association, that consumers were at risk of imminent or future harm from Public Utilities Commission's decision to approve an electric-security plan (ESP), as basis for seeking reversal of the order, where Office and association were able to assert claims of actual harm or prejudice in a separate appeal from the Commission's grant of electric utility's request to recover its costs under a related power purchase agreement (PPA) rider.

Manufacturers' association failed to show harm to ratepayers, as basis for seeking reversal of a decision of the Public Utilities Commission, as result of the establishment of a placeholder power purchase agreement (PPA) rider in Commission's order approving an electric-security plan (ESP), where the rider approved in the ESP order did not allow electric utility to recover costs from customers.

Manufacturers' association failed to show prejudice, as basis for seeking reversal of a decision of the Public Utilities Commission, to its appellate rights as result of Commission's delay in ruling on association's application for rehearing of an order approving an electric-security plan (ESP) until after Commission approved cost recovery through a power purchase agreement (PPA) rider, where no evidence existed that Commission intentionally refused to rule promptly, and association made no argument that the delay was unreasonable or unjustified.

