

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **PUBLIC UTILITIES - OHIO**

### **In re Ohio Power Company**

**Supreme Court of Ohio - January 22, 2020 - N.E.3d - 2020 WL 354954 - 2020 -Ohio- 143**

Office of Ohio Consumers' Counsel sought judicial review of a decision of the Public Utilities Commission approving and modifying a previously approved electric-security plan.

The Supreme Court held that:

- Commission had subject matter jurisdiction to approve a cost-recovery rider to the plan;
- Commission did not act unlawfully in approving rider that allowed for recovery of costs associated with technology-demonstration projects; and
- No prejudice to ratepayers resulted from approval of rider, on placeholder basis, allowing recovery of costs from future renewable-generation projects.

Public Utilities Commission had subject matter jurisdiction to approve a cost-recovery rider to an electric utility's electric-security plan, and thus the failure of the Office of Ohio Consumers' Counsel to raise before the Commission its contention that the rider intruded on the Federal Regulatory Commission's (FERC) exclusive jurisdiction under the Federal Power Act over wholesale sales of electricity in the interstate market deprived the Ohio Supreme Court of jurisdiction to consider the issue; the Act did not deprive state tribunals of the power to adjudicate claims that the Act preempted state law, and utility's application for extension of the rider did not depend on federal law.

Public Utilities Commission did not act unreasonably or unlawfully in approving a rider to electric utility's electric-security plan allowing for recovery of costs associated with technology-demonstration projects to encourage construction of electric-vehicle charging stations and development of microgrids; no evidence showed that the projects had no relation to distribution service, infrastructure, or modernization, within meaning of statute governing electric-security plans, no authority held that statute governing standard service offers limited provisions in an electric-security plan to those necessary to maintain essential electric service, and statute governing electric-security plans authorized certain plan provisions even if another public utilities statute prohibited them.

Office of Ohio Consumers' Counsel failed to show harm or prejudice to ratepayers, as required for reversal of a decision of the Public Utilities Commission authorizing electric utility's implementation on a placeholder basis, i.e., with a zero rate, of a rider to an electric-security plan permitting utility to recover costs from future renewable-generation projects to be approved by Commission at a later date; costs and inefficiencies associated with Office's strategy to litigate an issue prematurely were not harm or prejudice caused by or resulting from the Commission's order.