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PUBLIC UTILITIES - NEVADA

Southwest Gas Corporation v. Public Utilities Commission of Nevada

Supreme Court of Nevada - February 17, 2022 - P.3d - 2022 WL 495029 - 138 Nev. Adv. Op. 5

Natural gas provider petitioned for judicial review of decision of Public Utilities Commission (PUC) in rate setting case to deny provider's request for reimbursement for costs related to software upgrade projects and pension expenses and to set return on equity lower than what the provider requested.

The District Court denied petition. Provider appealed.

The Supreme Court held that:

- Public utilities do not enjoy a presumption of prudence with respect to the expenses they incur;
- Constitutional-fact doctrine does not apply to Supreme Court's review of decisions of PUC;
- Provider had notice and opportunity to present its case on issue of normalizing pension expenses, as required for PUC's rate-setting procedures to conform with procedural due process;
- PUC's decision to adopt three-year normalization of pension expenses was not arbitrary or capricious;
- PUC's selection of 9.25% return on equity was not unconstitutional confiscatory taking;
- PUC's decision to disallow provider to recover its costs related to software upgrade projects was supported by substantial evidence; and
- PUC's decision to disallow provider to recover its pension expenses was supported by substantial evidence.

Natural gas provider was not entitled to rebuttable presumption of prudence with respect to expenses for pension and software upgrade projects that provider sought to recover by filing general rate application with Public Utilities Commission (PUC) seeking to increase service rates charged to customers; provider was best positioned to prove the prudence of the expenses it incurred and could petition the courts for review if PUC rejected expenditures in arbitrary and capricious manner, and regulations required utilities to ensure material relied upon would serve as its complete case.

Public Utilities Commission's (PUC) rate-setting procedures to conform with procedural due process in proceeding in which provider sought to raise its service rates to recover adjusted pension expenses; normalization issue was raised in prefiled direct testimony, but provider did not address it in direct testimony or in rebuttal at the hearing.

Public Utilities Commission (PUC) did not deprive natural gas provider of opportunity to explain its proposal to reduce discount rate used to calculate amount it needed to set aside to fund future pension obligations in proceeding in which provider sought to raise its service rates to recover adjusted pension expenses, and thus did not violate procedural due process requirements; regulatory professional for provider was asked at hearing how discount rate was determined and she merely stated that decision was made in conjunction with actuary, that she could not provide any further information, and that provider had no other witnesses who could do so.

Public Utilities Commission's (PUC) decision to adopt three-year normalization of pension expenses was not arbitrary or capricious in proceeding in which natural gas provider sought to raise its service rates to recover adjusted pension expenses and costs related to software upgrade projects; adopting normalization procedure for the first time in response to significant fluctuation made sense as the nature of averaging meant that provider would be somewhat undercompensated in high-cost years but overcompensated in low-cost years.

Public Utilities Commission's (PUC) selection of zone of reasonableness for return on equity between 9.10% to 9.70% was not arbitrary or capricious but was supported by substantial evidence in proceeding in which natural gas provider sought to raise its service rates to recover adjusted pension expenses, costs related to software upgrade projects, and return on equity; PUC considered expert testimony and provider's circumstances, such as its capital structure and risk profile, and PUC was free to fix any return on equity within range of reasonableness and permissibly settled on rate of 9.25% after balancing interests of ratepayers and shareholders.

Public Utilities Commission's (PUC) selection of 9.25% return on equity, in proceeding in which natural gas provider sought to raise its service rates to recover adjusted pension expenses, costs related to software upgrade projects, and return on equity, was not unconstitutional confiscatory taking; 9.25% return on equity was commensurate with other utilities with corresponding risks and maintained provider's ability to attract capital.

Public Utilities Commission's (PUC) decision to disallow natural gas provider to recover its costs related to software upgrade projects was supported by substantial evidence in proceeding in which provider sought to raise its service rates; provider submitted scant evidence substantiating projects' work order expenses, provider presented no witnesses who were directly involved in execution of projects or who could explain basis for incurring costs, and PUC's skepticism of expenses was warranted in light of provider's earlier attempt to obtain reimbursement for number of questionable expenses, including biweekly massages and home theater system.

Public Utilities Commission's (PUC) decision to disallow natural gas provider to recover its pension expenses was supported by substantial evidence in proceeding in which provider sought to raise its service rates; provider did not provide evidence to support its proposal to reduce discount rate used to calculate amount it needed to set aside to fund future pension obligations as witness was unable to explain how provider made decision to significantly reduce the discount rate.