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PUBLIC UTILITIES - TEXAS

City of Dallas v. Public Utility Com'n of Texas

Court of Appeals of Texas, Austin - January 9, 2014 - Not Reported in S.W.3d - 2014 WL 108363

The City of Dallas filed an application to be certified as a retail electric provider. After reviewing the application, the Public Utility Commission denied the request. Essentially, the Commission determined that municipal corporations are not eligible for certification under the Commission's rule. Subsequent to the Commission's ruling, the City sought judicial review. Ultimately, the district court affirmed the Commission's ruling, and the City appeals that determination. The court of appeal affirmed the district court's order.

The Utilities Code sets out the process for certification and requires the Commission to issue a certificate "to a person" who demonstrates that he has "the financial and technical resources" needed, has the requisite "managerial and technical ability," has "the resources needed," and has "ownership or lease of an office within this state for the purpose of providing customer service, accepting service of process, and making available ... books and records sufficient to demonstrate [his] compliance with the requirements" of the Utilities Code. Tex. Util.Code § 39.352(b). Alternatively, a person can be certified by showing that he meets the last requirement and by filing an affidavit from all of the retail customers that he "has contracted to provide one megawatt or more of capacity stating that" he satisfies the remaining three requirements listed above. Id. § 39.352(d). The City elected to seek its certification using the alternative method.

As outlined above, the Utilities Code authorizes the Commission to issue a certificate to a "person." Id. § 39.352. The dispute in this case pertained to whether the City is a "person" as contemplated by the Utilities Code. See *Oncor Elec. Delivery Co. LLC v. Public Util. Comm'n*, 406 S.W.3d 253, 260 (Tex.App.-Austin 2013, no pet.) (explaining that statutory construction is question reviewed de novo with primary goal of giving effect to legislature's intent, which is generally discerned from statute's plain language). As support for the idea that it qualifies as a person, the City points to the definition of "person" found in another chapter of the Utilities Code. That definition states that the term "person" "includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative." Tex. Util.Code § 11.003(14).

The court then undertook a lengthy, exhaustive, and fairly interesting analysis. Although it found that the City's position was reasonable, it concluded that the Commission's interpretation of the various statutes was also reasonable and not inconsistent with the governing framework, and thus it was forced to conclude that the district court did not err when it upheld the Commission's determination that the City was not eligible to be certified as a retail electric provider and the Commission's decision to dismiss the City's application for certification.