

Bond Case Briefs

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PUBLIC UTILITIES - OHIO

In re Application of Columbus S. Power Co.

Supreme Court of Ohio - February 13, 2014 - N.E.3d - 2014 -Ohio- 462

Office of the Ohio Consumers' Counsel (OCC) and association of large industrial energy consumers appealed decision of Public Utilities Commission (PUC) authorizing new generation rates for two utilities in utilities' electric security plan (ESP). Operating company of the utilities intervened in support of PUC. The Supreme Court of Ohio affirmed in part, reversed in part, and remanded. On remand, the PUC determined that the environmental-investment carrying costs were lawful, but directed utility to deduct actual provider-of-last-resort (POLR) costs from tariff schedules, and rejected a request to recover the amounts of the POLR charge and carrying costs that utility had collected during remand period. OCC and association appealed.

The Supreme Court of Ohio held that:

- Utility was not required by statute to prove that carrying charges were necessary in order to recover them;
- Record supported authorization of carrying charges on the basis that they would have the effect of providing certainty to both utility and its customers regarding retail electric generation service;
- Subsection of statute did not require an economic basis for utility to recover environmental-investment carrying costs; and
- Consumers could not recover previously-collected provider-of-last-resort (POLR) charges.

Electric utility was not required, under statute that stated that electric security plan could provide terms, conditions, or charges relating to carrying costs as would have the effect of stabilizing or providing certainty regarding retail electric service, to prove that carrying charges were necessary in order to recover them. Statute did not expressly impose a "necessary" requirement, and when read as a whole, statute did not require the utility to prove that the provision of retail electric service would be less probable, or certain, in order to recover costs under the statute. R.C. 4928.143(B)(1)(d), 4928.143(B)(2)(d).

Record supported authorization of carrying charges on the basis that they would have the effect of providing certainty to both electric utility and its customers regarding retail electric generation service, where utility's witness testified that environmental-investment carrying costs allowed utility to continue to provide low-cost generation power, which had the effect of lowering the price of retail electric service, where witness testified that the environmental-investment carrying charges were important to utility's ability to provide generation power at a cost that was below the market rate for purchased power at that time, which in turn had the effect of lowering or stabilizing the price of retail electric service. R.C. 4928.143(B)(2)(d).