

Bond Case Briefs

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PUBLIC UTILITIES - OREGON

Gearhart v. Public Utility Com'n of Oregon

Supreme Court of Oregon, En Banc - October 2, 2014 - P.3d - 2014 WL 4924311

On remand following judicial review of rates approved for electric utility to recover its capital investment in nuclear generating facility after that facility was retired from service, the Public Utilities Commission (PUC) found the rates just and reasonable, awarded utility interest on unamortized balance, and ordered utility to issue refunds. Ratepayers and ratepayers' advocacy organization appealed. The Court of Appeals affirmed. Ratepayers and organization petitioned for review.

The Supreme Court of Oregon held that:

- PUC did not exceed scope of remand;
- PUC did not engage in impermissible retroactive ratemaking;
- PUC had authority to order refunds;
- PUC could allow utility to recover interest; and
- Substantial evidence supported PUC's order.

In proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, Public Utilities Commission (PUC) did not exceed scope of remand, after reversal by Court of Appeals, by reexamining rates from previous five-year period to determine whether to order refund of rates paid in subsequent period. Although Court had held that PUC had made a legal error in allowing utility to recover a return on its investment in rates, Court did not direct PUC to take any particular action in remand.

Public Utilities Commission (PUC) did not engage in impermissible retroactive ratemaking, on remand after reversal by Court of Appeals in proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, by reexamining rates from previous five-year period to determine whether to order refund of rates paid in subsequent period. After Court determined that PUC had erroneously allowed utility to recover a return on its investment, PUC properly used ratemaking principles to calculate rates that it would have authorized if the return on investment had not been included, and PUC's authority on remand included the authority to reconsider all aspects of the decision affected by the error.

Public Utilities Commission (PUC) had authority to order that electric utility provide refunds to ratepayers, on remand after reversal by Court of Appeals in proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, after Court determined that PUC had erroneously allowed utility to recover a return on its investment. PUC had broad statutory authority to remedy errors in ratemaking orders, and authority to order a refund reasonably could be implied from remand order from the Court of Appeals.

Public Utilities Commission (PUC) did not exceed scope of remand, after reversal by Court of Appeals in proceedings to determine whether electric utility could recover capital investment in

nuclear generating facility after the facility had been retired from service, by allowing utility to recover interest, although Court had determined that PUC had erroneously allowed utility to recover a return on its investment. PUC was careful not to recalculate rates using a factor that would allow utility to recover a profit on its investment, instead relying on lower Treasury bond rates to account only for the time value of money.