

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - OHIO**

### **In re Application of Ohio Power Co.**

**Supreme Court of Ohio - October 7, 2014 - N.E.3d - 2014 -Ohio- 4271**

Organization of industrial customers of electric utility appealed order of Public Utilities Commission order, permitting utility to recoup underrecovered transmission costs from all customers over three years on nonbypassable basis.

The Supreme Court of Ohio held that:

- Commission did not act outside its statutory authority, and Commission did not engage in unlawful retroactive ratemaking.

Public Utilities Commission's phase-in authority, under statute allowing Commission to authorize any just and reasonable phase-in of any electric distribution utility rate or price, included authority, in proceedings to review and adjust electric utility's transmission cost recovery rider, to allow utility to recover underrecovered transmission costs from all customers over three years on a nonbypassable basis. Statute did not limit exercise of Commission's authority to the proceedings that had set the rate or price, but instead allowed Commission to invoke its phase-in authority outside of standard service offer proceedings.

Public Utilities Commission did not engage in unlawful retroactive ratemaking, in proceedings to review and adjust electric utility's transmission cost recovery rider, by allowing utility to recover underrecovered transmission costs from all customers over three years on a nonbypassable basis. Even if the Commission's order did amount to retroactive ratemaking, it was not unlawful because Commission had statutory authority to phase in the collection of rates through a nonbypassable surcharge.

Revenue lost due to regulatory delay was not at issue in proceedings to review and adjust electric utility's transmission cost recovery rider, and thus Commission did not violate rule against retroactive ratemaking by allowing utility to recover underrecovered transmission costs from all customers over three years on a nonbypassable basis. Only issue was whether utility could recover costs from all customers or only from "non-shopping" customers who took generation service from the incumbent distribution utility instead of buying it on the market, and was not a case where Commission altered present rates to make up for dollars lost during the pendency of Commission proceedings.