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Ohio Supreme Court Rules That Ohio Power Can Recover Transmission Service Charge From Former Customers Over A Three-Year Period.

On October 7, 2014, the Ohio Supreme Court unanimously affirmed a ruling by the Public Utilities Commission of Ohio (“PUCO”) that permitted Ohio Power to recover \$36 million in transmission costs from ratepayers who had “shopped” for alternative generation providers, in addition to those ratepayers who purchased generation service from Ohio Power, during the period of July 2011 through June 2012.

Under Ohio law, ratepayers are permitted to purchase their generation service from independent providers. As part of the implementation of this retail competition, state law required incumbent distribution utilities to transfer control of their transmission assets to an independent system operator. On October 1, 2004, Ohio Power transferred operational control of its transmission assets to PJM Interconnection, LLC (“PJM”). Ohio Power pays PJM transmission rates to service its load. Ohio law permits Ohio Power to recover these payments to PJM from ratepayers through a mechanism called the Transmission Cost Recovery Rider (“TCRR”), which must be approved by the PUCO.

During the period of July 2011 through June 2012, Ohio Power under-recovered its PJM transmission costs by \$36 million, caused primarily by a substantial increase (from less than 10% to nearly 40%) in the number of customers in the utility’s service territory choosing alternative generation providers. While Ohio Power would normally recoup any under-recovered amounts from its customers over subsequent TCRR periods, PUCO rules require that the TCRR be imposed only on those customers who purchase generation service from incumbent utilities, and not on those customers who “shop” for alternative generation providers.

In permitting recovery for the period in question, the PUCO reasoned that it would be unfair to require non-shopping customers to bear the entire burden of paying for the under-recovery, since the under-recovered costs were caused in part by those customers who sought alternative generation providers. It therefore authorized the recovery of the unpaid transmission costs from both shopping and non-shopping customers. The PUCO also ordered that, given the size of the unrecovered amount, the costs be collected over a three-year period to ease the burden on ratepayers.

In upholding the PUCO’s order, the Ohio Supreme Court held that state law gave the PUCO discretion over how to design the cost phase-in, including the requirement that both shopping and non-shopping customers contribute their share of the costs, and the three-year implementation period. The court found that the group challenging the PUCO ruling—Industrial End-Users Ohio—had failed to demonstrate that the ruling was unjust, unreasonable, or unlawful.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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