

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - OHIO**

### **Duke Energy Ohio, Inc. v. Cincinnati**

**Court of Appeals of Ohio, First District, Hamilton County - November 25, 2015 - N.E.3d - 2015 WL 7573197 - 2015 -Ohio- 4844**

Electric utility filed complaint for declaratory judgment seeking a declaration that city ordinance, as it related to relocation costs for city's streetcar project, was invalid and that the city was required to pay the costs associated with the relocation of underground utilities. Parties filed competing motions for summary judgment. The Court of Common Pleas granted summary judgment to utility. City appealed.

The Court of Appeals held that:

- Ordinance involved an exercise of city's police powers for purposes of Home Rule Amendment, and
- City was responsible for costs incurred by utility to relocate its utilities to accommodate the governmentally-owned streetcar system.

City ordinance, requiring gas and electric utility to bear costs of relocating its underground utilities to accommodate city's street car project, involved an exercise of the city's police powers, and did not relate solely to matters of self-government, for purposes of determining whether, under Home Rule Amendment, ordinance could be invalidated for conflicting with statute governing access to public ways. Language in preamble and ordinance itself indicated that city's purpose in enacting the ordinance was to manage city streets in order to provide for the public welfare through safe, timely, and efficient transportation of persons and goods.

Because city's order for gas and electric utility to relocate its underground utilities at its own expense to accommodate city's streetcar system was not a valid exercise of the city's local police power, city ordinance dealing with determining whether a utility company was responsible for such costs, could not, under Home Rule Amendment, serve as basis for imposing upon utility cost to relocate its own utilities. City was responsible for costs incurred by utility to relocate its utilities to accommodate the governmentally-owned streetcar system.