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PUBLIC UTILITIES - OHIO

Cleveland Electric Illuminating Co. v. City of Cleveland

Court of Appeals of Ohio, Eighth District, Cuyahoga County - January 9, 2020 - N.E.3d - 2020 WL 105098 - 2020 -Ohio- 33

Public utility brought action for injunctive and declaratory relief against municipality challenging its purchase and resale of electricity to inhabitants located outside of its limits.

The Court of Common Pleas granted the municipality's motion for summary judgment and denied public utility's motion for summary judgment. Public utility appealed.

The Court of Appeals held that genuine issue of material fact with respect to purpose for which municipality had purchased surplus electricity precluded summary judgment.

Genuine issue of material fact with respect to purpose for which municipality had purchased surplus electricity precluded summary judgment in public utility's action against municipality challenging its purchase and resale of electricity to inhabitants located outside of its limits; utility presented evidence from which a reasonable factfinder could have concluded that municipality had purchased at least some of its electricity supply solely for the purpose of reselling electricity to others outside its municipal boundaries, and it was undisputed that municipality entered into a ten-year agreement to serve as another city's exclusive electricity supplier.

Provisions of State Constitution defining a municipality's rights to purchase electricity and to sell "surplus" electricity to an entity outside its geographic boundaries preclude a municipality from purchasing electricity solely for the purpose of reselling the entire amount to an entity outside the municipality's geographic limits regardless of whether (1) the municipality's extraterritorial sales exceed the fifty percent limitation or (2) the municipality purchased excess electricity in order to resell "the entire amount" of the purchased electricity outside its municipal boundaries.

Consistent with provisions of State Constitution defining a municipality's rights to purchase electricity and to sell "surplus" electricity to an entity outside its geographic boundaries, a municipality may acquire a surplus of electricity for reasons other than "solely for the purpose of reselling" surplus electricity outside its municipal boundaries and, if it does so, the municipality may then resell the surplus to others outside its municipal boundaries subject to the 50 percent limitation.