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PUBLIC UTILITIES - TEXAS

Public Utility Commission of Texas v. Texas Industrial Energy Consumers

Supreme Court of Texas - March 26, 2021 - S.W.3d - 2021 WL 1148227 - 64 Tex. Sup. Ct. J. 576

Electricity consumer advocacy group and others petitioned for judicial review of decision of Public Utilities Commission that electric utility met its burden of proving that it was prudent to complete construction of coal-fired power plant, and therefore, that utility's construction costs could be included in utility rate base passed onto consumers.

The District Court affirmed, and petitioners appealed. The Austin Court of Appeals reversed and remanded. Review was granted.

The Supreme Court held that:

- Electric utility was not required to present expert testimony to show that its decision to continue construction of coal-fired power plant was prudent at time, and
- Substantial evidence supported conclusion of Public Utilities Commission that electric utility's decision to complete construction of plant.

Electric utility was not required to present expert testimony in its independent, retrospective analysis in order to show that its decision to continue construction of coal-fired power plant fell within the select range of options that reasonable utility manager would exercise or choose, based on information available at time, and thus was prudent, given its lack of contemporaneous records at time decision was made, as required for Public Utilities Commission to allow utility to include construction costs in utility rates passed onto consumers; nothing prevented Commission from assessing prudence based on historical facts and employee testimony adduced at hearing.

Substantial evidence supported conclusion of Public Utilities Commission that electric utility's decision to complete construction of coal-fired power plant fell within range of reasonably prudent options available to utility at time, and thus, utility was entitled to include costs of construction in utility rates passed onto consumers; utility presented evidence regarding volatility of natural gas prices, whereas price of coal, in contrast, remained stable within same period, engineering work for plant was 93% complete at time it made decision to complete construction and overall plant construction was 39% complete, utility had \$655 million in outstanding commitments dependent on completion of construction, and plant's capacity met utility's power demands and had anticipated useful life that extended beyond economic conditions at time of decision.