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PUBLIC UTILITIES - OHIO

In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator

Supreme Court of Ohio - October 14, 2021 - N.E.3d - 2021 WL 4783198 - 2021-Ohio-3630

Public Utilities Commission of Ohio (PUCO) granted application to certify electric utility as a competitive retail electric service (CRES) provider to provide aggregator and brokerage services, and denied objectors' request for rehearing.

Objectors appealed, and the Supreme Court of Ohio granted utility's request to intervene in appeal.

The Supreme Court held that:

- PUCO's order violated statute governing certification;
- PUCO's failure to provide reasoned explanation of the basis of its decision warranted remand; and
- PUCO violated its duty to find that electric utility was fit and capable of complying with all applicable rules for CRES providers by deferring all consideration of corporate-separation issues to other proceedings after granting certification.

Order of Public Utilities Commission of Ohio (PUCO) granting application of electric utility for certification as a competitive retail electric service provider violated statute governing certification by failing to explain reasoning and factual grounds for granting application, failing to make any independent findings about utility's managerial fitness and competence to provide competitive retail electric services to Ohio consumers, and failing to identify facts in the record on which it based its decision.

Without knowing why Public Utilities Commission of Ohio (PUCO) decided to certify electric utility as a competitive retail electric service (CRES) provider, objectors faced an almost insurmountable task in showing prejudice, thus warranting remand for PUCO to make factual and legal findings consistent with its obligations under statute governing certification.

Public Utilities Commission of Ohio (PUCO) violated its duty to find that electric utility was fit and capable of complying with all applicable rules for competitive retail electric service (CRES) providers by deferring all consideration of corporate-separation issues to audit case after granting certification; there was no examination of the shared employees or of procedures and policies utility had in place to prevent information from passing improperly between shared employees, and instead of determining whether utility had shown that it could comply with code of conduct, PUCO deferred all issues regarding corporate-separation requirements to other proceedings.