

Bond Case Briefs

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PUBLIC UTILITIES - GEORGIA

Cazier v. Georgia Power Company

Court of Appeals of Georgia - December 1, 2021 - S.E.2d - 2021 WL 5626887

Customers brought putative class action against electric utility, alleging that utility had improperly collected certain sales taxes and fees.

The Superior Court denied utility's motion to dismiss, and utility appealed. The Court of Appeals affirmed in part and reversed in part. On remand, the Superior Court dismissed the action based on customers' failure to exhaust administrative remedies before the Public Service Commission (PSC), and customers appealed. The Court of Appeals vacated. After issuing writ of certiorari, the Supreme Court affirmed and remanded. In turn, the Superior Court remanded to PSC for determination as to whether utility had properly charged franchise fee to customers. The Superior Court adopted PSC's determination, certified class, and granted summary judgment to utility. Customers appealed and utility cross-appealed.

The Court of Appeals held that:

- Trial court properly remanded to PSC for initial determination as to meaning of terms in PSC's ratemaking orders, and
- Sufficient evidence supported PSC's finding that its orders used terms "usage revenue" and "total revenue" interchangeably.

Trial court properly invoked primary jurisdiction of Public Service Commission (PSC) for initial determination as to whether terms "usage revenue" and "total revenue" were used synonymously in PSC ratemaking orders concerning calculation of sales tax on municipal franchise fee (MFF), rather than interpreting terms itself; PSC's use of two different terms raised question as to whether two categories described by those apparently different terms were the same, and question was best answered by PSC itself as agency that authored orders and that had specialized competence in ratemaking proceedings.

Sufficient evidence supported finding by Public Service Commission (PSC) that its orders governing calculation of sales tax on municipal franchise fee (MFF) used terms "usage revenue" and "total revenue" interchangeably, such that electric utility properly applied MFF by calculating charge based on percentage of each consumer's total charge, where utility's rates were approved by PSC to recover all "usage" from customers, PSC noted exclusion of cost recovery items from MFF calculation by treating terms differently would be unreasonable, particularly given that minimum monthly bill included certain costs even if customer had no kilowatt-hour usage, and PSC previously approved utility's compliance filings which applied MFF to total revenue from each bill, including that from cost recovery items.