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Boyd v. Central Coast Community Energy

Court of Appeal, Sixth District, California - October 4, 2023 - Cal.Rptr.3d - 2023 WL 6457319

Residential customer petitioned for writ of mandate claiming that electricity rates charged by a regional governmental entity, which was a community choice aggregator, were invalid under State Constitution as taxes that voters had not approved.

The Superior Court denied petition. Customer appealed.

The Court of Appeal held that:

- Electricity rates were "taxes" under general definition of taxes, but
- Rates fell within exception for rates not exceeding reasonable costs of providing service.

Electricity rates that regional governmental entity, a community choice aggregator, charged to residential customers under an "investor owned utility-minus" model and then under a cost-o--service model were charges imposed by a local government and therefore the rates were "taxes" under general definition of taxes in state constitutional provision requiring local and regional governmental entities to secure voter approval for new or increased taxes, where entity was a joint powers authority formed of cities, towns, and counties, and rates were established by entity's board of directors under authority granted by the joint powers agreement forming the entity.

Electricity rates that regional governmental entity, a community choice aggregator, charged to residential customers under an "investor owned utility-minus" model and then under a cost-o--services model were "taxes" under general definition of taxes in state constitutional provision requiring local and regional governmental entities to secure voter approval for new or increased taxes, even though customers had the choice of opting out of the rates and receiving electricity from a privately owned utility instead; any requirement of no alternative way for customers to obtain electricity services in order to deem the rates "taxes" would have impermissibly engrafted an unstated, extratextual restriction onto the constitutional provision.

Electricity rates that regional governmental entity, a community choice aggregator, charged to residential customers under an "investor owned utility-minus" model and then under a cost-o--services model were "taxes" under general definition of taxes in state constitutional provision requiring local and regional governmental entities to secure voter approval for new or increased taxes, despite argument that treating entity's rates as taxes would undermine its ability to function due to the difficulty of obtaining voter approval for rate increases in each jurisdiction in which entity functioned, where entity could avoid having to obtain approval from all jurisdictions within its service area by making sure that its charges did not exceed its reasonable costs as an exception to definition of taxes.

Substantial evidence supported trial court's finding that electricity rates that regional governmental entity, a community choice aggregator, initially charged residential customers under an "investor

owned utility-minus" model did not exceed entity's reasonable costs, and therefore rates fell within the reasonable costs exception to general definition of "taxes" requiring voter approval under the State Constitution, where entity presented evidence about how it calculated rates using rates charged by incumbent privately-owned electric utility that served most of entity's operating area as the starting point, and entity also presented testimony that the rates of privately-owned electric utilities were based on their costs of service and that community choice aggregators had higher costs because they faced risks that privately-owned utilities did not.

Substantial evidence supported trial court's finding that electricity rates that regional governmental entity, a community choice aggregator, charged residential customer under a cost-of-service model did not exceed entity's reasonable costs, and therefore rates fell within the reasonable costs exception to general definition of "taxes" requiring voter approval under the State Constitution, even though entity had a surplus of nearly $18.5 million at time it adopted model and set new rates based on model, where surplus was from a mid-year treasurer's report, which took a snapshot of entity's position at time of report, and other evidence showed that by end of the year, entity's net position had declined $7.8 million, far from running a surplus.