

Bond Case Briefs

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PUBLIC UTILITIES - MAINE

Office of the Public Advocate v. Public Utilities Commission

Supreme Judicial Court of Maine - January 30, 2024 - A.3d - 2024 WL 339770 - 2024 ME 11

Office of the Public Advocate (OPA) sought judicial review of order of the Public Utilities Commission extending a waiver of the standard depreciation rate for the Maine Water Company (MWC).

The Supreme Judicial Court held that:

- Its review of Commission's decision was highly deferential;
- Plain language of Commission's rule did not authorize Commission to change or refrain from enforcing rule, and instead, provided a standard and alternative depreciation rate formula; and
- Commission did not abuse its discretion.

Plain language of Public Utilities Commission's rule providing that Commission may grant a request for a substantive deviation or waiver upon a finding of good cause or that compliance would be unduly burdensome and a finding that the deviation or waiver is not inconsistent with the purposes of the chapter or applicable statute from which the deviation or waiver is sought did not authorize Commission to change or refrain from enforcing rule, and instead, provided a standard and alternative depreciation rate formula, and therefore in the absence of a waiver provision specific to the standard and alternative approaches, the general waiver rule applied when determining whether to grant waiver as to depreciation rate for water utilities.

Public Utilities Commission did not abuse its discretion in setting water utility rates for Maine Water Company (MWC) by extending waiver of standard depreciation rate in anticipation of a gradual movement toward removal of cap on depreciation expenses that would otherwise have been charged to ratepayers and to use a phased-in approach when returning to a full charge of those expenses; by extending the cap temporarily and anticipating a gradual movement toward reduction of cap after MWC investigated impact of movement on customers, Commission's decision comported with statutory rate-setting goal and avoided rate shock.

Office of the Public Advocate (OPA) waived for Supreme Judicial Court review claims that Public Utilities Commission failed to create an evidentiary record in water utility rate setting proceeding, and that extending waiver of standard depreciation rate for Maine Water Company (MWC) was therefore unsupported by evidence in the record, by failing to raise issue with Commission; OPA knew that hearing examiners' report relied on parties' filings and MWC's data responses to OPA, but OPA made no challenge to recommendation and did not assert that this reliance was improper in its exceptions to the examiner's report.