

PSC exceeded authority in 2008 rate case, court rules

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The Public Service Commission overstepped its bounds in 2008 when it offset a 40 percent hike in electric costs to some businesses with a surcharge on large commercial customers like W.R. Grace & Co., the Court of Special Appeals has ruled.

“We hold that the PSC’s action exceeded its authority and therefore was unlawful,” the court wrote Friday in the published opinion.

The court’s decision overturns the Baltimore City Circuit Court’s ruling in favor of the PSC. The appellate court also remanded the matter to the PSC for further hearing.

“This is a significant decision,” Todd Chason, with Gordon, Feinblatt, Rothman, Hoffberger & Hollander LLC, which represented one of the plaintiffs, the Maryland Energy Group, said. “It’s unusual for the court to overturn an agency’s decision. There’s usually a great deal of deference that is owed.”

Calls to Baltimore City Solicitor George Nilson, who handled the case for the PSC, were not returned.

During the summer of 2008, around 17,000 businesses changed from “Type I” customers — those that get electricity through one- or two-year contracts — to “Type II” customers, which bid on electricity every three months.

Type I customers typically use less energy during peak hours, like an individual bank branch; Type II businesses use more electricity during peak hours, like dry cleaners or grocery stores.

The increase in cost from going to a Type II customer was estimated to be around 40 percent and the PSC agreed to cap the increase at a maximum of 15 percent. As a one-time measure to recover the loss to the Baltimore Gas & Electric Co. from the cap, the commission approved an electricity distribution surcharge to all other businesses that amounted to 1 percent to 3 percent of their total bills from June through August 2008.

The increase was applied to small commercial customers that did not select a power supplier. Deregulation allows customers to choose their energy providers, but utilities still have to supply electricity under the “standard offer service” for those that don’t pick a provider. Businesses that do not buy their power through utilities have to pay a distribution charge to receive their electricity, which is where the surcharge showed up on bills.

The large commercial customers argued that the commission did not have the authority to saddle them with the surcharge to make up for BGE’s shortfall. In court records, the plaintiffs, including steelmaker AOA Severstal, the Maryland Energy Group and W.R. Grace & Co., said that by capping the rates, the PSC was, “improperly inserting itself into the electric market.”

For Severstal, which owns the Sparrows Point steel mill, the surcharge cost \$400,000.

The Court of Special Appeals found that the commission's role in regulating electricity supply, including standard offer service, was limited by deregulation.

The commission can ask the highest court in Maryland, the Court of Appeals to hear the case, but it is not an automatic appeal.

Chason said the PSC will also have to decide how to reimburse the customers who paid the surcharge in 2008. The total collected during the three-month period was estimated to be \$7.4 million.

“This sends a message as to what the limits of the commission's authority are.” Chason said.

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