Supreme Court of Florida

FRIDAY, MAY 27, 2022

CASE NO.: SC21-303
Lower Tribunal No(s).:
202100176-EI

LULAC FLORIDA EDUCATIONAL FUND, INC.	vs.	GARY F. CLARK, ETC., ET AL.
Appellant(s)		Appellee(s)

The League of United Latin American Citizens of Florida appeals a Public Service Commission final order (PSC-2021-0059-S-EI) that approved a settlement agreement and tariffs comprising Duke Energy Florida's Clean Energy Connection Program. The program calls for Duke to build 10 separate solar plants totaling nearly 750 MW of solar generation. Duke has allocated varying percentages of the program capacity to the company's commercial, residential, and local government groups. Subject to availability, Duke customers will be given an opportunity to enroll in the program and pay a subscription fee, which will be added to the participants' regular electricity bill. In exchange, program participants will receive bill credits tied to the solar generation produced by the program's facilities. The Commission concluded in the order under review that, "taken as a whole, the [settlement agreement] establishes rates that are fair, just, and reasonable, is supported by the record evidence, and is in the public interest."

LULAC has raised several challenges to the Commission's order, but here we will address only one. Program participants over the life of the program are expected to receive $67.6 million (present value) more in bill credits than the total amount they will pay into the program. LULAC argues that the program thus unfairly requires Duke's non-participating customers to subsidize the participating customers. According to LULAC, this violates the

statutory requirement that Duke's rates be "fair and reasonable" and that they not give "any undue or unreasonable preference or advantage" to any person. § 366.03, Fla. Stat.

Although LULAC preserved this issue by raising it at the hearing below and in a post-hearing brief, the final order approving the program does not discuss it. The "decision" section of the order includes findings that the program "provides ample system-wide benefits" and aligns with the Legislature's expressed intent to promote renewable energy. The order also mentions that "87.3% of the cumulative net present value revenue requirement benefits from the CEC program will go to the general body of ratepayers"—a group that includes participants and nonparticipants alike. But the order does not acknowledge any dispute over the program's funding structure. It does not say whether the Commission accepts LULAC's characterization of the program's bill credit feature as a "subsidy," and if so, why the Commission nonetheless considers the program to have established rates that are fair, reasonable, and not unduly preferential. Indeed, the order leaves the Court guessing as to the reasoning underlying the Commission's conclusions on this issue.

We recognize that Commission orders arrive at this Court with a presumption that they are "reasonable and just." *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018) (citing *W. Fla. Elec. Coop. Ass'n v. Jacobs*, 887 So. 2d 1200, 1204 (Fla. 2004)). And we further acknowledge that the PSC itself reviews settlement agreements under a broad, fact-dependent "public interest" standard. *Id.* at 910-911. That standard allows the Commission to review a settlement agreement as a whole, without necessarily having to make findings on every disputed issue. *Id.* at 914. Finally, we understand that it is not this Court's job to substitute our policy views for the Commission's or to reweigh the evidence. *Id.* at 914-15 (quoting *Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143, 1164 (Fla. 2014)).

Nonetheless, at least as to the major issues in dispute, Commission orders must explain the agency's findings and

conclusions enough to permit meaningful judicial review. *See id.* at 914 (affirming final PSC order that "discussed the major elements of the settlement agreement and explained why it was in the public interest."). And when an agency "fail[s] to perform its duty to explain its reasoning," it departs from the essential requirements of law. *Citizens of State v. Graham*, 213 So. 3d 703, 711-14 (Fla. 2017).

The order under review is inadequate to an extent that prevents us from deciding the central issue that we have identified. To be clear, we express no position now on the merits of LULAC's challenge. But we believe it is necessary to remand this case and afford the Commission an opportunity to enter a revised final order that adequately explains the agency's findings and reasoning. *See* § 120.68(6)(a)(1), Fla. Stat. (a reviewing court may "remand the case for further agency proceedings"). Subject to any requirements imposed by law, the form of the proceedings on remand will be up to the Commission, including the decision whether to allow the parties to present additional evidence.

It is so ordered.

POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.
CANADY, C.J., dissents.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

lc
Served:

JON C. MOYLE, JR.
J. R. KELLY
KAREN A. PUTNAL
BRADLEY I. MARSHALL
SHAW P. STILLER
BIANCA YVA FAUSTIN LHERISSON
MATTHEW R. BERNIER
CHARLES J. REHWINKEL
DOMINIQUE R. BURKHARDT
MICHAEL P. SILVER
DIANE G. DEWOLF
ADRIA E. HARPER
STEPHANIE U. EATON
DIANNE M. TRIPLETT
DANIEL E. NORDBY
ALYSSA L. CORY
SAMANTHA M. CIBULA
JORDAN A. LUEBKEMANN
GEORGE S. CAVROS
HON. ADAM J. TEITZMAN, CLERK