



JUSTICE HECHT filed a concurring opinion, in which CHIEF JUSTICE PHILLIPS, JUSTICE ABBOTT, JUSTICE HANKINSON, and JUSTICE JEFFERSON joined.

JUSTICE OWEN filed a dissenting opinion, in which JUSTICE ENOCH and JUSTICE BAKER joined.

JUSTICE O'NEILL did not participate in the decision.

In 1999, the Legislature substantially revised the Public Utility Regulatory Act (PURA) to bring about a major restructuring of the electric power industry in Texas to allow retail electric rates to be determined by competition. As part of that restructuring, the PURA permits existing utilities to recover “regulatory assets” and “stranded costs” through securitization financing. Securitization is accomplished through a financing order issued by the Public Utility Commission that authorizes a utility to issue a transition bond. The transition bond is repaid or secured by transition charges to electric power consumers in a utility’s service area. Central Power and Light Company, an existing utility, applied for and the Commission approved a financing order that assures that CPL will recover certain of its regulatory assets through securitization. Two separate proceedings were brought in a Travis County district court seeking review of that order on different grounds. Final judgments were rendered in both proceedings affirming the Commission’s order. We granted direct appeals from those judgments pursuant to section 39.303(f) of the PURA and consolidated the two proceedings.

Power Choice, Inc., the appellant in one of the appeals, contends that the securitization provisions of the PURA are facially unconstitutional under the Texas Constitution because they impose a tax that is not for a public purpose, constitute a taking without adequate compensation, or are an appropriation or

grant for private purposes. We affirm the trial court's judgment that the securitization provisions are not unconstitutional on any of those grounds.

In the appeal by numerous cities including the City of Corpus Christi, and by Texas Industrial Energy Consumers and the Office of Public Utility Counsel, we also affirm the trial court's judgment. We hold that: 1) regulatory assets known as "SFAS 109 assets" may be securitized even though they currently earn no return and have no carrying costs; 2) the Commission properly treated investment tax credits; 3) the Commission did not err in securitizing regulatory assets reflected in CPL's SEC Form 10-K rather than the balance of those assets as of December 31, 2001; 4) the PURA authorizes the Commission to prescribe what it calls a "non-standard true-up"; 5) the Commission did not err in declining to adjust the allocation factors for industrial customer classes to reflect load loss; 6) the Commission did not err in its allocation of transition charges to non-firm industrial customer classes; and 7) the Cities were not denied due process in the proceedings before the Commission. Accordingly, we affirm the trial court's judgment. Justice Owen's concurring opinion is the opinion of the Court with respect to the issues that it addresses, and Justice Hecht's concurring opinion is the opinion of the Court with respect to the issue that it addresses.

OPINION DELIVERED: June 6, 2001