IN THE SUPREME COURT OF TEXAS

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NO. 00-0936
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TXU ELECTRIC COMPANY, ET AL., APPELLANTS

v.

PUBLIC UTILITY COMMISSION OF TEXAS, ET AL., APPELLEES

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ON DIRECT APPEALS FROM THE 250TH DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
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Argued on January 31, 2001

PER CURIAM

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

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 amended the Public Utility Regulatory Act (PURA) to usher in deregulation of retail electric utility rates in Texas.[1] As part of that plan, the Legislature concluded that, subject to certain restrictions, an existing utility like TXU Electric Company may recover amounts that the PURA defines as

[1] Act of May 27, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543.

"regulatory assets" by using securitization financing. Securitization is accomplished through a financing order issued by the Commission that authorizes a utility to issue transition bonds. The transition bonds are repaid or secured by transition charges to ratepayers in a utility's service area. TXU requested the Commission to issue a financing order securitizing certain of its regulatory assets. The Commission authorized securitization of some but not all of those assets. A district court reversed the Commission's order in part and remanded the case for further proceedings. TXU and others bring this direct appeal to our Court.[2]

We hold that: 1) in order to ensure that securitization provides tangible and quantifiable benefits to ratepayers greater than would have been achieved absent the issuance of transition bonds,[3] the Commission may apply a present value test in addition to the present value and revenue requirement tests expressly set forth in sections 39.301 and 39.303(a) of the PURA; 2) in applying an additional present value test, the Commission should assume that recovery of regulatory assets and stranded costs absent securitization would occur in substantially less than forty years; 3) the Commission must consider regulatory assets that a utility seeks to securitize in the aggregate to determine whether those assets meet the requirements for securitization and cannot categorically exclude certain types of regulatory assets from securitization; 4) section 39.253 permits the Commission to apply the rate design methodology established in a utility's last rate design case to the data in that rate case rather than to more current data, in order to establish demand

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[2] TEX. UTIL. CODE § 39.303(f) (providing that review of financing orders under the PURA are to be directly appealed from the district court to this Court).

[3] All statutory references are to the Texas Utilities Code, unless otherwise indicated.

allocation factors that determine how transition charges are to be allocated among classes of customers; 5) the Commission is authorized by section 39.307 to adopt a non-standard true-up provision that reallocates transition charges among classes of customers in a manner that differs from the allocation procedures set forth in section 39.253; 6) none of the other issues regarding allocation of transition costs among classes of customers has merit; and 7) certain findings of fact and conclusions of law by the Commission are advisory. Accordingly, we affirm the judgment of the district court in part, reverse it in part, and remand this case to the Commission for further proceedings. 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 issues that it addresses.

OPINION DELIVERED: June 6, 2001