

MASSACHUSETTS SUPREME JUDICIAL COURT

NSTAR Electric Co. v. Department of Public Utilities

462 Mass. 381 (2012) · Decided June 4, 2012

SUMMARY

The Massachusetts Supreme Judicial Court reviewed the Department of Public Utilities’ treatment of NSTAR Electric’s request to shift recovery of supply-related bad debt costs from distribution rates to supply rates. The court held that the department failed to adequately explain the legal and factual basis for conditioning approval on a corresponding distribution-rate reduction, and that its factual findings were insufficient for meaningful review. The court also concluded that the department erred in determining that provisions of a rate settlement did not incorporate referenced exhibits. The department’s order was vacated and the matter remanded.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Lenk, J.
JURISDICTION	Massachusetts
DECIDED	June 4, 2012
DISPOSITION	vacated
PROCEDURAL POSTURE	NSTAR petitioned for review of the Department of Public Utilities' final order on reconsideration under G. L. c. 25, § 5. A single justice of the county court reserved and reported the matter to the full Supreme Judicial Court.
STANDARD OF REVIEW	The court defers to the Department's expertise and experience in matters within its delegated authority, but must uphold an agency decision only if it is not based on an error of law, unsupported by substantial evidence, unwarranted by facts found on the record, arbitrary or capricious, an abuse of discretion, or otherwise inconsistent with law. The court also requires an agency to provide a clear statement of reasons and adequate subsidiary findings permitting meaningful judicial review.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	NSTAR Electric Co. v. Department of Public Utilities

TOPICS

judicial review of agency action

administrative law

contract interpretation

standard of review

appellate procedure

PRACTICE AREAS

administrative law

utilities regulation

contracts

appellate review

QUESTIONS PRESENTED

1. Whether the Department's final order provided an adequate statement of its legal reasoning and subsidiary factual findings to permit meaningful judicial review.
2. Whether the Department's conclusion that the December Settlement did not incorporate its referenced exhibits constituted an error of law.
3. Whether the Department adequately determined whether NSTAR in fact stopped recovering supply-related bad-debt costs through its distribution rates and whether any such change occurred through a general rate case or equivalent proceeding.

HOLDINGS

1. An agency order must clearly identify the legal and factual grounds for its decision and include adequate subsidiary findings supporting its conclusions; the Department's order failed to do so and therefore could not be meaningfully reviewed.
2. Article 2.5 of the December Settlement incorporated Exhibits NSTAR-3 (Settlement) through NSTAR-22 (Settlement) as fully integrated components of the agreement.
3. The Department could not apply an unexplained heightened clarity requirement to the December Settlement when its established policy was to interpret approved settlement agreements under general Massachusetts contract principles.

KEY QUOTATIONS

"The deference we grant to an agency's determination of questions entrusted to its expertise places a "heavy burden" on parties challenging the department's orders." (386)

"The principle of according weight to an agency's discretion ... is 'one of deference, not abdication.'" (386)

"we will not 'supply a reasoned basis for the agency's action that the agency itself has not given.'" (387)

"the December Settlement must be interpreted in line with the general principles governing the reading of any contract under Massachusetts law." (394)

"the department possesses the expertise to determine in first instance meaning to accord specialized contractual provisions" (397)

FACTUAL BACKGROUND

NSTAR provided both electric supply and distribution services and historically recovered at least part of its supply-related bad-debt costs through distribution rates. A January 2005 settlement contemplated shifting those costs to supply rates in a general distribution rate case or equivalent proceeding. NSTAR contended that a December 2005 settlement and resulting January 1, 2006 rate changes removed the bad-debt costs from its distribution rates, but the Department concluded that the settlement did not explicitly identify such a change and required a corresponding reduction in distribution rates before NSTAR could increase supply rates.

PROCEDURAL HISTORY

NSTAR sought permission to shift recovery of supply-related bad-debt costs from distribution rates to supply rates. The Department conditioned approval on a corresponding reduction in distribution rates and, after reconsideration proceedings, again denied NSTAR's request for a non-revenue-neutral adjustment. NSTAR sought judicial review, and the county court single justice reserved and reported the matter to the full court.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The county court was directed to vacate D.T.E./D.P.U. 07-4-B (2010) and remand the matter to the Department for a statement of reasons, including subsidiary findings, supporting its conclusions of law and relevant facts. The Department must clearly identify the legal and factual basis of its decision, determine what showing NSTAR was required to make, address whether the December Settlement incorporated the relevant exhibits, and address NSTAR's arguments concerning the technical meaning and effect of those exhibits.

CASES CITED

- Fitchburg Gas & Electric Light Co. v. Department of Public Utilities, 460 Mass. 800, 801 n.2 (2011)
- Attorney General v. Department of Public Utilities, 453 Mass. 191, 192-193 nn.4-7, 199 (2009)
- Fitchburg Gas & Electric Light Co. v. Department of Telecommunications & Energy, 440 Mass. 625, 631, 636 (2004)
- Massachusetts Institute of Technology v. Department of Public Utilities, 425 Mass. 856, 859, 867-869, 875 (1997)
- Moot v. Department of Environmental Protection, 448 Mass. 340, 346 (2007), S.C., 456 Mass. 309 (2010)
- Boston Preservation Alliance, Inc. v. Secretary of Environmental Affairs, 396 Mass. 489, 498 (1986)
- Costello v. Department of Public Utilities, 391 Mass. 527, 533, 535-536 (1984)
- Hamilton v. Department of Public Utilities, 346 Mass. 130, 137 (1963)
- Leen v. Assessors of Boston, 345 Mass. 494, 501-502 (1963)
- Bowman Transportation, Inc. v. Arkansas-Best Freight System, 419 U.S. 281, 285-286 (1974)
- Guarino v. Director of the Division of Employment Security, 393 Mass. 89, 92 (1984)
- Attorney General v. Commissioner of Insurance, 442 Mass. 793, 808 (2004)

- Massachusetts Automobile Rating & Accident Prevention Bureau v. Commissioner of Insurance, 401 Mass. 282, 292 (1987)
- Packard Mills, Inc. v. State Tax Commission, 345 Mass. 718, 723 (1963)
- New Boston Garden Corp. v. Assessors of Boston, 383 Mass. 456, 466 (1981)
- Boston Edison Co. v. Selectmen of Concord, 355 Mass. 79, 92 (1968)
- Cohen v. Board of Registration in Pharmacy, 350 Mass. 246, 251-253 (1966)
- Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37, 67 n.21 (1977)
- Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 50 (1983)
- Southern Union Co. v. Department of Public Utilities, 458 Mass. 812, 819-820 (2011)
- Biogen IDEC MA, Inc. v. Treasurer & Receiver General, 454 Mass. 174, 190 (2009)
- Boston Gas Co. v. Department of Public Utilities, 405 Mass. 115, 120-121 (1989)
- Artuso v. Vertex Pharmaceuticals, Inc., 637 F.3d 1, 7 (1st Cir. 2011)
- Northrop Grumman Information Technology, Inc. v. United States, 535 F.3d 1339, 1345 (Fed. Cir. 2008)
- M.L. Shalloo, Inc. v. Ricciardi & Sons Construction, 348 Mass. 682, 687-688 (1965)
- de-Freitas v. Cote, 342 Mass. 474, 477 (1961)
- USM Corp. v. Arthur D. Little Systems, Inc., 28 Mass. App. Ct. 108, 116 (1989)
- Trambly v. Ricard, 130 Mass. 259, 260 (1881)
- Polaroid Corp. v. Rollins Environmental Services (NJ), Inc., 416 Mass. 684, 696-697 (1993)
- Springfield v. Department of Telecommunications & Cable, 457 Mass. 562, 568 (2010)
- Pennsylvania Railroad v. Day, 360 U.S. 548, 553 (1959)
- Starr v. Fordham, 420 Mass. 178, 190 (1995)
- Shea v. Bay State Gas Co., 383 Mass. 218, 223 (1981)
- Bryne v. Gloucester, 297 Mass. 156, 158 (1937)
- McCarthy v. Tobin, 429 Mass. 84, 88-89 (1999)
- Robert Industries, Inc. v. Spence, 362 Mass. 751, 755 (1973)
- Saltzman v. Barson, 239 N.Y. 332, 336 (1925)