

SUPREME COURT OF NEBRASKA

Public Advocate v. Nebraska Public Service Commission, 279 Neb. 543

779 N.W.2d 328 (2010) · No. S-09-600 · Decided March 5, 2010

SUMMARY

The Nebraska Supreme Court held that a formal complaint challenging a utility's failure to prorate billing when implementing interim and final natural gas rates constituted an impermissible collateral attack on a prior rate case order. The court concluded that applicable statutes, regulations, and the rate case order did not require proration, making the issue subject to negotiation in the rate proceeding. It affirmed dismissal as to the interim rates, reversed the district court as to the final rates, and remanded with directions to reinstate the Nebraska Public Service Commission's dismissal.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Chief Justice Heavican; Justice Wright; Justice Connolly; Justice Gerrard; Justice Stephan; Justice McCormack; Justice Miller-Lerman
JURISDICTION	Nebraska
DECIDED	March 5, 2010
DOCKET	S-09-600
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	SourceGas and Knight appealed, and the Nebraska Public Service Commission and Nebraska Public Advocate cross-appealed, from a Lancaster County District Court judgment partially reversing the Commission's dismissal of the Public Advocate's formal complaint concerning nonprorated implementation of interim and final natural-gas rates.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the appellate court may reverse, vacate, or modify the district court's judgment for errors appearing on the record. Questions of law are reviewed independently of the lower court's conclusion.
PRECEDENTIAL VALUE	published and precedential

PARTIES

SourceGas Distribution LLC, Knight, Inc., formerly known as Kinder Morgan, Inc. v. Nebraska Public Advocate, Nebraska Public Service Commission

TOPICS

administrative law

judicial review of agency action

statutory interpretation

appellate procedure

res judicata

PRACTICE AREAS

administrative law

public utility regulation

appellate procedure

statutory interpretation

civil procedure

QUESTIONS PRESENTED

1. Whether the Public Advocate's complaint challenging the utility's nonprorated implementation of interim and final rates was an impermissible collateral attack on the Commission's final 2006 rate-case order.
2. Whether applicable Nebraska statutes, regulations, or Commission orders required a utility to prorate billing when implementing a rate change.
3. Whether the complaint concerning the interim rates was also barred as an impermissible collateral attack.

HOLDINGS

1. The applicable statutes, Commission rules, and rate-case order did not require a utility to prorate billing when implementing new rates; the issue was a proper subject of negotiation in the rate-case proceeding.
2. The Public Advocate's complaint concerning the final rates was an impermissible collateral attack on the final 2006 rate-case order and was barred because the proration issue could have been raised and resolved in the original rate proceeding.
3. The complaint concerning the interim rates was also an impermissible collateral attack and was properly dismissed.

KEY QUOTATIONS

"We conclude that as a matter of law, the issue of whether a utility must prorate its billing upon the implementation of new rates is not addressed by the applicable statutes, rules, or regulations and is therefore a proper subject of negotiation during a rate case proceeding." (779 N.W.2d at 334)

"The Public Advocate's formal complaint was an impermissible collateral attack on the 2006 rate case order and should be dismissed." (779 N.W.2d at 335)

FACTUAL BACKGROUND

Knight, a jurisdictional natural-gas utility, applied for an increase in its annual revenue requirement. While the application was pending, Knight implemented interim rates subject to refund; Knight and the Public Advocate

later settled the rate case, and the Commission approved an \$8.25 million annual increase effective January 1, 2007. Neither the settlement nor the Commission's approval order addressed whether billing had to be prorated when the new rates were implemented, and Knight did not prorate its billing. After the rate case order became final, the Public Advocate filed a formal complaint seeking refunds for customers who may have been charged the new rates for service rendered before the effective date.

PROCEDURAL HISTORY

Knight filed a rate-increase application with the Commission, and the Public Advocate intervened. The parties settled the rate case, the Commission approved the settlement, and the order became final without an appeal. The Public Advocate later filed a formal complaint alleging that the utility improperly failed to prorate billing when implementing interim and final rates. The Commission dismissed the complaint as an impermissible collateral attack. The Lancaster County District Court held that the complaint was a collateral attack as to the interim rates but not the final rates and remanded for consideration of the final-rate issue. The Nebraska Supreme Court affirmed the dismissal as to the interim rates, reversed the district court as to the final rates, and remanded with directions to reinstate the Commission's dismissal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court's decision concerning the final rates and remand with directions to reinstate the Commission's dismissal of the Public Advocate's formal complaint; affirm the dismissal concerning the interim rates.

CASES CITED

- R & D Properties v. Altech Constr. Co., 279 Neb. 74, 776 N.W.2d 493 (2009)
- State v. Keen, 272 Neb. 123, 718 N.W.2d 494 (2006)
- Norlanco, Inc. v. County of Madison, 186 Neb. 100, 181 N.W.2d 119 (1970)