

SUPREME COURT OF NEW MEXICO

New Mexico Exchange Carrier Group v. New Mexico Public Regulation Commission

No. S-1-SC-34933, consolidated with No. S-1-SC-35036 · No. Nos. S-1-SC-34933 and S-1-SC-35036, consolidated · Decided March 17, 2016

SUMMARY

The Supreme Court of New Mexico reviewed consolidated appeals concerning the New Mexico Public Regulation Commission's 2015 rural universal service fund surcharge order and related rule amendments. The court concluded that the 3% surcharge rate was arbitrary, unsupported by substantial evidence, and inconsistent with the PRC's own rules requiring a prudent fund balance. The court also addressed the rule amendments, including the surcharge cap and revised funding formula, and reversed the PRC's orders for further proceedings.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Edward L. Chávez, Justice; Barbara J. Vigil, Chief Justice; Petra Jimenez Maes, Justice; Charles W. Daniels, Justice
JURISDICTION	New Mexico
DECIDED	March 17, 2016
DOCKET	Nos. S-1-SC-34933 and S-1-SC-35036, consolidated
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from two orders of the New Mexico Public Regulation Commission: an annual 2015 surcharge-rate order and a rulemaking order amending the State Rural Universal Service Fund rules.
STANDARD OF REVIEW	The court reviews PRC orders to determine whether they are arbitrary and capricious, unsupported by substantial evidence, outside the agency's authority, or otherwise inconsistent with law. The court reviews the whole record, considering evidence supporting and opposing the agency's decision in the light most favorable to the decision. An order must substantially comply with the governing statute.
PRECEDENTIAL VALUE	published

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QUESTIONS PRESENTED

1. Whether the PRC's 2015 Surcharge Rate Order was arbitrary, unsupported by substantial evidence, or inconsistent with the PRC's existing rule requiring a prudent fund balance.
2. Whether the 2013 statutory requirement to establish a surcharge cap authorized the PRC to operate the fund at a projected deficit or disregard its existing funding rules when setting the 2015 surcharge.
3. Whether the PRC's rulemaking order adopting a 3% surcharge cap and changing the funding formula was supported by substantial evidence.
4. Whether the PRC prejudged the rulemaking by referring to the pending rule changes when it issued the Surcharge Rate Order.
5. Whether the PRC had authority to modify the funding formula through rulemaking.

HOLDINGS

1. The PRC's 2015 Surcharge Rate Order was arbitrary, unsupported by substantial evidence, and violated the PRC's existing rule because the 3% surcharge was projected to leave the fund with a substantial deficit rather than a prudent fund balance.
2. The PRC did not prejudge the rulemaking, although language in the Surcharge Rate Order suggesting that the pending rule changes would reduce fund payments was troubling.
3. The PRC's adoption of the 3% surcharge cap and revised funding formula was not supported by substantial evidence.
4. The PRC had authority to modify the funding formula through rulemaking, but the revised formula and surcharge cap required substantial evidentiary support that was absent from the record.

KEY QUOTATIONS

"We do not interpret the "minimum" surcharge requirement in Section 63-9H-6(J) as authority to operate the Fund at a deficit." (§ 16)

"The record must have substantial evidence to support a finding that the newly adopted funding formula is adequate to satisfy the requirements of Section 63-9H-6(C) and (K) and Rule 17.11.10.19(C), and that the surcharge cap has not been arbitrarily established." (§ 32)

“We reverse the PRC’s Surcharge Rate Order in NMPRC Case No. 14-00279-UT and also reverse the PRC’s Rule Order in NMPRC Case No. 12-00380-UT. We remand both matters to the PRC for further proceedings consistent with this opinion.” (¶ 33)

FACTUAL BACKGROUND

New Mexico's Rural Telecommunications Act established a State Rural Universal Service Fund financed by a surcharge on intrastate retail telecommunications services and distributed to eligible local telephone companies. The PRC's existing rules required the annual fund amount to include eligible carriers' revenue requirements, administrative expenses, and a prudent fund balance. Despite evidence that a 3% surcharge would produce a projected \$3,870,813 deficit, the PRC adopted that rate for 2015. In a separate rulemaking, the PRC adopted a 3% surcharge cap and changed the funding formula from one based on 2004 access minutes to a rolling formula, although the record did not establish that the new formula would provide sufficient support.

PROCEDURAL HISTORY

The PRC issued a September 17, 2014 order setting a 3% surcharge rate and a November 26, 2014 rule order establishing a 3% surcharge cap and changing the funding formula. The New Mexico Exchange Carrier Group appealed both orders directly to the New Mexico Supreme Court. The Supreme Court reversed both orders and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The PRC must conduct further proceedings consistent with the opinion. The record must contain substantial evidence showing that the revised funding formula adequately satisfies NMSA 1978, Section 63-9H-6(C) and (K), and Rule 17.11.10.19(C), and that the surcharge cap was not arbitrarily established.

CASES CITED

- In re Fed.-State Joint Bd. on Universal Serv., 12 F.C.C.R. 8776, 8780-86 (1997)
- Tex. Office of Pub. Util. Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999)
- N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n, 2007-NMSC-053, ¶ 13, 142 N.M. 533, 168 P.3d 105
- Gen. Tel. Co. of Sw. v. Corp. Comm'n (In re Gen. Tel. Co. of Sw.), 1982-NMSC-106, ¶ 29, 98 N.M. 749, 652 P.2d 1200
- Prometheus Radio Project v. FCC, 652 F.3d 431, 453 (3d Cir. 2011)
- Nat'l Tour Brokers Ass'n v. United States, 591 F.2d 896, 902 (D.C. Cir. 1978)
- In re PNM Gas Servs., 2000-NMSC-012, ¶ 4, 129 N.M. 1, 1 P.3d 383
- Rinker v. State Corp. Comm'n, 1973-NMSC-021, ¶ 5, 84 N.M. 626, 506 P.2d 783

