

SUPREME COURT OF NEBRASKA

McGinley v. Wheat Belt Public Power District

214 Neb. 178 (1983) · Decided April 29, 1983

SUMMARY

The Nebraska Supreme Court held that Wheat Belt Public Power District acted arbitrarily and discriminatorily by imposing substantially different irrigation rates based solely on the date customers requested service. The court ruled that similar customers receiving similar service must be charged rates established in a fair, reasonable, and nondiscriminatory manner. It reversed and remanded with directions for the district to recompute the rates and provide refunds or credits for resulting overcharges.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Krivosha, C.J.; Boslaugh; Brodkey; Caporale; Hastings; Krivosha; McCown; White
JURISDICTION	Nebraska
DECIDED	April 29, 1983
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Electric customers appealed the dismissal of their petition challenging Wheat Belt Public Power District's discriminatory allocation of a power-cost surcharge among irrigation customers.
STANDARD OF REVIEW	The Nebraska Supreme Court reviewed whether the public power district acted unreasonably, arbitrarily, or discriminatorily in setting rates and reviewed the propriety of intervention and the relief ordered.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	McGinley and other electric customers of Wheat Belt Public Power District v. Wheat Belt Public Power District, Intervening Rate Class 75 customers

TOPICS

- public utilities
- municipal law
- administrative law
- judicial review of agency action
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Rate Class 75 customers had a sufficient direct interest to intervene when Wheat Belt was already fully protecting the same interests.
2. Whether courts may review rates established by a public power district.
3. Whether Wheat Belt's allocation of the Tri-State surcharge and related benefits between Rate Class 75 and Rate Class 76 was arbitrary, unreasonable, and discriminatory.
4. Whether Rate Class 76 customers were entitled to judgment for the difference between the rates paid by the two classes, or whether the matter required recomputation of a lawful rate.

HOLDINGS

1. Rate Class 75 customers lacked a direct interest different from Wheat Belt's interest and should not have been permitted to intervene because Wheat Belt was adequately protecting the relevant interests.
2. The trial court and the Nebraska Supreme Court have jurisdiction to examine and review whether rates fixed by a public power district are unreasonable or arbitrary.
3. Wheat Belt acted arbitrarily and discriminatorily by imposing the bulk of the surcharge on Rate Class 76 and allocating the ratchet-free power solely to Rate Class 75 when the customers received similar service under similar conditions and the only material distinction was the date service was requested.
4. Rate Class 76 customers were not automatically entitled to recover the difference between their rates and the invalid Rate Class 75 rates; the proper remedy was to require Wheat Belt to recompute a fair, reasonable, and nondiscriminatory rate and refund or credit any resulting overcharge.

KEY QUOTATIONS

"The rates to be charged users of electricity are a blend of both demand charges and energy charges and likewise are the melding of various sources available to Wheat Belt." (184)

"Persons receiving similar service under similar circumstances cannot be charged for such service in an arbitrary, designed, dissimilar manner." (188)

"The only way to do that is to require Wheat Belt to set a rate for members of Rate Class 75 and Rate Class 76 in the same amount and in the same fashion and to refund or credit to customers in Rate Class 76 any overcharge which may result." (190)

FACTUAL BACKGROUND

Wheat Belt Public Power District created two irrigation rate classes based solely on when customers requested or began receiving service. Rate Class 76 customers were charged substantially more than Rate Class 75 customers for identical irrigation service and also did not receive the ratchet-free block of Bureau of Reclamation power allocated to Rate Class 75. The evidence showed that the two classes had substantially similar crops, geographic locations, energy use, horsepower demand, and load factors, and plaintiffs' experts testified that the rate disparity was not supported by differences in cost of service.

PROCEDURAL HISTORY

The plaintiffs filed an action challenging Wheat Belt's two-class irrigation rate structure and its allocation of the Tri-State surcharge. Certain Rate Class 75 customers intervened and joined Wheat Belt in defending the rate structure. The District Court for Cheyenne County dismissed the petition, and the Nebraska Supreme Court reversed and remanded with directions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The District Court was directed to order Wheat Belt to recompute the rates for Rate Classes 75 and 76 for the relevant period so that both classes would be charged identical amounts in a fair, equitable, and nondiscriminatory manner, and to require Wheat Belt to refund or credit Rate Class 76 customers for any resulting overcharge.

CASES CITED

- Cornhusker Electric Co. v. City of Fairbury, 131 Neb. 888, 270 N.W. 482 (1936)
- Noble v. City of Lincoln, 158 Neb. 457, 63 N.W.2d 475 (1954)
- Best & Co., Inc. v. City of Omaha, 149 Neb. 868, 33 N.W.2d 150
- City of Omaha v. Douglas County, 125 Neb. 640, 251 N.W. 262
- State ex rel. Randall v. Hall, 125 Neb. 236, 249 N.W. 756
- Erickson v. Metropolitan Utilities Dist., 171 Neb. 654, 107 N.W.2d 324 (1961)
- York County Rural Public Power Dist. v. O'Connor, 172 Neb. 602, 111 N.W.2d 376 (1961)
- Contractors & Builders Ass'n v. City of Dunedin, 329 So. 2d 314 (Fla. 1976)
- Hartman v. Aurora Sanitary District, 177 N.E.2d 218
- U.S. Steel Corp. v. Commonwealth, Public Utility Commission, 37 Pa. Commw. 195, 390 A.2d 849 (1978)
- Mountain States Legal Foundation v. Utah Public Service Commission, 636 P.2d 1047 (Utah 1981)
- Utilities Commission v. Mead Corp., 238 N.C. 451, 78 S.E.2d 290 (1953)
- State ex rel. DePaul Hospital South of North v. Public Service Commission, 464 S.W.2d 737 (Mo. App. 1970)
- State ex rel. McKittrick v. Public Service Commission, 352 Mo. 29, 175 S.W.2d 857 (1943)
- City of Scottsbluff v. United Tel. Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960)
- United Gas Corp. v. Shepherd Laundries, Inc., 144 Tex. 164, 189 S.W.2d 485 (1945)

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