

MONTANA SUPREME COURT

McGree Corp. v. Mont. Pub. Serv. Comm'n, 395 Mont. 229

438 P.3d 326 (2019) · Decided April 2, 2019

SUMMARY

The Montana Supreme Court affirmed the Montana Public Service Commission's approval of L&L Site Services, Inc.'s application for a Class D motor carrier certificate to provide garbage-hauling services in portions of Gallatin and Madison Counties. The court held that the Commission could consider competition when determining public convenience and necessity and that substantial evidence supported the certificate, despite the Commission's misapprehension of some rate-related testimony. The court also held that the Commission was not required to undertake rulemaking under the Montana Administrative Procedure Act because it exercised statutory discretion in a case-specific adjudication.

CASE DETAILS

COURT	Montana Supreme Court
WRITING FOR THE COURT	Justice Beth Baker; Mike McGrath, Chief Justice; Ingrid Gustafson, Justice; Laurie McKinnon, Justice; James Jeremiah Shea, Justice
JURISDICTION	Montana
DECIDED	April 2, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	McGree Corporation and Republic Services appealed the Second Judicial District Court's affirmance of the Montana Public Service Commission's final order granting L&L Site Services a Class D motor carrier certificate of public convenience and necessity.
STANDARD OF REVIEW	The Supreme Court applies the same standards as the district court in an administrative appeal. Statutory interpretation is reviewed de novo; agency factual findings are reviewed for clear error; and the court may reverse or modify an agency decision only on the grounds specified in Mont. Code Ann. § 2-4-704(2), including statutory violation, unlawful procedure, error of law, lack of substantial evidence, or arbitrary or capricious action. The court may not substitute its judgment for the agency's judgment regarding the weight of factual evidence.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential

PARTIES

McGree Corporation, Republic Services of Montana v. Montana
Public Service Commission, L&L Site Services, Inc.

TOPICS

administrative law agency adjudication judicial review of agency action statutory interpretation
rulemaking

PRACTICE AREAS

administrative law public utilities regulation motor carrier regulation statutory interpretation
appellate procedure

QUESTIONS PRESENTED

1. Whether the Commission properly considered competition in determining public convenience and necessity under Mont. Code Ann. § 69-12-323(2).
2. Whether substantial evidence supported the Commission's decision to grant L&L a Class D certificate.
3. Whether the Commission was required to engage in rulemaking under the Montana Administrative Procedure Act before using a different approach to considering competition.

HOLDINGS

1. Mont. Code Ann. § 69-12-323(2)(b) does not limit when the Commission may consider competition in determining public convenience and necessity. The Commission may consider competition as part of a holistic, case-specific analysis rather than only after finding a separate public need.
2. Competition in the abstract is insufficient by itself to justify granting a Class D certificate. The record must contain sufficient evidence, based on the specific facts, to establish public convenience and necessity.
3. Despite the Commission's clear error in comparing dissimilar profit-margin evidence, the remaining record contained substantial evidence supporting public need and the grant of L&L's certificate. The error therefore did not require reversal.
4. The Commission was not required to undertake MAPA rulemaking before exercising its statutory discretion to consider competition in this adjudication. Applying a different, case-specific analytical approach did not constitute rulemaking.

KEY QUOTATIONS

“Rather, there must be sufficient evidence in the record based upon the specific facts at hand to establish public convenience and necessity.” (¶20)

“The Commission is not required to go through rulemaking under MAPA to exercise this statutorily granted discretion.” (¶35)

FACTUAL BACKGROUND

L&L Site Services held a limited Class D certificate to haul construction debris and later sought authority to provide residential and commercial garbage service throughout Gallatin and Madison Counties. McGree and Republic protested the application, although the parties stipulated that L&L was fit to provide the proposed service. At the hearing, customers and other witnesses presented evidence of unmet service needs, customer-service problems, growth in the relevant areas, and the potential benefits of competition. The Commission granted the application in Gallatin County and granted limited authority in Madison County, but the Commission also improperly relied on incomparable profit-margin evidence in finding a need for more reasonable rates.

PROCEDURAL HISTORY

L&L applied for a full Class D certificate to provide residential and commercial garbage-hauling service in Gallatin and Madison Counties. After a three-day hearing, the Commission granted the application for Gallatin County and a limited portion of Madison County. The District Court affirmed the Commission's order, and the Montana Supreme Court affirmed the District Court.

DISPOSITION

affirmed

CASES CITED

- *Nw. Corp. v. Mont. Dep't of Pub. Serv. Regulation*, 2016 MT 239, 385 Mont. 33, 380 P.3d 787
- *Baker Sales Barn, Inc. v. Mont. Livestock Comm'n*, 140 Mont. 1, 367 P.2d 775 (1962)
- *Waste Mgmt. Partners of Bozeman, Ltd. v. Mont. Dep't of Pub. Serv. Regulation*, 284 Mont. 245, 944 P.2d 210 (1997)
- *Ramage v. Dep't of Revenue*, 236 Mont. 69, 768 P.2d 864 (1989)
- *Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont.*, 2003 MT 282, 318 Mont. 1, 78 P.3d 499
- *Rozel Corp. v. Dep't of Pub. Serv. Regulation*, 226 Mont. 237, 735 P.2d 282 (1987)
- *Peretti v. Dep't of Revenue*, 2016 MT 105, 383 Mont. 340, 372 P.3d 447
- *S. Mont. Tel. Co. v. Mont. Pub. Serv. Comm'n*, 2017 MT 123, 387 Mont. 415, 395 P.3d 473
- *Core-Mark Int'l, Inc. v. Mont. Bd. of Livestock*, 2014 MT 197, 376 Mont. 25, 329 P.3d 1278
- *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009)
- *In re Pan-American Bus Lines Operation*, 1 M.C.C. 190, 203 (I.C.C. 1936)

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