UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Alabama Power Co. v. Interstate Commerce Commission

852 F.2d 1364 (D.C. Cir. 1988) · No. 86-1574 · Decided August 2, 1988

SUMMARY

The D.C. Circuit reviewed an Interstate Commerce Commission order revising railroad cost-recovery rate procedures under the Staggers Rail Act. The court denied Consolidated Rail Corporation's motions to substitute or intervene because it had not timely sought review or intervention and had not adequately participated in the agency proceeding. The court also upheld the ICC's use of rate rollbacks, banking, and prospective correction of forecast errors against the shippers' arbitrary-and-capricious challenges.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Circuit Judge Starr; Circuit Judge Spottswood W. Robinson, III; Circuit Judge Buckley
JURISDICTION	Federal
DECIDED	August 2, 1988
DOCKET	86-1574
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated petitions for review challenged an Interstate Commerce Commission order modifying railroad cost-recovery rate procedures. Conrail separately moved to substitute for an original petitioner or, alternatively, to intervene after the original petitioners withdrew.
STANDARD OF REVIEW	The court reviewed the ICC's action under the Administrative Procedure Act's arbitrary-and-capricious standard and deferred to the agency's reasonable policy choices in the complex ratemaking context. Statutory construction was reviewed for whether the agency adopted a permissible construction of the governing statute.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alabama Power Co., other shipper-petitioners, The Fertilizer Institute v. Interstate Commerce Commission

TOPICS

judicial review of agency action · administrative law · administrative procedure act · appellate jurisdiction · statutory interpretation

PRACTICE AREAS

administrative law · railroad regulation · ratemaking · appellate procedure

QUESTIONS PRESENTED

1. Whether Conrail could substitute for an original petitioner or intervene after failing to file a timely petition for review and failing to intervene within the applicable period.
2. Whether the ICC's use of a 1.057 rollback floor and banking system was arbitrary and capricious.
3. Whether the ICC acted unlawfully by declining to correct or recompute cumulative pre-1986 RCAF forecast errors retroactively.
4. Whether the Staggers Act or equitable principles required the ICC to order refunds or damages for past discrepancies between RCAF-based rates and actual costs.
5. Whether the ICC sufficiently explained its responses to the shippers' and Fertilizer Institute's requests.

HOLDINGS

1. Conrail could not substitute for the withdrawn petitioner or intervene because Rule 43(b) addresses situations in which a party is unable to continue, not a party's voluntary withdrawal, and permitting Conrail to proceed would evade the Hobbs Act's jurisdictional and filing requirements.
2. The ICC reasonably exercised its discretion by adopting a 1.057 rollback floor combined with banking; the court would not invalidate the remedy merely because the shippers preferred another remedy.
3. The ICC was not required to recompute and republish prior RCAF values or apply its new forecast-error correction mechanism retroactively.
4. The ICC was not required to order refunds or damages absent a showing that particular rates violated a specific substantive provision of the Interstate Commerce Act.

KEY QUOTATIONS

> *"In the first instance, it is emphatically not the business of the judiciary to assess the relative merits of alternative agency actions and determine which is "better" or "best.""* (at 1369)

> *"To permit either substitution or intervention in these circumstances would be to condone the impermissible — an evasion of clear jurisdictional requirements ordained by Congress for obtaining judicial review."* (at 1368)

> *"Absent a showing that the rates actually charged by the railroads ran afoul of the specific requirements of the Interstate Commerce Act, a showing no one even argues was made here, the Commission's decision not to order refunds constituted a reasonable exercise of discretion."* (at 1372)

FACTUAL BACKGROUND

The Staggers Rail Act authorized cost-recovery rate increases tied to a quarterly rail cost adjustment factor (RCAF). The ICC's original rules did not require railroads to reduce cost-recovery rates when the RCAF declined, and a sharp decline in oil prices caused the first-quarter 1986 RCAF to overstate actual costs. The ICC responded by rolling back the master tariff to the prior 1.057 level, establishing a bank to account for disparities, conditioning future cost-recovery protection on rate rollbacks when the RCAF declined, and adopting prospective forecast-error corrections.

PROCEDURAL HISTORY

The ICC adopted modifications to its rail cost adjustment factor procedures, including a rollback to a 1.057 level, a banking system, conditional future rollbacks, and prospective forecast-error corrections. Shippers petitioned for review and challenged the adequacy and legality of the agency's remedies; the Fertilizer Institute also sought refunds. Conrail did not timely petition for review or intervene, and the original railroad-association petitioners withdrew. The court denied Conrail's motion and denied the shippers' petitions.

DISPOSITION

other

CASES CITED

- Western Coal Traffic League v. United States, 677 F.2d 915, 924-25 (D.C. Cir.), cert. denied, 459 U.S. 1086 (1982)
- Fred Harvey, Inc. v. Mooney, 526 F.2d 608 (7th Cir. 1975)
- Beghin-Say, Int'l v. OleBendt Rasmussen, 733 F.2d 1568 (Fed. Cir. 1984)
- Simmons v. ICC, 716 F.2d 40, 42, 46 (D.C. Cir. 1983)
- NRDC v. NRC, 666 F.2d 595, 602 (D.C. Cir. 1981)
- ICC v. Brotherhood of Locomotive Engineers, 482 U.S. 270 (1987)
- United States Steel v. EPA, 614 F.2d 843, 846 & n. 4 (3d Cir. 1979)
- Horn v. Eltra Corp., 686 F.2d 439, 442 n. 2 (6th Cir. 1982)
- Water Transport Ass'n v. ICC, 819 F.2d 1189, 1192 (D.C. Cir. 1987)
- American Pub. Gas Ass'n v. FPC, 567 F.2d 1016, 1029-30 (D.C. Cir. 1977), cert. denied, 435 U.S. 907 (1978)
- Baltimore Gas and Elec. Co. v. United States, 817 F.2d 108, 117 (D.C. Cir. 1987)
- Arizona Grocery Co. v. Atchison, T. & S.F. Ry., 284 U.S. 370, 390 (1932)
- Sea Robin Pipeline Co. v. FERC, 795 F.2d 182, 189 n. 7 (D.C. Cir. 1986)