

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Honeywell International, Inc. v. Nuclear Regulatory Commission

393 U.S. App. D.C. 340 (D.C. Cir. 2010) (D.C. Cir. 2010) · No. No. 10-1022 · Decided December 21, 2010

SUMMARY

The D.C. Circuit reviewed the Nuclear Regulatory Commission’s denial of Honeywell International’s request for an exemption allowing goodwill to be included in calculating the tangible-net-worth requirement for decommissioning financial assurance. The court held that it had jurisdiction under the Hobbs Act and that the controversy was not moot because it was capable of repetition yet evading review. It granted Honeywell’s petition, concluding that the NRC had failed to provide a reasoned explanation for departing from its prior decisions granting similar exemptions.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Rogers, Circuit Judge; Brown, Circuit Judge; Griffith, Circuit Judge
JURISDICTION	Federal
DECIDED	December 21, 2010
DOCKET	No. 10-1022
DISPOSITION	vacated
PROCEDURAL POSTURE	Honeywell petitioned for review under the Hobbs Act of the Nuclear Regulatory Commission's final order denying its request to extend an exemption permitting it to include goodwill in calculating tangible net worth for decommissioning financial assurance.
STANDARD OF REVIEW	The court reviewed the NRC's final licensing decision under the Administrative Procedure Act's arbitrary-and-capricious standard, while according the Commission substantial judicial deference because of its broad authority under the Atomic Energy Act.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Honeywell International, Inc. v. Nuclear Regulatory Commission, United States of America

TOPICS

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QUESTIONS PRESENTED

1. Whether the D.C. Circuit had exclusive jurisdiction under the Hobbs Act to review the NRC's denial of Honeywell's exemption request.
2. Whether Honeywell's petition was moot because the one-year exemption period had expired.
3. Whether the NRC acted arbitrarily and capriciously by denying Honeywell's exemption without adequately explaining its departure from the criteria used in its prior exemption decisions and without addressing material evidence in the record.

HOLDINGS

1. The D.C. Circuit had jurisdiction under the Hobbs Act because the NRC treated the exemptions as amendments to Honeywell's source-materials license, and the denial was a final order in a licensing proceeding.
2. The petition was not moot because Honeywell's challenge fell within the capable-of-repetition-yet-evading-review exception.
3. The NRC acted arbitrarily and capriciously by denying the 2009 exemption without adequately explaining its inconsistent treatment of the criteria used in its 2007 and 2008 decisions and without addressing significant contrary evidence.

KEY QUOTATIONS

“an agency “may change its policy only if it provides ‘a reasoned analysis indicating that prior policies and standards are deliberately changed, not casually ignored.’” (579)

“Without the Commission's explanation, “we are left with no guideposts for determining the consistency of administrative action in similar cases, or for accurately predicting future action by the Commission.”” (581)

FACTUAL BACKGROUND

Honeywell operated a uranium-conversion facility in Illinois subject to NRC requirements for financial assurance of decommissioning costs. In 2007 and 2008, the NRC granted temporary exemptions allowing Honeywell to include goodwill, an intangible asset, in calculating whether its net worth satisfied the applicable 10:1 ratio. In 2009, despite Honeywell's continuing A bond rating and net worth including goodwill exceeding the decommissioning obligation by more than 10:1, the NRC denied a third exemption based primarily on the decline in Honeywell's tangible net worth.

PROCEDURAL HISTORY

The NRC granted Honeywell similar one-year exemptions in 2007 and 2008 but denied its third exemption request on December 11, 2009. Honeywell sought review in the D.C. Circuit. The court held that it had jurisdiction, rejected the NRC's mootness argument, granted the petition, vacated the denial, and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the NRC's December 11, 2009 denial and remand Honeywell's April 11, 2009 exemption request to the Commission for further proceedings, including a reasoned explanation addressing the prior exemption decisions and the material evidence submitted by Honeywell.

CASES CITED

- Florida Power & Light Co. v. Lorion, 470 U.S. 729 (1985)
- Shoreham-Wading River Central School District v. NRC, 931 F.2d 102 (D.C. Cir. 1991)
- Massachusetts v. NRC, 878 F.2d 1516 (1st Cir. 1989)
- Brodsky v. NRC, 578 F.3d 175 (2d Cir. 2009)
- Natural Resources Defense Council, Inc. v. NRC, 680 F.2d 810 (D.C. Cir. 1982)
- County of Los Angeles v. Davis, 440 U.S. 625 (1979)
- Church of Scientology of California v. United States, 506 U.S. 9 (1992)
- Southern Co. Services, Inc. v. FERC, 416 F.3d 39 (D.C. Cir. 2005)
- McBryde v. Committee to Review Circuit Council Conduct & Disability Orders of Judicial Conference, 264 F.3d 52 (D.C. Cir. 2001)
- Motor & Equipment Manufacturers Association v. Nichols, 142 F.3d 449 (D.C. Cir. 1998)
- Newdow v. Roberts, 603 F.3d 1002 (D.C. Cir. 2010)
- Christian Knights of the Ku Klux Klan Invisible Empire, Inc. v. District of Columbia, 972 F.2d 365 (D.C. Cir. 1992)
- Washington v. Harper, 494 U.S. 210 (1990)
- Entergy Services, Inc. v. FERC, 391 F.3d 1240 (D.C. Cir. 2004)
- People for the Ethical Treatment of Animals, Inc. v. Gittens, 396 F.3d 416 (D.C. Cir. 2005)
- Pharmachemie B.V. v. Barr Laboratories, Inc., 276 F.3d 627 (D.C. Cir. 2002)
- National Association of Home Builders v. U.S. Army Corps of Engineers, 264 F. App'x 10 (D.C. Cir. 2008) (per curiam)
- Reytblatt v. NRC, 105 F.3d 715 (D.C. Cir. 1997)
- Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir. 1991)
- Professional Reactor Operator Society v. NRC, 939 F.2d 1047 (D.C. Cir. 1991)
- Nuclear Information & Resource Service v. NRC, 509 F.3d 562 (D.C. Cir. 2007)

- Michigan Public Power Agency v. FERC, 405 F.3d 8 (D.C. Cir. 2005)
- Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970)
- Hatch v. FERC, 654 F.2d 825 (D.C. Cir. 1981)
- Alaska Professional Hunters' Ass'n, Inc. v. FAA, 177 F.3d 1030 (D.C. Cir. 1999)
- MetWest Inc. v. Secretary of Labor, 560 F.3d 506 (D.C. Cir. 2009)
- Association of American Railroads v. Department of Transportation, 198 F.3d 944 (D.C. Cir. 1999)
- Jicarilla Apache Nation v. U.S. Department of the Interior, 613 F.3d 1112 (D.C. Cir. 2010)
- Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983)
- Newark Morning Ledger Co. v. United States, 507 U.S. 546 (1993)

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