STATE OF MICHIGAN

COURT OF APPEALS

WARD LAKE DRILLING, INC.,
d/b/a WARD LAKE ENERGY,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, CONSUMERS POWER COMPANY and ATTORNEY GENERAL,

Defendants-Appellees.

UNPUBLISHED
August 22, 1997

No. 190463
PSC
LC No. 10546

SRW, INC.,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, CONSUMERS POWER COMPANY and ATTORNEY GENERAL,

Defendants-Appellees.

No. 190464
PSC
LC No. 10546

BLUE SPRUCE INVESTMENTS,

Plaintiff-Appellant,

v

No. 190465
PSC

LC No. 10546

MICHIGAN PUBLIC SERVICE
COMMISSION, CONSUMERS POWER
COMPANY and ATTORNEY GENERAL,

Defendants-Appellees.

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

These consolidated appeals raise challenges to the Michigan Public Service Commission's interpretation of pricing provisions in natural gas supply contracts with Consumers Power. We affirm.

I

Ward Lake Drilling, Inc. (Ward Lake) and SRW are intrastate suppliers of natural gas to Consumers Power Company (Consumers). Blue Spruce Investments is an entity holding leasehold and revenue interests in a contract between Ward Lake and Consumers. Ward Lake sold gas to Consumers under two contracts. The first, dated January 20, 1986, expired on December 31, 1994. The second, dated October 15, 1987 and the one in which Blue Spruce has interests, remains in effect until December 31, 1997. SRW sells gas to Consumers pursuant to a contract dated January 15, 1988, which will expire no later than December 31, 1997.

Each contract contains a base price plus escalation provision, under which the base price is periodically increased. Each contract also contains price limitation provisions, only one of which is at issue here. It provides that in no event shall the price exceed 80% of the equivalent average price of No. 6 fuel oil as reported by Platt's Oilgram Price Report (Platt) for Detroit. (The 1986 contract is based on prices reported by Platt in both Detroit and Chicago.) Finally, each contract contains a floor or minimum price. The floor prices in the 1987 and 1988 contracts expired on December 31, 1993.

Under each contract the price paid by Consumers is determined as follows. First, the base price plus escalation is calculated. Second, this amount is compared to the relevant price limitation provisions. Third, the results of the first two steps are compared to the price floor specified in the contract.

Consumers never paid Ward Lake or SRW the base price with or without escalation. Instead, the price limitation provisions always came into play, and Consumers only paid the floor or minimum price until the floor prices expired for the 1987 and 1988 contracts on December 31, 1993. In the absence of floor prices, Ward Lake and SRW faced the prospect of being paid even less as a result of the price limitation provisions in the contracts.

On December 22, 1993, Platt ceased reporting data regarding the sale of No. 6 fuel oil in Detroit, although it did continue to report sales in other locations, including Chicago. Consumers asked Ward Lake and SRW to agree to use the reports for the Chicago market. When they refused, Consumers stated that it would use No. 6 fuel oil price data for Detroit published in Bloomberg Oil Buyer's Guide/Bloomberg Natural Gas Report (Bloomberg). Consumers relied on provisions in all three contracts, which provide that in the event Platt's report is discontinued, any other similar service may be used in its place. Ward Lake and SRW objected, contending that Bloomberg is not a "similar service" within the meaning of the contracts and that in any event the substitution provision could only be triggered if Platt ceased reporting any data from any market for No. 6 fuel oil.

On February 14, 1994 Consumers filed an application for a declaratory ruling by the Michigan Public Service Commission (PSC) regarding the meaning and application of the disputed provisions in the contracts with Ward Lake and SRW.[1] On June 30, 1994 the PSC issued an order denying the application because it did not seek a determination of whether or how a statute, rule, or PSC order applied to an actual state of affairs, as required for a declaratory ruling from an administrative agency.

On July 1, 1994 Consumers filed a petition for rehearing, arguing that the PSC had misunderstood the relief being sought, and in the alternative requesting the PSC to treat its pleading as an application for a determination of the reasonableness of the prices paid pursuant to the terms of the contracts under 1929 PA 9, MCL 483.101 *et seq.*; MSA 22.1311 *et seq*. (Act 9). Ward Lake and SRW answered, arguing that the PSC had no authority over the dispute in question, lacked jurisdiction over breach of contract claims, and has no power to award damages. By order dated August 3, 1994, the PSC granted Consumers' request that the application be treated as one requesting relief under §3 and §10 of Act 9.

Following evidentiary hearings and the release of a proposal for decision by the hearing officer, the PSC issued an opinion and order on October 25, 1995, largely agreeing with Consumers' interpretation of the pricing provisions in the contracts. The PSC reiterated that it has jurisdiction to adjudicate the dispute, rejected appellants' challenges regarding the evidence, and refused to address constitutional questions because the PSC is not competent to adjudicate them.

Ward Lake, SRW, and Blue Spruce each appealed by right. The cases were subsequently consolidated.

II

Sections 3 and 10 of Act 9 provide:

> Sec. 3. There is hereby granted to and vested in the Michigan public utilities commission, hereinafter styled the "commission," the power to control and regulate corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use; and said commission shall investigate any alleged neglect or violation of the laws of the state by any corporation, association or person purchasing or selling natural gas and transmitting or conveying the

same by pipe line or lines for public use: Provided, That nothing in this act shall be construed to prevent oil and gas operators or producers of gas from laying pipe lines to transport or transmit gas to drilling wells within this state: And provided further, That factories or industries in this state may transport or transmit gas through pipe lines for their own use in plants located wholly within this state without constituting themselves a common purchaser within the terms of this act.

Section 10. A common purchaser or common carrier of natural gas, before receiving the gas for transmission or delivery, shall file with the commission a schedule of the rates and price at which the common purchaser or common carrier will receive gas at delivery stations from a well, field, or source of supply as well as the rates or charges at which the common purchaser or common carrier will deliver gas to connecting carriers or distributing lines or customers and, if the common purchaser or common carrier is operating as a carrier for hire, the rates and charges which the common purchaser or common carrier will charge for the service to be performed by it. A common purchaser or common carrier operating as a carrier for hire also shall file a copy of each contract for purchasing, receiving or supplying gas. The price to be paid and the rates and charges shall be stated and set up in the manner and form required by the commission and outlined in the rules of the commission for filing of rates of artificial gas utilities or pursuant to rules and conditions of service adopted by the commission, which the commission may make for the regulation of common purchasers and common carriers of natural gas. Thereafter a common purchaser or common carrier of natural gas may alter or amend its price paid, rates, charges, and conditions of service by application to and approval by the commission in the same manner and by the same process and under the same legal limitations and like right as are now provided by statute for the regulation by the commission of the rates for electricity transmitted in this state and process of appeal as provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

Appellants contend that no part of Act 9, and in particular neither §3 nor §10, grants the PSC jurisdiction or power to interpret contract provisions generally or to adjudicate the disputes involved in this case. Appellants argue that Act 9 only regulates the relationship between Consumers and other common purchasers of natural gas and the ultimate customers. According to appellants Act 9 provides the PSC authority to determine whether changes in natural gas contract prices are just and reasonable, and if they are to approve the passing through of these costs to customers, and if they are not to prohibit passing them on to customers. Appellants argue that nothing in Act 9 authorizes the PSC to regulate the relationship between common purchasers such as Consumers and producers such as appellants, or to adjudicate disputes between them. Appellants argue that the contract disputes at issue here must be adjudicated by a court of law.

The PSC rejected the challenge to its jurisdiction in its October 25, 1995 opinion:

> In a June 9, 1995 opinion in *North Michigan Land & Oil Corporation v Public Service Commission*, 211 Mich App 424; 536 NW2d 259 (1995), the Court of Appeals rejected an argument that the Commission's jurisdiction is limited to approval or rejection of price amendments. In so doing, the Court of Appeals cited its earlier decisions in *Midland Cogeneration Venture Limited Partnership v Public Service Commission,* 199 Mich App 286; 501 NW2d 573 (1993), and [*Antrim Resources v Public Service Commission*, 179 Mich App 603; 446 NW2d 515 (1989)] as examples of cases that have upheld the Commission's broad jurisdiction to approve price amendments in gas supply contracts. Moreover, the Court of Appeals noted that the *Antrim Resources* decision specifically held that "the producers' contention that 1929 PA 9 does not grant the PSC jurisdiction and authority to interpret contracts between [a common purchaser] and the producers is without merit." *North Michigan, supra*, p 437. Accordingly, the arguments that the Commission has no jurisdiction to review contract prices in the absence of a price change or to interpret the meaning of pricing provisions in the contracts are rejected.

We agree with the PSC. Its authority is not limited to reviewing the reasonableness of the contract terms for purposes of deciding the rates a utility may charge its customers. Rather, the authorities cited by the PSC, *North Michigan Land & Oil Corp v Public Service Commission*, 211 Mich App 424; 536 NW2d 259 (1995), *Midland Cogeneration Venture Ltd Partnership v Public Service Commission*, 199 Mich App 286; 501 NW2d 573 (1993), as well as *Miller Bros v Public Service Commission*, 180 Mich App 227; 446 NW2d 640 (1989), and *Antrim Resources v Public Service Commission*, 179 Mich App 603; 446 NW2d 515 (1989) interpret the statute to authorize direct PSC regulation of the contracts between natural gas producers and utilities.

III

A

Appellants contend that the PSC ignored the statute and its prior decisions when it approved the manner in which Consumers paid appellants under the contracts. Because appellants were never paid the base price with or without escalation, they contend Consumers effectuated an alteration or amendment in the price paid under the contracts within the meaning of §10 of Act 9, and that such an amendment requires approval by the PSC. Appellants note that even escalation of the base price would constitute an amendment within the meaning of §10, but for the fact that the PSC long ago held that *definite* price escalation provisions in contracts may be implemented without PSC approval. However, they argue that the PSC has in the past required approval of contract price changes caused by *indefinite* pricing provisions, such as the No. 6 fuel oil provisions in the instant contracts. Appellants conclude that the PSC has acted arbitrarily, ignored its prior practice, and ignored the clear mandate of §10 by holding that Consumers properly implemented the indefinite pricing provisions without PSC approval.

We find that appellants have failed to show that the PSC's decision in this case is inconsistent with its past decisions. The PSC summarized its evolving doctrine regarding definite and indefinite pricing provisions in common purchaser natural gas contracts as follows:

> A review of the Commission's prior decisions establishes that Section 10 has not been interpreted as Ward Lake, SRW, Blue Spruce, and the ALJ would argue. The Commission has (1) distinguished between definite and indefinite price escalation provisions and (2) found that a flexible gas price is sufficiently definite for the purposes of Act 9 if specific floor and ceiling prices are established in the contract. Those long-standing interpretations should be respected. *Magreta v Ambassador Steel Company*, 380 Mich 513; 158 NW2d 473 (1968). Moreover, because Act 9 has remained virtually unchanged by the Legislature for more than 66 years, it may be presumed that the Legislature is satisfied with the Commission's interpretation of Section 10 and that it has chosen not to amend the statute in a manner that would require a different interpretation. *Antrim Resources v Public Service Commission, supra*, p 615; *Northern Michigan Exploration Company v Public Service Commission*, 153 Mich App 635; 396 NW2d 487 (1986). Accordingly, the Commission rejects the assertion that Act 9 requires every price change, including all price changes based upon indefinite pricing provisions, to be approved by the Commission before they become effective. For at least the past 23 years, the Commission has permitted price changes associated with indefinite pricing provisions to become effective without Commission approval so long as the fluctuations attributable to the indefinite pricing provision are subject to definite upper and lower limits. Moreover, because the current trend in the regulation of the natural gas industry emphasizes competition and market-based pricing, the Commission is not persuaded that its long-standing interpretation of Section 10 should be abandoned.
>
> In summary, the Commission concludes that Section 10 of Act 9 does not obligate a common purchaser to seek approval for every price change contemplated by the terms of a contract. Indeed, the Commission has consistently interpreted Section 10 to permit pricing mechanisms such as those contained in the Ward Lake and SRW contracts to be implemented without the prior approval of the Commission.

The PSC distinguishes between definite and indefinite pricing mechanisms, holding that prior approval is not necessary when administrating contracts containing definite price change mechanisms. A pricing mechanism is definite if the price to be paid pursuant to that mechanism can be ascertained with certainty for any given date. Over the course of time the PSC has decided that otherwise indefinite pricing mechanisms are "definite enough" if the mechanisms cause the price to "float" between definite upper and lower limits, i.e., between ceiling and floor prices. Because the contracts in question contain floor and ceiling prices, the PSC's decision in this case is consistent with prior practice.

We reject any suggestion by appellants that the trajectory of the PSC's evolving doctrine is inconsistent with the statute. We are required to presume that the PSC's decisions are lawful and

reasonable and must not substitute our judgment for the PSC's administrative expertise. *Marshall v Consumers Power*, 206 Mich App 666, 676-677; 523 NW2d 483 (1994). Great deference is due the interpretation of a statute by the agency legislatively chosen to enforce it, which ought not to be overruled without cogent reasons. *Breuhan v Plymouth-Canton Community Schools*, 425 Mich 278, 282-283; 389 NW2d 85 (1986). Appellants have advanced no cogent reasons for overruling the PSC's interpretation. Indeed, they admit that the PSC has appropriately decided to allow unapproved implementation of definite pricing provisions, even though a literal reading of the statute would suggest that prior approval of the PSC is required for *any* change in the price paid for gas. We hold that the PSC has not unreasonably extended this rationale to situations where otherwise indefinite pricing provisions are kept within fixed bounds. Under such circumstances the fluctuating price is by definition not completely open-ended, and so the PSC need not become involved to protect the public from unreasonably large increases in the price paid for natural gas.

B

In the alternative, appellants argue that once the floor prices in the contract expired the pricing became indefinite, thus preventing Consumers from applying the fuel oil price limitation provision without approval of the PSC. In response the PSC acknowledges that this case presented an issue of first impression to the PSC, whether a pricing provision remains definite after a minimum pricing provision expires. The PSC held that under the circumstances of this case, where the parties clearly structured the terms of the pricing provisions and the contracts to conform with past PSC decisions regarding indefinite pricing provisions floating between maximum and minimum prices, the expiration of the floor price should not upset the parties' bargain.

We hold that the PSC's conclusion that the contract remains sufficiently definite is not unlawful or unreasonable. The PSC has in effect equated the expiration of the floor price with a floor of zero dollars. Because this comports with the parties' agreement to eliminate the lower bound on the price after December 31, 1993, and because such a constructive or implicit lower bound protects the public from paying too high a price for natural gas under a contract not approved by the PSC, we defer to the PSC's refinement or extension of its distinction between direct and indirect pricing mechanisms.

C

Appellants contend that the PSC misunderstood the pricing mechanisms at issue, as illustrated by the PSC's inconsistent references to the price established by the No. 6 fuel oil provision as being both a floater and a cap, i.e., a floater that establishes an indefinite price between fixed floor and fixed ceiling prices and a cap that prevents the use of the base price plus escalator. We disagree. The PSC clearly understood that the price established by the fuel oil limitation functions as a floater; the cap is supplied by the base price plus escalation provision of the contracts. Under no circumstances is Consumers obliged to pay more than the base price plus escalation. Appellants' confusion results from the fact that the fuel oil limitation states that in no event will a price paid by Consumers be more than 80% of the relevant fuel oil price. However, although this language superficially looks like a cap, it functions to prohibit paying the true maximum amount permitted by the contract, base plus escalation,

and instead establishes the price that Consumers will pay based on market conditions, which will fluctuate or float.

D

Appellants contend that the PSC's decision amounts to the granting of retroactive rate relief, which is forbidden by a long line of cases decided by our Supreme Court. However, this argument is so sketchy and unsupported by citation to pertinent authority that we consider it abandoned or not properly raised before this Court. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *Isagholian v Transamerica*, 208 Mich App 9, 14; 527 NW2d 13 (1994). Moreover, the issue is without merit. The PSC's order grants no retroactive relief of any kind to Consumers.

IV

A

Each contract contains a price limitation based on prices for No. 6 fuel oil reported by Platt's Oilgram Price Report for Detroit (or Detroit and Chicago), and each contract provides that should Platt's report be "discontinued" it is agreed that "any other similar service may be used in its place."

Appellants contend that the reference to Platt's service and to Detroit are both crucial. It is undisputed that Platt has ceased reporting prices for fuel oil in Detroit, but not for Chicago and other markets. Appellants contend that Platt's *service* has not been discontinued, and therefore the substitution provision of the contracts cannot be invoked. Instead, appellants contend that because Platt has not ceased publishing completely, but has only stopped publishing prices for Detroit, the No. 6 fuel oil price limitation provision has simply become inoperative and may no longer be used to limit the price paid under the contracts. Alternatively, appellants argue that the PSC erred in agreeing with Consumers that Bloomberg is a similar service. Appellants cite testimony to the effect that whereas Platt published actual sales figures, Bloomberg estimates prices or otherwise uses a different methodology when it publishes prices.

The PSC found that the substitution provision was triggered when Platt ceased publishing prices for the Detroit area:

> The Commission is persuaded that the parties intended for the substitution provision to be triggered by the termination of Platt's publication of prices for the Detroit area, without regard to whether Platt's continued to report other prices in other areas. The plain language of the fuel oil limitation provisions establishes Platt's report for Detroit as the appropriate standard. The Commission finds that the reference to "Platt's report" that was made in the context of the substitution provision was intended to be the same as the reference to "Platt's report" in the price limitation provision. Further, as held by the ALJ, case law requires that any uncertainty in a contract due to references to both a general provision and a specific provision ordinarily should be

> resolved by finding that the specific provision qualifies the meaning of the general provision. *Autonumerics, Inc v Bayer Industries*, 144 Ariz 181, 696 P2d 1330 (1984); *Desbien v Penokee Farmers Union Cooperative Assn*, 220 Kan 358, 552 P2d 917 (1976); *Oakes Farming Association v Marlinson Brothers*, 318 NW2d 897 (ND, 1982). Application of this principle requires a finding that the two references to Platt's reports were intended to refer to No. 6 fuel oil prices for Detroit.

We agree with the PSC. Under appellants' interpretation of the contract, a similar service could only be substituted for Platt's if Platt ceased publishing any price data for fuel oil. We find this an unreasonable interpretation of the contract in light of the fact that a substitution provision such as this is obviously meant to solve the problem which would arise if Platt ceased publishing the price data necessary to implement the fuel oil price limitation provision. Although Platt did not entirely cease publishing, it did cease publishing the only information relevant to the contracts in question. We therefore agree with the PSC that it was entirely reasonable for Consumers to substitute a similar service.

We also conclude that substantial evidence supports the PSC's factual finding that Bloomberg is a similar service. The PSC cited record evidence demonstrating that Platt did not publish prices reflecting actual sales, but only an average of prices posted by sellers, not unlike Bloomberg. The PSC's finding is supported by Staff expert witness testimony, which constitutes substantial evidence. *Great Lakes Steel v PSC*, 130 Mich App 470, 481; 344 NW2d 321 (1983).

B

Art VII, ¶ 6 of the 1988 contract between Consumers and SRW is meaningless as it stands. Consumers argued that the meaninglessness resulted from the inadvertent omission of the four-word phrase "in no event shall" from the first part of the paragraph. The paragraph at issue, with Consumers' proposed language in brackets, is as follows:

> Except as provided otherwise in Section 1 of this Article, [*in no event shall]* the total remuneration per MMBtu herein provided exceed 80% of the equivalent average price of one million (1,000,000) Btu of No. 6 oil, using daily prices reported by Platt's Oilgram Price Report, US Tank Car Transport Lots, Mid-Continent for Detroit for the preceding six (6) months.

SRW argues that the PSC erred in accepting Consumers' argument and inserting the four words in the brackets above. SRW contends that the PSC violated the rule that any ambiguity in a contract must be construed against the drafter, in this case Consumers. SRW argues that the provision in the contract is simply incomprehensible, and that Consumers should not be allowed to utilize it to limit prices paid under the contract.

We reject SRW's argument for the reasons given by the PSC:

SRW insists that the fuel oil provision in its contract is inoperable because, as written, it makes no sense. The Commission disagrees.

A contract should be construed according to the obvious intent of the parties, notwithstanding clerical errors or inadvertent omissions that can be corrected. Contract construction principles allow words to be supplied if necessary to carry out the intention of the parties to the contract. Consumers has presented a compelling argument that the incomprehensibility of the fuel oil provision in the SRW contract can be cured by the addition of the phrase "in no event shall" between the words "this Article" and "the total remuneration" in the first sentence of Article VII, Paragraph 6 of Exhibit A-2, which causes that sentence to mirror the fuel oil provision in the 1987 Ward Lake contract. Exhibit A-1, p 11. Moreover the Commission finds that there is other evidence to support the correction suggested by Consumers. Exhibit A-69, a series of documents produced from SRW's files, includes two contract summaries that establish that SRW's understanding of the No. 6 fuel oil price limitation provision is consistent with the understanding held by Consumers. Moreover, Exhibit A-3, Consumers' October 21, 1987 transmittal letter that accompanied the SRW contract, includes the following abbreviated description of the disputed pricing provision:

> "Fuel oil ceiling - 80% #6 Detroit for six months (currently $2.11/MMBtu)."

Aside from arguing that Article VII, Paragraph 6 of its contract is incomprehensible, SRW made no effort to clarify the ambiguity or to dispute the clarification proffered by Consumers. Accordingly, the Commission is persuaded that it should interpret the No. 6 fuel oil price limitation provision in the SRW contract in the manner suggested by Consumers.

We note that the PSC's decision relies in part on documents from SRW's own files, indicating that SRW understood the provision in question in a manner consistent with the interpretation given by Consumers and the PSC.

V

Appellants contend that as a result of the PSC's interpretation of the contract, they are being paid an unreasonably low price for natural gas. They cite record testimony to the effect that there is no longer any reasonable causal relation between the price of No. 6 fuel oil and the price for natural gas, even if such a correlation existed at the time the contracts were entered into. However, appellants fail to note that according to the testimony of Consumers' gas acquisition director Michael J. Shore, Consumers paid Ward Lake $2.75 per MMBtu and SRW $2.40 per MMBtu before expiration of the minimum pricing provisions. After the floor prices expired, during the period January through July 1994 the prices paid pursuant to the fuel oil limitation provisions of the contracts ranged from $1.88 to $2.12

per MMBtu. Moreover, in analyzing Consumers' administration of the 1987 and 1988 contracts, the PSC found:

> The producers bargained for and received guaranteed minimum payments that enabled them to recover their fixed production expenses during the initial years of the contract. Thereafter, Ward Lake and SRW agreed to be paid in accordance with a market-sensitive pricing mechanism during the remaining four years of their contract.

Appellants cite no evidence that they failed to recover their fixed costs by December 31, 1993, when the minimum pricing provisions of the contracts expired. It is therefore reasonable to conclude that appellants did recover such costs. Consequently, the reduced payments after that date are both understandable in terms of the intent of the parties in so structuring the pricing mechanisms, and reasonable in light of Mr. Shore's testimony demonstrating that the prices paid after December 31, 1993 were not much less than the minimum prices paid before that date.

VI

Appellants contend that the PSC's decision violates the constitutional prohibition against impairment of contracts and deprives appellants of their rights to due process and equal protection of the laws. They also contend that the PSC's interpretation of the contracts violates the separation of powers provisions of the state constitution because the PSC is thereby exercising judicial power. Finally, appellants contend that the PSC has intruded upon areas preempted by the congressional repeal of the regulation of intrastate gas prices.

We once again find appellants' arguments to be so sketchily presented that they should be considered abandoned or otherwise not properly before this Court. *Mitcham, supra*; *Isagholian, supra*. Moreover, the constitutional arguments have already been rejected by this Court. See *North Michigan, supra* at 437, 440-444.

Appellants' preemption argument is likewise without merit. In *Northwest Central Pipeline Corp v State Corporation Commission of Kansas*, 489 US 493; 109 S Ct 1262; 103 L Ed 2d 509 (1989), the US Supreme Court rejected a claim that Congress meant to occupy the entire field of natural gas regulation. Congress conferred on federal authorities exclusive jurisdiction over the sale and transportation of natural gas in interstate commerce for resale, while at the same time expressly reserving to the states the power to regulate the production and gathering of natural gas for distribution. *Id.* at 510. Appellants' argument ignores this distinction. Appellants argue that because Congress previously provided for regulation of both intrastate and interstate gas prices, the 1989 deregulation must divest the PSC of jurisdiction to regulate. Appellants' argument is based on the false premise that federal regulation of intrastate gas prices was preemptive or exclusive. Because it was not, and because Congress left significant regulation to the states, appellants have failed to demonstrate that the subsequent federal deregulation in any way impacts state regulation.

VII

Appellants argue that the PSC erred in finding that the hearing officer did not abuse her discretion in making certain evidentiary rulings. In particular appellants contend that the hearing officer improperly excluded testimony sponsored by appellants regarding: the loss of large industrial customers and its effect on the fuel oil price limitation provision; the reasonableness of the fuel oil price limitation; the meaning of the terms "definite price" and "indefinite price"; the reasons for Platt's decision to stop reporting prices reflecting actual sales; and the need for PSC approval before implementing indefinite pricing provisions. Appellants also contend that the hearing officer failed to strike the testimony of Consumers' witness Mr. Shore regarding the history of various provisions in the contracts, and the testimony by Ms. Baldwin regarding the purpose of various contractual provisions. Finally, appellants contend that the hearing officer should have excluded a number of exhibits which were admitted into evidence.

Appellants have failed to demonstrate that any error by the hearing officer in admitting or excluding evidence was prejudicial. The PSC ruled that for the most part the evidence in question was cumulative and unnecessary and more importantly held that the evidentiary rulings were harmless even if erroneous. Appellants have not demonstrated that with other evidentiary rulings the result would have been different.

Affirmed.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald

[1] Although the application for declaratory ruling also involved a contract between Consumers and Terra Energy Ltd., Consumers later amended its application and deleted all references to Terra.