STATE OF MICHIGAN

COURT OF APPEALS

ATTORNEY GENERAL,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION and CONSUMERS POWER COMPANY,

Defendants-Appellees.

UNPUBLISHED

No. 193794
MPSC
LC No. 10961

ATTORNEY GENERAL,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Defendant-Appellee.

No. 193892
MPSC
LC No. 10997

ATTORNEY GENERAL,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Defendant-Appellee.

No. 193894
MPSC
LC No. 10995

Before: Jansen, P.J., and Markey and O'Connell, JJ.

JANSEN, P.J. (dissenting).

I respectfully disagree with the majority's opinion, although I recognize that we are bound by MCR 7.215(H)(1) to follow this Court's opinion in *Attorney General v Public Service Comm*, 227 Mich App 148; 575 NW2d 302 (1997). I believe that *Attorney General* was wrongly decided and follow it only because I am bound by the dictates of MCR 7.215(H). Were I not so bound, I would reverse the orders of the Public Service Commission (PSC) because I believe that the effect of the contracts will result in increased rates for other consumers and that notice and a hearing was required for approval of the contracts.

I believe that the PSC's orders in the case are based on an error of law. Here, Consumers Power has negotiated reduced rates with four major corporations: General Motors, Dow Corning, Hemlock Semiconductor, and Bundy Tubing. In the contracts that Consumers Power sought approval of from the PSC, it specifically reserved the right to seek appropriate ratemaking treatment which could include requests to recover the effects of the reduced rates provided by these contracts. By giving reduced rates to four large corporations, and by including such a reservation clause in the contracts, it appears that rates to other customers will occur in the future and Consumers Power has clearly laid the ground work in the current contracts to accomplish that goal.

Under MCL 460.6a(1); MSA 22.13(6a)(1), if the effect of the contracts will be to increase the cost of services to its customers, than notice and a hearing must be provided. It is only where a change in the rates will not result in an increase in the cost to its customers can the contracts be approved without notice or a hearing. I agree with the Attorney General that the statutory language is mandatory by the use of the word "will" under its plain and ordinary meaning. See *McElroy v Luster*, 254 SW2d 893, 896 (Tex Civ App, 1953); Black's Law Dictionary (5th ed.) (1979) ("An auxiliary verb commonly having the mandatory sense of 'shall' or 'must.' It is a word of certainty, while the word 'may' is one of speculation and uncertainty."). Thus, the fact that Consumers Power argues that an increase may not occur is not enough; it must show that an increase *will not* occur. Consumers Power has not done so in this case and, in fact, has clearly set forth the groundwork to raise rates in the future.

Further, the fact that if Consumers Power seeks to increase other customers' rates in the future as a result of these contracts will require notice and a hearing really does not address the question of whether *these* contracts will result in increased rates for other customers. See *Attorney General, supra*, p 151. In light of the fact that Consumers Power had granted reduced rates to four major corporations will surely lead to increased rates for other customers to make up for the lost revenue as a result of these contracts and it is highly unlikely that the PSC will deny Consumers Power's request to raise the rates of others to compensate for the lost revenue given that there are multiple corporations involved in this case.

Accordingly, I would find that the effect of these contracts will be to increase the rates of other customers and that notice and a hearing is required before the PSC can rule on the contracts. The PSC erred in giving ex parte approval to the contracts. But for this Court's decision in *Attorney General, supra*, I would reverse the PSC's orders and remand for a hearing.

/s/ Kathleen Jansen