

STATE OF MICHIGAN
COURT OF APPEALS

ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and MICHIGAN CONSOLIDATED GAS
COMPANY,

Appellees.

UNPUBLISHED

January 15, 1999

No. 203557

Public Service Commission

LC No. 0011247

Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

The Attorney General appeals a decision of the Michigan Public Service Commission (PSC) approving a special discount-rate contract between Michigan Consolidated Gas Company (Mich Con) and two of Mich Con's customers, Rouge Steel Company and Ford Motor Company, for natural gas transportation and storage services at the "Rouge Complex" in Dearborn, Michigan. We affirm.

The Attorney General argues that the PSC's ex parte approval of the special contract without notice and an opportunity for interested parties to be heard at a contested case hearing violates MCL 460.6a(1); MSA 22.13(6a)(1). We disagree. MCL 460.6a(1) provides in part that "[a]n alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing." Here, neither the special contract nor the PSC's order approving that contract purports to increase any customer rates or costs.

Notice and hearing was not required by MCL 460.6a(1) merely because the special contract may create the reason for a possible rate or cost of service increase in the future, since such potential increases are contingent upon future rate decisions by the PSC. *Attorney General v Public Service Comm*, 227 Mich App 148, 154; 575 NW2d 302 (1997). See also *Attorney General v Public Service Comm*, 231 Mich App 76, 81; ___ NW2d ___ (1998); *Attorney General v Public Service Comm*, 206 Mich App 290, 295; 520 NW2d 636 (1994). While the special contract's reduced revenues may impact Mich Con's 90/10 GCR refund program, whether any rate or cost increase will

result depends upon the PSC's ratemaking treatment of the revenue shortfall at the applicable GCR reconciliation proceeding. As the PSC notes, it may act to prevent any such cost or rate increase at that time, following notice and an opportunity for all interested parties to be heard. Thus, it cannot be said that the PSC's order approving the special contract in this case, in and of itself and without more, will necessarily result in any cost of service or rate increase for Mich Con's other customers.

The Attorney General has not met the burden of establishing by clear and convincing evidence that the PSC's decision is unlawful or unreasonable. MCL 462.26(8); MSA 22.45(8). The Attorney General's argument that this Court should apply stricter scrutiny to the PSC's decisions approving special discount contracts without notice and hearing pursuant to MCL 460.6a(1) was specifically rejected by this Court in *Attorney General v Public Service Comm*, *supra*, 227 Mich App at 153-154. Furthermore, because we do not find the PSC's ex parte approval of the special contract in this case unlawful or unreasonable, any error or irregularity in the PSC's handling of the Attorney General's petition for rehearing may be regarded as harmless. See, e.g., *Feaster v Portage Public Schools*, 210 Mich App 643, 655; 534 NW2d 242 (1995), rev'd on other grounds 451 Mich 351; 547 NW2d 328 (1996); *Verbison v Auto Club Ins Assoc*, 201 Mich App 635, 641; 506 NW2d 920 (1993).

We affirm.

/s/ Henry William Saad
/s/ Michael J. Kelly
/s/ Richard A. Bandstra