

STATE OF MICHIGAN  
COURT OF APPEALS

---

ATTORNEY GENERAL,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION  
and NORTHERN STATES POWER COMPANY,

Defendants-Appellees.

---

UNPUBLISHED

May 21, 1999

No. 207491

Public Service Commission

LC No. 11472

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIAM.

The Attorney General appeals as of right the August 25, 1997 order of the PSC reinstating Northern States Power Company's suspended Power Supply Cost Recovery (PSCR) clause without holding a contested case proceeding. We affirm.

In anticipation of a merger with Wisconsin Electric Power Company, Northern States Power requested and received authorization from the PSC to suspend its PSCR clause from January 1, 1997 to December 31, 2000. Plaintiff appealed that order, claiming that the suspension should only be granted after notice and hearing. This Court affirmed the decision of the PSC, finding that a contested case hearing was not required where the suspension would not result in an increase in costs to customers. *Attorney General v PSC*, 231 Mich App 76; 585 NW2d 310 (1998).

When the merger plans were abandoned, Northern States applied to the PSC to reinstate the PSCR clause. Without holding a contested case hearing, the PSC issued an order reinstating the PSCR clause effective January 1, 1998, and directing Northern States to file a PSCR plan. The Attorney General asserts that the PSC order was unlawful and unreasonable.

Our review of a PSC order is limited. An aggrieved party bears the burden of proving by clear and convincing evidence that the order appealed from is unlawful or unreasonable. MCL 462.26(8); MSA 22.45(8). An order is unlawful if it is based on an erroneous interpretation or application of the law, and it is unreasonable if it is not supported by the evidence. *ABATE v Public Service Comm*, 219 Mich App 653, 659; 557 NW2d 918 (1996). A reviewing court must give due deference to the

administrative expertise of the PSC and may not substitute its judgment for that of the agency. *City of Marshall v Consumers Power Co (On Remand)*, 206 Mich App 666; 523 NW2d 483 (1994). A statute that grants power to an administrative agency is to be strictly construed. *Attorney General v PSC, supra*, 78.

The PSC found that no contested case hearing was required because the order reinstating the PSCR clause would not result in an increase in rates. There would be no rate change until after a hearing was held on the annual PSCR case. A hearing was not required under MCL 460.6j(2); MSA 22.13(6j)(2) because the order did not implement a new PSCR clause, it merely reinstated the suspended clause, on which a hearing had been held.

Plaintiff has failed to show that the PSC decision is unlawful or unreasonable. MCL 460.61(1); MSA 22.13(6a)(1) provides in part: “An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the costs of service to its customers may be authorized and approved without notice or hearing.” This later, more specific provision overrides the general hearing requirement of MCL 462.24; MSA 22.43. *Irons v 61<sup>st</sup> Judicial District Court Employees Chapter of Local No 1645, Michigan Council 25, AFSCME, AFL-CIO*, 139 Mich App 313, 321; 362 NW2d 262 (1984).

Plaintiff failed to present clear and satisfactory evidence that an increase in costs will result from the order. As the PSC noted, there would be no actual change in the cost of service to customers until a contested case hearing was held on the utility’s annual PSCR plan. The PSC could approve the application of Northern States without notice or a hearing under MCL 460.6a(1); MSA 22.13(6a)(1).

Plaintiff also argues that MCL 462.6j(2); MSA 22.13(6j)(2) mandates that a contested case hearing be held prior to the implementation of the PSCR clause. We agree with the commission’s conclusion that the original 1986 hearing was sufficient to satisfy this provision. Once the initial hearing was held, the PSCR clause was included in the utility’s rates. It was unnecessary to hold another hearing where the PSCR clause was only temporarily suspended, and not terminated. *Attorney General v PSC, supra*.

Affirmed.

/s/ Roman S. Gibbs

/s/ Michael J. Kelly

/s/ Harold Hood