

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,  
MICHIGAN CONSOLIDATED GAS COMPANY,  
ABATE, SHELL WESTERN E&P, INC.,  
CHEVRON, USA, PENINSULAR OIL & GAS  
COMPANY, WARD LAKE DRILLING, INC.,  
d/b/a WARD LAKE ENERGY, and WOLVERINE  
GAS AND OIL COMPANY, INC.,

Appellees,

and

HRF E&P, INC., FRUEHAUF PRODUCTION  
COMPANY, and HARRY R. FRUEHAUF, III,

Intervenors.

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

PER CURIAM.

The Attorney General appeals by right from portions of a December 19, 1997 order of the Michigan Public Service Commission (PSC), which authorized Michigan Consolidated Gas Company (MichCon) to implement revised depreciation accrual rates in the month following issuance of the order, and which found that implementation of the revised depreciation rates would not necessarily result in MichCon earning windfall profits at the expense of ratepayers. We affirm.

On October 16, 1996, MichCon filed an application with the PSC requesting authorization, among other things, to implement revised depreciation accrual rates and to implement the new rates in

the month following PSC approval of the rates. At the Attorney General's request, a contested case proceeding was commenced to address MichCon's proposals. On December 19, 1997, the PSC issued an opinion and order which held, in pertinent part:

The Commission finds that Mich Con's request for authority to implement its new depreciation accrual rates in the month immediately following issuance of an order in this proceeding should be granted. The new rates established by this order are based upon a depreciation study supported by data for the year ending December 31, 1995. As such, the information upon which the new rates are based is already nearly two years old.

At the present time, Mich Con does not have a general rate case pending and the company says it has no plans to file a rate case in the near future. Therefore, if the Commission were to adopt the position supported by ABATE, Wolverine, SWEPI, and Fruehauf, the rates approved by this order would remain ineffective for the foreseeable future.

Further, the Commission has previously rejected a claim that implementation of depreciation rates for financial accounting purposes must be synchronized with a change in tariff rates. In the December 7, 1989 order in Cases Nos. U-8678, U-8924, and U-9197, the Commission determined that the implementation of revised depreciation rates need not coincide with the use of those rates for ratemaking purposes.

Finally, the record does not support a finding that the annual decrease in depreciation expense to be experienced by Mich Con will necessarily result in the utility earning windfall profits. It has been four years since the issuance of Mich Con's last rate order and it cannot be assumed that other factors have remained unchanged. Accordingly, the Commission finds that the exceptions raised by ABATE, Wolverine, SWEPI, and Fruehauf regarding the implementation date for the new depreciation rates should be rejected.

On appeal, the Attorney General argues that a direct relationship exists between MichCon's depreciation accrual rates and its general revenue rates, and that any adjustment to the former must be synchronized with an adjustment to the latter in order to avoid MichCon earning windfall profits at the expense of ratepayers. We disagree.

This Court's standard of review for PSC orders is extremely narrow. *Detroit Edison Co v Public Service Comm*, 221 Mich App 370, 373; 562 NW2d 224 (1997). All rates, fares, practices, and services prescribed by the PSC are presumed, prima facie, to be lawful and reasonable, MCL 462.25; MSA 22.44, and a PSC decision can only be overturned upon a showing by "clear and satisfactory evidence" that the decision is "unlawful or unreasonable." MCL 462.26(8); MSA 22.45(8). This Court will not substitute its judgment for that of the PSC on a factual issue and must defer to the PSC's administrative expertise. *Attorney General v Public Service Comm*, 206 Mich App 290, 294; 520 NW2d 636 (1994).

Having reviewed the extensive and conflicting expert opinion testimony offered in this matter, we conclude that the PSC's decision was both lawful and reasonable. Contrary to the Attorney General's argument, the existence of conflicting expert testimony does not provide a basis for this Court to overturn the PSC's decision. A decision by the PSC must be affirmed if it is supported by opinion testimony, offered by a qualified expert who has a rational basis for his views, regardless of whether other experts disagree. *Association of Businesses Advocating Tariff Equity v Public Service Comm*, 216 Mich App 8, 27; 548 NW2d 649 (1996). Moreover, as a matter of policy, the PSC has historically treated ratemaking as separate from financial accounting. In its opinion and order in this case, the PSC noted that automatic synchronization had been rejected in its December 7, 1989 order in PSC Case Nos. U-8678, U-8924, and U-9197, where it reasoned that adoption of a policy that required any accounting change to be immediately reflected in general rates would be "administratively burdensome and, in practice, impossible to implement." The agency's administrative expertise in such matters is deserving of judicial deference. *Attorney General v Public Service Comm*, *supra*, 206 Mich App at 294.

The Attorney General also challenges the PSC's finding that "the record does not support a finding that the annual decrease in depreciation expense to be experienced by MichCon will necessarily result in the utility earning windfall profits. It has been four years since the issuance of MichCon's last rate order and it cannot be assumed that other factors have remained unchanged." The Attorney General contends that this finding was not supported by competent, material, and substantial evidence on the whole record. We again disagree.

MichCon's manager of financial accounting testified that, although the company's earnings were in excess of its authorized rate of return, its general revenue rates reflected less than its booked depreciation expenses. The PSC determined that MichCon's depreciation accrual rates were inaccurate and that revised rates should be implemented in the following month in order to ensure the integrity of MichCon's accounting records and annual financial statements. In the absence of compelling evidence that MichCon would in fact reap windfall profits at the expense of ratepayers, the PSC acted within its broad discretion in concluding that "the record does not support [such] a finding."

We affirm.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald