

STATE OF MICHIGAN
COURT OF APPEALS

ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,
CONSUMERS ENERGY COMPANY, and
ABATE,

Appellees.

UNPUBLISHED

August 27, 1999

No. 208537

Public Service Commission

LC No. 00010750

Before: Holbrook, P.J. and Zahra and J.W. Fitzgerald*, JJ

PER CURIAM.

The Attorney General appeals by right the opinion and order of the Michigan Public Service Commission holding that certain revenues were to be excluded from the Consumers Energy Company 1995-1996 Gas Cost Recovery (GCR) reconciliation proceedings conducted pursuant to MCL 460.6h; MSA 22.13(6h). We affirm.

Under MCL 460.6h(2); MSA 22.13(6h)(2), a mechanism is created that allows the MPSC to include a gas cost recovery clause in the rate or rate schedule of a gas utility. Such a clause permits the monthly adjustment of rates for gas to allow the utility to recover booked costs of gas sold by the utility that are incurred under reasonable and prudent policies and practices. To implement the clause, a utility is required to file annual GCR plan cases describing the utility's gas supply, changes in the cost of gas anticipated for the following year, and a five-year forecast of gas requirements, sources, and costs. The PSC conducts a review as a contested case proceeding to evaluate the reasonableness and prudence of the plan, and to approve, reject, or amend the GCR plan and forecast. *Attorney General v MPSC*, ___ Mich App ___, ___NW2d ___ (Docket No. 205845, issued 4/23/99).

The statute also requires the PSC to conduct a reconciliation proceeding in which the PSC reconciles the revenues received against the allowances for costs. The PSC must require a gas utility to

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

refund or credit any net overrecovery under the GCR clause and to charge for any underrecovery. MCL 460.6h(12)-(14); MSA 22.13(6h)(12)-(14).

This appeal concerns the treatment of revenues Consumers Energy received from a gas loan program and from cooperative marketing agreements. The PSC found that there was no demonstration on the record that the cost of gas to GCR customers was adversely affected by the gas loan program. The PSC concluded that the proper treatment of loan program revenues was a question to be decided in a general rate case, rather than in GCR proceedings. It also found that cooperative marketing agreement revenues were outside the scope of the GCR process. The PSC concluded that the statute provided no basis for requiring Consumers to share these revenues with GCR customers, and there was no evidence that the agreements increased the cost of GCR gas. The PSC denied the Attorney General's petition for rehearing.

Appellate review of PSC orders is narrow in scope. All rates, fares, regulations, practices and services prescribed by the PSC are deemed prima facie to be lawful and reasonable. MCL 462.25; MSA 22.44. The party attacking an order of the PSC bears the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8); MSA 22.45(8). A decision of the PSC is unlawful when it involves an erroneous interpretation or application of the law and it is unreasonable when it is unsupported by the evidence. *ABATE v PSC*, 219 Mich App 653, 659; 557 NW2d 918 (1996). This Court will give due deference to the administrative expertise of the PSC, and will not substitute its judgment for that of the PSC. *Ford Motor Co v PSC*, 221 Mich App 370, 373; 562 NW2d 224 (1997).

Appellant has failed to show that the PSC order is unlawful or unreasonable. This Court has repeatedly declined to second-guess a decision of the PSC on how to best account for certain costs. *Attorney General v PSC*, 215 Mich App 356, 365; 546 NW2d 266 (1996); *Attorney General v PSC No 1*, 171 Mich App 696, 699; 431 NW2d 47 (1988). Where the loan and cooperative marketing agreements are not direct elements of the booked costs of gas, there is no showing that the PSC decision to defer a decision on the treatment of these revenues to a general rate case was an erroneous application of the law. We defer to the administrative expertise of the PSC as to the treatment of these revenues. *Ford Motor Co, supra*.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra

/s/ John W. Fitzgerald