

STATE OF MICHIGAN  
COURT OF APPEALS

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TURTLE LAKE CLUB,

Appellant,

V

MICHIGAN PUBLIC SERVICE COMMISSION,  
PAXTON RESOURCES, L.L.C., and UPPER  
MULVANEY RESOURCES GROUP,

Appellees.

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UNPUBLISHED

August 17, 2001

No. 221812

MPSC

LC No. 00-011765

Before: K. F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Appellant Turtle Lake Club appeals as of right from an opinion and order of the Michigan Public Service Commission (MPSC) authorizing Paxton Resources' amended application, pursuant to § 9 of Act 9, MCL 483.109, to construct and operate a 900-foot section of natural gas transmission pipeline known as the Lone Wolf Pipeline, in Ossineke Township, Alpena County.<sup>1</sup> We affirm.

A party challenging an order of the MPSC must show by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.25(1). A decision of the MPSC is unlawful when it involves an erroneous interpretation or application of law, and is unreasonable when it is "arbitrary, capricious or totally unsupported by admissible and admitted evidence." *Associated Truck Lines, Inc v PSC*, 377 Mich 259, 279; 140 NW2d 515 (1966). Where the MPSC conducts a hearing, the decision must be supported by competent, material, and substantial evidence on the whole record. *Attorney General v PSC*, 206 Mich App 290, 295-296; 520 NW2d 636 (1994).

Paxton's application before the MPSC seeking approval of a natural gas pipeline was governed by § 9 of Act 9, MCL 483.109, which provides:

Any corporation, association or person within the terms of this act desiring  
to construct transmission mains for the transportation or conveying of natural gas

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<sup>1</sup> Appellee Upper Mulvaney Resources Group filed an appearance in this appeal, but no brief has been submitted.

from its source to the locality or localities where utilized, shall submit to the commission, accompanied by due application, a map or plat of such proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections, and shall first receive the approval of the commission of such map, route and type of construction before proceeding with the actual construction of such transmission lines, and *it shall be the duty of the commission to examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public before approval of such map and proposed transmission line or lines:* Provided, That persons, associations or corporations having already acquired the rights of common purchasers and common carriers at the time the provisions of this act became effective shall be required to file the map or plat provided for in this section only. [MCL 483.109. Emphasis added.]

Appellant Turtle Lake contends that the MPSC's finding that the Lone Wolf pipeline would serve the public convenience and necessity was unsupported by competent, material and substantial evidence on the whole record, and was thus unreasonable, and was unlawful because based on an erroneous interpretation of what constitutes the "public convenience and necessity." We disagree.

At the hearing before the ALJ, Paxton presented several witnesses in support of its claims that the Lone Wolf pipeline would serve the public convenience and necessity by (1) opening additional markets to shippers, (2) providing shippers an economically viable option to treat their gas at different processing plants, (3) providing shippers the economic flexibility to move gas in a different direction when necessary, (4) providing shippers a way to get their gas to the pipelines and processing plants to which their reserves are dedicated, and (5) extending the economic life of the gas fields being served by Lone Wolf. In addition, MPSC staff witness Donald J. Mazuchowski testified in support of the application, opining that the pipeline would provide Beaver Creek shippers an opportunity to move their gas to the west if the Thunder Bay-Spartan valve was closed.

Turtle Lake contends that the MPSC disregarded the testimony of its expert, Beth Knol, who disagreed with Paxton's witnesses regarding whether the proposed pipeline was duplicative and unnecessary, and further testified that the pressures in the pipeline system were such that the gas would not be able to move as described by Paxton's witnesses.

The MPSC found that a finding of public convenience and necessity is not undermined simply because the pipeline will parallel an existing pipeline for the 900-foot distance, because the overall pipeline arrangement must be considered. The MPSC further determined that Paxton

could demonstrate a sufficient showing of need based on economic need, rather than the volume constraints of the existing system, and could show a benefit to the public by the extension of economic viability of natural gas recovery. The MPSC found that Paxton demonstrated that the public will benefit from such an extension of viability for gas wells served by the Beaver Creek and Lone Wolf lines<sup>2</sup> due to the ability to ship gas west without the necessity to pay an additional tariff to use the Thunder Bay line, which parallels the Lone Wolf line. The MPSC concluded that this economic benefit would extend beyond the producers to the public. The MPSC found that the economic benefit would be available even if the gas did not actually flow west, because the benefits could be reaped by continuing the practice of “back hauling,” a paper swap of gas heading in one direction for gas heading in another direction.

We conclude that the MPSC’s decision was supported by competent, material and substantial evidence on the whole record. Further, that Turtle Lake presented testimony that conflicted with that of Paxton’s witnesses is insufficient to satisfy Turtle Lake’s burden of rebutting the prima facie presumption that the PSC’s order was lawful and reasonable. MCL 462.25(1).

It is for the PSC to weigh conflicting opinion testimony of the qualified (“competent”) experts to determine how the evidence preponderated. Expert opinion testimony is “substantial” if offered by a qualified expert who has a rational basis for his views, whether or not other experts disagree. [*North Michigan Land & Oil Corp v PSC*, 211 Mich App 424, 439; 536 NW2d 259 (1995), quoting *Antrim Resources v PSC*, 179 Mich App 603, 620; 446 NW2d 515 (1989).]

The testimony of even one expert can be “substantial” evidence. *Michigan Intra-State Motor Tariff Bureau, Inc v PSC*, 200 Mich App 381, 388; 504 NW2d 677 (1993); *Ass’n of Businesses Advocating Tariff Equity v PSC*, 192 Mich App 19, 27; 480 NW2d 585 (1991). The disputed factual matters—public convenience and necessity, safety, and environmental soundness—were properly within the sphere of the administrative expertise of the MPSC and this Court will not substitute its judgment for that of the MPSC on such matters. *Residential Ratepayer Consortium v PSC*, 239 Mich App 1, 3; 607 NW2d 391 (1999). Turtle Lake has failed to support its assertion that the public benefit found by the MPSC is either unsupported by the evidence, or insufficient to satisfy the statute.

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<sup>2</sup> The Beaver Creek line, built by Paxton on property as to which it already owned a right of way, was approved by the MPSC in an ex parte proceeding. The Lone Wolf line at issue here is an extension of the Beaver Creek line.

Appellant has failed to satisfy its burden to show by clear and satisfactory evidence that the MPSC's order was either unlawful or unreasonable, or that its factual findings were not supported by competent, material, and substantial evidence on the whole record.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot