

STATE OF MICHIGAN
COURT OF APPEALS

MVW LIMITED PARTNERSHIP, HERSEE
CORPORATION, and MASK OIL, LLC,

UNPUBLISHED
October 23, 2001

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and MICHIGAN CONSOLIDATED GAS
COMPANY,

No. 217495
MPSC
LC No. 11463

Appellees.

MVW LIMITED PARTNERSHIP, HERSEE
CORPORATION, and MASK OIL, LLC,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and MICHIGAN CONSOLIDATED GAS
COMPANY,

No. 217496
MPSC
LC No. 11464

Appellees.

FRUEHAUF ANTRIM LIMITED
PARTNERSHIP,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and MICHIGAN CONSOLIDATED GAS
COMPANY,

No. 217640
MPSC
LC No. 11464

Appellees.

Before: K. F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

On July 14, 1997, Michigan Consolidated Gas Company (MichCon) filed applications with the Public Service Commission (PSC) pursuant to MCL 483.101 *et seq.* (Act 9), seeking relief from excessive prices in certain natural gas purchase contracts with appellants MVW Limited Partnership, Hersee Corporation, and Mask Oil [Docket Nos. 217495 & 217496] and Fruehauf Antrim Limited Partnership [Docket No. 217640]. On January 19, 1999, the PSC issued an opinion and order rejecting appellants' challenge to the PSC's jurisdiction over the issues raised and holding that the price of gas in the contracts would be reduced from \$3.15142 per Mcf to \$2.83 per Mcf, inclusive of add-ons. MVW and Fruehauf appeal as of right from this decision. We affirm.

Appellants first argue that the PSC lacked jurisdiction under Act 9 to make a price redetermination in a gas purchase contract. We disagree. The issue whether the PSC has the authority to unilaterally change a contract price has been addressed by this Court, and the PSC properly cited this authority in its opinion. See, e.g., *North Michigan Land & Oil Corp v Public Serv Comm*, 211 Mich App 424; 536 NW2d 259 (1995); *Miller Bros v Public Serv Comm*, 180 Mich App 227; 446 NW2d 640 (1989); *Antrim Resources v Public Service Comm*, 179 Mich App 603; 446 NW2d 515 (1989). We expressly decline appellants' invitation to disapprove or overrule these decisions.

We further reject appellants' contention that the PSC's exercise of jurisdiction has the effect of sanctioning a breach of contract, which would be within the jurisdiction of the circuit court, not the PSC. See *Dominion Reserves, Inc v Michigan Consolidated Gas Co*, 240 Mich App 216, 221-222; 610 NW2d 282 (2000); *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 216; 561 NW2d 854 (1997); *North Michigan*, *supra* at 437.

Appellants next argue that their contractual and constitutional rights have been impaired because the PSC exceeded its jurisdiction by establishing a new contract price. Given that we have rejected appellants' jurisdictional challenge, these claims are likewise rejected. In any event, we agree with this Court's analysis of similar claims in *North Michigan*, *supra* at 431-432 and *Antrim Resources*, *supra* at 616-617.

Appellants next assert that their substantive due process rights have been infringed as a result of the PSC's historical, institutional bias against gas producers. In support of this claim, appellants simply point to a series of cases in which the PSC rejected the position advocated by the gas producer and accepted that of the utility. It hardly needs be said that repeated rulings against a litigant, standing alone, do not demonstrate bias or a denial of substantive due process. See *Mahlen Land Corp v Kurtz*, 355 Mich 340, 350; 94 NW2d 888 (1959); *Wayne County Prosecutor v Parole Bd*, 210 Mich App 148, 155; 532 NW2d 899 (1995). Although appellants need not demonstrate actual bias to establish a violation of due process, they must demonstrate a

risk or probability of unfairness that is too high to be constitutionally tolerable. See *Ferrario v Bd of Ed of Escanaba Area Public Schools*, 426 Mich 353, 379-380; 395 NW2d 195 (1986); *Hagerty v State Tenure Comm*, 179 Mich App 109; 445 NW2d 178 (1989). No such showing has been made here.

Lastly, appellants assert that the PSC's decision to establish a new fixed gas price of \$2.83 per Mcf was not supported by competent, material, and substantial evidence on the whole record. In particular, appellants challenge numerous specific findings of the PSC which relate to such factors as add-ons, shrinkage adjustments, intrastate gas premiums, spot market prices, and forecast price methodologies. Such factors concern matters to which the judiciary will defer to the administrative expertise of the PSC, absent some breach of a constitutional standard or statutory mandate or limitation. As this Court aptly stated in *Miller Bros, supra* at 234-235, "That is the type of evidence the PSC is particularly equipped to weigh." Here, because the PSC's decision was supported by competent, material, and substantial evidence on the whole record, Const 1963, art 6, § 28, and appellants have failed to meet their burden of proving by clear and satisfactory evidence that the decision was unlawful or unreasonable, MCL 462.25, we affirm.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald