

STATE OF MICHIGAN
COURT OF APPEALS

In re Implementation of Section 401e of 2007 PA 165.

COUNTY OF GRAND TRAVERSE, COUNTY
OF MONTCALM, COUNTY OF DELTA,
COUNTY OF HILLSDALE, COUNTY OF
HOUGHTON, COUNTY OF DICKINSON,
COUNTY OF CASS, COUNTY OF CHIPPEWA,
COUNTY OF MENOMINEE, COUNTY OF
TUSCOLA, COUNTY OF CHEBOYGAN,
COUNTY OF EMMET, COUNTY OF CHARLE-
VIOX, COUNTY OF SAGINAW, COUNTY OF
NEWAYGO, COUNTY OF IONIA, COUNTY
OF GOGEBIC, COUNTY OF OGEMAW,
COUNTY OF MACKINAC, COUNTY OF
ALCONA, COUNTY OF ALPENA, COUNTY
OF HURON,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and TELECOMMUNICATIONS ASSOCIATION
OF MICHIGAN,

Appellees.

In re Implementation of Section 401e of 2007 PA 165.

COUNTY OF VAN BUREN,

Appellant,

v

UNPUBLISHED
April 20, 2010

No. 285896
Public Service Commission
Case No.00-015489

No. 285964
Public Service Commission
Case No.00-015489

MICHIGAN PUBLIC SERVICE COMMISSION
and TELECOMMUNICATIONS ASSOCIATION
OF MICHIGAN,

Appellees.

In re Implementation of Section 401e of 2007 PA 165.

COUNTY OF SAINT CLAIR,

Appellant,

v

No. 286244
Public Service Commission
Case No.00-015489

MICHIGAN PUBLIC SERVICE COMMISSION
and TELECOMMUNICATIONS ASSOCIATION
OF MICHIGAN,

Appellees.

Before: METER, P.J., MURPHY, C.J., AND ZAHRA, J.

ZAHRA, J (*concurring in part and dissenting in part*).

I concur in the portion of the majority opinion that affirms the orders of the Public Service Commission (PSC) adjusting downward the surcharges requested by the various county litigants for emergency telephone services under the Emergency 9-1-1 Service Enabling Act, MCL 484.1101 *et seq.* (the Act). I respectfully dissent from the conclusion reached in the majority opinion that the PSC improperly treated the formula of 2007 revenues plus 2.7 percent (as provided in MCL 484.1401e(2)) as a ceiling when adjusting surcharges. I would affirm all of the orders of the PSC that are the subject of this appeal.

The majority opinion has wrongly interpreted MCL 484.1401e. Pursuant to the plain and clear meaning of MCL 484.1401e(2), “[i]f the surcharge is rejected, it shall be adjusted to ensure that the revenues generated do not exceed the amounts allowed under this subsection.” The PSC rejected the requested surcharges submitted by the complaining counties. The only revenue formula allowed under subsection 401e(2) is 2007 revenues plus 2.7 percent. Thus, pursuant to the plain meaning of this statute, the PSC was required to adjust the surcharge to ensure that the revenues generated do not exceed 2007 revenues plus 2.7 percent.

The majority opinion concludes that because section 401b is mentioned in subsection 2, the “necessary and reasonable” language from that section is incorporated into subsection 2. Thus, the majority concludes that the amount allowable under subsection 2 is not “the amount

received in 2007 plus an amount not to exceed 2.7% of the 2007 revenues[,]” as expressly provided in subsection 2. Rather, the majority imposes on the PSC a duty “to adjust those proposed surcharges that were subject to adjustment to levels necessary and reasonable as discretely determined” Majority opinion at p 11. Nothing in MCL 484.1401e(2) supports this outcome.

MCL 484.1401e(2) states:

If the amount to be generated in 2008 exceeds the amount received in 2007 plus an amount not to exceed 2.7% of the 2007 revenues, the commission, in consultation with the committee, shall review and approve or disapprove the county 9-1-1 surcharge adopted under section 401b. If the commission does not act by March 17, 2008, the county 9-1-1 surcharge shall be deemed approved. If the surcharge is rejected, it shall be adjusted to ensure that the revenues generated do not exceed the amounts allowed under this subsection. In reviewing the surcharge under this subsection, the commission shall consider the allowable and disallowable costs as approved by the committee on June 21, 2005.

The Legislature’s reference to section 401b was only to identify the requested surcharge that the PSC was required to approve or disapprove. The Legislature did not refer to section 401b to incorporate any of its provisions into subsection 2. The Legislature further expressly directs the PSC on its duty in the event the PSC rejects a surcharge sought by a county—to adjust the surcharge to ensure that it does not exceed the amounts allowed under “this subsection,” which is subsection 2, and not MCL 484.1401b(2) as the majority maintains. MCL 484.1401e(2). Again, there is only one formula under subsection 2 that describes the allowable surcharge: “2007 plus an amount not to exceed 2.7% of the 2007 revenues.” For this reason, I conclude that upon rejection of the surcharge requested by the counties pursuant to section 401b, the PSC was obligated to reduce the surcharge to an amount not in excess of 2007 revenues plus 2.7 percent.

I also find no merit to the counties’ claims that the PSC failed to give individualized attention to each county’s request. The counties bore a heavy burden to establish that the surcharges sought, to the extent they exceeded 2007 revenues plus 2.7 percent, were necessary and reasonable. The counties, for the most part relied on budgets, without underlying data establishing their need, to support their respective claims. However, the mere creation of a budget does not establish necessity or reasonableness. The PSC’s rejection of these surcharges should be affirmed.

The counties also argue they were misled by the Commission because they presented their evidence to the 9-1-1 Committee rather than the PSC. The counties claim the January 2, 2008, order of the PSC limited the proofs they were to present to the PSC to items specifically referenced in the Act. I disagree. While the January 2, 2008 order requires presentation by February 15, 2008, of the materials referenced in the Act, nothing in the order limits the counties from presenting additional materials to support their respective claims. Further, the order and the Act require this information from any county intending to impose a surcharge, regardless of whether the surcharge exceeded 2007 revenues plus 2.7%. Common sense dictates that if a county is requesting imposition of a surcharge that will trigger PSC review and approval, detailed evidence to substantiate the request should be presented to the PSC.

This issue aside, the Act requires the PSC to review in consultation with the committee, at the requests of the counties. Here, the March 3, 2008 order of the PSC that rejects the counties' requests references the committee report. Thus, I conclude the PSC considered the committee report, which considered the evidence presented to the committee by the counties, before rejecting each county's request. I therefore conclude the PSC did precisely what it was statutorily permitted to do—it reviewed and considered each county's request for a surcharge as well as the report of the committee and then it rejected each county's request for a surcharge calculated to exceed 2007 revenues plus 2.7%. I find no error in the action of the PSC on the record presented. I would affirm all orders of the PSC issued in this matter.

/s/ Brian K. Zahra