

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

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J.A.F. PROPERTIES, INC.,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,  
MICHCON PIPELINE COMPANY, SAGINAW  
BAY AREA LIMITED PARTNERSHIP, and  
SAGINAW BAY LATERAL COMPANY,

Appellees.

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UNPUBLISHED  
December 3, 1999

No. 209405  
MPSC  
LC No. 011294

Before: Neff, P.J., and Murphy and Joseph B. Sullivan\*, JJ.

PER CURIAM.

Appellant J.A.F. Properties, Inc. (JAF) appeals as of right from an order of the Michigan Public Service Commission (PSC) dismissing its complaint against MichCon Pipeline Company (MichCon), Saginaw Bay Area Limited Partnership (the Partnership), and Saginaw Bay Lateral Company (the Lateral Company). We affirm.

The Saginaw Bay pipeline, known as the Mainline, was designed for the transportation, processing, and marketing of natural gas and associated liquid hydrocarbons. The Mainline ships gas from both Prairie du Chien and Antrim fields. The Saginaw Bay Pipeline Company (Saginaw Bay), a subsidiary of MichCon, is the general partner and majority interest holder in the Partnership, which owns the Mainline. The Lateral Company, a separate subsidiary of MichCon, owns the lateral pipelines that connect to the Mainline.

In 1995 JAF signed a contract for the transportation of natural gas over the Mainline at a cost of twenty cents per one thousand cubic feet (Mcf). Section 11.2 of the contract allowed Saginaw Bay to terminate the agreement upon thirty days' written notice in the event that it determined, in its sole judgment, that the Mainline had reached the end of its economic life. In 1996, after a cash flow analysis revealed that the Mainline had a negative net present value, Saginaw Bay contacted each shipper

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

holding a Mainline contract, and informed it that pursuant to § 11.2 the contract would be terminated unless it was amended to increase the rate charged for transportation of natural gas to fifty cents per Mcf.

JAF filed a complaint against MichCon, the Partnership, and the Lateral Company, arguing that Saginaw Bay's attempt to obtain a modification of the contract by threatening to discontinue service: (1) constituted a monopoly abuse of its certificate of public convenience and necessity to operate the Mainline; (2) violated the terms of the PSC's order approving the construction and operation of the Mainline; (3) discriminated against JAF and other similarly situated transportation customers; and (4) violated 1929 PA 9 (Act 9), MCL 483.101 *et seq.*; MSA 22.1211 *et seq.*, by attempting to alter the rate structure without prior PSC approval. JAF requested that the PSC bar termination of the contract, continue the original transportation rate, and find that Saginaw Bay's attempt to increase the rate constituted discrimination in violation of MCL 483.106; MSA 22.1316 and MCL 483.109; MSA 22.1319.

The PSC dismissed JAF's complaint. Initially, the PSC rejected the assertion that it was without jurisdiction to interpret the contract or to make findings of fact regarding whether Saginaw Bay was justified in terminating the agreement. The PSC found that Saginaw Bay's conclusion that the Mainline was at the end of its economic life was supported by the evidence, that Saginaw Bay's decision to charge lower rates for the shipment of Antrim gas did not constitute unlawful discrimination, and that Saginaw Bay was not required to obtain Commission approval prior to raising rates.

The standard of review for PSC orders is narrow and well established. Pursuant to MCL 462.25; MSA 22.44, all rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, *prima facie*, to be lawful and reasonable. *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC bears the burden of establishing by clear and convincing evidence that the order is unlawful or unreasonable. MCL 462.26(8); MSA 22.45(8). Const 1963, art 6, § 28 also applies, and provides that a final agency order must be authorized by law and be supported by competent, material, and substantial evidence on the whole record. A reviewing court gives due deference to the PSC's administrative expertise, and is not to substitute its judgment for that of the PSC. *Attorney General v Public Service Comm*, 206 Mich App 290, 294; 520 NW2d 636 (1994).

On appeal, JAF argues that its complaint did not state a breach of contract claim; rather, the allegations were directed to Act 9, the authorizing legislation. The PSC's order dismissing the complaint is unlawful and unreasonable because the PSC exceeded its jurisdiction by interpreting the contract. The interpretation of a contract for possible breach by one of the parties is within the exclusive jurisdiction of the circuit court. Const 1963, art 6, § 13.

We disagree. Other panels of this Court have repeatedly held that the PSC has the jurisdiction to hear and decide breach of contract claims. See, e.g., *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 216; 561 NW2d 854 (1997); *North Michigan Land & Oil Corp v Public Service Comm*, 211 Mich App 424, 437; 536 NW2d 259 (1995). While cases so holding have dealt with gas purchase contracts, the principle applies with equal force to gas transportation contracts.

MCL 483.110; MSA 22.1320 confers on the PSC the authority to approve contract changes, and does not distinguish between gas purchase and gas transportation contracts. Implicit in the authority conferred by MCL 483.110; MSA 22.1320 is the power to inspect and interpret provisions in contracts to determine whether they comply with PSC rules and regulations. *Antrim Resources v Public Service Comm*, 179 Mich App 603, 611-612; 446 NW2d 515 (1989). Moreover, when a claim is governed by the PSC regulatory scheme, as were JAF's claims, the PSC's legislative authority and the doctrine of primary jurisdiction place initial jurisdiction with the PSC. *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, 454 Mich 65, 77 n 15; 559 NW2d 647 (1997). The PSC did not act unlawfully or unreasonably by interpreting the contract in order to adjudicate JAF's complaint. MCL 483.110; MSA 22.1320; *Energy Reserves, supra*.

Next, JAF argues that Saginaw Bay violated MCL 483.104; MSA 22.1314, which required it to accept gas for shipment over the Mainline as long as it was paid the agreed-upon price and the gas met certain specifications, MCL 483.110; MSA 22.1320, which required it to obtain PSC approval prior to raising rates, and MCL 483.106; MSA 22.1316, which prohibited it from giving preferential pricing treatment to certain customers, by unilaterally raising the rate charged to certain shippers and threatening cancellation of the contracts if the shippers did not agree to pay the increased rates. The PSC was not required to interpret the contract to determine if Saginaw Bay violated these statutory provisions.

We disagree. The PSC acted within its authority by interpreting the contract. *North Michigan, supra*. JAF conceded that the decision to terminate the contract was within Saginaw Bay's sole discretion, but contended that the decision was not justified under the circumstances. The PSC was required to interpret § 11.2 of the contract in order to address JAF's own argument. Witnesses for Saginaw Bay presented cash flow analysis figures to support the position that the Mainline was no longer economically viable. This testimony constituted competent evidence to support the PSC's conclusion that Saginaw Bay's decision to terminate the contract was justified, notwithstanding the existence of contrary evidence presented by JAF. *Great Lakes Steel v Public Service Comm*, 130 Mich App 470, 481; 344 NW2d 321 (1983).

Furthermore, JAF's argument that Saginaw Bay engaged in unlawful discrimination by charging a lower rate to ship gas from Antrim fields is without merit. While a shipper is prohibited from giving preferential treatment to any customer with regard to pricing or service, MCL 483.106; MSA 22.1316, every customer need not be charged the same price. The reasonableness of the price charged a particular customer is determined by examining a variety of factors, including alternatives available to the customer. *Antrim Resources, supra*, 612-614. The evidence that Saginaw Bay's customers who shipped Antrim gas had competitive alternatives to shipping over the Mainline supported the PSC's conclusion that Saginaw Bay did not engage in discriminatory pricing. Const 1963, art 6, § 28.

Affirmed.

/s/ Janet T. Neff  
/s/ William B. Murphy  
/s/ Joseph B. Sullivan