STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, CONSUMERS ENERGY COMPANY, MIDLAND COGENERATION ACTION AGENCY, and MICHIGAN POWER LIMITED PARTNERSHIP,

Appellees.

UNPUBLISHED
November 27, 2001

No. 224687
Public Service Commission
LC No. 00-011180

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Michigan Community Action Agency Association (MCAAA) appeals as of right from the Public Service Commission's (Commission) August 31, 1999, power supply cost recovery reconciliation order. We affirm.

A review of the pertinent statutory authority as well as the relevant facts provides a useful starting point for our analysis in this case. Pursuant to MCL 460.6j, the Commission is permitted to include in its rate schedule for a utility a power supply cost recovery (PSCR) clause. The PSCR clause allows utilities to charge customers for anticipated costs associated with the supply of electrical power, such as the cost of generating fuel. MCL 460.6j(1)(a); *Attorney General v Public Service Comm No 1*, 237 Mich App 27, 30; 602 NW2d 207 (1999). This Court has previously explained the process involving the use of the PSCR clause.

> The statute contemplates a multistep procedure. Each year a utility with such a clause in its rate schedule must file a PSCR plan and a five-year forecast of power supply requirements. The PSC may or may not make a finding and enter a temporary order approving or partially approving the PSCR plan. In any event, the PSC either approves, disapproves, or modifies the proposed PSCR plan for the upcoming year. After the end of the year, a reconciliation phase begins, whereby the PSC makes adjustments to take into account the true cost of supplying power. The PSC can order a utility to refund amounts collected in excess of the true cost

> or allow a utility to recoup additional expenses from customers in the next plan year. [*Id.*]

The facts in this case are not in dispute. After Consumers Energy Company filed applications to suspend its PSCR clause in Case Nos. U-11453 and U-11290, the Commission granted these requests. As relevant to the instant case, the Commission's February 11, 1998, order provided that a PSCR reconciliation for 1997 would occur, and that the base rate adjustment[1] needed to reflect the shift of costs from the suspended PSCR clause to base rates would be determined during the reconciliation.

Pursuant to the Commission's order, Consumers filed an application for reconciliation of its 1997 PSCR and for a permanent base rate adjustment arising from that reconciliation in Case No. U-11180, which gave rise to the present appeal. As relevant to this appeal, Consumers submitted a specific proposal detailing the procedure for suspending the PSCR clause. Specifically, Consumers proposed that the correct method for determining a permanent base rate adjustment would be to use its actual 1997 costs as determined in the 1997 PSCR reconciliation. The Commission subsequently adopted Consumers' proposal, concluding that the permanent base rate adjustment would be determined during the 1997 reconciliation based on 1997 actual cost levels.

After MCAAA sought to introduce evidence concerning fuel and coal-related costs for 1998 and subsequent years to determine the permanent base rate adjustment, the hearing referee granted this request. Challenging this ruling, Consumers applied for leave to appeal to the Commission in May 1998. The Commission reversed the hearing referee's holding in an order entered June 26, 1998. The Commission concluded that it had never approved of an inquiry beyond the scope of Consumers' actual 1997 costs. Specifically, the Commission reasoned:

> To the extent that the intervenors assert that the law requires the Commission to conduct a full and complete hearing, to set rates that will be in effect prospectively only after an examination of future costs, or to conclude that rates would be lower with the PSCR clause suspended, the Commission finds the arguments unpersuasive. The Commission is not required to adopt any particular approach to setting just and reasonable rates. . . . Having decided to hold a hearing to consider a base rate adjustment, the Commission is not required by law to open that hearing to all issues that any party desires to raise. The Commission defined the scope of this case in the February 11, 1998 order. It finds no reason to expand the scope at this time.

The Commission expressly reaffirmed this ruling in its August 31, 1999, order. MCAAA now appeals as of right.

It is well settled that our review of the Commission's order is narrow in scope. All rates, fares, regulations, practices and services set forth by the Commission are presumed, prima facie,

[1] According to the record, a base rate adjustment is the incremental amount per kilowatt-hour paid by customers as a surcharge for power supply costs and is cumulative to the base factor used to recover PSCR costs in base rates.

to be lawful and reasonable. MCL 462.25; *Attorney General v Public Service Comm, No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). This Court defers to the Commission's administrative expertise and may not substitute its judgment for that of the agency. *Attorney General v Public Service Comm*, 231 Mich 76, 78; 585 NW2d 310 (1998) (hereinafter referred to as "*Northern States*"). A party challenging a Commission order setting rates bears the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8); *North Michigan Land & Oil Corp v Public Service Comm*, 211 Mich App 424, 438; 536 NW2d 259 (1995).

> To prove that the Commission's order was unlawful the appellant must show "that the commission failed to follow some mandatory provision of the statute or was guilty of an abuse of discretion in the exercise of its judgment." *In re MCI Telecommunications Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). Our Supreme Court has explained that "[t]he hurdle of unreasonableness is equally high. Within the confines of its jurisdiction, there is a broad range or 'zone' or reasonableness within which the PSC may operate." *Id.* at 427. [*LCI Int'l Telecom Corp v Public Service Comm*, ___ Mich App ___; ___ NW2d ___ (Docket No. 224661, issued 9/21/01), slip op, 4.]

This Court has previously recognized that by virtue of MCL 460.6j(2), the Commission has authority to suspend a PSCR clause. *Northern States, supra* at 78-79. According to MCAAA, the Commission erred in not allowing it to present the testimony of its coal expert, Jerry Mendl, regarding projected declining coal costs for the period of 1998-2001. MCAAA further asserts that it was denied a reasonable opportunity to a full and complete hearing pursuant to MCL 460.6a(1). This statutory provision provides in relevant part:

> When a finding or order is sought by a gas or electric utility to increase its rates and charges or to alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, notice shall be given within the service area to be affected. The utility shall place in evidence facts relied upon to support the utility's petition to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. After first having given notice to the interested parties within the service area to be affected and affording interested parties a reasonable opportunity for a full and complete hearing, the commission, after submission of all proofs by any interested party, may in its discretion and upon written motion by the utility make a finding and enter an order granting partial and immediate relief.
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> (a) "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments *relevant to the specific element or elements of the request that are the subject of the hearing*. [Emphasis supplied.]

In our view, MCAAA has not carried its burden of establishing that the Commission's August 31, 1999, order was unlawful or unreasonable to the extent that it may be disturbed on appeal. There is no indication in the record that the Commission abused its discretion or failed to follow a mandatory provision of the governing statute. Rather, it is clear that the Commission rejected MCAAA's suggestion that it was required to consider evidence regarding projected declining coal costs from 1998 on because it had previously determined that the permanent base rate adjustment would be determined using actual 1997 costs determined in the 1997 reconciliation. It is well-settled that the Commission is not required to adopt any particular approach in setting just and reasonable rates. *Ass'n of Businesses Advocating Tariff Equity v Public Service Comm*, 208 Mich App 248, 258; 527 NW2d 533 (1994); *Residential Ratepayer Consortium v Public Service Comm*, 239 Mich App 1, 6; 607 NW2d 391 (1999). "The [Commission] is not bound by any single formula or combination of formulas, but is free to make pragmatic adjustments warranted by the particular circumstances." *Attorney General v Public Service Comm*, 189 Mich App 138, 147; 472 NW2d 53 (1991).

Likewise, the Commission may lawfully limit its proceedings to a single issue or purpose. *Consumers Power Co v Public Service Comm*, 181 Mich App 261, 266-267; 448 NW2d 806 (1989). Further, "it is certainly within the [Commission's] broad ratemaking authority to determine which factors it would consider" in assessing the permanent base adjustment rate. *Id.* at 267. Moreover, selection of the year to determine actual costs is within the Commission's "broad ratemaking power." *Id.* at 269.

Likewise, we reject MCAAA's contention that it was deprived of a full and complete hearing. We are satisfied that MCAAA was provided with a reasonable opportunity to present evidence relevant to the specific elements that were the subject of the hearing. Simply because MCAAA was precluded from presenting evidence irrelevant to the Commission's determination does not lead us to conclude that MCAAA was denied the opportunity to participate in a full and complete hearing. In sum, MCAAA has failed to present clear and satisfactory evidence that the Commission erred in limiting the scope of the 1997 reconciliation hearing to actual costs incurred in 1997 as a method for ascertaining the permanent base adjustment rate.

In view of our foregoing disposition, we decline the Commission's and Consumers' invitation to consider whether MCAAA's appeal is moot by operation of 2000 PA 141.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael R. Smolenski