STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION, Appellant, v MICHIGAN PUBLIC SERVICE COMMISSION and INDIANA MICHIGAN POWER COMPANY, Appellees.	UNPUBLISHED June 25, 2002 No. 226487 PSC LC Nos. 011181; 011531; 011792; 012127

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Michigan Community Action Agency Association (MCAAA) appeals as of right the PSC order approving a proposed settlement agreement resolving issues in four Indiana Michigan Power Company (I&M) Power Supply Cost Recovery (PSCR) proceedings. We affirm.

I&M and PSC staff presented a proposed settlement agreement incorporating the 1997 and 1998 PSCR reconciliation proceedings, and the 1999 and 2000 PSCR plan cases. The central dispute in each of the cases concerned the treatment of costs related to a prolonged shut down of the company's Donald Cook nuclear power plant. During the shut down, I&M was required to purchase power to replace the power lost while the plant was out of operation. Appellant disputed whether I&M should be allowed to recover the cost of purchased power.

The settlement suspended the PSCR clause, set PSCR factors, and required I&M to reduce its base rates by $2 million effective January 1, 2000. Prior to 2004, I&M could only seek changes to the fixed PSCR factor under the force majeure provision if its bond rating fell below investment grade, if it had an increase or decrease in costs amounting to more than 3% of its Michigan jurisdictional operating revenues caused by regulations or laws enacted after March 1, 1999, or if one of the Cook units was retired before January 1, 2004.

The PSCR factors allowed I&M to recover 15% of the net replacement power costs for the Cook plant outage for 1997 and 1998. I&M was also allowed to amortize some costs over a five-year period to spread the financial impact of the outage.

PSCR proceedings are governed by MCL 460.6j. Subsection (13) provides in part:

(13) In its order in a power supply cost reconciliation, the commission shall:

* * *

(c) Disallow net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

Appellant asserts that the settlement agreement was unreasonable because it allows I&M to recover for increased costs that were attributable to its negligence and its imprudent management of the Cook facility. It argues that the settlement disadvantages consumers by preventing a decrease in the PSCR factor, while allowing I&M to seek an increase under certain conditions, and it results in rates that are not just and reasonable.

If a rate approved is within the zone of reasonableness within which the PSC's judgment operates without judicial interference, this Court will not reverse a settlement order. *Attorney General v PSC No 2*, 237 Mich App 82, 91; 601 NW2d 225 (1999). Appellant has failed to show that the settlement results in a rate outside the zone of reasonableness.

1992 AACS, R 460.17333, provides that the commission may approve a settlement agreement in a contested case if it finds that the agreement is in the public interest and represents a fair and reasonable resolution of the proceeding. If the settlement is contested, it must be supported by substantial evidence on the record as a whole. The PSC found that the settlement was a reasonable compromise of opposing positions regarding cost recovery. Nuclear outages are particularly complex, and it is difficult to draw a bright line between situations where management has failed to live up to reasonable regulatory expectations and where the utility has been adversely affected by changes beyond its control.

There is substantial evidence on the record to support the settlement. Although the hearing officer found that I&M failed to show by clear and convincing evidence that the outage was not caused or prolonged by the utility's negligence or imprudent management, I&M filed exceptions to the proposal for decision. I&M argued that the shut down was caused by enhanced NRC scrutiny and an overstrict interpretation of existing rules and regulations. The matter was not fully litigated as the PSC had yet to hear the case. The proposal for decision was challenged and subject to review by the PSC, and the settlement compromise was reasonable.

There is no showing that the settlement is unreasonable because it provides contingencies under which I&M can reopen PSCR factors and base rates. The conditions do not allow for unreasonable rate increases, particularly where the settlement does not preclude interested parties from seeking a rate reduction at any time if conditions change. *Attorney General v PSC*, 231 Mich App 76, 82; 585 NW2d 310 (1998). The amortization provision will not result in a rate increase unless one of the Cook units is retired. At that point, a rate case will result and all interested parties will have the opportunity to be heard.

Although appellant argues that the PSC violated its notice and hearing rights through decisions controlling the procedures in the case, it has not challenged any particular ruling, and it has failed to cite any authority in support of its position. A party may not announce a position and leave it to the Court to discover and rationalize a basis for the claim. *Morris v Allstate Ins Co*, 230 Mich App 361, 370; 584 NW2d 340 (1998).

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper