STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of APPLICATION OF MICHIGAN CONSOLIDATED GAS COMPANY FOR SALE OF EXCESS GAS.

NATIONAL ENERGY MARKETERS ASSOCIATION, DIRECT ENERGY SERVICES, L.L.C., and INTERSTATE GAS SUPPLY, INC.,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION, and ATTORNEY GENERAL,

Appellees,

and

MICHIGAN CONSOLIDATED GAS COMPANY,

Petitioner-Appellee.

UNPUBLISHED
January 21, 2010

No. 282810
MPSC
LC Nos. 00-014800
00-015042

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

PER CURIAM.

I. Facts

Appellants National Energy Marketers Association (NEMA), Direct Energy Services, L.L.C. (Direct Energy), and Interstate Gas Supply, Inc. (IGS)[1] appeal by right a portion of an

[1] NEMA is a non-profit trade association represented wholesale and retail marketers of natural gas and electricity. Its membership includes "independent power producers, advanced metering, demand and load management firms, billing back office, customer service and related information technology providers." IGS and Direct Energy are "alternative gas suppliers" who (continued…)

August 21, 2007 order entered by appellee Michigan Public Service Commission (PSC) approving a settlement agreement between appellees Michigan Consolidated Gas Company (MichCon) and the Attorney General (AG) in the combined PSC proceedings concerning MichCon's proposed sale of excess gas supply (PSC Docket No. U-14800) and its request for approval of its natural gas cost recovery plan (GCR) and related actions for the 12 months ending March 31, 2008 (PSC Docket No. U-15042). We affirm.[2]

On August 23, 2006, MichCon filed an application to gain PSC approval of the sale of four billion cubic feet (Bcf) of excess natural gas in its underground storage supplies. It planned on ultimately removing seventeen Bcf from storage. However, MichCon planned to include the remaining thirteen Bcf of the removal, and the revenues generated by the sale of this portion of the gas, in its next GCR plan, since MichCon had purchased that gas separately. Unlike the sale of the remaining gas, MichCon wanted to keep the proceeds from the sale of the four Bcf of "native base gas"[3] to offset its capital improvements to its storage facilities rather than pass them on to the GCR customers.

The AG filed a petition to intervene and a motion for a contested case hearing on the sale. Petitions to intervene were then filed by the Residential Ratepayers Consortium (RCC), the Michigan Community Agency Action Association (MCAAA), the Michigan Public Service Commission staff (Staff), and NEMA. The Administrative Law Judge (ALJ) granted all of the intervention petitions except NEMA's, after finding that it did not have standing due to its primary status as a MichCon competitor. Counsel for NEMA then stated that it wished to "make a statement of position without becoming a party" pursuant to R 460.17207 and the ALJ granted the request.

RRC moved to consolidate Docket U-14800 with the upcoming GCR plan case, U-15042, and the ALJ agreed. MichCon then filed its plan case. While the other parties petitioned to intervene and were permitted to do so, NEMA did not again move to intervene. It instead renewed its request to file a statement of position and later did so. The parties to the consolidated cases signed a settlement of all of the issues, which the PSC subsequently adopted. Under the terms of the agreement, MichCon was permitted to make a total "decrement" of seventeen Bcf, with 7.2 Bcf allotted to "native base gas" and 9.8 Bcf allotted to working gas. MichCon was allowed to then sell 3.2 Bcf of the native base gas and keep the proceeds, and sell

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(…continued)

provide natural gas to MichCon's choice customers.

[2] We note that appellees argue that this Court lacks jurisdiction to hear appellants' appeal because they lack standing to appeal the PSC's order since they were not parties to the proceedings below and were not aggrieved by the PSC's decision. However, our clerk's office has determined otherwise, and we concur with this decision. MCR 7.203.

[3] "Base gas" is the minimum volume of gas required in a gas storage field to maintain sufficient pressure to operate the field and recover the working gas (i.e., the gas which can be cycled, injected into and withdrawn from, a natural gas storage field as a source of supply), and "native" base gas as the base gas that existed in the field at the time the gas storage field was originally certificated and developed.

the remaining native base gas to GCR customers at a fixed rate and use the proceeds to provide funding for residential energy efficiency programs.[4]

Approximately one month later, appellants moved to reopen and rehear the consolidated cases, NEMA renewed its motion to intervene, and Direct Energy and IGS also filed late petitions to intervene. The PSC denied the motions to reopen the case, and the petitions to intervene. It found that NEMA was correctly denied intervention status because its only interest was that of a competitor. The PSC also noted that NEMA did not timely challenge the denial of its petition to intervene. The PSC also found that Direct Energy and IGS had not demonstrated good cause to grant their late-filed intervention requests. The PSC then stated that, because appellants were not parties to the actions, they did not have standing to request rehearing or reopening of the proceedings under R 460.17401 (governing reopening of proceedings) or R 460.17403 (governing rehearing).

II. Denial of NEMA's Initial Petition to Intervene.

On appeal, petitioners first argue that the PSC erred when it agreed with the ALJ's determination that NEMA did not have standing to intervene in the U-14800 application. We disagree.

In *In re Application of Detroit Edison Co*, 276 Mich App 216, 224-225; 740 NW2d 685 (2007), this Court explained the applicable standard of review:

> The standard of review for PSC orders is narrow and well-defined. Pursuant to MCL 462.25, 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 has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment. *In re MCI Telecom Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). And, of course, an order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966). In sum, a final order of the PSC must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney General v Public Service Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987).

However, "an agency's interpretation of a statute, while entitled to 'respectful consideration,' 'is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.'" *Mich Envtl Council v Public Service*

[4] The 9.8 Bcf of working gas would take the place of what would have been presumably more expensive future gas purchases.

Comm, 281 Mich App 352, 357; 761 NW2d 346 (2008), quoting *SBC Michigan v Public Service Comm (In re Complaint of Rovas Against SBC Michigan)*, 482 Mich 90, 93, 103; 754 NW2d 259 (2008).

As to this Court's review of the PSC's factual determinations:

> Judicial review of administrative agency decisions must "not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 124; 223 NW2d 283 (1974); see also *In re Payne*, 444 Mich 679, 692-693; 514 NW2d 121 (1994) ("When reviewing the decision of an administrative agency for substantial evidence, a court should accept the agency's findings of fact if they are supported by that quantum of evidence. A court will not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record."). [*In re Application of Detroit Edison Co*, 483 Mich 993, 993; ____ NW 2d ____ (2009).]

In addition, "[w]hether a party has legal standing to assert a claim [is] a question of law that we review de novo." *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001).

In general, intervention in a PSC proceeding is governed by R 460.17201, which provides:

> (1) A person who is not a complainant, respondent, protestant, applicant, or staff, as defined in these rules, and who claims an interest in a proceeding may petition for leave to intervene. Unless otherwise provided in the notice of hearing, a petition for leave to intervene shall be filed with the commission not less than 7 days before the date set for the initial hearing or prehearing conference, and the petition shall be served on all parties to the proceeding. All parties shall have an adequate opportunity to file objections to, and to be heard with respect to, the petition for leave to intervene. A petition for leave to intervene that is not filed in a timely manner may be granted upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding. Except for good cause, an intervenor whose petition is not filed in a timely manner, but who is nevertheless granted leave to intervene, shall be bound by the record and procedural schedules developed before the granting of leave to intervene.
>
> (2) A petition for leave to intervene shall set out clearly and concisely the facts supporting the petitioner's alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceeding to fully and completely advise the parties and the commission of the specific issues of fact or law to be raised or controverted. If affirmative relief is sought, the petition for leave to intervene shall specify that relief. Prayers for relief may be stated in the alternative.

Although the rule speaks in terms of "leave to intervene," the PSC has indicated that it considers the ability to intervene to be one of right under circumstances where a party can

demonstrate that (1) it has suffered or will suffer an injury in fact, and (2) the interests allegedly affected fall within the zone of interests intended to be protected or regulated by the statute or constitutional guarantee in question. See PSC Order, U-10030, 6/12/92, 3. This test is taken from the federal test for establishing standing to bring an action established by the Supreme Court in *Ass'n of Data Processing Service Orgs, Inc v Camp*, 397 US 150, 90 S Ct 827; 25 L Ed 2d 184 (1970). It was subsequently applied to utility matters in *Drake v Detroit Edison Co*, 443 F Supp 833(WD Mich, 1978). See *Michigan Bell Telephone Co v Public Service Comm*, 214 Mich App 1, 4; 542 NW2d 279 (1995). As appellants acknowledge, for a party to show an injury in fact, it must demonstrate an invasion of a legally protected interest that is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 628-629; 684 NW2d 800 (2004) (citations omitted).

A. NEMA's Claim of Standing

In this and in the other issues raised on appeal, NEMA and the other appellants largely rest their claim that they satisfied the actual harm element of the PSC standing test by virtue of their representation of the choice customer's interests. We find this argument unpersuasive.

We note that NEMA did not raise this as a reason to grant its motion to intervene in its initial petition. When discussing whether a contested case hearing was warranted, NEMA stated that it was concerned about whether MichCon's direct customers would benefit from the sale more than the choice customers. However, it did not claim to represent these customers. Rather, it described itself as "a representative of a regionally diverse group of providers of energy and energy-related services" and listed its membership to include "gas marketers and providers of energy-related services and technologies." As to its actual interest in the proceedings, NEMA stated "[t]he ability of NEMA's members to participate in a competitive retail gas market in Michigan will be affected by the outcome of this proceeding." During the hearing on its petition, NEMA's counsel attempted to broaden NEMA's interest to include that of representing the choice customers and averred that it had "at least one member" that would be a choice customer. However, when the ALJ stated that it struck him that NEMA's "interests here are primarily a competitive one (sic)," counsel conceded, " I think that's fair in this case, yes." Generally, a party may not take a position below or stipulate to a matter and then argue on appeal that the resultant action was error. *Holmes v Holmes*, 281 Mich App 575, 587, 588; 760 NW2d 300 (2008). In addition, while NEMA continues to assert that at least one of its members is a choice customer, it has not presented any evidence to support this assertion, such as the name of that member. In their opposition to appellants' late-filed motions to intervene and to reopen the proceedings, the PSC Staff asserted that they, the AG, the RRC, and the MCAAA were the parties that actually represented the interests of gas customers. This assertion is supported by the statement of interests in the intervention petitions filed by the RRC, the MCAAA, and the AG. Thus, contrary to appellants' arguments, they have not shown that NEMA's intervention was essential to protect the choice customers' interests.

In addition, appellants have presented nothing, apart from supposition, to show that choice customers' interests would suffer "actual and imminent" harm here. While appellants maintain that inequities must have occurred, they provided no direct evidence of this below, and do not do so now. Nor have appellants adequately addressed their theory that choice customers suffer an inequity generally. Appellants have presented no authority to support the claim that

choice customers are somehow legally entitled to present rate decreases due to their actions in the past in helping "pay for" the gas in storage. Appellants have not addressed MichCon's assertion that the gas, at least the portion of it discussed in U-14800 that was apparently included when MichCon initially purchased the facility, was somehow the property of choice customers, or customers generally. Appellants have not provided citation to authority to counter the argument that choice customers pay for the service and do not acquire any interest in MichCon's property. See e.g. *Bd of Public Utilities Comm'rs v New York Telephone Co*, 271 US 23, 32; 46 S Ct 363; 70 L Ed 808 (1926). Perhaps most importantly, appellants do not refute the AG's argument below that "any alleged benefit solely to GCR customers can be acquired by a choice customer if the choice customer wants to become a GCR customer." "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). "Failure to brief a question on appeal is tantamount to abandoning it." *Mitcham, supra*.

B. Competitor Standing

Appellants argue in the alternative that the ALJ and the PSC erred when they determined that, as a competitor, NEMA could not show that it had, or would, suffer an injury in fact. However, this argument is largely based on the above assertion that appellants represent choice customers coupled with a claim that the choice customers were entitled to a portion of the revenue from the sale of the gas, and that the customers and the suppliers were harmed by "inequitable treatment that creates an unfair market environment." Appellants maintain that this is not merely a speculative interest, but a discrete and concrete financial interest in the relief sought by MichCon. We disagree.

As noted above, appellants' position as choice customer representatives directly contradicts NEMA's position before the ALJ. Further, NEMA has not presented "clear and satisfactory" evidence that any of its members is a choice customer. As to the stand-alone claim that NEMA or its members could show that they were in danger of suffering a concrete injury, we find it to be without merit. The future possibility of rate decreases for direct customers, which in turn might lead to a future loss of customers for NEMA's members, is too attenuated to constitute a clearly "actual and imminent" harm.

As to the second part of the test used by the PSC, appellants raise for the first time on appeal a claim that NEMA's interests are within the zone of interests of the statutes at issue, by claiming that the case involves the PSC's statutory regulatory authority under 1929 PA 9 (Act 9), particularly MCL 483.105 and MCL 483.106.[5] However, while appellants cite to the provisions they believe apply, they provide no other support for their contention that this case involves this provision, rather than a general disagreement with the prior PSC cases that held to the contrary.

[5] Contrary to its assertion on appeal, NEMA did not raise this before the ALJ, but argued generally that its interests, or rather the choice customers' interests, were within the zone of interests involved in the case.

See e.g., PSC Order, U-10030, 6/12/92, 7-8; PSC Order, U-9804, 5/17/91, 13-14; PSC Order U-9852, 9/25/91, 12-13. In addition, to the extent appellants attempt to explain the application of Act 9, and the duty of the PSC to prevent inequity, appellants couch them in terms of the effect on the interests of choice customers. As discussed above, NEMA has not shown that it represents the interests of the choice customers.

Appellants further argue that, even if this Court agrees with the PSC's determination that competitors generally do not have standing to intervene in a PSC proceeding, other jurisdictions have held that a claim of unfair and unlawful competition is distinct from the assertion of a mere competitive interest and that a competitor has standing to intervene in such a case. However, we note that in its initial petition, NEMA did not specifically allege that MichCon's actions amounted to unfair or unlawful competition, and raised only a general allegation of possible unfair competition during a latter filing concurring with the AG's request for a contested case hearing. Thus, to the extent this issue was raised before the ALJ, it was little more than a claim that NEMA's members were likely to lose revenues if MichCon lowered the price of its gas to direct customers. Competition does not equal unfair competition. Therefore, even were we to credit appellants' assertion that competitors raising valid claims of unfair competition should be treated differently, appellants have not shown that the ALJ's or the PSC's decisions were improper for this reason.

We further note that the PSC's determination here is also consistent with its prior rulings concerning intervention as a matter of right by competitors. See Order U-9852, 9/25/91, 12-13.

Thus, we conclude that appellants have not shown that the PSC acted unlawfully or unreasonably in applying its historical test to NEMA's initial request to intervene by right.

C. Use of MCR 2.209(A)

Appellants also appear to argue that the PSC erred when it did not use the intervention test set forth in MCR 2.209(A). Appellants did not raise this issue below. Therefore, it is unpreserved. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). "Although this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice, generally a 'failure to timely raise an issue waives review of that issue on appeal.'" *Id.* (citations omitted).

Appellants have not shown that the PSC's decision to rely on its traditional test for standing was erroneous. R 460.17103 provides in pertinent part, "In areas not addressed by these rules, the presiding officer may rely on appropriate provisions of the currently effective Michigan court rules." However, as discussed above, a specific rule exists regarding intervention in PSC proceedings. R 460.17201. In addition, to the extent that R 460.17103 permits the use of the court rules to decide when intervention is appropriate, the use of the court rules is permissive, not mandatory.

Nor can appellants show that, even under MCR 2.209(A), NEMA was entitled to intervention as of right such that the PSC's decision to deny NEMA standing was unlawful or unreasonable. MCR 2.209(A)(3) states that a person has the right to intervene:

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

For the reasons discussed above, even were we to find that the court rule can or does grant a more liberal ability to intervene than that of our Supreme Court's standing test, appellants' arguments are not persuasive. NEMA has no interest in the gas itself or in the storage facility. Also as noted above, NEMA has not convincingly shown that it, rather than the AG, the RRC, and the MCAAA, represents the interest of the choice customers, and in fact admitted as much in the proceedings below. Any member's competitive interest, or damage thereto, is speculative. Moreover, we are not convinced of the propriety of holding that a business competitor is entitled to intervene as a matter of right in its competitor's case absent a showing of something more than possible future damage to the competitor's bottom line. Such a rule could easily lead to abuse.

For these reasons, we find that appellants have failed to meet their burden of demonstrating by clear and satisfactory evidence that the PSC's decision affirming the ALJ's denial of NEMA's initial intervention petition was unlawful or unreasonable.

III. Late Intervention

Appellants next argue that the PSC erred when it denied appellants' late-filed motions to intervene. We disagree.

Pursuant to R 460.17201, "[a] petition for leave to intervene that is not filed in a timely manner may be granted upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding." The PSC's decision that appellants could not satisfy this test was not erroneous.

First, appellants have not shown good cause in seeking late intervention. Appellants' arguments that they did not have an earlier chance to intervene due to the timing of the consolidation of the cases is specious. The ALJ agreed to consolidate the cases on December 29, 2006, and to suspend the previously set schedule. RRC, ABATE, the Staff, and the AG petitioned to intervene in the new GCR plan case and the ALJ granted the petitions to intervene in February of 2007. At that time, NEMA could have again moved to intervene, and Direct Energy and IGS could have also tried to intervene.[6] Instead, NEMA chose to simply file a position statement, and moreover, waited until two months later to do so. In addition, appellants

[6] We do not necessarily agree with appellees' contention that NEMA waived any objection to the denial of its motion to intervene in case U-14800 because it did not appeal the ALJ's denial of that decision to the PSC, and did not attempt to intervene in case U-15042, see PSC rule R 460.17337(5). However, the PSC's notation that NEMA's response was untimely was not erroneous, see R 460.17337(1), and supports the PSC's subsequent decision that NEMA could not show good cause for late intervention.

did not attempt to intervene after the settlement agreement was proposed. They instead waited a month until after the PSC approved it. Appellants' apparent claim that any new attempt to intervene would have been futile is speculative. Nor did appellants raise anything new when they later moved to intervene. Their arguments were essentially the same as those presented in NEMA's initial position statement, albeit coupled with a claim that the ALJ should have let NEMA intervene initially. Appellants have not shown that the PSC erred when it determined they did not have good cause for late intervention.

In addition, appellants have not shown that a grant of the petition would not have delayed the proceeding or unduly prejudiced any party to it. The case had been concluded by settlement after lengthy proceedings and considerable effort by the parties. Appellants' contention that the settlement agreement could have simply been "tweaked" to provide more relief to the choice customers directly contradicts appellants' own claim that more discovery was needed to discover the inequities they claim exist here. We also find such a contention without merit considering what would most likely have been strenuous objections by the parties, as shown by their vehement opposition to the late intervention motions.

In summary, appellants have not presented clear and satisfactory evidence that the PSC's denial of appellants' late petitions to intervene was unlawful or unreasonable. MCL 462.26(8).

IV. Appellants' Petitions on PSC Proceedings

Appellants next argue that the PSC erred in denying appellants' motion to reopen proceedings and petition for rehearing. They contend that the PSC erroneously found that appellants could not move to reopen proceedings or to seek rehearing under R 460.17401 and R 460.17403. We disagree.

A motion to reopen PSC proceedings is governed by R 460.17401, which provides in pertinent part:

> (1) A proceeding may be reopened for the purpose of receiving further evidence when a reopening is necessary for the development of a full and complete record or there has been a change in conditions of fact or law such that the public interest requires the reopening of the proceeding.
>
> (2) After providing due notice and an opportunity for the parties to be heard, the presiding officer, upon his or her own motion or upon motion of any party, may reopen the proceeding at any time before the date for the filing of exceptions to a proposal for decision or, if provided for, replies to exceptions. After the date for filing exceptions or replies to exceptions and until the expiration of the statutory time period for filing a petition for rehearing, the commission may reopen a proceeding upon its own motion or motion of any party.

Thus, to move to reopen a proceeding, the movant must be a party to the proceeding. Rehearings are governed by R 460.17403, which provides:

> 1) A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or

> order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

While this provision does not state who can move for rehearing, the PSC found below that this was governed by MCL 24.287(1), which provides that "[a]n agency may order a rehearing in a contested case on its own motion or on request of a party." As noted by appellants, MCL 24.205(6) defines "party" in pertinent part as "a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case." Under these provisions, the resolution to the question whether the PSC erred in finding that appellants could not move to reopen the proceedings or to request rehearing depends on appellants' status. They were not parties, and we have concluded that the PSC did not act clearly unreasonably or unlawfully when it refused to allow appellants to intervene. Thus, we find that appellants cannot show that, under MCL 24.205(6), they were "entitled of right to be admitted." Therefore, the PSC did not err when it would not allow appellants to move for rehearing or to reopen the case.

Appellants also contend that the PSC erred when it ignored its power to sua sponte reopen the proceedings or grant rehearing. However, the fact that the PSC could have acted on its own motion does not equate to a finding that its decision not to do so is unreasonable or unlawful. Appellants point to the PSC's obligation to implement the power given it in 1929 PA 9, presumably a reference to MCL 483.105 (providing the PSC the right to regulate gas supplies), and MCL 483.106 (disallowing preferences) to support their position that the PSC has authority, and a responsibility, to require rehearing to explore whether the settlement agreement inappropriately benefited MichCon's customers over the choice customers. However, appellants did not raise this claim in their motion to reopen or for rehearing. And appellants cannot show that the PSC's actions clearly contradict the language of these provisions, or that the PSC was clearly derelict in its responsibilities. While appellants maintain that inequities must have occurred, they provided no direct evidence of this below, and do not do so now. Nor, as noted above, do appellants explain how the actual parties to the proceedings failed to advocate for choice customers. In addition, their claim that the PSC failed to consider the rights, if any, of the choice customers when deciding whether to approve the settlement agreement appears to be supported only by the somewhat circular argument that the PSC did not provide the relief appellants now seek. The approval of a proposed settlement agreement, which directly involves the PSC's administrative expertise, is entitled to great deference by this Court. This Court should not substitute its judgment for that of the PSC. *Attorney General v Pub Service Comm*, 237 Mich App 82, 94; 602 NW2d 225 (1999). Appellants have not shown the PSC's refusal to sua sponte reopen the proceedings or to rehear the case was clearly unlawful or unreasonable.

V. Remand for Evidentiary Hearing

Citing the lack of evidence concerning the fees and charges paid by choice customers or any corresponding benefits to them in the settlement agreement reached by the parties, appellants

next argue that a remand for further evidentiary proceedings are required because the PSC's decision was not supported by any evidence on the record. We disagree.

Appellants have not presented anything to support their position that this Court should or could simply order a remand to help appellants more fully develop their claims on appeal. In effect, such an action would amount to this Court stepping into the shoes of the PSC and granting appellants' motion to reopen the case. Appellants have failed to introduce any supporting authority to show that this Court can sua sponte take notice of appellants' alleged inequities between the choice and direct gas customers and direct the PSC to admit or consider specific evidence about this issue. Accordingly, we need not address this issue. *Wilson*, 457 Mich at 243.

Even were we to reach this issue, appellants have failed to show that the PSC acted unlawfully or unreasonably. As discussed above, appellants' claim that their interests are intertwined with those of the choice customers is at odds with NEMA's acknowledgement below to the contrary and is unpersuasive. In addition, appellants have presented no evidence to support a claim that MichCon's decision, or the settlement, treats choice customers unfairly. Appellants' request for a remand appears to be a fishing expedition to enable them to obtain some support for their speculative assertions, which we decline.

Affirmed.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ Donald S. Owens