STATE OF MICHIGAN

COURT OF APPEALS

In re Application of Consumers Energy Company to Increase Rates.

MUNICIPAL COALITION,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION, MICHIGAN STATE UTILITY WORKERS COUNCIL UTILITY WORKERS UNION OF AMERICA, METAL TECHNOLOGIES, INC., RAVENNA CASTING CENTER, INC., and HEMLOCK SEMICONDUCTOR CORP.,

Appellees,

and

CONSUMERS ENERGY CO.,

Petitioner-Appellee.

UNPUBLISHED
October 30, 2012

No. 295287
Public Service Commission
LC No. 00-015645

In re Application of Consumers Energy Company to Increase Rates.

ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY,

Appellant,

v

No. 296625
Public Service Commission

MICHIGAN PUBLIC SERVICE COMMISSION, MUNICIPAL COALITION, METAL TECHNOLOGIES, INC., RAVENNA CASTING CENTER, INC., and HEMLOCK SEMICONDUCTOR CORP.,

Appellees,

and

CONSUMERS ENERGY CO.,

Petitioner-Appellee.

LC No. 00-015645

In re Application of Consumers Energy Company to Increase Rates.

ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, MICHIGAN MUNICIPAL COALITION, METAL TECHNOLOGIES, INC., RAVENNA CASTING CENTER, INC., and HEMLOCK SEMICONDUCTOR CORP.,

Appellees,

and

CONSUMERS ENERGY CO.,

Petitioner-Appellee.

No. 296633
Public Service Commission
LC No. 00-015645

In re Application of Consumers Energy Company to Increase Rates.

PHILLIP FORNER,

Appellant,

v

No. 296640
Public Service Commission
LC No. 00-015645

MICHIGAN PUBLIC SERVICE COMMISSION, METAL TECHNOLOGIES, INC., RAVENNA CASTING CENTER, and HEMLOCK SEMICONDUCTOR CORP.,

Appellees,

and

CONSUMERS ENERGY CO.,

Petitioner-Appellee.

In re Application of Consumers Energy Company to Increase Rates.

ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY,

Appellant,

v

No. 298476
Public Service Commission
LC No. 00-015986

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

CONSUMERS ENERGY CO.,

Petitioner-Appellee.

Before: RONAYNE KRAUSE, P.J., AND BORRELLO, AND RIORDAN, JJ.

PER CURIAM.

In Docket No. 295287, the Michigan Municipal Coalition (Municipal Coalition) appeals as of right from the Michigan Public Service Commission's (PSC) order, arguing that the PSC

improperly approved an incorrect calculation of the peak demand, apportioned a refund, phased out the municipal pumping credit, and failed to separate out municipal electric users into a separate class.

In Docket Nos. 296625 and 298476, Association of Businesses Advocating Tariff Equity (ABATE) appeals as of right from the PSC's order, arguing that the PSC improperly approved an incorrect calculation of the peak demand, a revenue decoupling mechanism (RDM), funding for Low Income and Energy Efficiency Fund (LIEEF), the use of tracking mechanisms, apportioned a refund, and increased rates to pay for an Advanced Metering Infrastructure (AMI) program.

In Docket No. 296633, the Attorney General appeals as of right from the PSC's order, arguing that the PSC improperly adopted a RDM, approved funding for LIEEF, and approved tracking mechanisms. Lastly, in Docket No. 296640, Phillip Forner appeals as of right from the PSC's order, contending that the PSC failed to properly allocate the costs for the Appliance Service Program (ASP). On this Court's own motion, these five cases were consolidated for appellate review. We affirm in part, reverse in part, and remand for further proceedings.

I. STANDARDS OF REVIEW

The applicable standards of review have been well defined. As recognized in *In re Michigan Consol Gas Co to Increase Rates Application*, 293 Mich App 360, 364-365; 810 NW2d 123 (2011) (internal citations omitted):

> All rates, fares, charges, classifications, joint rates, regulations, practices, and services prescribed by the PSC are presumed prima facie to be lawful and reasonable. A party aggrieved by an order of the PSC has the burden of showing by clear and satisfactory evidence that the order is unlawful or unreasonable. To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a statutory requirement or abused its discretion in the exercise of its judgment.
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> A final order of the PSC must be authorized by law and 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.
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> Issues of statutory interpretation are reviewed de novo. A reviewing court should give an administrative agency's interpretation of statutes it is obliged to execute respectful consideration, but not deference.
>
> Whether the PSC exceeded the scope of its authority is a question of law that is reviewed de novo.

II. PEAK DEMAND

First, the Municipal Coalition and ABATE challenge the way in which the PSC calculated the peak demand in the context of cost allocation. The Customer Choice and Electricity Reliability Act states:

> Except as otherwise provided in this subsection, the commission shall phase in electric rates equal to the cost of providing service to each customer class over a period of 5 years from the effective date of the amendatory act that added this section . . . .The cost of providing service to each customer class shall be based on the allocation of production-related and transmission costs based on using the 50-25-25 method of cost allocation. The commission may modify this method to better ensure rates are equal to the cost of service if this method does not result in a greater amount of production-related and transmission costs allocated to primary customers. [MCL 460.11.]

As indicated in the statute, the cost of providing service to each customer class shall be based on the "50-25-25 method of cost allocation," which is understood as the peak demand constituting 50 percent, peak energy use constituting 25 percent, and total energy use constituting 25 percent. *In re Detroit Edison Co Applications*, 296 Mich App 101, 117; 817 NW2d 630 (2012). At issue in this case is how to calculate the peak demand and the PSC's decision to eschew a method known as "MH4CP" in favor of one designated "12CP."[1]

The Municipal Coalition and ABATE argue that the Legislature intended that the MH4CP continue to be used in connection with the 50-25-25 cost-allocation formula. However, this Court has already rejected this argument, holding that "the Legislature intended to prescribe the 50-25-25 formula while leaving the PSC and the utilities it regulates to determine such components as 12CP or MH4CP in the normal course of business." *In re Detroit Edison Co Applications*, 296 Mich App at 118. We further explained that this Court is "not at liberty to read into the statute provisions which the legislature did not see fit to incorporate, nor may it enlarge the scope of its provisions by an unwarranted interpretation of the language used." *Id.* (internal quotations and citation omitted). Accordingly, we reject this claim of error and reiterate that the PSC retains broad discretion in deciding such methodology.

III. REFUND OF DECOMMISSIONING FUNDS

Next, the Municipal Coalition and ABATE challenge the PSC's decision regarding the refund of certain decommissioning funds. This issue arose because Consumers Energy Company (Consumers Energy) sold its nuclear generating station, the Palisades Power Plant. Before the sale, Consumers Energy had been collecting from all ratepayers a surcharge with the intent of amassing a fund to pay for the eventual decommission of the plant. Once the plant was

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[1] As we explained in *In re Detroit Edison Co Applications*, 296 Mich App at 117 (internal quotations omitted):

> 'MH4CP' stands for multihour 4 coincident peak and is based on peak demands in the four months typically bringing greatest energy usage, June through September. The PSC described it as using a multi-hour approach, which looks at a seven-hour time period, from 1:00 p.m. to 8:00 p.m., on the peak day of each summer month. In contrast, '12CP' stands for twelve coincident peaks. The PSC described this as using the peak hour from each month of the year.

sold, Consumers Energy was relieved of that expense and determined to refund the money collected.

As the PSC explained in its opinion and order:

> In its report filed on July 10, 2008, Consumers identified an additional $109 million available for refund. In its May 12, 2009 order in this case, the Commission ordered Consumers to provide a partial refund of the remaining Palisades money of $36.04 million to offset the company's self-implemented rate increase for residential customers. The Commission also indicated that it intended to address the refund of the remaining Palisades proceeds in the final order in this case."

Thus, at issue is whether appellants were entitled to receive a portion of the $36.04 million that was distributed to residential ratepayers only. The PSC determined that the $36.04 paid to residential ratepayers "was structured to accommodate unique circumstances presented at the time of the temporary order," and should not be factored into the division of the remaining money in the Palisades fund. The Municipal Coalition and ABATE insist that the result of this approach was that the residential class customers received a windfall, having received $36.04 million as well as their proportionate share of the remainder.

Yet, according to MCL 462.25, the PSC has broad discretion in determining issues such as rates, fares, charges, regulations, and practices. *Attorney General v Pub Serv Comm*, 269 Mich App 473, 479; 713 NW2d 290 (2005). Pursuant to this authority, the PSC determined that the distribution of the $36.04 to residential ratepayers only was warranted because those ratepayers were experiencing substantially more rate shock than other ratepayers. In essence, the PSC found that distributing the refund in this manner was equitable and tailored to the particular circumstances at the time of its decision. While appellants clearly do not agree with the PSC's assessment, that does not transform the PSC's decision into one that is unlawful. This is especially true considering that we are obligated to give "due deference to the PSC's administrative expertise" and refrain from substituting our judgment for that of the PSC. *In re Michigan Consol Gas Co to Increase Rates Application*, 293 Mich App at 365. We find no error requiring reversal.

IV. MUNICIPAL PUMPING CREDIT

The Municipal Coalition also argues that the PSC erred when phasing out the municipal pumping credit. The PSC decided to phase out this credit enjoyed by municipal pumping customers in order to align rates for each rate class with the respective cost of service, in accordance with MCL 460.11(1). The Municipal Coalition protests that this credit was not a subsidy, and that the PSC erred in ordering it terminated. We conclude that the PSC had a reasonable basis for deeming the credit inconsistent with MCL 460.11(1), and for recognizing the need to eliminate it.

MCL 460.11(1) requires that, "[e]xcept as otherwise provided in this subsection, the commission shall phase in electric rates equal to the cost of providing service to each customer class over a period of 5 years from the effective date of the amendatory act that added this

section." In response to this statutory command, the PSC implemented its plan to phase out the municipal pumping credit, which it categorized as a subsidy. The Municipal Coalition insists that there is no evidence that this pumping credit was a subsidy. The PSC and Consumers Energy respond that there was evidence to support the PSC's decision to phase out the pumping credit, and that this Court has a duty to defer to the fact-finder below.

Consumers Energy presented a witness who testified that, in the context of the General Municipal Pumping Service Provision, the PSC had approved a discount for pumping customers in order to effectuate a more gradual rate increase, but that in accordance with MCL 460.11, that discount had to be phased out. Another witness for Consumers Energy testified that if the municipal pumping customers were viewed as a separate rate class, their rate revenues would not cover the full cost of service. The Municipal Coalition, in turn, presented a witness who opined that the municipal pumping customers were actually subsidizing other customers, not the other way around. The PSC resolved this battle of the experts as follows:

> . . . Consumers states that the purpose of the pumping credit was to alleviate rate shock and provide a more gradual rate increase for customers. Consumers claims that the Municipal Coalition's witness . . . made a substantial mistake when he testified that municipal pumping customers are not paying less than their cost of service. According to Consumers, [Municipal Coalition's witness] used the actual jurisdictional ROR [rate of return] in his analysis, which is not equivalent to the Commission authorized ROR from Consumers' previous rate case. Using the Commission's defined ROR from the previous rate case, Consumers states that the revenues produced by rates charged to the municipal pumping customers, viewed as a separate class, are deficient and would not cover the allocated revenue requirements.
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> * * *
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> The Commission is persuaded that Consumers' and the Staff's proposal to reduce the municipal pumping credit by 20% for the first year and automatically for the next four years is reasonable. Section 11 of Act 286 requires that, within five years of the effective date of the Act, the Commission shall phase-in cost of service rates for each electric customer class. There is no exception for municipalities or municipal pumping customers.

At issue, then, is whether the PSC was within its rights in crediting the testimony of the witness who relied on PSC approved rates of return. We conclude that it was. In spite of appellant's arguments, we find it unremarkable that sometimes a utility's actual revenues depart from PSC expectations, as the PSC is fully entitled to rely on its expectations when making decisions concerning prospective rates. Further, as we have previously recognized, "the PSC has wide latitude when choosing whether to credit expert witness testimony in a PSC case" and "[i]t is for the PSC to weigh conflicting opinion testimony of the qualified ('competent') experts . . . ." *In re Review of Consumers Energy Co Renewable Energy Plan*, 293 Mich App 254, 284; __NW2d__ (2011) (internal quotations and citations omitted). For these reasons, we hold that the PSC had a reasonable basis for its decision to phase out the municipal pumping credit.

V. MUNICIPAL CUSTOMERS AS A SEPARATE RATE CLASS

The Municipal Coalition argues that the PSC erred in continuing to group municipalities in the same class as other commercial and industrial customers. This grouping occurred in an earlier case, where municipalities were rolled into the same rate classes as commercial and industrial customers in an effort to shift all customers toward rates based on cost of service. While the Municipal Coalition requested that municipalities be separated into a distinct class, the PSC rejected the proposal, explaining:

> The Commission finds no compelling reason to reverse the decision it made in Case No. U-15245. The Commission finds that the Municipal Coalition did not demonstrate that the energy consumption characteristics for municipalities as a whole are clearly distinct from the characteristics of the rate classes from which they take service. The municipalities have similar enough characteristics to [commercial and industrial] customers to include them in the same rate classes.

The PSC properly elected to defer to its earlier decision. The PSC has discretion in rendering classifications and consistent with "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." *Attorney General*, 269 Mich App at 479. Thus, even a showing of *some* differences in costs associated with electricity consumption by municipalities and other commercial and industrial customers does not render the PSC's decision to maintain these customers in the same rate class unlawful or unreasonable.

Furthermore, the PSC did not actually change the classification in this case, but merely affirmed its previous decision. While the doctrines of res judicata and collateral do not apply in the purest sense to ratemaking cases, "issues fully decided in earlier PSC proceedings need not be 'completely relitigated' in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable." *In re Consumers Energy Application For Rate Increase*, 291 Mich App 106, 122; 804 NW2d 574 (2010), quoting *Pennwalt Corp v Pub Serv Comm*, 166 Mich App 1, 9; 420 NW2d 156 (1988). Appellants failed to present any new evidence or changed circumstances that would render the PSC's decision in error.

VI. REVENUE DECOUPLING MECHANISM

The Attorney General and ABATE argue that the PSC exceeded its authority when it authorized Consumers Energy to adopt a RDM, which the PSC described as a ratemaking mechanism that removes the link between energy sales and the utility's non-fuel revenues. In support of their argument, the Attorney General and ABATE highlight differences in statutes addressing the use of RDMs for natural gas and electric utilities, and argue that those differences indicate that the PSC has authority to direct or approve the use of RDMs only for gas utilities. As guided by recent caselaw, we agree.

In the context of gas, MCL 460.1089(6) directs that the PSC may authorize a natural gas provider "to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales volumes that are above or below the projected levels that were used to determine the

revenue requirement authorized in the natural gas provider's most recent rate case." In contrast, in the context of electric providers, MCL 460.1097(4) only directs the PSC to "report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates."

In *In re Detroit Edison Co Applications*, 296 Mich App at 110, this Court concluded that a plain reading of the above-quoted statutes "does not empower the PSC to approve or direct the use of an RDM for electric providers." This Court reasoned that "[i]f the Michigan Legislature had wanted to do so, it is plain from the language applicable to gas utilities in MCL 460.1089(6) that it could and would have made its intention clear." *Id.* In light of this authority, we reverse the result below, and hold that the PSC exceeded its authority in allowing Consumers Energy, as a provider of electricity, to adopt an RDM.

VII. LOW-INCOME AND ENERGY EFFICIENCY FUND

The Attorney General and ABATE argue that the PSC exceeded its authority when it authorized Consumers Energy to charge its customers for continued funding of the LIEEF.[2] This issue has been addressed in *In re Michigan Consol Gas Co to Increase Rates Application*, 293 Mich App at 368. This Court found that "the deletion of all references to the LIEEF from the Customer Choice and Electricity Reliability Act—whose now-deleted provisions were recognized as the fund's enabling legislation in the first instance—nonetheless indicates a legislative intent to withdraw any obligation, or prerogative, on the part of PSC-regulated utilities to raise money for that fund." *Id.* (internal citation omitted). We affirmed this holding in *In re Detroit Edison Co Applications*, 296 Mich App at 112, stating that "to the extent that the LIEEF may exist, the deletion of the enabling legislation from MCL 460.10d left the PSC and PSC-regulated utilities without authorization to include revenue for the LIEEF as a cost to be borne by ratepayers, the utility users."

In light of our prior holdings, we reverse the decision below insofar that it authorized Consumers Energy to collect funds for the LIEEF from its ratepayers.

VIII. TRACKING MECHANISMS

Next, ABATE and the Attorney General claim that the PSC erred in approving Consumer Energy's use of tracking mechanisms. Appellants contend that the PSC erred in authorizing Consumers Energy to use mechanisms that control expenses such as the tree-trimming and line clearing tracker and uncollectible expense tracker mechanism (UETM) because they are tantamount to retroactive ratemaking.

"In the absence of specific statutory authorization, retroactive ratemaking in utility cases is prohibited." *In re Consumers Energy Application For Rate Increase*, 291 Mich App at 113.

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[2] We note that this issue is unpreserved, as ABATE did not object to LIEEF funding until the petition for rehearing. Accordingly, we review this issue for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Yet, retroactive ratemaking does not occur where only future rates are affected, with no adjustment to previously set rates. *Attorney General v Pub Serv Comm*, 262 Mich App 649, 655-658; 686 NW2d 804 (2004). As recognized in *In re Detroit Edison Co Applications*, 296 Mich App at 113-114, this Court has recently approved the PSC's decision to authorize tree-trimming trackers as well as a UETM tracker. As we have previously stated, "our caselaw confirms that the PSC correctly approved [the] use of tracking mechanisms through which future rates are adjusted to take account of actual past expenses." *Id.* at 114; see also *In re Michigan Consol Gas Co to Increase Rates Application*, 293 Mich App at 365-367; *In re Consumers Energy Application For Rate Increase*, 291 Mich App at 113 (stating that this Court has adopted "a narrower view of what constitute[s] retroactive ratemaking" so that it does not include "an agreement between a utility and the PSC" when the agreement "does not change existing rates, is consensual, applies on a prospective basis only, and . . . one-time refunds are merely potential, not guaranteed.") (internal quotations and citation omitted). In light of this precedent, the Attorney General's and ABATE' challenges to the PSC's approval of Consumers Energy's use of tracking mechanisms through which future rates are adjusted to take account of past expenses must fail.

IX. ADVANCED METERING INFRASTRUCTURE PROGRAM

ABATE argues that the PSC erred in approving funding for Consumers Energy's AMI program without better ascertaining the program's benefits to its customers. As guided by recent case law, we agree.

In *In re Detroit Edison Co Applications*, 296 Mich App at 114, this Court discussed the PSC's decision to fund the AMI program, stating that it was a pilot program that had yet to be commercially tested. We also noted that only "aspirational testimony describing the AMI program in optimistic but speculative terms" was provided, and that "[w]hile we appreciate that a cost-benefit analysis for a pilot program may be more difficult to establish with record evidence, this inherent difficulty does not permit the PSC to authorize millions of dollars in rate increases without an informed assessment supported by competent, material, and substantial evidence." *Id.* at 115. This Court remanded the case to the PSC for:

> a full hearing on the AMI program, during which it shall consider, among other relevant matters, evidence related to the benefits, usefulness, and potential burdens of the AMI, specific information gleaned from pilot phases of the program regarding costs, operations, and customer response and impact, an assessment of similar programs initiated here or in other states, risks associated with AMI, and projected effects on rates. In other words, a real record, with solid evidence, should support whatever decision the PSC makes on remand. [*Id.* at 116]

The instant case is on all fours with *In re Detroit Edison Co Applications*. The PSC defends the AMI program by arguing that "five witnesses . . . testified regarding the Company's use of the AMI pilot program and how it will be used in conjunction with demand response to affect the capacity necessary to reliably serve firm demand." Consumer Energy highlights testimony regarding the potential benefits that AMI will provide to customers, such as enhanced customer service and value, cost savings, and increased effectiveness in meeting customer needs.

Yet, just like in *In re Detroit Edison Co Applications*, 296 Mich App at 115, the evidence Consumers Energy and the PSC relies on is "aspirational testimony" concerning expectations for the project. As epitomized in one witness's explanation, "[t]hese benefits *will become* available to customers once the supporting systems and communications infrastructure are in place and as smart meters are deployed across our service area." Thus, as we instructed in *In re Detroit Edison Co Applications*, 296 Mich App at 116, we remand this case to the PSC for full hearing on the AMI program to consider "evidence related to the benefits, usefulness, and potential burdens of the AMI, specific information gleaned from pilot phases of the program regarding costs, operations, and customer response and impact, an assessment of similar programs initiated here or in other states, risks associated with AMI, and projected effects on rates."

X. APPLIANCE SERVICE PROGRAM

Lastly, appellant Forner claims that the PSC erred in requiring the electric utility rates to include direct and indirect costs attributable to the ASP, a gas utility program. In particular, Forner argues that the PSC "never bothered to allocate any of electric utility billing, postage, payment processing and call center costs directly attributable to the ASP . . . ." Forner argues that as a result of this failure, electric utility rates are artificially higher because they "include costs that are directly attributable to the ASP" and "[t]he Gas Utility receives payment for those Electric Utility costs, which artificially reduces the Gas Utility rates."

The PSC declined to revisit these issues, explaining the following:

> Phillip Forner presented testimony addressing costs associated with Consumers' Appliance Service Program (ASP). Mr. Forner claimed that Consumers' ASP is not adequately compensating the utility for the costs of using the utility's system. Mr. Forner requested that Consumers' rates be adjusted to reflect additional reimbursement from the ASP for including ASP charges on monthly electric bills, processing the ASP payments, and use of the utility's call center.
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> In response, Consumers contended that one of the purposes of the ASP program is to generate revenue to offset the gas utility's O&M expenses by providing gas utility employees, vehicles, tools and equipment to perform repairs for customers. Consumers asserted the ASP contributed $974,661 for various services provided by the utility for 2008 and that the company is complying with 2004 PA 88 by allocating expenses to the ASP based upon the amount of use by the program. In addition, the Staff and Consumers contended the Commission has already addressed and rejected Mr. Forner's arguments in previous cases.
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> The ALJ [administrative law judge] reviewed previous proceedings where Mr. Forner had raised similar claims. The ALJ noted that, beginning in Case No. U-13089, on the basis of a complaint brought by Mr. Forner, the Commission found that Consumers had violated the Code of Conduct adopted in Case No. U-12134 and directed the company to address the subsidies created by allowing access by the ASP to equipment and personnel in Consumers' regulated divisions. Subsequently, in Case Nos. U-14329 and U-15245, the Commission addressed

> other arguments that Mr. Forner again raised here. The ALJ pointed to the fact that the Commission made clear that questions regarding alleged subsidies to the ASP were not appropriately within the scope of a rate case but should be considered separately in a complaint case. The ALJ added that the Commission had also determined that the Commission reasonably evaluated the costs and revenue associated with the ASP program in gas rate cases.
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> The ALJ found that Consumers and the Staff had effectively rebutted Mr. Forner's claims regarding a subsidy on the electric side through a $235,000 billing system cost adjustment included in Case No. U-15245 and again in this case. The ALJ recommended that the Commission reject Mr. Forner's claims on grounds that his claims have been addressed and because his complaint was not properly raised in a rate case.
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> Mr. Forner filed exceptions in which he reiterated the arguments in his brief.
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> The Commission agrees with the ALJ that the issues raised by Mr. Forner in this proceeding have been previously addressed by the Commission. The rate adjustments requested by Mr. Forner are therefore rejected.

In regard to Forner's claims relating to postage, this Court has specifically held the PSC's refusal to revisit these claims was proper. See *In re Consumers Energy Application For Rate Increase*, 291 Mich App at 123-125. In regard to Forner's remaining claims that the PSC improperly allowed the ASP program to be subsidized, the PSC did not err in failing to revisit these claims. As the PSC noted, the majority of Forner's claims have been addressed in former proceedings.[3] Although preclusion doctrines are not strictly applied in administrative determinations of this sort, issues fully decided in earlier PSC proceedings need not be relitigated unless new evidence or changed circumstances demonstrates that the earlier result is unreasonable. *In re Consumers Energy Application For Rate Increase*, 291 Mich App at 122. Forner asserts that preclusion doctrines should not apply in this case because the PSC overlooked PA 88, which amended relevant portions of MCL 460.10a. However, PA 88 took effect in 2004, and Forner has presented no evidence or statutory history demonstrating that this amendment occurred after the previous PSC decisions, particularly in Case No. U-15245.[4]

Furthermore, even if preclusion doctrines have limited application in a ratemaking case, they have full force in judicial decisions. Forner has availed himself of opportunities to raise his issues concerning the ratepayers' remedies in connection with the improper subsidization of the ASP, and the resulting decisions have been affirmed by this Court. See *In re Consumers Energy*

[3] See Case Nos. U-13089, U-14329, and U-15245.

[4] Moreover, in 2010, this Court recognized that Forner's claims relating to interest and postage "were in fact fully raised and decided in the PSC's favor in complaint action, Case No. U-14329." *In re Consumers Energy Application For Rate Increase*, 291 Mich App at 120.

Application For Rate Increase, 291 Mich App at 120-121; see also *Forner v Pub Serv Comm*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2008 (Docket No. 270941). Hence, as we stated in *In re Consumers Energy Application For Rate Increase*, 291 Mich App at 120-121:

> The instant appeal is of the result in the general rate case that accounted for the subsidy at issue, and Forner apparently sees it as an opportunity to revisit issues that were, *or could have been*, decided in the earlier proceedings. But the PSC, citing the earlier litigation, declined to address these issues in the instant case. We agree that the PSC's forbearance in this regard was appropriate. [(Emphasis added).]

Thus, because Forner has raised his claims or had an opportunity to raise his claims in former proceedings, we decline to consider them anew here.[5]

XI. CONCLUSION

We affirm the PSC's order in regard to the peak demand calculation, the Palisades refund, eliminating the municipal pumping credit, grouping municipal ratepayers with other ratepayers, tracking mechanisms, and the ASP. We reverse the result below insofar that the PSC authorized Consumers Energy to adopt a RDM and approve funding for LIEFF. We remand this case for further proceedings consistent with this opinion, including a full hearing on the AMI program.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan

[5] We note that the more appropriate method of raising these claims is to file a complaint against Consumers in a separate action, which Forner did in Case No. U-16273, currently pending before this Court.