

STATE OF MICHIGAN
COURT OF APPEALS

ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and CONSUMERS POWER COMPANY,

Appellees.

UNPUBLISHED

August 27, 1996

No. 179799

LC No. U-10490

Before: McDonald, P.J., White and P.J. Conlin*, JJ.

MEMORANUDM.

The Attorney General appeals by right a September 27, 1994 order of the Michigan Public Service Commission (PSC) approving the annual gas cost recovery (GCR) plan filed by Consumers Power Company (Consumers) for 1994 pursuant to §6h of 1982 PA 304, MCL 460.6h; MSA 22.13(6h). Specifically, the Attorney General challenges that portion of the PSC's order which allows Consumers to alter its methodology for refunding or surcharging customers for any GCR cost overrecoveries or underrecoveries. We affirm.

In the past, Consumers has used an "historical" refund and surcharge procedure approved by the PSC whereby the utility's customers were refunded or surcharged, after the conclusion of the GCR plan year, based upon their actual historical consumption. In the instant case, the PSC allowed Consumers to replace its historical refund/surcharge procedure in whole or in part with a procedure that would allow refunds or surcharges to be "rolled in" prospectively during the current GCR year by making immediate adjustments to the amounts recovered under the current GCR plan for any overcharges or undercharges detected at that time, instead of waiting until after the GCR plan year to refund or surcharge its customers. The adjustment is not based on individual consumers' actual historical consumption, but, rather, is applied to the current customers based on their usage at the time.

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

We conclude that the Attorney General has not met the burden of establishing that the PSC's decision to allow Consumers' new "rolled in" methodology is unlawful or unreasonable. MCL 462.26(8); MSA 22.45(8); *Attorney General v Public Service Comm*, 215 Mich App 356, 364; 546 NW2d 266 (1996); *Association of Businesses Advocating Tariff Equity v Public Service Comm*, 208 Mich App 248, 266-267; 527 NW2d 533 (1994); *Michigan Intra-State Motor Tariff Bureau, Inc v Public Service Comm*, 200 Mich App 381, 387-388; 504 NW2d 677 (1993). Most of the Attorney General's arguments have already been expressly or implicitly rejected by this Court in *Attorney General v Public Service Comm*, *supra*, where this Court upheld the PSC's decision to allow Michigan Consolidated Gas Company (Mich Con) to use essentially the same "rolled in" methodology. See 215 Mich App at 367-370. Although the Attorney General argues that the facts in this case are distinguishable from the facts of the Mich Con case in several respects, such as the fact that unlike Mich Con, Consumers will continue using the old historical refund method for at least some of its refunds, we find the Attorney General's arguments unpersuasive, and agree with the PSC that the somewhat different circumstances presented in the instant case are not sufficient to render the PSC's reasoning in the Mich Con case inapplicable here.

Affirmed.

/s/ Gary R. McDonald

/s/ Helene N. White

/s/ Patrick J. Conlin