

## COA Opinion: PSC interpretation of statute regarding scope of allowed charges to customers was entitled to deference and should be upheld as consistent with legislative intent

15. September 2011 By Jason Byrne

In [\*In re Michigan Consolidated Gas Company Compliance to 2008 PA 286/295\*](#), No. 292683 the Court of Appeals considered three issues on appeal and ultimately affirmed the June 2, 2009, order of the Michigan Public Service Commission (“PSC”), approving the energy optimization plan submitted by Michigan Consolidated Gas Company (“MichCon”). On appeal, the appellant Association of Business Advocating Tariff Equity (“ABATE”) challenged the PSC’s interpretation of Michigan’s Clean, Renewable, and Efficient Energy Act, 2008 PA 295, MCL 460.1001 *et seq.* (“the Act”). The Court of Appeals noted that under the applicable standard of review, PSC orders are presumed to be lawful and reasonable, and the evidentiary burden is on the party challenging the order to prove “by clear and satisfactory evidence that the order is unlawful or unreasonable.” Additionally, agency interpretations of statutes are entitled to “respectful consideration,” although they are not binding on the courts and may not conflict with the legislative intent behind the statute.

First, the Court of Appeals considered whether the PSC’s interpretation of MCL 460.1089(2) was in accordance with the legislative intent of the Act. MCL 460.1089(1)&(2) allow a provider to “recover ‘the actual costs of implementing its approved energy optimization plan’” from “all” the provider’s “natural gas customers.” The PSC interpreted the language of the Act as allowing providers to recover their costs from all their customers, including customers who only purchase “transportation services” from the provider. In holding that the PSC’s interpretation was correct, the Court adopted its own analysis from [\*In re Temporary Order to Implement 2008 PA 295\*](#), unpublished opinion, No. 290640. The Court held that “‘the PSC correctly found that a portion of the natural gas providers’ energy optimization plan could be charged back to the providers’ gas transportation customers.’”

Second, the Court of Appeals considered whether the PSC's interpretation of 460.1093(1) that a charge "exemption only applies to surcharges from electric providers" was in accordance with the Act's legislative intent. Under MCL 460.1093(1) eligible "electric customers" are exempt from certain recovery charges for provider energy optimization plans if the customer implements its own "self-directed energy optimization plan." ABATE argued that the exemption also applied to natural gas customers. Once again the Court adopted its analysis from *In re Temporary Order to Implement 2008 PA 295*, and held that the PSC's interpretation limiting the exemption solely to electric providers and electric customers was in accordance with the legislative intent.

Lastly, the Court of Appeals concluded that the PSC's actions in rejecting ABATE's arguments and approving MichCon's energy optimization plan was not prejudicial to ABATE's members and not in violation of Article 6, § 28 of Michigan's 1963 Constitution. The Court again adopted its analysis from *In re Temporary Order to Implement 2008 PA 295*, and determined that the 90 day review period for energy optimization plans was sufficient. The Court noted that ABATE provided "nothing to show that the time limits imposed by MCL 460.1021(5) ha[d] actually caused it or its members to be prejudiced."