

## COA Opinion: Michigan Public Service Commission has authority to use uncollectable expense true-up mechanism, but not to administer the Low-Income and Energy Efficiency Fund

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In *In re Application of Michigan Consolidated Gas Company, Nos. 298830, 298887*, the Michigan Public Service Commission (“PSC”) had decided to allow the Michigan Consolidated Gas Company (“Mich Con”) to use an uncollectable expense true-up mechanism (“UETM”) and to charge ratepayers over \$5 million to support the Low-Income and Energy Efficiency Fund (“LIEEF”). The Court of Appeals affirmed the use of the UETM, but held that the PSC did not have authority to approve the collection of funds for the LIEEF.

The UETM is an accounting convention that compares actual revenues to base revenues and defers certain expenses from one year to the subsequent year. The procedure is used to adjust future rates to compensate for consumers from whom Mich Con is unable to collect in the current rate year. Due to increasing numbers of such consumers, the PSC approved Mich Con’s proposal to increase its base level uncollectable expense level by \$32.6 million. The Court of Appeals held that the PSC’s approval of Mich Con’s use of the UETM was appropriate because, while retroactive ratemaking is prohibited in utility cases, Mich Con used the UETM to adjust future rates rather than to alter previously set rates.

The LIEEF is a fund created by the Customer Choice and Electricity Reliability Act (“CCERA”) to promote energy efficiency and to provide protection for low-income customers. In considering whether the PSC had authority with respect to the LIEEF, the Court of Appeals looked in part to 2009 PA 172, which refers to a “low-income and energy efficiency fund” and appropriations for “[l]ow income energy efficiency assistance.” In 2008, CCERA was amended to remove all references to the PSC, however, and the Court held that removal indicated “the legislative intention to withdraw any obligation, or prerogative, on the part of PSC-regulated utilities to raise money for [the LIEEF.” As a consequence, the Court held that the PSC did not have the general or specific statutory authority to administer the LIEEF, and reversed the PSC’s order “insofar as it approved more than \$5 million in LIEEF funding to come from Mich Con’s ratepayers.”