

COA Opinion: The Public Service Commission's approval of Consumers Energy's renewable energy plan is affirmed.

14. July 2011 By Gaetan Gerville-Reache

On July 12, 2011, in *In the Matter of In Review of Consumers Energy Company Renewable Energy Plan, No. 292659*, the Michigan Court of Appeals affirmed the Public Service Commission's ("PSC") decision to approve Consumers Energy's energy optimization and renewable energy plans for its electric division and its energy optimization plan for its gas division, pursuant to Michigan's Clean, Renewable, and Efficient Energy Act, 2008 PA 295, MCL 460.1001 *et seq.* (the "Act"). The opinion also reports that the Court has resolved a similar challenge to Michigan Consolidated Gas Company's energy optimization plan in a separate appeal, but the decision has yet to be released. The Act requires electric utilities to adopt plans demonstrating how they will comply with the Act's requirements to obtain electric capacity and energy production from "renewable energy sources." The Act allows the utility to recover the cost of implementing the plans by charging a price equivalent to that charged for conventional sources and then adding a surcharge over the 20-year life of the program. The Act also requires electric and gas companies to adopt an "energy optimization plan," designed to reduce future costs to consumers by reducing demand for energy and providing for load management. Under the Act, PSC can only approve the renewable energy plan if it is reasonable and prudent and if the utility shows that the incremental cost of developing clean energy sources, minus the costs saved through an optimization plan, is less than the incremental cost of developing new coal-fired power plants.

On appeal, the Association of Businesses Advocating Tariff Equity ("ABATE") challenged the PSC's decision to approve Consumers Energy's plans, despite acknowledging that the cost estimates were "likely" to prove to high. The Court disagreed with ABATE's interpretations of the Act, rejected ABATE's argument that the Act's 90-day window for approving plans violated the APA and Michigan Constitution, and found sufficient evidence in the record to support the PSC's approval of Consumers Energy's plans.

In particular, the Court held that gas transportation customers are "natural gas customers" under the Act and, as such, are subject to a surcharge to fund an energy optimization plan. The Court also held that the Act's charge exemptions for eligible electric customers who file a self-directed optimization plan do not apply to gas customers. The Court further held that the Act's 90 day deadline for PSC to approve energy optimization plans and renewable energy plans is not a violation of customer rights under the Administrative Procedures Act or the Michigan Constitution. Finally, the Court held that the PSC had discretion to approve Consumers Energy's renewable energy plan even though cost estimates would likely be inaccurate and the record evidence supported the PSC's finding that the plan was reasonable and prudent with conditions designed to enable continued review of actual costs to make sure they were reasonable.