

COA Opinion: The Public Service Commission properly determined Consumer's Energy's application to raise rates

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In March 2007, Consumer's Energy applied to the Public Service Commission (PSC) to raise its rates. The PSC approved the application, including approval of raises to cover actual forestry expenses, fluctuations in retail open access sales, and several funds. The PSC also permitted Consumer's Energy to pay for several consultants during the application process. In the consolidated cases of *In re Application of Consumer's Energy Company for Rate Increase*, No. 286477 and No. 288728, the Court of Appeals affirmed the PSC's order in its entirety, holding that the PSC acted within its authority in approving the rates or, in the one instance of error, that the PSC's error was harmless.

There are two appellants in the consolidated appeal: the Attorney General and an individual, Phil Forner. The appellants objected to four issues from the PSC order. First, the Attorney General argued that the PSC's order required Consumer's Energy to modify its customers' rates to reflect tree trimming and forestry expenses that had occurred in the past. The Attorney General contended that this was in contravention of Michigan case law against retroactive ratemaking. The Court of Appeals held to the contrary. It relied on *Attorney General v Pub Serv Comm*, 262 Mich App 649 (2004) as support for the proposition that the PSC was within the scope of its authority because Consumer's Energy may properly "recover actual expenses incurred in a given year by accounting for them as subsequent years' expenses to be reflected in new rates with proper prospective effect."

Second, the Attorney General argued that the PSC improperly allowed Consumer's Energy to fund the Low Income and Energy Efficiency Fund (LIEEF) through general utility rates instead of by securitization financing within a 6-year period, as required by MCL 460.10d(7). The Court of Appeals disagreed, holding that MCL 460.10d(7) does not restrict funding for LIEEF to excess securitization savings.

Third, the Attorney General contended that the PSC's order allowed a party before it to cover part of its operational costs, leading to the appearance of impropriety. This complaint resulted from PSC's agreement with Consumer's Energy that Consumer's Energy would pay consultant fees that normally would fall to PSC. Although the Court of Appeals agreed with the Attorney General and admonished the PSC for permitting Consumer's Energy to pay the consultants, the Court held it was harmless error because there was no suggestion of actual impropriety as a result of the consultant fee arrangement.

Fourth, Mr. Forner contended that PSC should have charged Consumer's Energy with interest as part of its refunding of an improper subsidy to an appliance service program, and should have included postage costs in that additional charge to Consumer's Energy. The Court that Mr. Forner was precluded from making these arguments by his previous challenge to the ratemaking, where he could

and should have addressed those issues. The Court found him precluded despite the fact that ratemaking is a legislative issue so res judicata and collateral estoppel do not strictly apply.