

STATE OF MICHIGAN
COURT OF APPEALS

ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,
DETROIT EDISON COMPANY, and the
ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY,

Appellees.

UNPUBLISHED

August 2, 2007

No. 265869

MPSC

LC No. U-14275

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

The Attorney General appeals as of right the June 30, 2005 interim order and the September 20, 2005 final order of the Michigan Public Service Commission (the Commission) approving appellee Detroit Edison Company's (Edison) power supply cost recovery (PSCR) plan for 2005. We affirm.

The standard of review applicable to orders of the Commission is narrow and well defined. *In re Michigan Cable Telecommunications Ass'n Complaint*, 239 Mich App 686, 689; 609 NW2d 854 (2000). Under MCL 462.25, "[a]ll rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until found otherwise" Further, the party challenging an order of the Commission bears the burden of showing "by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable." MCL 462.26(8).

The Attorney General first argues that the Commission was without the authority to approve Edison's PSCR plan under MCL 460.6j. Specifically, the Attorney General contends that the Commission set Edison's PSCR factors in a previous general rate case under MCL 460.6j(18), which provides that the factors set shall cover "a future period of 48 months or the number of months which elapse until the commission orders new power supply cost recovery factors in a general rate case, whichever is the shorter period." MCL 460.6j(18)(a). Consequently, the Attorney General further contends, the Commission could not approve of an annual PSCR plan under MCL 460.6j(3) to (7) before the expiration of the applicable 48 month period. We do not agree.

The Attorney General's argument turns on whether the PSCR base and factors ordered in case U-13808 were set pursuant to MCL 460.6j(18) or MCL 460.6j(3) to (7). After a motion for rehearing of its November 2004 order in case U-13808, the Commission entered its order of June 30, 2005. In that order, the Commission stated,

The statutory language does not support Detroit Edison's view that the Commission may approve a new PSCR base and factors in this rate case pursuant to Section 6j(18) and yet permit the annual PSCR plan case filings, within this rate case docket and without reopening the entire general rate case for review. The Commission is not free to rewrite its enabling statutes to meet the desires of any party, or even its own desires. Rather, the Commission must follow the dictates of the statute as passed by the Legislature.

The Commission concludes that it should treat Detroit Edison's request for PSCR reinstatement and establishment of PSCR base and factors to have been properly raised under Section 6j(3)-(7), rather than Section 6j(18). . . . Therefore, the Commission concludes that it should grant rehearing on this issue and amend the November 23 order to reflect that the PSCR portion of that order was completed pursuant to MCL 460.6j(3)-(7). [June 30, 2005 order of the Commission in case U-13808.]

Hence, contrary to the Attorney General's contention, the Commission did not set Edison's PSCR base and factors under MCL 460.6j(18). Rather, the Commission set the PSCR base and factors under MCL 460.6j(3) to (7), which requires the submission of annual plans. See MCL 460.6j(3). Further, to the extent that the Attorney General seeks to collaterally attack the June 30, 2005 order of the Commission in case U-13808, we conclude that that issue is not properly before us. Instead, whether the Commission had the authority to treat Edison's application for approval of PSCR factors as having been made under MCL 460.6j(3) to (7) rather than MCL 460.6j(18) is properly a matter for appeal in case U-13808. Therefore, we decline to address this claim of error to the extent that it is an attempt to challenge the propriety of the Commission's amended order in case U-13808.

The Attorney General next argues that the Commission was without the authority to approve Edison's proposal to recover the cost of transmitting electricity to the ultimate consumer as a PSCR factor under MCL 460.6j(1)(a). However, this Court recently held that transmission costs "are properly recoverable in a PSCR clause" under MCL 460.6j(1)(a). *Attorney General v Public Serv Comm*, ___ Mich App ___, slip op. at 9; ___ NW2d ___ (2007) (docket no. 259845, issued July 3, 2007). Therefore, the Commission did not exceed its authority when it authorized the recovery of transmission costs as a PSCR factor.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kurtis T. Wilder