In re Complaint by Shark

2005 | Cited 0 times | Court of Appeals of Minnesota | December 27, 2005

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2004).

Affirmed

Considered and decided by Shumaker, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

Relator Myer Shark brings this certiorari appeal from a decision by the Minnesota Public Utilities Commission (MPUC) denying a motion for reconsideration of relator's complaint. Shark, along with more than 50 other Northern States Power (NSP) customers, filed a complaint with the MPUC, requesting an investigation into whether NSP's rates were unreasonable and seeking a refund. The MPUC determined that because it did not have the authority to order a refund, Shark failed to establish a reasonable ground to conduct an investigation. We affirm.

DECISION

Any party aggrieved by a decision of the MPUC may appeal in accordance with chapter 14. Minn. Stat. § 216B.52, subd. 1 (2004). On certiorari appeal, this court may reverse if the agency decision is arbitrary or capricious. Minn. Stat. § 14.69(f) (2004).

"The legislature has delegated authority to regulate public utilities and to determine the reasonableness of the rates they charge to the Minnesota Public Utilities Commission." Computer Tool & Eng'g, Inc. v. N. States Power Co., 453 N.W.2d 569, 572 (Minn. App. 1990), review denied (Minn. May 23, 1990). The MPUC thus has broad regulatory power. Id. And a party who asserts that an agency's decision is arbitrary and capricious bears the burden of proving it. See Markwardt v. State, Water Res. Bd., 254 N.W.2d 371, 374 (Minn. 1977). An agency's decision will be deemed arbitrary or capricious if "its determination represents its will and not its judgment." Id. It will also be deemed arbitrary and capricious if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Trout Unlimited, Inc. v. Minn. Dep't of Agric., 528 N.W.2d 903, 907 (Minn. App. 1995), review denied

(Minn. Apr. 27, 1995). "[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977).

Relator sought an investigation pursuant to Minn. Stat. § 216B.17, subd. 1 (2004), asserting that NSP ratepayers were entitled to a refund because NSP was allowed a rate increase based on estimated income taxes that NSP ultimately did not pay. We conclude that the MPUC properly rejected this argument.

NSP is a subsidiary of Xcel Energy Inc. (Xcel), a registered holding company. Another of Xcel's subsidiaries is Xcel Energy Wholesale Group Inc. (Xcel Wholesale), which previously owned a subsidiary called NRG. In 2002-03, NRG had financial difficulties and went into bankruptcy. As NSP concedes, Xcel received federal income tax benefits arising out of a worthless stock deduction on Xcel's consolidated tax returns. Citing newspaper reports, relator contends that these tax benefits amounted to some $700 million dollars. Relator asserted that an investigation would show that NSP as well as Xcel benefited, thus making the utility rate assessed by NSP unreasonable. NSP claims that pursuant to a tax-allocation agreement approved by MPUC, the tax benefit associated with the NRG stock loss was allocated only to Xcel Wholesale, the entity that incurred the loss, and that none of the tax benefit was allocated to NSP.

After a hearing at which arguments were presented, the MPUC ruled that because the relief that relator sought--a refund--was unavailable, further investigation of relator's complaint would serve no purpose. Consequently, the MPUC dismissed relator's complaint and denied a subsequent motion for reconsideration. Relator contends that the MPUC acted arbitrarily and capriciously. We disagree.

The MPUC properly determined that relator's requested action ignores the statutory scheme under which the MPUC sets rates. "In determining the size of a rate increase for a public utility, the Commission considers appropriate expenses, revenues, and investment for a twelve-month period, commonly referred to as a 'test year.'" In re Petition of Interstate Power Co., 419 N.W.2d 803, 805 (Minn. App. 1988). "The test year concept is designed to produce a measure of a regulated utility's earnings for a known period of time, to enable the regulatory body to make an accurate prediction of revenues and expenses in the reasonably near future." In re Petition of Minn. Power & Light Co., 435 N.W.2d 550, 556 (Minn. App. 1989) (quotation omitted), review denied (Minn. Apr. 19, 1989).

As the MPUC explained, using a test year to set rates in the future allows rates to be based on experience rather than conjecture, provides fiscal discipline for utilities, and assures utilities and ratepayers that rates will not be changed retroactively. The MPUC stated, "[a]lthough individual cost components that were used to develop the rates may vary (increase or decrease) after the rates are set, no adjustment (with the exception of the pass-throughs) is made outside of a rate case for increases or decreases in the individual components of rates." While anomalies are likely to exist, sometimes

they will favor the ratepayer, and sometimes they will favor the utility.

Moreover, the Minnesota Supreme Court has addressed whether, under the statutory ratemaking scheme, refunds are allowed. It concluded that the MPUC does not have authority to order refunds. Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n, 369 N.W.2d 530, 531-32 (Minn. 1985) (rejecting claim that there was statutory authority to refund charges collected under rates the MPUC had previously determined to be discriminatory). First, the court noted that there was no express statutory authority for the commission to order refunds of past revenue collections. Id. at 534. The court then concluded there was no implicit authority either. Id. at 535. The court reasoned that "[p]ublic regulation of utility rates is an intricate, ongoing process. A reallocation of rates may set in motion an ever-widening set of consequences and adjustments, and a refund not under bond may further complicate these consequences." Id. While relator attempts to distinguish Peoples, we cannot ignore the plain language of Peoples, which explicitly states that refunds are not authorized. Id. at 536.

On appeal relator argues that the remedies available to the MPUC were not limited to the specific forms of relief addressed in his complaint. He argues that the legislature has specifically mandated that when the MPUC determines through a section 216B.17 investigation that a utility's rates are unreasonable, it must replace those rates with reasonable ones. Minn. Stat. § 216B.23, subd. 1 (2004). We conclude relator's argument lacks merit.

First, as discussed above, a refund is not available as a remedy. Peoples, 369 N.W.2d at 536. Rather, in the event that the commission finds significant fact issues have not been resolved to its satisfaction, it may order the utility to initiate a rate proceeding under Minn. Stat. § 216B.16 or it may order a contested-case hearing. Minn. Stat. § 216B.17, subd. 8. If the commission finds the rates unreasonable, "the commission shall determine and by order fix reasonable rates . . . to be imposed, observed and followed in the future in lieu of those found to be unreasonable or unlawful." Minn. Stat. § 216B.23, subd. 1. But the MPUC cannot simply remove an item from the base rate without an analysis that also evaluates other rate-base components and the appropriate rate of return. See In re Minn. Power's Transfer of M.L. Hibbard Units 3 & 4 Boilers, 399 N.W.2d 147, 150 (Minn. App. 1987) (rejecting claim that transfer of equipment should be accompanied by removal of property from rate base and corresponding reduction of rates). Instead, when an investigation reveals that the rates are unreasonable, new rates must be fixed by order, and pursuant to a rate hearing. Id.; see Minn. Stat. §§ 216B.14, 216B.23, subd. 1. Further, section 216B.23, subdivision 1, provides that such rates shall be "in the future." Thus, the MPUC properly determined that the law does not authorize the relief relator is seeking.

Finally, amicus curiae Office of the Attorney General (OAG), which was not a party but participated in the proceedings before the MPUC, raises additional arguments on appeal regarding the effect of the tax-allocation agreement, entered into by Xcel and its subsidiaries, including NSP. But the role of an amicus is generally limited to addressing issues raised by the parties. See Kline v. Berg Drywall,

Inc., 685 N.W.2d 12, 23 n.9 (Minn. 2004). OAG's arguments exceed that limit. Moreover, the MPUC correctly rejected the arguments raised by OAG at the hearing, and further determined that even if OAG's arguments had merit, the remedy sought, a refund, was not available.

We conclude that the MPUC's decision was not arbitrary and capricious. As detailed above, the MPUC sets rates based on the premise of a test year, which necessarily involves consideration of numerous factors, some of which will inevitably vary from that which was predicted. And refunds are not an authorized way in which to address this inevitability. Further, relator and amicus failed to show that the allocation agreement changed the ratemaking process.

Affirmed.