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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

OFFICE OF CONSUMER ADVOCATE,

Petitioner-Appellant,

vs.

IOWA STATE COMMERCE COMMISSION,

Respondent-Appellee,

and INTERSTATE POWER COMPANY and NORTHWEST IOWA POWER COOPERATIVE,

Intervenors-Appellees.

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Filed February 26, 1986

5-560
85-499

Appeal from the Iowa District Court for Polk County (AA2-562) - Anthony M. Critelli, Judge.

The appellant appeals the district court's ruling affirming a decision by the appellee to allow an acquisition adjustment to be included in a future rate base. **REVERSED.**

Alexis K. Wodtke and James R. Maret, Waukee, Iowa, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, Diane Munns and Patrick J. Nugent, Assistant Attorneys General, for respondent-appellee.

William D. Carstedt, Clement F. Springer, Jr., and Leslie Recht, of Springer & Carstedt, Chicago, Illinois, for intervenor-appellee Interstate.

Fred L. Door and John T. Ward of Wasker, Sullivan & Ward, Des Moines, Iowa, for intervenor-appellee Northwest.

Heard by Donielson, P.J., Schlegel, and Sackett, JJ.

The Office of Consumer Advocate appeals the district court's ruling affirming a decision by the Iowa State Commerce Commission to allow an acquisition adjustment to be included in a future rate base. We reverse the district court.

The subject matter of this case concerns the potential consequences of the future purchase of a percentage of a generating station. On June 17, 1983, Interstate Power Company (Interstate) filed a petition with the Iowa State Commerce Commission (Commission) requesting a declaratory ruling on an acquisition adjustment of approximately $3,270,500 required to purchase 25MW of a generating station from Northwest Iowa Power Company (NIPCO). Interstate requested assurance from the Commission, prior to its purchase of the generating plant, that its full acquisition price would be includable in a future rate base and that associated operating costs, depreciation, and amortization will be allowed as proper cost of services in future rate cases. The Office of Consumer Advocate (OCA) challenged Interstate's request and proposed a more careful study of various alternatives available to Interstate before the Commission acted upon the petition. The Commission initially decided it could not issue a declaratory ruling because Interstate's petition raised factual and legal questions that were more appropriately addressed in a contested case proceeding. The Commission then docketed the matter as a contested case and anticipated the end result to be an accounting ruling. Based upon hypothetical facts, the Commission issued an order requiring the unamortized acquisition adjustment to be included in the rate base and then to be amortized in the above-the-line expense account.

The OCA interpreted the effect of this ruling to be an approval of a rate change, and asked the Commission to reconsider its decision because the statutory

notice to the public was not allowed under Iowa Code section 476.6. The Commission denied the request and did not explain its authority to take such an action, but did admit that its order was issued pursuant to its "rate regulatory powers."

Without specifically addressing the issue of whether this was a ratemaking ruling, the district court affirmed the Commissioner's ruling. It held that Iowa Code section 476.6 did not apply simply because the Commission's decision may have an effect on rates at some time in the future, or if in turn Interstate may change its rates due to the purchase of the generating plant. The district court then concluded that Interstate merely wanted to know how it was to account for the purchase and that the Commission's order simply decided that specific issue.

OCA filed a motion pursuant to Iowa Rule of Civil Procedure 179(b) requesting the district court to specify the Commission's authority to issue this type of order, and also asked the court to explicitly rule on the binding or preclusive effect of the Commission's order. The district court ruled that the proceeding was a declaratory ruling, prescribing accounting which the commission had power to issue under Iowa Code sections 17A.9 and 476.9(1). It also held that the issue of the binding effect of the Commission's order was not before the court and was improperly raised in the 179(b) motion.

On appeal, the OCA raises numerous procedural and legal issues, but for our purposes they can be assimilated into two broader, more comprehensive questions: 1) Did the Commission issue an order which it is bound to enforce in future rate cases, and if so, what statute authorized that action? and 2) If the Commission could and did promise Interstate favorable ratemaking treatment of the acquisition adjustment, can we conclude the Commission sufficiently considered evidence about the excessive costs customers would pay as a consequence of the orders?

The Commission argues on appeal that it need not follow ratemaking procedures prescribed by Iowa Code chapter 476 when issuing a decision that "may in the future result in higher rates." The Commission does not specifically say that its final order would be given the requested preclusive effect. Interstate, on the other hand, argues that the order would be binding in future rate cases. Interstate made it clear to the Commission that it required assurance prior to the purchase of the generating plant that its full acquisition price would be includable in a future rate base and that associated operating costs, depreciation and amortization will be allowed as proper cost of service in future rate cases. The Commission argues, however, that Interstate will be bound by this order only if it is able to establish the same facts and benefits in a rate case. The Commission notes that the purchase had not yet taken place so all the facts were hypothetical.

As we stated earlier, the district court did not specifically rule as to the binding nature of the Commission's order, although the issue was clearly raised and discussed by the parties. Only in response to the 179(b) motion, did the district court decide what type of action really was involved in the administrative proceeding below. It stated that the Commission's ruling was "in the nature of a declaratory ruling" prescribing accounting pursuant to Iowa Code sections 17A.9 and 476.9(1). The Commission, on the other hand, declared its authority under Iowa Code section 476.2 to design proceedings to best meet its need and therefore it scheduled a contested case (emphasis ours) "to ascertain the hypothetical facts upon which a declaratory ruling could be issued," and concluded that it would not be bound by its ruling if the facts it relied upon are no longer valid.

On appeal we are faced with the unwillingness of both the Commission and the district court to address the most fundamental issue raised by Interstate's

original request. The sole purpose for Interstate's request for the ruling on its acquisition of the generating plant was to be assured that it could include those costs in the rate base and that it would be binding in future rate cases. Despite Interstate's strenuous arguments that it did not request or receive a ratemaking decision, we believe that is exactly what it received. Therefore, the crucial issue that should have been addressed at the proceedings below was, what the specific effect of the Commission's order is, and what authority sanctioned such an order. We will address this issue and, because it is dispositive of the case before us, we will need to address no other issues.

The binding nature of the ruling sought by Interstate would naturally have a preclusive effect on, and therefore affect the legal rights of its customers. Thus, the nature of the proceeding should have been in a contested case setting according to Iowa Administrative Code 250—4.6(11), (12), and Iowa Code section 476.6 whereby a notice to the public and hearings are required. See Teleconnect Co. v. Iowa State Commerce Commission, 366 N.W.2d 515, 518 (Iowa 1985). While the Commission may have discretion to act by rule or contested case, that discretion must be exercised reasonably and is subject to review under the standards of Iowa Code section 17A.19(8)(g).

We agree with the OCA that the Commission did not issue a declaratory ruling. The Commission found that Interstate had provided sufficient evidence of actual benefit to customers to support the inclusion of the acquisition adjustment in the rate base. However, there was no evidence in the record as to the actual financing costs of the proposed transaction, no evidence of actual tax costs, actual coal costs, actual operation and maintenance costs, and no evidence of revenues when the newly-purchased plant would be in operation. Significantly, the Commission's findings were made without reference to statutory and regulatory standards requiring consideration of verifiable data respecting costs and revenues measured in a representative test period. Iowa Code

§ 476.33(4); Iowa Admin. Code 250—7.11. The findings also lacked reference to statutes requiring evidentiary findings that rates resulting from its decision would be reasonable and just. Iowa Code §§ 17A.12(8), 17A.16, 476.6(9), 476.8; Davenport Water Co. v. Iowa State Commerce Commission, 190 N.W.2d 583, 604-5 (Iowa 1971).

Because of the binding effect on future rate cases requested and received by Interstate, the Commission's ruling below essentially amounts to a ratemaking decision. Our holding today simply addresses that single but crucial issue. Despite the various labels attached to the ruling, its effect was in the nature of deciding rates in future cases for Interstate's customers. Therefore, the statutory guidelines must be observed.

Ratemaking is included within the definition of "contested case" proceedings according to Iowa Code section 17A.2(2). The legislature and the Commission have set standards for evidence to be heard in rate cases. Iowa Code §§ 476.6(6), (7), 476.33(4) (1983); Iowa Admin. Code 250—7.4(6), 7.4(11). Findings of fact must be based solely on the evidence in the record and on matters officially noticed in the record. See Iowa Code § 17A.12(8). Rulings, such as we have before us, depending solely upon hypothetical facts, are directly contrary to the rules of evidence set out in Iowa Code sections 17A.14 and 17A.16(1). Finally, the Commissioner's decision must show meaningful consideration was given to evidence and that rate case issues were not decided in advance as a policy matter. See United Telephone Co. v. Iowa State Commerce Commission, 257 N.W.2d 466, 470 (Iowa 1977); Davenport Water Co. v. Iowa State Commerce Commission, 190 N.W.2d 583, 613 (Iowa 1971). It is the court's responsibility to ensure statutory procedures are followed and that the public is not "fenced-out of its role in ratemaking." See Moss v. C.A.B., 430 F.2d 891, 900 (D.C. Circuit, 1970).

Because we have determined that the Commission's ruling was ratemaking in nature and that the required statutory guidelines for such a ruling were not observed, we must reverse the district court.

REVERSED.