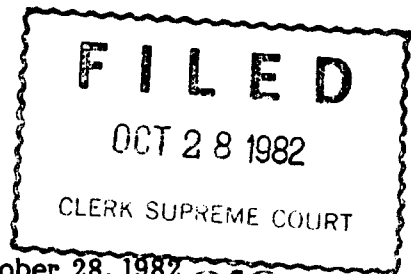


IN THE COURT OF APPEALS OF IOWA



IOWA ELECTRIC LIGHT
AND POWER COMPANY,

Appellant,

vs.

IOWA STATE COMMERCE
COMMISSION,

Appellee.

Filed October 28, 1982

2-229
2-67349

Appeal from Linn District Court, L. Vern Robinson, Judge.

Utility company appeals from district court's ruling that sustained State
Commerce Commission's special appearance. AFFIRMED.

Tom Riley, Peter C. Riley, and Frank S. Mitvalsky, Cedar Rapids, for
appellant.

Michael K. McCabe, Assistant Commerce Counsel, for appellee.

Considered en banc.

PER CURIAM

Appellant Iowa Electric Light and Power Company operates a nuclear generator at the Duane Arnold Energy Center. In June 1978, the Center was shutdown following discovery by Iowa Electric of a defect in the system. During the power outage, replacement power was purchased from other sources so that continuous electrical service could be provided Iowa Electric's customers.

The underlying dispute between the parties evolves from Iowa Electric's July 1978 filing with the Iowa State Commerce Commission of a tariff proposal to allow Iowa Electric to collect costs of the replacement power from its customers. The Commission allowed the tariff proposal subject to refund. A docket was then established to determine whether the replacement costs were reasonable and just. In May 1979 the Commission ordered that together with the replacement cost inquiry, it would also consider the question whether Iowa Electric could recover the cost of repairing a defect in the system during the period when the system was being started up after the shutdown. On June 3, 1980, the Commission issued an order approving most, but not all, of the replacement costs sought by Iowa Electric and disapproving Iowa Electric's claim for repair costs. Iowa Electric timely filed a petition for rehearing, which was denied by the Commission.

On January 28, 1981, Iowa Electric filed a petition in the district court seeking judicial review of the Commission's action. The petition alleges various grounds for relief the substance and merit of which are not the subject of this appeal. The dispute focuses on a special appearance filed by the Commission on February 17, 1981, which was sustained by the district court.

I. Scope of Review

Our scope of review on appeal from a ruling on a special appearance is governed by Larsen v. Scholl, 296 N.W.2d 785, 787 (Iowa 1980). "The trial court

findings. . . have the force and effect of a jury verdict. However, we are not bound by trial court's conclusions of law or by its application of legal principles. . . . Our determination turns on the application of legal principles." Id. (citations omitted); accord, Iowa Public Service Co. v. Iowa State Commerce Commission, 263 N.W.2d 766, 770 (Iowa 1978)(inquiry focuses on whether trial court "correctly ruled" on the question of jurisdiction).

II. Final Action

Iowa Code § 17A.19 (1979) provides that "[a] person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final action is entitled to judicial review." (emphasis added). The requirements and procedures of § 17A.19 are mandatory, see Dawson v. Iowa Merit Employment Commission, 303 N.W.2d 158, 160 (Iowa 1981)(failure to mail petition as required by § 17A.19 deprives district court of jurisdiction), and judicial review of administrative actions are strictly governed by statute. Iowa Public Service Co., 263 N.W.2d at 769. There can be no review unless petitioner complies with the conditions imposed by the legislature. Id. Thus, it is clear that the district court lacks jurisdiction to entertain Iowa Electric's petition unless Iowa Electric has exhausted all administrative remedies and was aggrieved by a final action. Our inquiry will accordingly be so focused.

A. Rate Regulatory Power

Section 17A.19 further states that "[w]hen agency action is pursuant to rate regulatory powers over public utilities. . . and the aggrievement. . . is to the rates or charges. . . , the agency action shall not be final until. . . a decision prescribing rates which satisf[ies] the requirements of those provisions of the Code has been rendered." (emphasis added) The Commission urges that because there has not been "a decision prescribing rates," its action is not final and thus not judicially reviewable. Iowa Electric argues that (i) this rate regulation clause does not apply

because the agency action was not "pursuant to rate regulatory powers" and (ii) even if the agency action was pursuant to its rate regulatory power, the agency's action is final and subject to review. Our first inquiry is therefore the applicability of this rate regulation clause.

1. Applicability

Iowa Electric's initial tariff proposal was filed pursuant to the provisions of ch. 476. See Iowa Code §§ 476.1 (1979)("The Iowa state commerce commission shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided."); 476.6(1)("A public utility subject to rate regulation shall not make effective any new or changed rate. . . except by filing it with the commission. . ."). The hearings were held pursuant to the Commission's power under Iowa Code § 476.4 (1979). In fact, Iowa Electric's authority to charge its customers subject to refund was granted it by the Commission pursuant to Iowa Code § 476.6 (1979).

Iowa Electric's contention is that the Commission's action was an "investigation," not a rate regulatory proceeding. This argument ignores the statutory language of § 17A.19, which brings within its purview agency actions that are "pursuant to rate regulatory powers." While not all the Commission's action focused directly on rates, its authority over Iowa Electric was exercised "pursuant to" the provisions of ch. 476. We therefore hold that the rate regulatory clause in § 17A.19 applies in this case.

2. Decision prescribing rates

The Commission contends that its June 3, 1980, order was not a "decision prescribing rates." See Iowa Code § 17A.19 (1979). This June 1980 order disapproved a small portion of the replacement costs and all the repair costs claimed by Iowa Electric. The order then directed Iowa Electric to calculate and

submit the results of the amount of the portions of Iowa Electric's claims that were not approved. Iowa Electric maintains that this order makes a final determination of its rate claims within the meaning of § 17A.19. We disagree.

In Federal Trade Commission v. Standard Oil Co., 449 U.S. 232, 101 S. Ct. 488, 66 L. Ed. 2d 416 (1980), petitioner sought judicial review after the agency issued a complaint against petitioner but before the completion of all adjudication of the complainant's charges. Id. at 234-35, 101 S. Ct. at 490-91, 66 L. Ed. 2d at 420-21. The agency was authorized to issue the complaint when it had "reason to believe" that the petitioner engaged in unfair methods of competition. See 15 U.S.C. § 45(b). The United States Supreme Court held that

By its terms, the Commission's averment of "reason to believe" that Socal was violating the Act is not a definitive statement of position. It represents a threshold determination that further inquiry is warranted and that a complaint should initiate proceedings. . . . [T]he issuance of the complaint is definitive on the question whether the Commission avers reason to believe that the respondent to the complaint is violating the Act. . . . Thus, the averment of reason to believe is a prerequisite to a definitive agency position on the question whether Socal violated the Act, but itself is a determination only that adjudicatory proceedings will commence.

449 U.S. at 241-42, 101 S. Ct. at 493-94, 66 L. Ed. 2d at 425. Similarly, in the instant case the Commission's order disapproving some of Iowa Electric's claim is not definitive of the rates that Iowa Electric may eventually charge its customers. It represents a threshold determination that inquiry into the amount of unreasonable replacement and repair costs is warranted. The issuance of the order is definitive only on the question whether Iowa Electric's cost figures are reasonable. Thus, the determination of the unreasonableness of portions of Iowa Electric's claim is a prerequisite to a definitive agency decision that certain rates be imposed. We conclude that the Commission's order is not a "decision prescribing rates." Having so concluded, the agency action is not final. See Iowa Code § 17A.19(1) (1979).

B. Other Provisions

Our conclusions in Divisions A1 and 2, supra, that the underlying agency action was exercised "pursuant to rate regulatory powers" and that no "decision prescribing rates" was rendered support our holding that Iowa Electric has failed to satisfy the "final action" requirement for judicial review. To further buttress our conclusion, we will assume that the rate regulation clause is nonapplicable and will now address the "final action" requirement that is not within the purview of the rate regulatory clause in § 17A.19.

Iowa Electric claims that the Commission's order is a final action and reviewable in that the Commission has determined the unreasonableness of portions of Iowa Electric's claims and that further administrative proceedings would not lead to a contrary determination.

Initially we note that the "final action" requirement should be interpreted pragmatically. Abbott Laboratories v. Gardner, 387 U.S. 136, 149, 87 S. Ct. 1507, 1516, 18 L. Ed. 2d 681, 692 (1967). Second, we note that one of "the relevant considerations in determining finality is whether the process of administrative decisionmaking has reached a stage where judicial review will not disrupt the orderly process of adjudication." Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71, 91 S. Ct. 203, 209, 27 L. Ed. 2d 203, 210 (1970). The pragmatic view of the rate proposal dispute in the instant case is that the parties will most likely engage in many more negotiations and hearings before the issues are finally resolved. One probable example of such issues is a dispute over the method of calculations utilized by Iowa Electric in arriving at the figures for a reasonable rate base. All these and other technical issues are much better reserved for the expertise of an initial administrative determination. Judicial inquiry should await the eventual outcome when the

rights and liabilities of the parties are fully adjudicated. See Renton Education Association v. Washington State Public Employment Relations Commission, 24 Wash. App. 476, 479-80, 603 P.2d 1271, 1273 (1979)("The policy of the administrative procedures act is against piecemeal appeals. . . . when [an] order comes up for review it brings with it. . . all previous interlocutory orders. . . .").

Judicial intervention at the current stage of proceedings will "disrupt the orderly process of adjudication. We therefore conclude that independent of the rate regulatory clause of § 17A.19(1), Iowa Electric has failed to satisfy the "final action" requirement of § 17A.19(1).

III. Exhaustion

A party seeking judicial review must satisfy both the exhaustion and the final action requirements. Iowa Code § 17A.19(1979); see, e.g., Iowa Public Service Co., 263 N.W.2d at 769. Iowa Electric has failed to satisfy the final action requirement. See Division II, supra. There is thus no need to address the exhaustion issue.

IV. Preliminary Review

Iowa Electric's last contention is that assuming that the Commission's action is not final, a preliminary judicial review is proper. Iowa Electric appears to rely on Iowa Code § 17A.19 (1979), which provides that "[a] preliminary procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy."

A. Adequate Remedy

"An adequate showing of irreparable injury resulting from following the administrative process would make judicial review of final agency action an inadequate remedy for purposes of [preliminary review] of section 17A.19(1)."

Salsbury Laboratories v. Department of Environmental Quality, 276 N.W.2d 830, 837 (Iowa 1979)(construing Richards v. Iowa State Commerce Commission, 270 N.W.2d 616, 619-20 (Iowa 1978)). The only argument made by Iowa Electric to support the Salsbury "irreparable injury" requirement is the expenses incurred in filing the calculations ordered by the Commission. Iowa Electric reasons that if the Commission's order were later vacated on judicial review, the resources directed at calculating the requested figures would be wasted.

We have little doubt that some resources may have to be needlessly expended if on later judicial review the Commission's order proves unreasonable. However, the authorities overwhelmingly indicate that the trouble and monetary losses associated with administrative processes do not constitute irreparable injury. E.g. Iowa Industrial Commissioner v. Davis, 286 N.W.2d 658, 662 (Iowa 1979)(monetary loss does not justify judicial intervention); Renegotiation Board v. Bannerkraft Clothing Co., 415 U.S. 1, 24, 94 S. Ct. 1028, 1040, 39 L. Ed. 2d 123, 139 (1974)("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); 5 B. Mezines, J. Stein & Gruff, Administrative Law, § 49.02[2], at 49-23 (1982)(same). See generally Petroleum Exploration, Inc. v. Public Service Commission, 304 U.S. 209, 222, 58 S. Ct. 834, 841, 82 L. Ed. 1294 (1938)("the expense and annoyance of litigation is 'part of the social burden of living under government.' "). Iowa Electric's claim of irreparable injury is thus too insubstantial to justify preliminary review.

B. Exhaustion

Having concluded that Iowa Electric has failed to show that judicial review of final agency action would not provide an inadequate remedy, the question of exhaustion need not be considered. See Iowa Code § 17A.19(1)(1979)(no preliminary

review unless all remedies exhausted and showing of irreparable injury).

V. Conclusion

Iowa Electric has failed to satisfy the jurisdictional requirements of § 17A.19(1). The district court was correct in sustaining the Commission's special appearance. We affirm.

AFFIRMED.