

Court of Appeals, State of Michigan
ORDER

Docket No.317434; 317456
LC No.00-017087

July 22, 2015

The Court orders that the motion for reconsideration is DENIED.

**The issue of legal redress for possible harm to health or environment is a
fundament right stated by COA Judge Peter D. O'Connell.**

Quote:

"I concede a hearing was held below, but supplementing this record with additional facts and conclusions of law that actually support the PSC's ultimate decision and giving the individual appellants their day in court is a fundamental requirement of our form of government. "

Unquote.

Quote:

" 'cost' includes more than the expense of complying with regulations; any disadvantage could be termed a cost. ... including, for instance, harms that regulation might do to human health or the environment."

Unquote.

Foot Notes pages 3 and 4:

1 As a result of our prior remand opinion, I fully expected the PSC on remand to grant the individual appellants a full and fair due process hearing so that they would have their day in court and would be able to air their concerns about the AMI program. In our form of government, the least a governmental body should do is listen to its citizens and provide a forum to allow them to air their grievances. Unfortunately, in its motion for reconsideration, the PSC claims it has already done so: "What this Court is requiring the Public Service Commission to do on remand has already been done." The PSC claims, "The Commission has already 'thoroughly' addressed the issues this Court remanded." First, if the above statements were correct, I would not have voted to remand this case for further proceedings. Second, the individual appellants in Docket No. 317456 have not had the opportunity to present any evidence to the PSC. I for one am curious to see what proofs will be presented. I concede a hearing was held below, but supplementing this record with additional facts and conclusions of law that actually support the PSC's ultimate decision and giving the individual appellants their day in court is a fundamental requirement of our form of government.

2 As the United States Supreme Court has recently stated, " 'cost' includes more than the expense of complying with regulations; any disadvantage could be termed a cost. ... including, for instance, harms that regulation might do to human health or the environment." Michigan v EPA, US ; S Ct ; L Ed 2d (2015); slip op at 29. "Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions." Id. While the holding in that case is not specifically applicable to this case, the general principle regarding nonmonetary costs applies.