STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS POWER COMPANY** for authority to increase its rates for the sale of natural gas and for other relief.	)))))	Case No. U-10755

At the June 5, 1996 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

On March 11, 1996, the Commission issued an order decreasing the base gas rates of Consumers Power Company (Consumers) by $11,730,000 and making other changes to its rules and tariffs. On April 10, 1996, Consumers filed a petition for rehearing, and the Commission Staff (Staff) filed a request seeking clarification. On May 1, 1996, Attorney General Frank J. Kelley (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), the Coalition of Michigan End-Users for Tariff Relief (Coalition), and the Staff filed responses to Consumers' petition. That same day, Consumers and the Coalition filed responses to the Staff's request for clarification.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17403, provides that an application for rehearing may be based on claims of error, newly discovered

evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. An application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

Ray Storage Field

Consumers argues that the Commission erred in disallowing a loss attributed to a gas inventory discrepancy at the Ray Storage Field. Consumers says that its evidence showed, without contradiction, that the loss did occur and that it did not act imprudently. It claims that its position is supported by the Uniform System of Accounts, which provides for amortizing the loss.

ABATE and the Coalition argue in favor of the Commission's decision on this issue. ABATE says that the gas volumes were not lost in the sense that they leaked from the storage field, but rather they were withdrawn without being metered. It adds that cross-examination of Consumers' own witness revealed that the metering problem should have been detected years earlier.

The Commission finds no merit in Consumers' claim. As argued by ABATE, there was testimony that the metering inaccuracy could and should have been detected considerably sooner.[1] Regardless of whether Consumers' portrayal is true as a matter of fact, the Commission's ruling was that rate recognition of the inaccuracy is not warranted under the circumstances shown in the record. Consumers has not advanced anything showing that the Commission's ruling was erroneous.

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[1]Both this fact and the absence of physical leakage due to a breach in the field's integrity distinguish this case from the Pennsylvania decision cited by Consumers.

James River and T-2 Discounts

Consumers argues that the Commission should reconsider its determination that the rate discounts extended to James River Corporation under special contract and various other customers under the Rate T-2 tariff will not be reallocated to other ratepayers. See March 11, 1996 order, pp. 33-38. Consumers argues that the discounts benefit other ratepayers by retaining the contribution to fixed costs that would have otherwise been lost if James River and T-2 customers had left Consumers' system. Responding to the rate order's criticism of Consumers' evidence, Consumers says that its evidence was unrebutted and fully demonstrated the reasonableness of its discounted prices. It argues that its evidence met the standard in the March 23, 1995 order for The Detroit Edison Company (special manufacturing contracts), Case No. U-10646, and subsequent orders approving special contracts, even though that standard was first announced after Consumers entered into the Rate T-2 contracts. It further contends that it is unlawful and unconstitutional for the Commission to apply a new standard to it retroactively.

Consumers argues that its efforts to provide discounts to at-risk customers are an innovative response to the new challenges of a market-driven environment. It argues that an unintended consequence of the Commission's ruling will be to act as an impediment to economic development in Michigan if the utility's inability to retain load means that some customers move to other states.

The Staff opposes rehearing on this issue. It says that Consumers had the opportunity and the means to present a cost-of-service analysis for the James River contract, but did not do so.

The Commission concludes that Consumers has not presented any valid reason for granting rehearing on the treatment of the rate discounts. Contrary to Consumers' argument, the Commission does not favor policies that impede competition or economic development. As stated in the

March 11, 1996 order, p. 38, the Commission reaffirmed its support for "the reasonable and prudent use of negotiated rate discounts as a means of meeting competitive challenges and promoting economic development, provided that adequate safeguards are put in place to protect the public interest." The claim that "load retention confers a general benefit on . . . ratepayers" was acknowledged as "a proposition that could be true under some circumstances." Id., p. 36.

However, the Commission will not adopt a proposed ratemaking treatment simply because the utility claims that it is pro-competitive. Consumers' shortcoming in this case was its evidentiary failure "to meet its burden of accountability." Id., p. 38. Even though some of Consumers' stated reasons for negotiating the discounts were advanced in the form of testimony that was not directly contradicted by other testimony, that does not mean that those reasons must be accepted at face value, particularly if they are superficial or lack persuasive value. As explained at more length in the March 11, 1996 order, Consumers' presentation provided few specific details regarding the circumstances leading to individual agreements and did little more than represent that the overall pricing was reasonable.

Moreover, the March 11, 1996 order did not, as Consumers claims, retroactively apply a new standard. The Commission's earlier orders approving Rate T-2[2] and the James River special contract[3] did not make provision for recovering the discounts in other rates. If anything, the Commission's ruling in this case signals a greater willingness to facilitate competitive discounts and is in line with other recent orders approving special contracts.

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[2]December 7, 1989 order in Cases Nos. U-8678, U-8924, and U-9197.

[3]February 23, 1995 order in Case No. U-10651.

90/10 Refund Mechanism

In its petition for rehearing, Consumers challenges the Commission's decision to continue the 90/10 refund mechanism. As stated in the Commission's March 11, 1996 order, pp. 128-129, this mechanism requires that 90% of all revenues from certain storage and transmission operations in excess of $13,689,000 annually be refunded to ratepayers.

Consumers reiterates earlier arguments that it is unfair to penalize it to the extent that it fails to collect up to the $13,689,000 threshold (which was imputed as revenues for purposes of calculating the revenue requirement), but allows it to retain only 10% of any amounts collected in excess of the threshold. It says that this approach ignores the market-oriented deregulatory initiatives at the federal level by effecting an unbalanced distribution of risks and rewards.

Moreover, Consumers says, its right to retain 10% of any overcollection is not as significant as it appears. It claims that its 10% share is diminished by the incremental costs that it would incur to produce the additional revenues and that those incremental costs could produce a net loss if they exceed 10% of the incremental revenues. It further argues that its obligation to refund the 90% share includes interest at its authorized return on common equity of 11.6% or its short-term borrowing rate, whichever is more. It says that the interest provision diminishes its incentive by the difference between 11.6% and the actual return it achieves on short-term funds.

Consumers says that the 90/10 threshold prior to this case was zero, not $13.7 million. It says that the Staff's proposal expanded the mechanism to cover off-system transmission and storage injection revenues. It contends that the March 11, 1996 order does not indicate that this was an intended consequence of the Commission's decision.

In reply, the Staff argues that Consumers misapprehends the rationale for the 90/10 refund mechanism, which is to compensate for an inability to project the revenues with reasonable certainty. The Staff explains that it derived the $13,689,000 revenue threshold by making downward adjustments to revenues in the historical test year, including the elimination of interruptible transmission revenues earned from the Midland Cogeneration Venture Limited Partnership (MCV). It says that the resulting $13.7 million estimate is conservative and poses little risk that Consumers will not attain it. It says that a 90/10 sharing of revenues in excess of the threshold provides Consumers with an incentive to maximize those revenues.

As to Consumers' argument regarding interest on refunds, the Staff responds that Commission procedures permit the utility to avoid interest by issuing refunds prior to the gas cost recovery (GCR) reconciliation proceeding. With respect to Consumers' argument regarding the incremental costs of producing additional revenues, the Staff says that Consumers did not show that there are any costs that are not recovered in base rates.

The Commission concludes that it should not grant rehearing on the 90/10 refund mechanism. As argued by the Staff, the mechanism uses the threshold amount as a conservative estimate of Consumers' revenue capabilities from storage and transmission operations and provides an incentive for Consumers to maximize those revenues. Given this context, the Commission does not find the mechanism to be unbalanced or unfair.

Consumers' arguments regarding the adverse effects of incremental costs and interest rates on its incentives under the mechanism are unpersuasive and were not advanced in Consumers' exceptions. The record does not identify incremental costs, if any, or the adverse effects of those costs and interest on Consumers' incentives under a 90/10 refund mechanism.

Although Consumers argues that the refund mechanism has been expanded in this case, its prior rate case was decided more than six years ago. December 7, 1989 order in Cases Nos. U-8678, U-8924, and U-9197, pp. 168-170. Consumers subsequently acquired a revenue stream from negotiated transmission and storage arrangements with its affiliate, the MCV. Because the MCV facility was not on line at the time of Consumers' last general gas rate case, those revenues, which amount to more than $11 million of the $13.7 million threshold, are a material change in circumstances. Setting a threshold for the refund mechanism was not an unintended consequence of this case. Moreover, Consumers' argument that the threshold has been expanded to include additional revenues is different from its earlier position, which was that the 90/10 refund mechanism was inappropriate in its entirety and should be ended. Consumers' exceptions, pp. 54-57. Consumers' current argument is untimely for purposes of rehearing.

Rule F13: Contiguous Billing and Aggregation of Accounts

Two issues have been raised with regard to Rule F13. One (concerning contiguous billing) was included in Consumers' petition, while the other (concerning aggregation of accounts) forms the basis of the Staff's request for clarification.

a. Contiguous billing

The final issue on which Consumers seeks rehearing concerns the contiguous billing program approved in the March 11, 1996 order. This program, designed after Michigan Consolidated Gas Company's (Mich Con) Rule No. D3.2, treats as a single customer for billing purposes all commercial or industrial buildings that (1) are located on the same or contiguous parcels of land, or across the street or alley from one another, (2) are operated as a unitary enterprise under

common ownership or leasehold, and (3) are exclusively occupied and used by the customer. Consumers finds fault with two aspects of the contiguous billing program adopted by the Commission and contained in Rule F13, Option A.

First, it asserts that the Commission mistakenly expanded the proposed program to cover not only transportation customers, but also sales customers taking service under Rates B and C. Claiming that such sales customers are not eligible for contiguous billing under Mich Con's Rule No. D3.2, and therefore were not intended to be included within the program approved in this case, it asks the Commission to find that "the 'Contiguous Facilities' portion of [Rule F13] should be revised so that sales customers are not eligible." Consumers' petition, p. 5.

Second, it contends that the Commission must increase the sales and transportation rates established in the March 11, 1996 order to offset revenues lost due to contiguous billing. In support of this contention, Consumers submitted an affidavit from its Director of Gas Pricing and Rate Administration, James F. Bearman. According to that affidavit, allowing qualifying customers to avoid paying monthly customer charges on some of their facilities (as would occur under Rule F13) will lead to a revenue shortfall of at least $512,000 annually. The affidavit further asserts that by also allowing those customers to convert some of their facilities from sales to transportation service, a separate revenue shortfall of at least $138,000 per year would arise. Consumers therefore requests a finding that "the revenue impact of the contiguous billing rule change should be reflected in the rate design ordered by the Commission, and transportation and sales rates should be adjusted upwards accordingly." Id.

Several parties oppose Consumers' requests. The Staff notes that, notwithstanding Consumers' assertion to the contrary, Mich Con's contiguous billing rule extends to both sales and transportation

customers. It therefore contends that the Commission was correct in adopting a contiguous billing rule for Consumers that, likewise, applies to both types of customers. The Staff further disputes the utility's claim that Commission approval of Rule F13 will lead to a significant annual revenue shortfall. Although acknowledging that Rule F13 may reduce revenues obtained from some customers, the Staff points out that any such shortfall will be offset by the increased customer charges received from customers that switch their facilities from sales to transportation service.[4]

Moreover, both the Staff and the Coalition assert that Consumers' claims of an impending revenue shortfall are based on extra-record evidence that could have, and should have, been presented on rebuttal and thus subjected to cross-examination. They therefore contend that Mr. Bearman's affidavit should be disregarded. Finally, the Attorney General says that the arguments offered by Consumers on rehearing are, for the most part, the same as those that "were presented and fully considered by the Commission before reaching its [March 11, 1996] decision." Attorney General's response, p. 3. The Attorney General thus joins the Staff and the Coalition in requesting that the Commission reject Consumers' arguments.

The Commission agrees and finds that the utility's request for rehearing on this issue should be rejected. It reaches this conclusion for two reasons.

First, the fact that the rule adopted by the Commission's March 11, 1996 order in this case allows some[5] of Consumers' sales customers to take advantage of contiguous billing is not improper.

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[4]For example, the Staff notes that if just 10 facilities are switched to transportation service, the $750 per month customer charge assessed to each would produce total annual revenues of $90,000. Staff's response, p. 4. In contrast, if those 10 facilities continue taking sales service on Rate B (which has a customer charge of only $15 per month), the total annual revenue derived from customer charges would be only $1,800.

[5]Consistent with the rule adopted for Mich Con, none of Consumers' residential customers are eligible for contiguous billing under Rule F13.

Although the program is designed to address the needs of a limited range of customers (namely those having two or more immediately adjacent facilities), those customers may be receiving service on either Consumers' sales or transportation tariffs. Moreover, allowing some sales customers to participate makes Consumers' contiguous billing program better correspond to that approved for Mich Con. As correctly noted by the Staff, Mich Con's Rule No. D3.2 offers contiguous billing not just to its transportation customers, but also to sales customers taking service on Rate No. 6 (large volume commercial), Rate No. 8 (alternate fuel displacement rate), and Rate No. 10 (school rate). Because Consumers' large volume commercial customers are served under Rate C, and because schools in the utility's service territory are served under both Rates B and C, limiting contiguous billing to Consumers' transportation customers would result in a significantly narrower program than that previously approved for Mich Con. The Commission therefore concludes that Consumers' argument should be rejected and that Rule F13 should continue to apply to sales customers taking service under Rates B and C, as well as the utility's transportation customers.

Second, despite Consumers' assertions to the contrary, it is not clear that implementation of Rule F13 will result in a substantial loss of revenue, or any loss at all. Allowing some customers to convert a few of their facilities from sales to transportation service, and further allowing them to enroll their remaining facilities in Consumers' contiguous billing program, will decrease the number of customer charges assessed and produce a reduction in distribution charges imposed on some facilities. Nevertheless, as the Staff correctly points out, Consumers' revenue received from customer charges will increase dramatically for each facility that switches from sales to transportation service. Specifically, the utility's customer charge revenue will rise by between $735 and $1,285 per month for each Rate B customer that converts to transportation service, and increase

by between $540 and $1,090 per month for each Rate C customer that makes a similar conversion.[6] Therefore, it cannot be assumed that Consumers will sustain a revenue shortfall due to implementation of Rule F13, and the Commission finds that the utility's request to increase its rates should be rejected.

For these reasons, the Commission denies the utility's petition for rehearing with regard to its contiguous billing rule.

b. Clarification regarding aggregation of accounts

In addition to contiguous billing, Rule F13 also provides for the aggregation of accounts. This program allows customers with multiple facilities to aggregate the quantities of gas supplied to those facilities by designating one as a "master account" and the others as "subsidiary accounts." The only restrictions are that a facility taking transportation service must serve as the master account and the subsidiary accounts must be facilities taking service on one of Consumers' sales tariffs (e.g., Rates A, A-1, B, B-NGV, C, or F). Under this program, a customer's master account would pay the usual transportation tariff rate (e.g., the Rate ST-1, ST-2, LT-1, or LT-2 charges) and its sales facilities would pay the applicable sales rates, except for the gas cost recovery (GCR) factors. This would allow a customer with two or more noncontiguous facilities, such as a school district, church, hospital, and commercial enterprise having common ownership, to combine a single transportation facility/master account with the entity's sales accounts so that all of its facilities can effectively receive transportation service.

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[6]These figures are based on the fact that the Commission's March 11, 1996 order established monthly customer charges of $15 and $210, respectively, for Rates B and C, while also setting the respective customer charges for small- and large-volume transportation customers at $750 and $1,300 per month.

According to the Staff, Consumers interprets the Commission's approval of this program as restricting aggregation of accounts to customers who were taking transportation service at one or more of their facilities prior to issuance of the March 11, 1996 order. Specifically, it contends that the utility is advising customers that they may not now convert a sales account covering one of their respective facilities to transportation service simply in hopes of designating that facility as a master account. The Staff contends that Consumers' interpretation conflicts with the underlying goal of the aggregation of accounts program, namely reducing economic barriers to customers' use of transportation service. Moreover, the Staff asserts that the utility's overly narrow interpretation of Rule F13 is based on Consumers' mistaken reading of footnote 51 on page 95 of the March 11, 1996 order.

The Staff therefore asks the Commission to clarify the portion of the March 11, 1996 order addressing aggregation of accounts. Specifically, it requests that the Commission "make clear that the master account provision is available not just to customers who currently have a transportation account, but [also] to customers who wish to establish a transportation account." Staff's request for clarification, p. 3. The Coalition supports the Staff's request, claiming that the Staff's interpretation of Rule F13 is consistent with the March 11, 1996 order and the record evidence.

Consumers agrees that clarification is needed in light of the difference of opinion regarding Rule F13's scope. The utility argues that, consistent with the language of the March 11, 1996 order, the Commission should resolve this dispute by stating that only facilities that were already receiving transportation service when that order was issued may be designated as master accounts. In support of this argument, Consumers relies on footnote 51 of that order, which states:

"In adopting [the contiguous billing and aggregation of accounts] proposal, it should be noted that 'an existing transportation customer' means any facility (as opposed to any corporation, association, school district, etc.) that is currently taking service on Rates T-1 or T-2 as of the date of this order's issuance."

March 11, 1996 order, p. 95.

According to the utility, both this footnote and other statements in the March 11, 1996 order show that the Commission desires to "take a limited, measured response to aggregation of accounts at multiple facilities under common ownership." Consumers' response, p. 3. Consumers asserts that such a restrained approach is necessary and that the Staff's interpretation (by extending eligibility for master account status to any facility that converts to transportation service in the future) creates undue economic uncertainty for the utility.

The Commission agrees with the Staff and the Coalition, and concludes that Consumers' interpretation of Rule F13 is too narrow. As indicated throughout its March 11, 1996 order, the Commission seeks to reduce or eliminate economic barriers to customers' use of transportation service. The aggregation of accounts program is designed to do this in two ways, neither of which should create significant economic problems for Consumers.

First, it enables existing transportation customers that also have facilities that are too small to economically qualify for transportation service to aggregate the quantities of gas used at those smaller facilities. Because Rule F13 allows Consumers to continue charging those smaller, subsidiary accounts the same sales rates (except for the GCR factor) that they would pay absent aggregation of accounts, the utility will suffer little or no economic harm.[7]

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[7]Although Consumers implies that broad application of Rule F13 may also result in stranded gas supply and pipeline transportation costs, the Commission previously noted that "Consumers' ability to use capacity release to offer excess capacity to other utilities, marketers, or end-users indicates that stranded costs should not present a significant problem." March 11, 1996 order, p. 94.

Second, it also provides a customer whose facilities have each been too small to justify switching from sales to transportation service with a chance to participate in the transportation market. As mentioned previously, the customer can accomplish this by (1) converting one facility from sales to transportation service, (2) declaring that facility to be a master account, and (3) aggregating its other facilities' gas usage with that master account. Because the rate revenue from the subsidiary accounts will remain the same, while the master account will pay higher rates due its conversion to transportation service, the utility's revenue from base rates will likely rise.

Finally, the Commission finds Consumers' reliance on footnote 51 (on page 95 of the March 11, 1996 order) to be misplaced. That footnote was not designed to narrow the scope of the aggregation of accounts program. Rather, the Commission intended to clarify that each of an entity's facilities constitutes a separate customer. Consequently, the fact that one or more of an entity's facilities take transportation service does not preclude that entity from participating in the contiguous billing and aggregation of accounts program.

For all of these reasons, the Commission concludes that the Staff's recommended clarification should be adopted.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 300, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101); and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. Consumers' petition for rehearing should be denied.

c. The Staff's request for clarification should be granted.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing filed by Consumers Power Company is denied.

B. The Commission's March 11, 1996 order in this case is clarified as requested by the Commission Staff and as provided for in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of June 5, 1996.

/s/ Dorothy Wideman
Its Executive Secretary