

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for reconciliation of power supply costs and) Case No. U-15415-R
revenues for 2008 and for other relief relating)
to pension and other post-employment benefit costs.)
_____)

At the January 20, 2011 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On March 31, 2009, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting reconciliation of power supply costs and revenues for calendar year 2008. A prehearing conference was held on May 5, 2009, before Administrative Law Judge James N. Rigas (ALJ). The ALJ granted intervenor status to, among others, Attorney General Michael A. Cox (Attorney General). The Commission Staff (Staff) also participated. The ALJ issued his Proposal for Decision on February 4, 2010.

On June 3, 2010, the Commission issued an order (June 3 order). On July 6, 2010, Consumers filed a petition for rehearing. On July 23, 2010, the Attorney General filed a response to the petition; and on July 27, 2010, the Staff filed a response to the petition.

In the June 3 order, the Commission found that Consumers' reduction of its 2008 PSCR revenues by amounts equal to its unrecovered Rate E-1 discount costs was improper, stating:

The same issues were raised and rejected in Consumers' 2007 PSCR reconciliation, Case No. U-15001-R. Despite the evidence introduced in this proceeding by Consumers, the Commission remains convinced that nothing in 1982 PA 304 obligates the Commission to approve the reduction of Consumers' 2008 PSCR revenues by the amount of the TPR and Rate E-1 discounts. . . . With respect to the Rate E-1 discount, the Commission notes that Rate E-1 is an all inclusive rate. The rate charged to the Rate E-1 customer is \$0.042 per kWh, which is inclusive of surcharges, PSCR factors, and other charges of any kind. Consumers sought approval of Rate E-1 in Case No. U-14692, which the Commission granted in an order issued November 22, 2005. Consumers did not request any ratemaking determination in its Case No. U-14692 application, and none was authorized by the November 22, 2005 order. The Commission addressed this issue in the March 2, 2010 order in Case No. U-15001-R and found that Rate E-1 is an all-inclusive rate and continues to be so.

Consumers' witness argued in Case No. U-15001-R that the Rate E-1 discount was intended to replace both the base PSCR factor plus the annual PSCR factor. March 2, 2010 order, p. 5. Then, after acknowledging that there was a difference between the PSCR factor embedded in the Rate E-1 tariff and the annual PSCR factor for 2007, Consumers altered its argument and stated that the Rate E-1 was not really meant to replace the base and annual PSCR factors. According to the Michigan Supreme Court,

[T]he essential principle of the rule against retroactive ratemaking is that when the estimates prove inaccurate and costs are higher or lower than predicted, the previously set rates cannot be changed to correct for the error; the only step that the MPSC can take is to prospectively revise rates in an effort to set more appropriate ones.

Detroit Edison Co. v Public Service Comm., 416 Mich 510, 523; 331 NW2d 159 (1982). The Commission stated that it has taken that step in Case Nos. U-15245 and U-15645.

June 3 order, pp. 11-12.

In its petition, Consumers objects to the Commission's finding on the Rate E-1 discount, and argues that it should be granted rehearing under 1999 AC, R 460.17403 of the Commission's Rules of Practice and Procedure (Rule 403) because the Commission's conclusion on this issue is in error.

Rate E-1 is a discounted rate available only to customers that meet the criteria defined in the E-1 tariff. In this reconciliation case, Consumers proposed to reduce its PSCR revenues by amounts that the company states are not recovered from the Rate E-1 customer for that customer's power supply. In the June 3 order, the Commission denied this request. In its petition, Consumers again argues that recovery of this amount is required under Act 304, MCL 460.6j(1), (14), and (15). The company argues that Act 304 does not allow for partial recovery, and does not allow the Commission to ignore differences between actual power supply costs and actual power supply revenues. In answer to the Commission's finding that Consumers did not request ratemaking treatment of the discount in Case No. U-14692 (where the company sought and obtained *ex parte* approval of Rate E-1), the company argues that this "should not preclude the Commission from providing recovery pursuant to Act 304." Consumers' petition, p. 4. Consumers points out that it is not asking to raise the E-1 customer's rate, but believes that it is entitled to shift this claimed unrecovered cost of the discount to other customers. Consumers contends that it is "legal error to rely on the original application" for the purpose of determining whether this amount may be recovered. *Id.*, p. 5. Finally, Consumers contends that the Commission's statements in the June 3 order about retroactive ratemaking are in error, because this is a reconciliation process authorized by statute.

The Attorney General opposes the petition for rehearing, arguing that Consumers' arguments are factually incorrect. The Attorney General contends that Act 304 does not permit Consumers to reduce its booked PSCR revenues in the proposed manner. MCL 460.6j(1), (12). The Attorney General points out that the company did not ask the Commission to re-allocate the discount to other customers when seeking the rate.

The Staff also opposes the petition, pointing out that the petition simply reargues the positions taken by the company in the case, and rejected by the Commission in the June 3 order. The Staff additionally argues that the petition should be denied because Act 304 makes no provision for PSCR customers to be forced to pay for this discounted rate. The Staff notes that E-1 is an all-inclusive rate, as defined in the tariff. The Staff further points out that Consumers ignores the fact that the discount has been spread to other customers in Consumers' base rates in the June 10, 2008 order in Case No. U-15245, which covers power as well as non-power costs.

The Staff is correct. As can be seen from the language quoted from the order, the Commission has already dealt with the arguments presented in the petition. The petition does not meet the standards of Rule 403; it simply rehashes the arguments made in the proceeding. Rule 403 provides that a petition 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. A petition 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. The petition is denied.

THEREFORE, IT IS ORDERED that Consumers Energy Company's petition for rehearing is denied.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of January 20, 2011.

Mary Jo Kunkle, Executive Secretary