

S T A T E O F M I C H I G A N
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates.))) Case No. U-15645)

At the October 17, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER REOPENING PROCEEDING

On November 14, 2008, Consumers Energy Company (Consumers) filed an application in this case requesting a \$215 million rate increase above the retail electric base rates established in the June 10, 2008 and June 19, 2008 orders in Case No. U-15245 and other relief.

On November 2, 2009, the Commission issued an order in this proceeding (November 2009 order) approving, among other things, a rate increase in the amount of \$139,411,000 and the recovery of costs associated with an advanced metering infrastructure (AMI) pilot program in the company's service territory.

The Association of Businesses Advocating Tariff Equity (ABATE) appealed the November 2009 order, arguing, in part, that the Commission improperly increased rates to pay for an AMI program. On October 30, 2012, the Michigan Court of Appeals issued an order affirming in part, reversing in part, and remanding in part the November 2009 order. *In re Application of*

Consumers Energy to Increase Rates, unpublished per curiam opinion of the Court of Appeals issued October 30, 2012 (Docket No. 296625, et al.).¹

In its October 30, 2012 order, the Court of Appeals agreed with ABATE that the Commission erred in approving funding for the utility's AMI program "without better ascertaining the program's benefits to its customers." *In re Application of Consumers Energy to Increase Rates, supra*, p. 10. Specifically, the Court of Appeals relied on its previous decision in *In re Detroit Edison Co Applications*, 296 Mich App 101, 114; 817 NW2d 630 (2012), where it concluded that "mere aspirational testimony" that described the AMI program in "optimistic but speculative terms...without an informed assessment supported by competent, material, and substantial evidence" warrants a remand for a full hearing about the benefits, usefulness, and potential burdens of the program. The Court of Appeals found this case to be similar to *In re Detroit Edison Co Applications* and concluded that the evidence presented was mere "aspirational testimony" about the project's expectations. Accordingly, the Court of Appeals remanded the case to the Commission for a full hearing on the AMI program, with instructions that it consider:

evidence related to the benefits, usefulness and potential burdens of the AMI, specific information gleaned from pilot phases of the program regarding costs, operations, and customer response and impact, an assessment of similar programs initiated here or in other states, risks associated with AMI, and projected effects on rates.

In re Application of Consumers Energy Company to Increase Rates, supra, p. 11.

¹ Several other parties appealed the Commission's November 2009 order on other grounds not related to the cost recovery of the AMI program and the Michigan Court of Appeals consolidated all five cases in its October 2012 order.

Discussion

The Commission finds that this case should be reopened for the limited purpose of responding to the Court of Appeals' remand. Accordingly, a prehearing conference has been scheduled at Constitution Hall located at 525 W. Allegan, Lansing, Michigan on November 13, 2013, at 9:00 a.m. before Administrative Law Judge Sharon L. Feldman (ALJ). At the prehearing conference, the ALJ shall establish an appropriate schedule for the remainder of the proceedings.

THEREFORE, IT IS ORDERED that:

- A. Case No. U-15645 is reopened for the limited purpose of addressing the Court of Appeals' Opinion and Order in *In re Application of Consumers Energy Company to Increase Rates*, unpublished per curiam opinion of the Court of Appeals issued October 30, 2012 (Docket No. 296625, *et al.*).
- B. A prehearing conference shall be held at 9:00 a.m. on November 13, 2013, before Administrative Law Judge Sharon L. Feldman.

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

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

By its action of October 17, 2013.

Greg R. White, Commissioner

Mary Jo Kunkle, Executive Secretary

Sally A. Talberg, Commissioner