

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY for approval)	
of a power supply cost recovery plan and)	Case No. U-16045
authorization of monthly power supply cost)	
recovery factors for the calendar year 2010.)	
_____)	

At the February 22, 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

OPINION AND ORDER

History of Proceedings

On September 30, 2009, Consumers Energy Company (Consumers) filed an application with supporting testimony and exhibits requesting approval of its power supply cost recovery (PSCR) plan and monthly PSCR factors for calendar year 2010 pursuant to 1982 PA 304, MCL 460.6j (Act 304).

A prehearing conference was held on December 1, 2009 before Administrative Law Judge Sharon L. Feldman (ALJ). The ALJ granted petitions for leave to intervene filed by the Department of the Michigan Attorney General – Natural Resources and Agriculture Division (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), the Michigan Environmental Council (MEC), Hemlock Semiconductor Corporation (Hemlock),

Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership, Cadillac Renewable Energy, LLC, and the Midland Cogeneration Venture Limited Partnership. The Commission Staff (Staff) also participated in the proceedings.

An evidentiary hearing was held on April 20, 2010. On May 13, 2010, Consumers, the Attorney General, and MEC filed initial briefs. On June 4, 2010, the Staff, the Attorney General, MEC and Consumers filed reply briefs. On July 16, 2010, the ALJ issued her Proposal for Decision (PFD). On August 20, 2010, Consumers, the Attorney General, MEC, and the Staff filed exceptions and on September 3, 2010, the same parties filed replies to exceptions. The record consists of 298 pages of transcript and 54 exhibits admitted into evidence. Additionally, the parties agreed to take official notice of the testimony of witness Michael Hoffman from Case No. U-16047.

Positions of the Parties

Consumers' direct evidence included the testimony and supporting exhibits of 7 witnesses. Lincoln D. Warriner, a Senior Business Support Consultant in the Rates and Business Support Department, testified to Consumers' five-year forecast as required under Section 6j(4) of Act 304, MCL 460.6j(4). Mr. Warriner provided forecasts of electric deliveries, generation requirements, and peak demand for the years 2010-2014.¹

David F. Ronk, Consumers' Director for Electric Transactions and Resource Planning, testified on the electric generation that Consumers expects to rely upon during the five-year forecasting period. Mr. Ronk testified that Consumers expects to maintain a 12% reserve margin. Mr. Ronk sponsored Exhibit A-17 showing that resource categories expected to meet the peak summer capacity and the company's 2010 projected summer peak capacity reserve margin of

¹See, Exhibits A-21 to A-25.

18.6%. Mr. Ronk testified further that the company expects to sell some capacity to reduce its summer peak reserve margin to the intended 12.69%.

Consumers further relied on the testimony of Mr. Ronk to show how the PSCR plan treated costs associated with the company's Green Generation² program and its renewable energy plan.³ Mr. Ronk further explained that the PSCR plan included several agreements, as provided in Exhibit A-17, pending approval in Case No. U-15805.

Mr. Ronk explained further that the PSCR plan includes a Power Purchase Agreement, Exhibit A-19, between Consumers and Scenic View Dairy, LLC, dated October 16, 2008 for the purchase of 350 kW of capacity and energy from the Fennville Dairy Plant for the period beginning on November 1, 2008 and continuing through September 30, 2010, with an option to extend the contract until December 31, 2015. The PSCR plan also includes a Reduced Dispatch Agreement, Exhibit 20, between Ada Cogeneration Limited Partnership and Consumers, dated January 30, 2009.

Richard J. Polena, a Principal Engineer Lead in Consumers' Transaction and Resource Planning Section of the Electric and Gas Supply Department, testified to Consumers' power supply costs during the five-year forecast. Mr. Polena sponsored Exhibits A-14 through A-16 and explained that Consumers employs the "PROMOD" production costing program to simulate the dispatch of the company's generating resources and purchased and interchange power resources to meet projected customer requirements.

Andrew C. Dotterweich, the Electric Transmission and Market Regulations Director in the Transmission and Regulatory Strategies Section of the Electric and Gas Supply Department, testified to the cost of transmitting the energy required to serve Consumers' proposed load during

²Approved in Case No. U-13843.

³Approved in Case No. U-15805.

the five-year period. Mr. Dotterweich sponsored Exhibit A-2 and explained the company's anticipated Midwest Independent Transmission System Operator, Inc., (MISO) charges.

Mr. Dotterweich testified that projected MISO charges would be \$248,234,653 for 2010 offset by a \$19,706,000 credit due to generation-related reactive services.

David B. Kehoe, the Director of Staff for Electric Generation, testified to the cost of emission allowances for the five-year forecast period as well as the company's planned outages and forecast outage rates.⁴ Mr. Kehoe testified that the company projects that the 2010 expense for nitrogen oxide (NOx) is \$69,014.33. He further testified that the company incurred a cost of \$2,514,822 for urea, a chemical used to react with NOx to reduce emissions.

Laura M. Collins, a Senior Analyst I in the Revenue Section of the Rates Department, presented the company's calculations for the 2010 PSCR factor. Ms. Collins sponsored Exhibit A-1 detailing Consumers' calculations and explained that the 2010 PSCR factor is \$0.02257⁵ per kilowatt-hour (kWh).

Brian D. Galloway, the Fuels Transportation and Planning Director in the Electric and Gas Supply Department, testified to the company's projected fuel costs. Mr. Galloway's testimony included projected costs for the five-year forecast period and included actions the company had taken to reduce these costs.

MEC presented the testimony of George E. Sansoucy, a civil engineer and owner of George E. Sansoucy, P.E., LLC, which provides valuation, consulting and engineering services throughout the country. Mr. Sansoucy was the only non-Consumers' witness, and the only witness to

⁴Mr. Kehoe's testimony is transcribed at 2 Tr 261-273 and he sponsored Exhibits A-8 to A-11.

⁵The 2010 PSCR factor was subsequently amended pursuant to the Commission's August 10, 2010 order in Case No. U-15645.

challenge Consumers' PSCR plan. Mr. Sansoucy specifically challenged four areas of Consumers' plan.

First, Mr. Sansoucy testified to Consumers' excessive projected line losses. He explained that, based on a comparison to a 13-utility sample, the 8.6% line loss projections for 2010 are unreasonable and recommended a \$27 million reduction to the 2010 PSCR plan.

Second, Mr. Sansoucy challenged Consumers' projections for 2010 coal costs. Mr. Sansoucy explained that Consumers' projected cost of \$2.45 per million British thermal unit (MMBtu) for 2010 is at least 25% higher than the \$1.96 per MMBtu cost The Detroit Edison Company (Detroit Edison) projected for 2010. Thus, the potential impact to ratepayers, Mr. Sansoucy explained, is \$96,601,647, which should be the reduction related to coal costs in Consumers' 2010 PSCR plan.

Third, Mr. Sansoucy testified that Consumers' projected costs for natural gas for the Zeeland generating plant are excessive. 2 Tr 284. He noted that Consumers' proposed cost was equal to \$6.37 per MMBtu and based on one natural gas price strip, when the cost should project at \$5.83 per MMBtu, resulting in savings to ratepayers of over \$5 million.

Fourth, Mr. Sansoucy testified that Consumers' company-owned generation is underutilized and not being taken out of service. Mr. Sansoucy presented Exhibits MEC-1 through MEC 4 and MEC-13 to support his conclusion that the company's utilization of its power plant capacity is only 33%. Mr. Sansoucy further noted that the company's utilization of the capacity available under contract is almost 100%. Mr. Sansoucy recommended that the Commission open a docket to develop a new plant dispatch stacking. Mr. Sansoucy further recommended, at a minimum, reducing Consumers' PSCR recovery factor by 8% to accommodate the difference in sales estimates from the time of the initial plan filing and the sales estimates extracted through later discovery.

MEC also claims that Consumers' forecast of generation requirements for 2010 is unreasonable.⁶ Mr. Sansoucy noted that the generation requirements for 2010, as presented by Consumers' witness Lincoln Warriner, were 4.4% greater than the actual 2009 generation requirements.

The Attorney General did not present any witnesses in this case. The Attorney General did, however, support MEC's positions on reductions to the PSCR plan related to Consumers' projected overall coal cost and natural gas cost at the Zeeland plant, and to the unreasonableness of the company's sales forecast. The Attorney General further requested that, pursuant to MCL 460.6a(7), (8) and (9), the Commission preserve the parties' rights to review in the company's reconciliation proceedings the reasonableness of payments to biomass merchant plants.

The Staff did not present any witnesses in this case, but generally supports Consumers' 2010 PSCR plan and forecast. The Staff did disagree with the Attorney General, calling his request to preserve parties' rights in reconciliation unnecessary.

ABATE, Hemlock, Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership, Midland Cogeneration Limited Partnership, and Cadillac Renewable Energy LLC presented no witnesses and made no substantive filings in this case.

Proposal for Decision

The ALJ analyzed four areas of contention among the parties related to Consumers' 2010 PSCR plan. The ALJ first dissected arguments surrounding Consumers' projections for coal costs for the plan period. The ALJ noted that the crux of MEC's position is that Consumers' projected costs are significantly higher for 2010 than that of Detroit Edison. The ALJ concluded, however, that Consumers was "not required to provide a quantitative evaluation of the differences between

⁶This issue was raised for the first time in MEC's brief, pp. 26-28.

its as-burned costs and Detroit Edison's to meet its burden of proof in this plan proceeding." PFD, p. 17. Additionally, the ALJ recommended finding that the \$97 million reduction in power supply costs suggested by MEC and supported by the Attorney General be rejected.

Next, the ALJ broke down the differences among the parties related to transportation charges for the natural gas burned at the Zeeland plant. The ALJ recognized that disputed transportation costs were intrinsically linked to Consumers' third-party contract for the gas. In evaluating the 54 cents per thousand cubic-feet (Mcf) cost under the third-party contract, the ALJ was not persuaded by Consumers evidence to support the associated cost and recommended that the Commission find the contracts unreasonable. The ALJ recommended no specific reduction to the PSCR plan, but that Consumers support the reasonableness and prudence of this agreement in the reconciliation.

The ALJ also considered the evidence presented by the parties related to the commodity cost component of the Zeeland plant power supply costs. The ALJ rejected two separate adjustments proposed by MEC. The ALJ first rejected the \$17.2 million adjustment because, as she explained, it was based on 2009 costs for the entire electric power sector. The ALJ rejected MEC's alternate \$18.2 million adjustment because the calculations did not include transportation costs. The ALJ relied on more recent data and testimony of Mr. Sansoucy setting the cost at \$5.83 per Mcf and recommended a \$5.1 million adjustment to the total power supply costs, resulting in a PSCR factor of negative \$0.00066 per kWh.

Third, the ALJ reviewed MEC allegations that Consumers' forecast generation requirement underlying the 2010 plan is unreasonable and imprudent. The ALJ, however, was persuaded by the detailed modeling presented by Consumers witness Warriner rather than reliance on 2009 sales as MEC and the Attorney General supported. The ALJ recommended no action towards Consumers' projected forecast requirement.

Fourth, the ALJ reviewed arguments related to biomass merchant plants (BMP). The ALJ determined that the parties really presented no tangible dispute on the issue. The ALJ explained that the Commission had already determined that the costs associated with BMPs would be reviewed during reconciliation. The ALJ recommended that Consumers' \$12 million payments to BMPs be included as part of the total PSCR factor calculation.

Finally, the ALJ reviewed two contracts that Consumers requests approval. Because no party objected, the ALJ recommend approval of the two agreements, Exhibit A-19, a power purchase agreement intended to supply the company's Green Generation program, and Exhibit A-20 reduced dispatch agreement.

Exceptions and Replies

Consumers takes exception to the ALJ's recommendation that the company's 2010 PSCR factor should be reduced by \$5.1 million for natural gas costs to the Zeeland plant. Consumers argues that if the ALJ's recommendation is accepted, it would represent a zero dollar projection for gas transportation expense.

MEC replied that Consumers misconstrues the ALJ's recommendation, in that the reduction results from a decline in projected commodity price. The Attorney General further elaborates in his reply, that the ALJ determined the more recent \$5.30 per Mcf cost more reasonable than the \$5.83 offered by Consumers.

Consumers also takes exception to the ALJ's recommendation that the natural gas services contract providing natural gas to the Zeeland plant be reviewed in the 2010 reconciliation. Consumers argues that the evidence supports a finding, in this case, that the third-party contract is reasonable and prudent. Consumers further argues that the intervenors' position related to the transportation costs is from a prior year and covers territory and services not analogous to the costs

for the Zeeland plant. Consumers further argues that none of the intervenors challenged the third-party contracts in their filed testimony or initial briefs.

MEC argues in reply that Consumers did not provide specific enough information in its initial application and filed testimony for intervenors to address the third-party contract. MEC further states that it and the Attorney General did challenge the transportation case once the 54 cents per Mcf was identified. The Attorney General further argues that the ALJ properly recommended reviewing the reasonableness of the third-party contract in the 2010 reconciliation because the terms and conditions of that contract do not satisfy the provisions of MCL 460.6j(3).

The Attorney General filed two exceptions to the PFD. First, the Attorney General takes exception to the PFD's recommendation related to projected fuel expense. The Attorney General argues that the PFD should have reduced that expense and PSCR factor by \$48.7 million. MEC agrees and adopts the position of the Attorney General.

Consumers argues that its projections for coal costs are reasonable and prudent and that counter arguments rely on incongruent data from another utility. Consumers believes that such a comparison is subjective, arbitrary, and cannot result in any meaningful and objective measurement.

The Staff agrees with the PFD, stating that the arguments of MEC and the Attorney General related to coal cost projections attempt to expand the review of the Commission to an area beyond whether the plan is reasonable and prudent.

The Attorney General and MEC also take exception to the PFD's recommendation related to Consumers' projected sales forecast and argue that the company's PSCR expense should be reduced by 8% of the projected average expense. Consumers replies that the PFD correctly rejected the arguments of MEC and the Attorney General because the intervenors placed too much

reliance on actual 2009 sales. Consumers argues that the evidence presented by its witness is more reasonable and in line with the requirements of Act 304.

MEC takes additional exceptions to the PFD. MEC first argues that the PFD mistakenly determined that the Commission's review is limited to the decisions underlying the plan. MEC argues that MCL 460.6j(5) allows the Commission review to encompass the reasonableness and prudence of the costs projected by the plan. Consumers replies that Act 304 must be construed in its entirety and requires that it is the company's decisions, and the policies and practices underlying the PSCR plan, that must be reviewed for reasonableness and prudence. The Staff agrees with Consumers' position on this issue.

MEC also takes exception to the PFD in what MEC describes as a shift in the burden away from Consumers with regards to arguments on the issues. MEC provides various examples from the PFD to demonstrate the shift of burden. Consumers replies that MEC's exception ignores the company's entire direct case. Consumers points out that the testimony of its witness and supporting exhibits clearly established the reasonableness and prudence of its decisions related to the 2010 plan.

The Staff takes exception to the PFD's recommendation that the Commission find the third-party contract unreasonable and that Consumers should be prepared to support the reasonableness of the contract in its 2010 reconciliation. The Staff recommends that Consumers be allowed to supplement its filings in its 2009 reconciliation so that the issue can be resolved more expeditiously. The Attorney General replies that testimony related to the contract in question omits vital information with which to determine its reasonableness. The Attorney General states that MCL 460.6j(3) imposes a duty upon Consumers to describe its major contracts so as to determine the reasonableness of the associated cost projections.

Discussion

Coal Cost Projections

Prior to addressing the substantive issues related to Consumers' 2010 PSCR plan, the Commission finds it necessary to address two general issues brought up by MEC in its exceptions. First, MEC grasps at the language of MCL 460.6j(5) in arguing that the focus of the PSCR plan proceeding should be on costs, and that the costs experienced by a different utility are relevant and determinative of the reasonableness of Consumers' coal costs.

Second, MEC implied that the PFD shifted the burden of demonstrating the reasonableness and prudence of its 2010 PSCR plan away from Consumers and on to intervenors in this case. The Commission finds these arguments are without merit. As discussed below, approval or rejection of Consumers' PSCR factor does not turn on the level of costs experienced by another utility. Furthermore, the Commission has not found any instance in the PFD where Consumers was not required to support the reasonableness and prudence of its decisions underlying its 2010 PSCR plan.

As to the specific substantive issues related to Consumers' 2010 PSCR plan, the Commission disagrees with MEC and the Attorney General's argument that the PSCR cost should be reduced by almost \$97 million because of excessive coal cost projections. To support its argument, MEC and the Attorney General relied heavily on comparisons from Detroit Edison coal costs. MEC witness George Sansoucy testified that Consumers' projected costs were 25% higher than Detroit Edison's. MEC argued that Consumers did not explain the cause of this disparity or why the comparison is not a relevant factor. MEC's suggested \$97 million reduction is derived from applying Detroit Edison's lower estimated cost of \$1.96 per MMBtu to Consumers' projected volumes.

Consumers argued that the comparison is subjective and provides little objectivity to the reasonableness of Consumers' decisions underlying its projections. Consumers' testimony and exhibits provide the requisite insight into the company's decision-making and modeling related to its coal cost projections. The Commission agrees with the ALJ "that Consumers is not required to provide a quantitative evaluation of the differences between its as-burned coal costs and Detroit Edison's." PFD, p.17. Because the essence of MEC and the Attorney General's argument for reduction pertain to the differences between the utilities, the Commission is not persuaded that any reduction for projected coal costs is warranted.

Zeeland Plant Costs

The Commission agrees that, for purposes of Consumers' 2010 PSCR plan, there should be a \$5.1 million cost reduction associated with natural gas costs at the Zeeland plant as determined by the ALJ. Consumers' original projection for the delivered natural gas costs to the plant of \$6.37 per MMBtu is excessive in light of the testimony that a more recent 12-month average New York Mercantile Exchange (NYMEX) price would result in a delivered cost of gas at the plant of \$5.83 per MMBtu.

Therefore, the Commission agrees with the ALJ and adopts the recommended adjustment from the PFD. The Commission further agrees that Consumers has not proven that the 54 cents per MMBtu for transportation expense is reasonable and prudent. The Commission will not, however, adjust the plan factor in this proceeding but will require Consumers to support the transportation cost during reconciliation.

Load Projections/Sales Forecasts

The Commission disagrees with MEC's and the Attorney General's position that Consumers' generation forecast is overstated. MEC argued that Consumers' projected generation for 2010 is

4.4% higher than Consumers' actual 2009 generation as identified in the company's FERC Form 1 filing. The Staff asserted that MEC's arguments provide only a surface level comparison and did nothing to diminish the detailed explanation of the modeling employed by the company to project its 2010 forecast.

The Commission agrees with the PFD and finds Consumers' 2010 forecast generation requirement underlying the company's 2010 plan reasonable and prudent. Consumers' witness Warriner provided a thorough examination of the power supply requirements of the company's customers by rate class. MEC's recommended rejection of Consumer's forecast relies inadequately on the company's 2009 actual generation data. Although the previous years' actual data may be useful in determining the reasonableness of the current forecast, the Commission finds, in this case, that Consumers provided satisfactory and essentially unrebutted evidence to support its figures.

Merchant Plant Issues

According to MCL 460.6a(9), the Commission is directed to issue orders permitting BMPs to recover additional payments, above the contract requirements, for reasonably and prudently incurred fuel and variable operations and maintenance expenses.⁷ The utilities may then recover the additional allowed amounts from ratepayers. The procedures for implementing these provisions were approved by the Commission in its August 11, 2009 order in Case No. U-16048.

In this case, Consumers requests \$12 million for inclusion in the factor calculation. The PFD recommended inclusion of the entire amount, but noted that the parties had no real opportunity to review the reasonableness and prudence of Consumers' payments to the BMPs. The ALJ further

⁷See also, MCL 460.6a(7) and (8).

noted that the Commission preserves review of this issue in the reconciliation proceedings. No party filed an exception to the PFD on this issue.

The Commission agrees with the recommendation of the PFD and accepts Consumers' \$12 million for inclusion in the factor calculation. The Commission further finds that it will review the reasonableness and prudence of the payments to the BMPs in the reconciliation proceeding.

Contract Approval

As a final measure the ALJ recommended approving two contracts submitted by Consumers. The first contract, Exhibit A-19, is a power purchase agreement to supply the company's Green Generation program. The second contract, Exhibit A-20, is a reduced dispatch agreement. No party objected to approving these contracts. The Commission finds that approval of these is reasonable and prudent.

THEREFORE, IT IS ORDERED that:

A. The application for a power supply cost recovery plan and monthly factors filed by Consumers Energy Company for calendar year 2010, as modified by this order, is approved.

B. Consumers Energy Company is authorized to charge a maximum power supply cost recovery factor of negative \$0.00066 per kilowatt-hour.

C. All payments to biomass merchant plants pursuant to MCL 460.6a(7), (8) and (9) shall be reviewed in Consumers Energy Company's 2010 power supply cost recovery plan reconciliation proceeding.

D. The two contracts submitted by Consumers Energy Company in its initial application and entered as Exhibits A-19 and A-20, are approved.

E. Consumers Energy Company shall file with the Commission, within 30 days, tariff sheets reflecting the approvals 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.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of February 22, 2011.

Mary Jo Kunkle, Executive Secretary