

(MCTA) and the Educational Telecommunications Networks Committee Concerned About Costs filed answers.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACRS, R 460.17403, 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 Commission finds that the petitions for rehearing fail to meet the standard set forth in Rule 403. Except as noted below, the petitioners' arguments reiterate their previous positions or express disagreement with the Commission's decision. Therefore, the Commission will not summarize those arguments or address them in this order.

However, two points require clarification. First, the petitions imply that the only beneficiary from the rate decrease is the cable television industry. However, the rates are available to any attaching party, including educational institutions seeking to use pole attachments for distance learning applications.

Second, the joint petitioners state that the calculation of the weighted average rate should have used the actual numbers of pole attachments provided by Consumers and Detroit Edison, which were documented in discovery responses. The joint petitioners do not provide a citation to the record for this data. Discovery responses are not part of the record, which is the basis for fact finding under the Administrative Procedures Act of 1969. MCL 24.276; MSA 3.560(176), MCL 24.285; MSA 3.560(185).

On April 2, 1997, TCI of Greater Michigan, Inc., (TCI) filed a late petition for leave to intervene. On April 10, 1997, the Commission Staff filed an objection to TCI's petition.

TCI has an interest in these cases as one of the parties represented by the MCTA. It represents that its participation will not delay the proceedings or cause hardship to the parties. Because these cases have already been decided in a final order, there would be little, if any, effect on the existing parties if TCI is granted leave to intervene at this time. Therefore, the Commission finds that it should grant TCI's petition.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 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) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. The petitions for rehearing should be denied.
- c. TCI's late petition for leave to intervene should be granted.

THEREFORE, IT IS ORDERED that:

- A. The petitions for rehearing are denied.
- B. The late petition for leave to intervene filed by TCI of Greater Michigan, Inc., is granted.

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

John G. Strand
Chairman

(S E A L)

John C. Shea
Commissioner, dissenting in a separate

opinion.

David A. Svanda
Commissioner

By its action of April 24, 1997.

Dorothy Wideman
Executive Secretary

THEREFORE, IT IS ORDERED that:

A. The petitions for rehearing are denied.

B. The late petition for leave to intervene filed by TCI of Greater Michigan, Inc., is granted.

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

Chairman

Commissioner, dissenting in a separate opinion.

Commissioner

By its action of April 24, 1997.

Executive Secretary

In the matter of the application of
CONSUMERS POWER COMPANY for
authority to modify tariffs governing
attachments to poles.

Case No. U-10741

In the matter of the application of
THE DETROIT EDISON COMPANY for
authority to modify tariffs governing
attachments to poles.

Case No. U-10816

In the matter of the proceeding, on the
Commission's own motion, to examine setting
just and reasonable rates for attachments to
utility poles, ducts, and conduits, pursuant to
MCL 460.6g; MSA 22.13(6g).

Case No. U-10831

Suggested Minute:

“Adopt and issue order dated April 24, 1997 denying the petitions for rehearing of the Commission's February 11, 1997 order setting pole attachment rates, as set forth in the order.”