

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
CONSUMERS ENERGY COMPANY for a)
reconciliation of power supply cost recovery) Case No. U-11180-R
costs and revenues for calendar year 1997 and)
for a permanent base rate adjustment resulting)
from the reconciliation.)
_____)

At the June 26, 1998 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

OPINION AND ORDER

The Commission's February 11, 1998 order in Case No. U-11290 et al. granted the request of Consumers Energy Company (Consumers) to suspend its power supply cost recovery (PSCR) clause, effective immediately, through the year 2001. The order provided that the PSCR reconciliation for 1997 would occur and that the base rate adjustment needed to reflect the shift of costs from the suspended PSCR factor to base rates would be determined in the reconciliation. Some of the parties sought discovery related to fuel and purchased power costs for 1998 and later years, apparently on the theory that the Commission intended to adjust rates for projected changes in costs during the period the PSCR clause would be suspended. On April 24, 1998, Consumers filed an objection to the discovery and sought a protective order barring further discovery of such information.

At a hearing on May 18, 1998, Administrative Law Judge Robert E. Hollenshead (ALJ) heard argument on Consumers' objection and motion, after which he ruled against the utility's position. On May 26, 1998, Consumers filed an application for leave to appeal.¹ Attorney General Frank J. Kelley, the Residential Ratepayer Consortium, the Association of Businesses Advocating Tariff Equity, and the Michigan Community Action Agency Association filed replies.

Rule 337 of the Commission's Rules of Practice and Procedures, 1992 AACS, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review; an appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

Because a ruling on the scope of the case will materially advance a resolution of the case, the Commission grants the application for leave to appeal. The Commission rejects the suggestion that litigation of additional issues will take no more time and resources than litigation of fewer issues.

In the October 29, 1997 order in Case No. U-11453, the Commission granted, with modifications, Consumers' request to suspend its PSCR clause. Consumers had proposed that the Commission suspend the PSCR clause for the period 1998 through 2001 and increase its base rates by the

¹The Commission requests that parties filing applications for leave to appeal begin to include a statement of the date by which responses are due.

amount of the 1997 PSCR factor plus (1) the amount of the scheduled increases in capacity payments already approved for power purchased from nonutility generators and (2) an adjustment to reflect that the Palisades nuclear plant experienced an unusually high capacity factor in 1997.² The Commission concluded that the suspension of the PSCR clause should be delayed until at least 5% of Consumers' load was being served by nonaffiliated power suppliers under the retail access tariff approved in Case No. U-11451. Consistent with the delay in suspending the clause, the Commission concluded that it would be more productive to determine the base rate adjustment when the threshold had been reached.

In the January 14, 1998 order on rehearing, the Commission concluded that Consumers' PSCR clause should be suspended beginning with the first billing cycle in the month that the retail open access load reaches 150 megawatts (MW). In addition, the Commission concluded that the appropriate base rate adjustment should be determined in the ongoing 1998 PSCR plan case rather than in a separate case that would commence only when the threshold had been met.

On January 28, 1998, Consumers filed a motion for clarification of the order. Among other things, it proposed a more specific procedure for suspending the PSCR clause. As the fourth point in its proposal, Consumers suggested "that the permanent base rate adjustment would be established using actual 1997 costs as reviewed in the 1997 PSCR reconciliation (Case No. U-11180-R), adjusted only for the impact of future [purchased power agreement] capacity charge increases which have been previously approved by the Commission." January 28, 1998 motion, p. 4. Consumers noted that "use of the 1997 reconciliation to determine the base rate adjustment will permit the

²This proposal is consistent with the company's March 7, 1997 filing in Case No. U-11290 at page 43.

Commission to rely upon its review of actual expenses, instead of various parties' estimations of future costs." January 28, 1998 motion, p. 6.

In the February 11, 1998 order on further rehearing, the Commission concluded that "Consumers' PSCR suspension process should be adopted." February 11, 1998 order, p. 11. The Commission summarized the fourth point as stating that it would "determine the permanent base rate adjustment in the 1997 PSCR reconciliation." February 11, 1998 order, p. 9. Further, the Commission stated that "interested parties will have an opportunity for a hearing in the 1997 PSCR reconciliation case to determine the appropriate base rate adjustment." February 11, 1998 order, p. 11.

From the time Consumers first proposed that its PSCR clause be suspended until the Commission approved the company's January 28, 1998 proposal on February 11, 1998, Consumers has never proposed an inquiry into projected costs for 1998 through 2001 and the Commission has never approved such an inquiry. The Commission's summary of Consumers' last proposal is not fairly read as modifying the proposed PSCR suspension process. The Commission explicitly adopted Consumers' proposal and therefore implicitly adopted the proposal to calculate the base rate adjustment using actual 1997 costs in the 1997 reconciliation. The Commission's intent has been and remains that 1997 actual costs, with limited adjustments, will be reflected in base rates during the suspension period.

This approach is consistent with the Commission's suspension of PSCR clauses and gas cost recovery clauses for other utilities. In those cases, the Commission has approved the continuing recovery of costs at or below the levels collected before the suspension of the clause. The Commission has not first commenced an examination into projected costs during the suspension period so that those projections could be incorporated into rates.

To the extent that the intervenors assert that the law requires the Commission to conduct a full and complete hearing, to set rates that will be in effect prospectively only after an examination of future costs, or to conclude that rates would be lower with the PSCR clause suspended, the Commission finds the arguments unpersuasive. The Commission is not required to adopt any particular approach to setting just and reasonable rates. Attorney General v Public Service Comm #2, 136 Mich App 515, 523; 358 NW2d 351 (1984); Attorney General v Public Service Comm, 189 Mich App 138, 147-148; 472 NW2d 53 (1991). In addition, the Court of Appeals has affirmed the Commission's conclusions that it need not conduct a hearing before suspending a clause if the suspension does not result in a rate increase and that a potential reduction in PSCR costs that is foregone because the clause is suspended is not the same as a rate increase for which a hearing is required. Attorney General v Public Service Comm, unpublished opinion per curiam of the Court of Appeals, decided January 20, 1998 (Docket Nos. 191946, 192000, 192001, and 192515). It is therefore difficult to conclude, as the intervenors have, that the Commission must adjust rates to reflect expected cost reductions during the suspension period. The Commission could lawfully have incorporated the most recent PSCR factor into base rates. Having decided to hold a hearing to consider a base rate adjustment, the Commission is not required by law to open that hearing to all issues that any party desires to raise. The Commission defined the scope of this case in the February 11, 1998 order. It finds no reason to expand the scope at this time.

For these reasons, the discovery sought by the intervenors is beyond the scope of this case, and the ruling of the ALJ to the contrary should be reversed.

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.; 1982 PA 304, as amended, MCL 460.6h et seq.; MSA 22.13(6h) 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 AACCS, R 460.17101 et seq.

b. The application for leave to appeal should be granted, and the ruling of the ALJ reversed.

THEREFORE, IT IS ORDERED that:

A. The application for leave to appeal is granted.

B. The motion for protective order filed by Consumers Energy Company is granted.

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

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ John G. Strand

Chairman

By its action of June 26, 1998.

/s/ John C. Shea

Commissioner

/s/ Dorothy Wideman

Its Executive Secretary

/s/ David A. Svanda

Commissioner

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Case No. U-11180-R

Suggested Minute:

“Adopt and issue order dated June 26, 1998 granting Consumers Energy Company’s application for leave to appeal and its motion for a protective order, as set forth in the order.”