

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the petition by)
CONSUMERS ENERGY COMPANY)
for a declaratory ruling related to PPA)
auction process.)
_____)

Case No. U-11811

At the October 12, 1998 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner

ORDER

On October 8, 1998, Consumers Energy Company (Consumers) filed a petition for
declaratory ruling pursuant to Rule 701 of the Commission's Rules of Practice and Procedure, 1992
AACS, R 460.17701. The petition recited that Consumers was embarking upon an auction process

Through use of the auction process, Consumers seeks to accomplish several objectives. First, the auction process would achieve a quantification by independent market forces of Consumers' above-market or stranded cost liability under the PPA with the MCV. Second, given that today's market for electric generating assets and power purchase agreements is widely regarded as being a seller's market, the auction represents the opportunity to save Consumers' retail customers money in the form of reduced stranded costs by selling now. Third, use of an auction process would remove the need for a true-up for this PPA under the Commission's program for electric industry restructuring. Fourth, sale of its rights to 1,240 MW of contract capacity would significantly reduce Consumers' alleged market power in the generation sector of Michigan's bulk power market. Finally, such an auction would bring certainty now to all parties involved in the Michigan electric industry restructuring.

It is impossible for this Commission to determine at this time whether these objectives can be achieved. Moreover, the petition is unable to provide many facts concerning the results of the auction because the details of the disposition will not be known until definitive agreements are negotiated with the winning bidder(s) in January 1999. Nor does the petition describe the precise nature of the accounting and ratemaking treatment that Consumers will be seeking or the issues that the Commission will have to decide in order to rule upon Consumers' request. Nonetheless, the petition does state that Consumers does not expect the Commission to prejudge the matter and that Consumers will make a filing with the Commission after the definitive agreements have been negotiated where the exact relief Consumers desires will be specified.

In light of these and other circumstances that demonstrate that the petition fails to present an "actual state of facts," the Commission finds that it would be premature to address the petition at this time. However, the Commission does view such an auction process and transaction as consistent with its prior orders issued with respect to electric industry restructuring in Michigan. The proposed approach can offer a legitimate way to utilize independent market forces to determine the above-market or stranded portion of Consumers' obligations under the PPA with the MCV. The Commission cautions all parties that, in so stating, it is making no ruling related to the outcome

of such a process and especially reserves all of its rights to fully consider the definitive agreements reached with the winning bidder when they are presented to the Commission for consideration.

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 AACR, R 460.17101 et seq.

b. The petition for declaratory ruling is premature because an actual state of facts regarding the transaction does not yet exist. When Consumers completes its proposed auction process, it should file an application with the Commission seeking necessary approvals to implement the transaction.

THEREFORE, IT IS ORDERED that the petition of declaratory ruling is dismissed.

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

/s/ John G. Strand

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

By its action of October 12, 1998.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated October 12, 1998 denying the petition for declaratory ruling filed by Consumers Energy Company, as set forth in the order.”