

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 December 21, 1998 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

ORDER DENYING REHEARING

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 AACSR 460.117701. The petition stated that Consumers proposed to implement an auction process to dispose of its rights and obligations under the power purchase agreement that it currently has with the Midland Cogeneration Venture Limited Partnership (MCV). Consumers' petition listed several objectives that the company hoped to achieve through the auction process and requested that the Commission sanction the proposed process. Consumers asserted that granting its petition would increase the willingness of potential bidders to participate in the auction process.

On October 12, 1998, the Commission issued an order dismissing the petition because Consumers had failed to demonstrate that an actual state of facts regarding possible transactions existed. The order indicated that Consumers should file an application seeking necessary approvals

to implement the transaction after it had completed the proposed auction. However, without prejudging the merits of any petition not yet before it, the Commission stated that it viewed the auction process described by Consumers as consistent with prior Commission orders issued with respect to electric industry restructuring in Michigan.

On November 6, 1998, Attorney General Frank J. Kelley (Attorney General) filed notice of his intervention and a petition for rehearing of the October 12, 1998 order. The Attorney General argues that the Commission's October 12, 1998 order grants Consumers the relief that it sought, despite the fact that the order dismisses the petition as premature. In the Attorney General's view, the relief sought by Consumers is inappropriate and directly contrary to the Commission's previous rulings in cases related to restructuring of the electric industry. Specifically, the Attorney General asserts that the Commission has previously rejected a Consumers proposal to use an auction process to determine the market price of power and the amount of stranded costs applicable to Consumers' qualifying facility power purchase agreements. According to the Attorney General, previous Commission orders have favored a process that relies on actual market prices that customers are paying.

On November 20, 1998, Consumers filed a response to the Attorney General's petition. In that response, Consumers argues that the Commission's October 12, 1998 order merely indicates a willingness to remain open-minded about the auction process, and about the resulting effect on prior Commission determinations made in connection with industry restructuring, but granted no specific relief to Consumers.

Consumers argues that the Attorney General appears to desire the Commission to issue an order that would ensure that the auction process would fail. Consumers states that a principle purpose of the auction is to determine whether the stranded costs associated with the power purchase agreement with MCV can be better defined. Thus, Consumers argues, the Attorney

General's petition is contrary to the interests of the customers he purportedly represents. To the extent that the Attorney General opposes efforts by Consumers to divest itself of control over generating capacity within Michigan, argues Consumers, his position is contrary to the interest of customers in reducing concerns over Consumers' market power and in reducing stranded costs.

The Commission finds that the Attorney General's request for rehearing should be denied. In doing so, the Commission notes that its October 12, 1998 order dismissed the petition for declaratory ruling because it failed to establish an actual state of facts upon which to grant the requested relief. The Commission has made no final determination concerning the proper measure of stranded costs for Consumers, and has made no finding regarding the meaning or reasonableness of the auction process or its future results. It merely stated that such a process could offer one legitimate way to use independent market forces to determine the above-market or stranded portion of Consumers' obligations under the power purchase agreement with the MCV. The Commission explicitly stated that the October 12, 1998 order makes no ruling related to the outcome of the auction process and reserved 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 Attorney General may properly raise his concerns before the Commission at that time.

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 Attorney General's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Attorney General Frank J. Kelley is denied.

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 December 21, 1998.

/s/ Dorothy Wideman

Its Executive Secretary

b. The Attorney General's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Attorney General Frank J. Kelley is denied.

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

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Suggested Minute:

“Adopt and issue order dated December 21, 1998 denying the petition for rehearing filed by Attorney General Frank J. Kelley, as set forth in the order.”