

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 December 16, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

ORDER DENYING REHEARING

On August 31, 1999, the Commission issued an order reconciling Consumers Energy Company's (Consumers) power supply cost recovery (PSCR) revenues and expenses for 1997 pursuant to 1982 PA 304, as amended, MCL 460.6h et seq.; MSA 22.13(6h) et seq. (Act 304). The order also approved a permanent base rate adjustment of \$0.00302 per kilowatt-hour (kWh), which is to take effect in the first billing cycle of the month after Consumers' retail open access load reaches 150 megawatts (MW) and will expire after December 31, 2001. On September 30, 1999, Consumers and the Michigan Community Action Agency Association (MCAAA) filed petitions for rehearing. Thereafter, Consumers, the MCAAA, Energy Michigan, and Attorney General Jennifer M. Granholm (Attorney General) filed answers.

In its petition for rehearing, Consumers makes the following assertions: (1) the Commission erred in ruling that the 80/20 sharing mechanism for transmission revenues remained in effect after Consumers' most recent base rate case, (2) the Commission erred in disallowing \$4.3 million of costs related to unamortized nuclear fuel in the reactor core at the time of the permanent shutdown of the Big Rock Point plant, (3) the computation of the base rate adjustment for the Palisades capacity factor is flawed, (4) the Commission should clarify the effective date of the base rate adjustment, (5) the Commission should approve a charge to recover Consumers' obligations owed under a power purchase agreement with the Midland Cogeneration Venture Limited Partnership (MCV) from 2002 through 2007, (6) a true-up procedure for MCV capacity costs is unnecessary, and (7) the Commission erred in disallowing \$100,000 to give customers the benefit of a contractual penalty obtained by Consumers due to Westinghouse's failure to meet deadlines in repairing Consumers' Weadock 7 plant. The MCAAA contends that the procedures used to conduct the hearings in this case were unfair and violated its due process rights.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, 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 issues raised in the petitions for rehearing fail to meet the standards set forth in Rule 403. For the most part, they amount to repetition of arguments that the Commission has already considered or serve only to register disagreement with the Commission's decision. Only one issue, the computation of the Palisades base rate adjustment, requires extended comment.

Attachment A to this order sets forth the computation used in the Commission's August 31 order to produce a \$0.00014 per kilowatt-hour (kWh) normalized Palisades capacity factor adjustment (which is shown as a component of the total power supply charge of \$0.00302 per kWh on page 50). As seen from that computation, the methodology used is the same as that proposed by Consumers. See Ex. A-2, at 2. This is true even for those modifications that Consumers made to account for delay in implementing the base rate adjustment (beyond the beginning of 1999). See Ex. A-5, at 2. The only difference is the input used to represent the increase in Consumers' net replacement power costs that results from lowering the Palisades capacity factor from the plant's actual 1997 performance of 85.6% to the Commission-approved factor of 78%. Consumers says that it is not seeking rehearing to challenge the Commission's finding of a normalized factor of 78%.¹

The cost input used in Attachment A was adapted from the Attorney General's position, which is somewhat different from Consumers' approach to determining the cost effect. Consumers used its PROMOD planning model with cost data from its 1997 PSCR plan case to estimate additional costs of \$12,357,000 that it would have incurred in 1997 if the Palisades capacity factor had declined to 71.8%.

Exs. A-2, at 2, l. 13; A-5, at 2, l. 13. Using Consumers' actual cost data from 1997, the Attorney

¹The Commission's finding regarding a normalized capacity factor of 78% was contrary to the ALJ's recommendation, in his Proposal for Decision (PFD) at 24, not to make any base rate adjustment for Palisades. The Attorney General, the RRC, the MCAAAA, and Energy Michigan concurred in the recommendation set forth in the PFD.

General determined the same value to be \$9,486,000. Ex. I-68. Applying this approach, the Attorney General further determined that the cost effect of lowering the Palisades capacity factor to 79.6% (her position, which is higher than Consumers' 71.8%) was \$3,451,000. Ex. I-69. The input of \$4,689,000 used in Attachment A reflects a further adjustment for the somewhat lower capacity factor of 78% that the Commission adopted in the August 31 order.

Neither approach is exact, but both seek to produce a reasonable approximation of the change in net replacement power costs based on a lower capacity factor.² Under the circumstances, the Attorney General's estimate is reasonable and is preferable to Consumers'. Its principal advantage lies in its use of actual fuel costs, actual unit availabilities, actual loads, and other actual data from 1997. 12 Tr. 1074. In contrast, Consumers' use of its projected data from its plan case to run the PROMOD model introduces an unacceptable degree of artificiality into the estimate. Although Consumers claimed that PROMOD cannot run with actual data, it had the access to the database and the computing resources necessary to undertake a detailed statistical analysis with actual data. Its failure to make the modifications necessary to adjust 1997 projected costs for actual outcomes (particularly in the context of a reconciliation case) undermines the reliability of its estimate. Therefore, the Commission rejects Consumers' claim that the computation of the Palisades adjustment derived from the Attorney General's cost estimate was improper or that it was less accurate than Consumers' cost estimate.

The Commission adds a few brief comments regarding three other issues. Consumers' arguments regarding the 80/20 sharing mechanism are addressed in today's order denying rehearing in Case No. U-

²In effect, the parties are hypothesizing what costs would have been incurred if Palisades had run less often. This exercise requires a number of assumptions regarding the power supply options that would have been available to Consumers at the various times throughout 1997 when Palisades would have sustained the reductions in output consistent with a lower capacity factor.

10973-R, Consumers' 1996 PSCR reconciliation case. As for the effective date of the permanent base rate adjustment, the reference in the August 31 order to "the first billing cycle in the month after Consumers' open access load reaches 150 MW" was not intended to alter the meaning of prior orders establishing the effective date. The phrase was merely a shorthand reference to those orders. See February 11, 1998 order, Case No. U-11290 et al. at 10. As for the MCAAA's argument that the August 31 order is inconsistent with the recent decision in Consumers Power Co v Public Service Comm, 460 Mich 148; 596 NW2d 126 (1999), that case has been found not to apply to issues relating to the Commission's authority to suspend an Act 304 fuel clause and freeze the charge at the request of a utility. Residential Ratepayer Consortium v Michigan Public Service Comm, ___ Mich App ___; ___ NW2d ___ (1999), slip op at 4, n.1.

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 petitions for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petitions for rehearing are 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, concurring in a separate opinion.

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 16, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated December 16, 1999 denying the petitions for rehearing filed by Consumers Energy Company and the Michigan Community Action Agency Association, as set forth in the order.”

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**CONCURRING OPINION OF
CHAIRMAN JOHN G. STRAND**

I concur in the majority opinion.

The one area where I do have concerns with the majority opinion is with the computation of the base rate adjustment for the Palisades capacity factor. After reviewing the record, I believe that the computation used in the Commission's August 31, 1999 order is in question and that rehearing should be granted on this issue.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman