

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	
for adjustment of its surcharges for	)	Case No. U-11662
nuclear plant decommissioning.	)	
_____	)	

At the March 22, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

**OPINION AND ORDER**

**I.**

**HISTORY OF PROCEEDINGS**

On March 31, 1998, Consumers Energy Company (Consumers) filed an application to adjust the surcharges that fund the external trusts that will pay for the decommissioning of the Big Rock Point and Palisades nuclear power plants. Although Consumers' application did not propose to alter the revenues projected to be recovered through the current surcharges, the company did propose to reallocate those revenues between the Big Rock Point and Palisades trusts and to reallocate the revenue recovery among the rate classes.<sup>1</sup> Attached to the application is Consumers' "1998

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<sup>1</sup>The surcharges approved by the Commission's April 10, 1996 order in Case No. U-10800 were designed to recover \$47,424,933 based on projected 1996 sales. Those revenues were to be allocated as follows: \$24,191,411 for Big Rock Point and \$23,233,522 for Palisades.

Based on Consumers' projections for 1998 sales, the company estimates that the surcharges currently in place will generate \$50,623,175 in 1998. The company proposes to

Report on the Adequacy of the Existing Annual Provision for Nuclear Plant Decommissioning,” which was required by the settlement agreement approved by the November 21, 1991 order in Case No. U-9668.

Pursuant to due notice, a prehearing conference was held on May 7, 1998 before Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ). At that time, the ALJ recognized Attorney General Frank J. Kelley<sup>2</sup> (Attorney General) and the Commission Staff (Staff) as parties to the case in addition to Consumers. Three days of evidentiary hearings were completed by August 31, 1998. On September 9, 1998, the parties filed briefs. On September 25, 1998, Consumers and the Attorney General filed reply briefs.

Thereafter, the ALJ issued his Proposal for Decision (PFD) in which he recommended that the Commission approve Consumers’ Big Rock Point decommissioning method and resulting costs and approve the site-specific cost studies for decommissioning both Big Rock Point and Palisades. Further, the ALJ recommended that the Commission adopt neither Consumers’ nor the Attorney General’s assumed investment plans for one of the Palisades trust funds, but order Consumers to file a revised plan, with a resulting revised surcharge calculation, within three months of the final order in this case. Finally, the ALJ recommended that the Commission require Consumers to file a revised tariff that clearly states that the surcharges apply to all delivered energy for both sales and retail transmission customers.

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allocate those revenues as follows: \$32,466,243 for Big Rock Point and \$18,156,932 for Palisades.

Consumers proposed to allocate recovery from the various rate classes using the same methodology approved by the Commission in Case No. U-10800.

<sup>2</sup>On January 1, 1999, Jennifer Granholm was sworn in to replace Mr. Kelley as Michigan’s Attorney General.

On December 9, 1998, Consumers and the Attorney General filed exceptions to the PFD. On December 23, 1998, those parties filed replies to exceptions.

## II.

### SUMMARY OF THE RECORD

#### Consumers

Consumers witness Thomas S. LaGuardia is President of TLG Services, Inc. (TLG), a firm that provides consulting services related to nuclear decommissioning. As he did in Case No. U-10800, Mr. LaGuardia sponsored studies that estimate the future costs to decommission the Big Rock Point and Palisades plants on a site-specific basis. The study for Big Rock Point estimates that the plant will be fully decommissioned by 2012 at a total cost of \$293.9 million. The study for Palisades estimates that the plant will be fully decommissioned in 2032 at a total cost of \$517.8 million. Both cost estimates are in 1997 dollars, with no adjustment for inflation or consideration of the cost of money over time.

The cost study for Big Rock Point assumes that the plant will be decommissioned using the DECON approach, which entails dismantling the plant as soon as possible after nuclear operations cease and the plant is retired. The assumed method has changed from that employed in the cost study for Big Rock Point in Case No. U-10800, which assumed use of the SAFSTOR approach, in which the plant is shut down for an extended period of time before radioactive structures are dismantled and residual radioactivity is reduced to a level suitable for unrestricted use of the site.

Kenneth P. Powers, Consumers' Site General Manager, whose responsibilities encompass the safe decommissioning of Big Rock Point, testified that the DECON approach emerged as a viable option for Big Rock Point because of the window of opportunity for disposal of low level radioac-

tive waste from the Big Rock Point plant that did not exist at the time the company prepared its 1995 decommissioning study. He stated that there are currently two facilities that will accept low level radioactive waste. Mr. Powers further testified that although it is still uncertain when the United States Department of Energy (DOE) will take possession of spent nuclear fuel, the company has prepared a contingency plan that it believes will allow it to remove spent fuel from the spent fuel pool at Big Rock Point, after a cool down period, for eventual shipment to the DOE. That contingency plan is based on an agreement with Westinghouse Electric Corporation for the design, licensing, construction, and delivery of containers that are approved for safe use both for storing and transporting spent fuel, thus eliminating the need to maintain the spent fuel pool in operating order to facilitate the transfer of fuel from temporary dry casks to casks suitable for safe transportation. It further assumes that the company will be able to obtain approval for the new containers from the Nuclear Regulatory Commission.

Mr. Powers testified that there are certain advantages to using the DECON approach, including the availability of personnel that are knowledgeable about the plant and that have long term experience in operating plant equipment. In his view, these persons will function more safely and efficiently and without the training related to radioactive materials that might be needed after the delay associated with the SAFSTOR approach. Another advantage of the DECON approach is that the equipment should remain in relatively good working order without the extensive additional expenditures for refurbishing that might be necessary after an extended period of non-use.

The cost study for Palisades assumes that the SAFSTOR approach will be used for that plant's decommissioning. The assumed use of SAFSTOR is based in large part on the uncertainty concerning the disposal of radioactive materials at the time of Palisades' planned retirement. In

contrast to Big Rock Point, which has already begun the process of decommissioning, Palisades has several years remaining on its operating license.

Both of Consumers' site plans include costs associated with site restoration. Consumers notes that the Commission has previously recognized these costs as decommissioning costs and included them in determining the appropriate surcharge levels.

In order to calculate surcharges sufficient to assure the existence of funds to decommission these nuclear power plants, assumptions must be made as to the investment strategy and the estimated rate of inflation. Consumers' witness Don A. Forsblom testified that there are two trust funds for each plant, one a qualified Decommissioning Reserve Fund, as defined in Section 468A of the Internal Revenue Code of 1954, as amended (Section 468A trust). The other is set up to receive funds in excess of those permitted by law to be placed in the Section 468A trust.<sup>3</sup> In addition, Consumers established a fifth trust to receive and invest monies related to the Federal Energy Regulatory Commission (FERC) decommissioning collections.

Mr. Forsblom testified that Consumers' investment strategy takes into account the risk and likely returns available. He stated that for the Palisades Section 468A trust, the target mix includes 65% equity investments, with the remainder in fixed income securities that provide the best after-tax return. No new equity purchases are being made for the Big Rock Point Section 468A trust, and Consumers plans to convert the trust assets to fixed income securities as the decommissioning process continues at this plant. All of the non-Section 468A trusts' assets will continue to be invested 100% in tax-exempt securities.

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<sup>3</sup>The difference in tax treatment is significant. Taxable income in the Section 468A trusts is taxed at 20%, while taxable income in the nonqualifying trusts is taxed at the corporate rate of 35%.

Mr. Forsblom went on to say that the anticipated after-tax rate of return for the Palisades Section 468A trust is 7.18%, and for its non-Section 468A trusts is 5.13%. The rate of return for the Big Rock Point trusts will depend on cash flow and the need for liquidity. However, Mr. Forsblom stated that the after-tax return is expected to decline over time from 8% to a projected 4.5%.

In addition to its request that the Commission approve its proposed surcharges for nuclear decommissioning, Consumers asks the Commission to also specifically approve Exhibit A-18, which is a summary of information needed for the company to prepare a request to the federal Internal Revenue Service for a Schedule of Ruling Amounts for the Palisades Section 468A trust. Such a request is necessary, the company states, to amend the amount that may be placed into the tax-advantaged Section 468A trust. Without including the required information in this order, Consumers states, a large portion of decommissioning funds would lose the tax benefits available under Section 468A of the tax code.

#### The Staff

The Staff presented no witnesses and takes the position that Consumers' proposed decommissioning plans and the proposed surcharges are reasonable and should be approved as requested.

#### Attorney General

Through the testimony of William A. Peloquin, the Attorney General challenged the assumptions and calculations that Consumers used to produce the proposed surcharges. In his view, the surcharge for Palisades should be reduced to zero for 1999 through 2001, and the surcharge for Big Rock Point should be reduced by \$18 million annually.

Mr. Peloquin testified that, in his opinion, Consumers understated the projected balances for the Palisades trust funds by (a) reducing fund earnings from 7.18% to 5.13% for years 2009 through

2045, based on an unreasonable assumption that all equity funds would be converted to municipal bonds, (b) excluding from the interest income calculation interest for the year prior to scheduled expenditures, and (c) failing to include any additional customer contributions resulting from Consumers' own projected increases in both sales and retail transmission. Mr. Peloquin further asserted that even accepting Consumers' position on the above alleged errors, the company's proposed surcharge for Palisades would result in a \$274 million surplus at the end of the decommissioning period. Correction of this projection to a zero end balance, without any other corrections, Mr. Peloquin stated, would reduce the annual revenue required for Palisades decommissioning to about \$14.5 million.

Mr. Peloquin also challenged Consumers' proposal for Big Rock Point as a means by which Consumers could double recover certain operation and maintenance (Other O&M) expenses that he alleged are currently collected in Consumers' base rates, but are now charged to decommissioning costs because the plant is shut down. He recommended that the Commission find that the Other O&M expenses recovered in base rates for Big Rock Point should be considered as a deductible amount from the expenses recoverable from the decommissioning trust funds. Mr. Peloquin testified that the annual amount required for Big Rock Point should be reduced by \$18 million to recognize this double counting.

Mr. Peloquin addressed four additional matters. First, he testified that the tariff for the Big Rock Point decommissioning surcharge should be physically separate from the one for Palisades, and should specifically state that the Big Rock Point surcharge will end on December 31, 2000. Second, he charged that Consumers should be required to provide for the expeditious refunding of any DOE reimbursement for that agency's breach of its obligation to store nuclear waste. Third, he opined that Consumers should be required to allocate to jurisdictional ratepayers the value of the

prime lakefront real estate upon which Big Rock Point is located, once it is decommissioned.

Finally, Mr. Peloquin objected to the lack of specific language requiring the surcharges to apply to all energy deliveries, both to sales and retail transmission customers.

### **III.**

#### **DISCUSSION**

##### Assumed Goal of the Funds

Mr. Peloquin noted that Consumers' calculations for its Palisades trust funds resulted in a projected end balance in 2045 of \$274 million. He argued that the goal of the decommissioning funds should be to have a zero balance at the conclusion of decommissioning. He testified that even if no other adjustments were made to Consumers' proposed surcharge, adjusting the surcharge for a zero fund balance at the conclusion of decommissioning would lower the needed annual revenue from the estimated \$18,156,932 to \$14,458,350.

Consumers argued that the Attorney General's position depended on the invalid assumption that there will in fact be a \$274 million balance in 2045. It argued that the projected \$274 million balance at the conclusion of decommissioning is only the mathematical result of the assumptions Consumers deemed reasonable for this case. Those assumptions, argued Consumers, are subject to a number of uncertainties that could affect the end result. For example, the company argued, a variation of negative 0.5% in the assumed inflation rate would change the surplus to a \$423 million deficit. A 0.5% change in earning rates, argued the company, could change the surplus to a deficit of almost equal amount. Further, the company argued, the costs for decommissioning are not entirely predictable, and will be reviewed at three-year intervals. Unlike Big Rock Point, for which the company calculated the surcharge based on a zero end balance, Palisades will not be decommis-

sioned for some time. Thus, argued Consumers, all of the assumptions used for purposes of calculating a surcharge for Palisades are subject to greater uncertainty than for Big Rock Point. According to Consumers, positive end balances for decommissioning funds are not a new phenomena. The company stated that, in Case No. U-10800, funds for both Big Rock Point and Palisades had projected positive balances.

The ALJ did not specifically address this issue.

In his reply to exceptions, the Attorney General resurrects his argument that the highest surcharge justified on this record cannot be based on more than an annual amount of \$14,458,350, the amount that Mr. Peloquin testified would reduce the projected balance in the trust to zero at the conclusion of decommissioning activities.

The Commission agrees with the Attorney General that the surcharges should be calculated in a fashion that, using all of the assumptions found most reasonable, the trust fund end balance is reduced to zero. Although Consumers is correct that it projected a positive end balance in Case No. U-10800, the April 10, 1996 order in that case does not reflect that the issue was ever raised. Moreover, the positive balance projected in the present case is more than double that projected in Case No. U-10800.<sup>4</sup>

The Commission finds unpersuasive Consumers' arguments that the Commission would unreasonably increase the risk that sufficient funds might not be available when needed. The calculation to reach a zero balance presumably includes all of the costs and risks as best they can be projected. Although it is true that a change in assumptions concerning the rate of inflation or the rate of return on investments will alter the projected end balance, Consumers insists that it has used

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<sup>4</sup>Exhibit A-18 filed in Case No. U-10800 reflects that the projected positive ending fund balance was \$136 million in that case.

reasonable assumptions to project decommissioning costs and the growth of investments. There is no support on this record for a finding that additional funds are needed above the amount resulting from those assumptions. Moreover, the Commission notes that there will be at least one more review of the adequacy of the decommissioning funding prior to the planned closure of Palisades.

#### Palisades Trust Fund Investment Assumptions

Consumers' proposed surcharge for Palisades assumes that the Section 468A trust fund will be converted from 65% equity investments (stocks) to 100% fixed income investments (bonds) beginning in 2009, which conversion, the company asserts, is intended to reduce investment risk and to provide flexibility to alter the planned decommissioning method to the DECON approach if circumstances warrant it. That reduction in risk, however, is accompanied by a reduction in the assumed after-tax rate of return from 7.18% to 5.13% beginning in 2009.

As noted above, the Attorney General, through Mr. Peloquin, took the position that the assumed conversion of all stocks to bonds in 2009, 17 years prior to the first planned expenditures from the fund, is unreasonable. The Attorney General noted that the assumed rate of return on the Palisades Section 468A trust fund was less than that assumed for the funds held in the trust for Big Rock Point. In Mr. Peloquin's view, Consumers did not adequately support its assumption that the return on the Palisades Section 468A trust fund should drop to 5.13% in 2009. Thus, he concluded that the surcharge should be calculated assuming that the fund would earn 7.18% through 2045. With that assumption, Mr. Peloquin stated, the balance of the fund at year end 2045 would be approximately \$2.6 billion, rather than the \$274 million projected under Consumers' assumptions.

If one assumes a 7.18% after-tax rate of return on the investments through 2045, Mr. Peloquin testified, no additional funding is required for decommissioning Palisades as the project is already

more than fully funded. He asserted that using the correct model for the Palisades Section 468A trust fund results in an ending fund balance of \$199,292,650 without further contributions after 1998.

Consumers responded that following the Attorney General's investment assumptions would substantially increase the risk that funds would not be available at the time needed for decommissioning. Consumers asserted that any overfunding could be dealt with in future reviews of the adequacy of the Section 468A trust fund before Palisades is retired in 2007. Moreover, Consumers argued, early full funding of Palisades' decommissioning is prudent because it allows Consumers flexibility to take appropriate action should a low-level radioactive repository be available at the time that Palisades is shut down.

The ALJ recommended that the Commission reject both parties' proposals. He found Consumers' investment assumptions so conservative as to require a higher surcharge than should be necessary to achieve full funding for these costs. He further found Consumers' assumption that all equity investments would be converted to fixed income investments in 2009 to be unsupportable on the record. The ALJ also rejected the Attorney General's proposal, reasoning instead that the 65% equity/35% fixed income investment mix should be assumed to continue only through 2025, followed by a gradual shift from equity to fixed income investments as decommissioning is proceeding. Because the record did not provide an adequate basis for calculating an appropriate surcharge, the ALJ recommended that the Commission require Consumers to develop a revised assumed investment plan for the Palisades 468A trust that, beginning in the year 2026, would gradually divest equity investments over the remaining years of the decommissioning period. He further recommended that the Commission direct Consumers to file a newly calculated surcharge consistent with his recommendation within three months of a Commission order. The ALJ

envisioned that the newly calculated proposed surcharge would then be subject to contested case procedures before final Commission approval.

Consumers excepts to the ALJ's recommendations on this issue. The company argues that the ALJ's approach would substantially hinder, if not preclude, the ability to switch to the DECON approach should the circumstances make that a viable option. Consumers acknowledges that it has assumed the use of SAFSTOR for Palisades for purposes of this case. Although SAFSTOR is the only prudent assumption at this time for Palisades, Consumers argues, conditions eight years from now may support a different conclusion. Consumers asserts that its proposed surcharge would allow the company the needed flexibility for choosing a different method.

Moreover, argues Consumers, the ALJ's approach should be rejected because it increases the risk that adequate funds will not be available for decommissioning at the time needed. If that risk is realized, says Consumers, future customers, who will not have had the benefit of the plant's operation, may be required to pay for its decommissioning. Thus, Consumers argues, the ALJ's proposal increases the risk of intergenerational inequity.

Consumers further argues that, contrary to the ALJ's criticism that the company's plan does not provide a contingency if stock prices are down in the year in which the conversion to bonds is assumed, the company's plan provides flexibility to await a more advantageous time. Consumers argues that it is the ALJ's plan that lacks flexibility. Delaying the date of conversion, Consumers argues, narrows the time frame in which to convert funds and thus increases the potential risk of necessarily taking a loss.

Consumers asserts that the ALJ failed to consider that lowering the surcharge would have the effect of lowering fund balances and fund earnings. If the decommissioning provision for Palisades is reduced, the company argues, the future surcharge revenues that could be placed into the

Section 468A trust fund would be reduced or perhaps eliminated, thereby affecting the tax advantages otherwise enjoyed.

Consumers points out that prior to Case No. U-10800, rates were set assuming that there would be no investment in stocks and that full funding of decommissioning would be achieved by the time a plant was retired. In Case No. U-10800, Consumers says, the company proposed investing a portion of the Section 468A trust fund in stocks prior to full funding and deferring full funding until shortly after retirement. Consumers says that this was permissible because of the SAFSTOR decommissioning approach. However, Consumers states, that approach still provided for full funding to occur and funds in stocks to be converted to bonds well before the actual decommissioning expenses would occur. It notes that at the time of retiring Big Rock Point, the investment mix included 35% of the Section 468A funds in stocks, which was only 21% of the entire funds available. Even so, Consumers says, it is necessary to increase the amount of the surcharge for Big Rock Point by 25% to cover the costs of decommissioning that plant.

Furthermore, Consumers argues, the costs for decommissioning Palisades will be much larger than those for Big Rock Point. The structures at Palisades are larger and the radiation levels higher. Additionally, Consumers states, because Palisades decommissioning will not begin until some point in the future, and it will likely be a longer process, there is less certainty of the cost projections. Consumers points to the comment in its “Decommissioning Cost Study for the Palisades Plant,” in which the following notation appears:

[T]he chances of the base estimate’s being too high is a low probability, and the chances that the estimate is too low is a much higher probability. . . . [T]his report does not include any additional costs to address the perceived risk.

Exhibit A-1, Section 3, p. 8.

The Attorney General responds that the ALJ correctly rejected Consumers' proposal to convert all of the equity stocks in the decommissioning trust fund to bonds 17 years before an initial draw down on the Palisades decommissioning funds. Additionally, the Attorney General argues, Consumers' proposal has little support on the record. Although Consumers cites the testimony of Mr. Forsblom, the company's in-house financial witness, the Attorney General argues, that witness never directly supported a conversion of equity investments to bonds in 2009. Rather, Consumers used the testimony of Thomas L. Simonsen, who, the Attorney General states, has little if any experience in the area of finance and economics.

In contrast, the Attorney General says, Mr. Peloquin, who has a Master of Business Administration degree with a major in finance, testified that Consumers' proposed 2009 conversion of investments is unreasonable. In fact, the Attorney General posits, Consumers' proposal is so preposterous that any reasonable person would reject it out of hand. Although admittedly the stock market has more risk than bonds, the Attorney General argues, stocks have a higher expected return over the long term. In the Attorney General's view, to suggest that 17 years is so near term that conversion to 100% bonds is required is not supported by reasoned analysis.

In answer to Consumers' claim that it desires flexibility to use the DECON approach rather than the SAFSTOR approach at Palisades, the Attorney General points out that the only method that is supported on this record as reasonable for Palisades' decommissioning is the SAFSTOR method. The Attorney General argues that Consumers has failed to demonstrate the reasonableness of authorizing the company to collect a higher surcharge now to create the flexibility for the company to pursue a different decommissioning plan for which the record contains no evidence of reasonableness. The Attorney General argues that it is far more reasonable to adopt his position in which there

will be sufficient principal to generate earnings during the SAFSTOR period such that Palisades decommissioning will be fully funded.

The Attorney General goes on to say that Consumers presents doomsday predictions that highlight the short term fluctuations in the stock market and ignore the real risks and benefits attributable to long term investments. Moreover, the Attorney General argues, Consumers' position with respect to the investment mix for Palisades is totally inconsistent with the decommissioning method chosen for that plant and with the investment mix the company projects for Big Rock Point. For the latter plant, the Attorney General argues, Consumers projects the percentage of equity investments to grow from the 1997 level of 21.2% to a high of 98% equity investments in 2006, which then declines as decommissioning winds down through 2013.

Additionally, the Attorney General argues that the conversion date is, on this record, completely arbitrary. There is no evidence, says the Attorney General, that supports converting stocks to bonds in 2009 and not 2014 or some later time. The Attorney General concludes that the ALJ's proposed conversion plan should be adopted as it offers enormous flexibility to take advantage of the benefits associated with long-term equity investments while at the same time reasonably minimizing risks for the utility and the ultimate risk-bearer, the utility's ratepayers.

The Commission finds that it can endorse neither of the investment strategy assumptions, and their resulting fund balances, as reasonable predictions of future prudent actions. While Consumers' proposal to assume conversion of all equity investments into bonds on the date of Palisades' retirement understates the future growth of prudently managed funds, the Attorney General's assumption that no conversion ever takes place overstates the probable future growth of prudently managed funds.

On the other hand, the ALJ's proposal is, as he noted, without sufficient data on the record to calculate an appropriate surcharge. Therefore, the Commission directs Consumers to file and serve on the parties of record, within 30 days of the date of this order, a revised projection of fund balances that incorporates a gradual reduction in equity holdings within the funds following the plant's retirement, together with supporting data, and the resulting proposed appropriate surcharge. If, within 30 days of the filing and service of the revised investment plan, any party files an objection to the proposed surcharge, the Commission will hold a hearing to determine the reasonableness of the proposed surcharge. In the interim, the Commission finds that Consumers should be authorized to implement a surcharge calculated to recover \$14,458,350 annually for Palisades decommissioning, subject to later adjustment following the completion of the reopened proceedings.

#### Double Recovery of Big Rock Related Costs

The Attorney General argued that Consumers is currently recovering certain Big Rock Point expenses through the decommissioning funds at the same time that it recovers those expenses through base rates. The Attorney General points to the testimony provided by Mr. Simonsen that certain expenses that were being recovered as Other O&M expenses on the day before the Big Rock Point plant was shut down are now being recovered out of the decommissioning trust funds.

The ALJ rejected the Attorney General's argument, finding that this is not an appropriate case in which to resolve this issue. The ALJ found that the record did not provide sufficient information to determine either the amount of Other O&M expenses related to Big Rock Point that are properly included in rates and the portion that should be considered decommissioning expenses or the extent of any duplication.

The Attorney General excepts to the ALJ's conclusion that this issue is irrelevant to the present case. He states that the costs of maintaining the spent fuel pool, security, salaries of workers still at the plant, building heat, and so on, are all items for which Consumers' base rates provide recovery. Moreover, the Attorney General argues, Consumers is no longer incurring other expenses related to Big Rock Point that are also still included in the company's base rates, because no rate reduction has been made to recognize the end of operations at that plant. The Attorney General insists that the Commission should use the amount included in Consumers' base rates for Other O&M expense at Big Rock Point as a "deductible" amount from the funds necessary for recovery through the decommissioning surcharge, thereby effectively shifting these base rate revenue dollars to Big Rock Point's decommissioning fund.<sup>5</sup>

Consumers responds that the ALJ correctly found that decommissioning costs for the Big Rock Point plant are not collected as part of Consumers' base rates. Consumers emphasizes that this is not a base rate case, but rather a case dealing with decommissioning surcharges.

Consumers points out that its current base rates were set in Case No. U-10685, the company's most recent rate case, based on a 1996 test year. It says that none of the orders related to that case included decommissioning costs in Consumers' base rates. The effect of adopting the Attorney General's proposal, argues Consumers, would be to unlawfully and unreasonably lower the company's base rates in the absence of a rate case or the company's acquiescence.

Consumers argues that the Attorney General's proposal disregards the manner in which base rates are set. It states that in determining the level of base rates, the Commission assumed various

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<sup>5</sup>Although the Attorney General's exceptions treat the issue as one involving approximately \$21 million, Mr. Peloquin recommended a deduction of \$18 million "to be conservative." 3 Tr. 205.

levels of expenses and revenues. However, the company says, there will virtually always be variations in sales, revenues, and expenses from those assumed in setting the rates. Existence of variations from the assumed facts does not establish that base rates are overall too high. Consumers points out that while some expenses have decreased, others have increased. Consumers further points out that it indicated in Case No. U-11180-R, its 1997 power supply cost recovery (PSCR) reconciliation case, that the company would not seek net replacement power costs for the period after the Big Rock Point plant shut down. It further states that it does not propose to request an increase in the frozen PSCR charge to reflect those higher replacement power costs.

The Commission finds that the Attorney General's proposal should not be adopted. The deficiency/sufficiency of base rates is a matter properly determined in a general rate case, not in a case limited to dealing with decommissioning surcharges. Consumers correctly points out that its current rates were set based on 1996 figures. Although closure of the Big Rock Point plant brought with it a presumed reduction in costs, as Consumers begins to use decommissioning funds to pay expenses at the plant, that does not necessarily mean that Consumers' base rates are unreasonable. It is likely that most of the assumptions made in the setting of base rates do not precisely track the company's actual experience. That the actual facts vary in some respect from the assumptions used to set rates does not necessarily require the Commission to lower or raise Consumers' base rates. There is no demonstration on this record that Consumers' base rates are unreasonable.

#### Approval of the Revised Surcharge for Big Rock Point

In its application and testimony, Consumers requested that its proposed changes in the annual decommissioning provision for each of the company's nuclear plants be implemented effective for service on and after January 1, 1999. It asserts that expeditious implementation of the increase in

the portion of surcharge revenues currently being collected for the Big Rock Point plant decommissioning is critical due to the ongoing need for decommissioning funds and the short collection period used in developing the proposed decommissioning rates. Consumers excepts to the ALJ's failure to recommend that the revised surcharge for Big Rock Point be approved for immediate implementation and the reallocation of surcharge revenues be effective as of January 1, 1999. The company points out that its calculations assumed this implementation date, and notes that the surcharge for decommissioning Big Rock Point terminates on December 31, 2000. Therefore, there is a relatively short time in which to collect the needed amounts.

The Attorney General does not object to Consumers' request for approval of the implementation date for the Big Rock Point surcharge.

The Commission finds that it should approve Consumers' proposed surcharge for Big Rock Point and authorize its collection as of January 1, 1999. Further, the Commission finds that it should authorize Consumers to allocate the amounts placed in decommissioning trusts in 1999 to effect the same result as if the Big Rock Point decommissioning surcharge had been effective on January 1, 1999.

#### Land Value of Big Rock Point

The Attorney General argued that because ratepayers must pay for restoring the Big Rock Point to a condition in which it may be released for unrestricted use, they should also be credited with the value of that real estate at the end of decommissioning. Big Rock Point is located on what the Attorney General refers to as "prime lakefront property," which will have "enormous value . . . once the Big Rock Point plant is dismantled and the property decontaminated." Attorney General's brief, p. 14. The Attorney General proposed that the Commission condition the continued collection of

decommissioning funds on the ratepayers' receiving full market value for the Big Rock Point property at the end of decommissioning.

Consumers responded that the Attorney General's proposal was premature at best because decommissioning activities at Big Rock Point are not scheduled to be completed until 2012. However, the company argued that if the Commission were to address the issue, the proposal would have to be rejected. Consumers pointed out that utility customers pay for service, not for the property used in providing that service. Board of Public Utility Commissioners v New York Telephone, 271 US 23; 46 S Ct 363; 70 L Ed 808 (1926). Consumers argued that because land is normally not a depreciable asset, ratepayers have not paid for the land through base rates. According to Consumers there is no net salvage value of the land. Consumers argued that, because ratepayers cannot be said to have paid for the land, there is no reason to credit them with the value of the land at the end of its use for producing power.

The ALJ rejected the Attorney General's proposal as premature. He found that there is no need to address this issue because the property will remain in Consumers' possession for at least another 13 years. He further found that there are too many unknowns to address the issue at this time.

The Attorney General excepts to the ALJ's recommendation, arguing that there is nothing currently unknown that is necessary to addressing this issue. The Attorney General likens his proposal to the Commission's conditioning Consumers' collection of additional revenue in Case No. U-7830 on the equitable requirement that the ratepayers were entitled to the full benefit of any and all proceeds related to the sale of the plant at Midland. In the Attorney General's view, no more funds should be allowed to be withdrawn from the Big Rock Point decommissioning trusts until this condition is adopted.

The Commission concludes that the Attorney General's proposal need not be decided at this time. According to the proposed decommissioning schedule, the property will not be ready for sale for at least 40 years. The absence of a Commission determination in this order will not alter the Commission's ability to require that return.

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 AACCS, R 460.17101 et seq.
- b. The site-specific cost studies for decommissioning the Big Rock Point and Palisades nuclear plants should be approved.
- c. Consumers should file and serve on all parties to this case a revised surcharge calculation for Palisades based on a revision to its assumed investment mix for the Palisades Section 468A trust, as described in this order.
- d. Consumers should file revised tariff sheets reflecting that the decommissioning surcharges apply to all retail service customers.
- e. Exhibit A-18 should be approved, except for paragraph a. Consumers should submit a corrected version of Exhibit A-18 with its revised surcharge calculation.
- f. Consumers' proposed surcharge for Big Rock Point should be approved. Consumers should be authorized to allocate decommissioning surcharge revenues to effect the same result as if the Big Rock Point surcharge had been effective on January 1, 1999.

g. Consumers should be authorized to implement an interim surcharge for Palisades decommissioning calculated to recover \$14,458,350 annually, subject to adjustment based on the additional proceedings.

THEREFORE, IT IS ORDERED, that:

A. The site-specific cost studies for decommissioning the Big Rock Point and Palisades nuclear plants are approved.

B. Within 30 days, Consumers Energy Company shall file and serve on all parties to this case a revised surcharge calculation for the Palisades nuclear plant based on revisions to its assumed investment mix for the Section 468A trust, as described in this order.

C. If, within 14 days of the date of Consumers Energy Company's filing and service of the documents described in Paragraph B, any party files an objection to the proposed surcharge, the case shall be transferred to the Administrative Law Judges Division for hearing. Any objection must specify the basis upon which the objection is made.

D. Exhibit A-18 is approved except as to Paragraph a therein.

E. The surcharge for decommissioning the Big Rock Point nuclear plant proposed by Consumers Energy Company is approved. Consumers Energy Company is authorized to allocate decommissioning surcharge revenues to effect the same result as if the Big Rock Point nuclear plant surcharge had been effective on January 1, 1999.

F. Consumers Energy Company is authorized to collect, on an interim basis, and subject to change, a surcharge for decommissioning the Palisades nuclear plant calculated to recover \$14,458,350 on an annual basis.

G. Within 30 days, Consumers Energy Company shall file revised tariff sheets containing the new decommissioning surcharges authorized by this order, and reflecting that the decommissioning surcharges apply to all retail service customers. Additionally, the tariffs shall reflect that the surcharge for the Big Rock Point nuclear plant is authorized through December 31, 2000.

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 March 22, 1999.

/s/ Dorothy Wideman

Its Executive Secretary

G. Within 30 days, Consumers Energy Company shall file revised tariff sheets containing the new decommissioning surcharges authorized by this order, and reflecting that the decommissioning surcharges apply to all retail service customers. Additionally, the tariffs shall reflect that the surcharge for the Big Rock Point nuclear plant is authorized through December 31, 2000.

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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Chairman

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Commissioner

By its action of March 22, 1999.

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Its Executive Secretary

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for adjustment of its surcharges for )  
nuclear plant decommissioning. )  
\_\_\_\_\_ )

Case No. U-11662

Suggested Minute:

“Adopt and issue order dated March 22, 1999 authorizing Consumers Energy Company to implement surcharges for decommissioning its Big Rock Point and Palisades nuclear plants and directing the company to file a revised surcharge calculation for Palisades, as set forth in the order.”