

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the application of |) | |
| CONSUMERS ENERGY COMPANY for |) | |
| certification pursuant to Section 32(k) of the |) | Case No. U-11954 |
| Public Utility Holding Company Act of 1935. |) | |
| _____ |) | |

At the August 31, 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 ON REHEARING

On April 6, 1999, Consumers Energy Company (Consumers) filed an application requesting certification pursuant to Section 32(k)(2) of the Public Utility Holding Company Act of 1935 (PUHCA), 15 USC 79z-5a(k)(2), which it required in order to enter into a three-year power purchase agreement with an affiliate. On June 10, 1999, the Commission issued an order (June 10 order) granting the requested certification for one year provided that: (1) within 15 days of the order, Consumers file a request for proposals, and (2) within 30 days of the order, Consumers commence a competitive capacity solicitation consistent with the June 12, 1992 order in Case No. U-9586 or file a proposal for a revised capacity solicitation process.

On June 24, 1999, Consumers filed a notice indicating that its affiliate had elected not to enter into a one-year agreement that would conform with the June 10 order and hence there was no longer a viable benchmark to use as a basis for conducting the request for proposals.

On July 9, 1999, Consumers filed a petition for clarification and/or rehearing. Consumers argues that the capacity solicitation process in Case No. U-9586 is outmoded due to the significant change in the structure of the electric industry since the order was issued in 1992. Accordingly, Consumers requests that the Commission rescind the order. In a footnote, Consumers also indicates its position that the Commission lacks statutory authority to compel a utility to commence a capacity solicitation.

On July 30, 1999, Energy Michigan filed a reply to Consumers. Energy Michigan argues that the order in Case No. U-9586 was issued after a contested case hearing and cannot be rescinded without appropriate procedural guarantees. Energy Michigan contends that the order should not be rescinded because Consumers' proposed contract with its affiliate was not the product of arm's-length bargaining, granted significant concessions to the affiliate, and did not include solicitation of potential non-affiliated suppliers. According to Energy Michigan, Consumers' customers could pay indirectly for excessive purchased power costs and the Commission should not abandon its ratemaking authority by waiving the capacity solicitation requirement.

Discussion

The June 10 order required Consumers to either commence a capacity solicitation under the process approved in Case No. U-9586 or propose an alternative process. Consumers may well be correct that the process in Case No. U-9586 has become outmoded, but the Commission's June 10 order allowed Consumers to address that issue by filing a request for a more expeditious process. Consumers has not

done so. Without an adequate replacement, the Commission is not inclined to rescind the order in Case No. U-9586.

At the present time, there is no need for the Commission to address Consumers' assertion that the Commission lacks statutory authority to require the company to follow a specific capacity solicitation process.¹ On June 29, 1999, the Michigan Supreme Court issued a decision in Consumers Power Company v Public Service Commission, ___ Mich ___ (1999), S Ct Docket Nos. 111482, 111483, 111486, 111487, 111719-111726, in which the Court reaffirmed its prior determination that, in cases where the Commission lacks statutory jurisdiction, the Commission "can encourage a specific management decision through the exercise of its ratemaking power, but may not directly order the utility to make the decision." Consumers v PSC, supra, at 11. In an order issued today in Case No. U-11941, the Commission has conditioned ratemaking approvals associated with a proposed transaction with PECO Energy Company (PECO) on Consumers initiating a capacity solicitation in accordance with the order in Case No. U-9586 or obtaining Commission approval for an alternative process.

The Commission wishes to emphasize that it has no interest in interfering with a competitive market when one comes to fruition. However, the market is not there yet. As the application in this case and the request for ratemaking approvals associated with the PECO transaction demonstrate, a utility's power transactions still have a significant effect on its customers and on the market. Indeed, as the June 10 order noted, the failure to follow a capacity solicitation process has repeatedly resulted in utilities filing last-

¹Although the June 12, 1992 order in Case No. U-9586 did establish a framework for future capacity solicitations by Consumers, the order was not appealed. In that order, the Commission relied on its specific authority under MCL 460.6j(13)(b); MSA 22.13(6j)(13)(b). Now that the power supply cost recovery clause has been suspended through 2001, it follows that significant capacity additions during this period should be reviewed in some other forum.

minute emergency applications for special ratemaking treatment. Given the transition state of the market, a capacity solicitation process is needed both to assure that customers are protected and to allow a competitive market to develop.

Moreover, the Commission has no desire to engage in an administrative process that is burdensome. Consumers describes the capacity solicitation process from Case No. U-9586 as “a lengthy, heavily litigation-oriented procedure which is unsuited to current circumstances.” Consumers’ petition, p. 3. The Commission recognizes this concern, which is why the June 10 order suggested that Consumers offer an alternative. A heavily-litigated capacity solicitation process is not necessary or even desirable. However, it is necessary to have a process that allows input from all interested parties and permits needed electric capacity to be obtained in an economic and expeditious manner.

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.; 15 USC 79z-5a; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.

b. Consumers’ petition for clarification and/or rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for clarification and/or rehearing 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

/s/ Robert B. Nelson
Commissioner

By its action of August 31, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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Case No. U-11954

Suggested Minute:

“Adopt and issue order dated August 31, 1999 denying the petition for clarification and/or rehearing, as set forth in the order.”