

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
INDIANA MICHIGAN POWER COMPANY)	
for a power supply cost reconciliation proceeding)	Case No. U-11181-R
for the 12-month period ended December 31, 1997.)	
_____)	

In the matter of the application of)	
INDIANA MICHIGAN POWER COMPANY)	
for a power supply cost reconciliation proceeding)	Case No. U-11531-R
for the 12-month period ended December 31, 1998.)	
_____)	

In the matter of the application of)	
INDIANA MICHIGAN POWER COMPANY)	
for approval of a power supply cost recovery)	Case No. U-11792
plan for 1999.)	
_____)	

In the matter of the application of)	
INDIANA MICHIGAN POWER COMPANY)	
for approval of a power supply cost recovery)	Case No. U-12127
plan for 2000.)	
_____)	

At the March 14, 2000 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 December 16, 1999, the Commission approved a settlement agreement between Indiana Michigan Power Company (I&M) and the Commission Staff (Staff) in accordance with Rule 333

of the Commission's Rules of Practice and Procedure, R 460.17333. The settlement prescribes the means and amount of cost recovery in Cases Nos. U-11181-R and U-11531-R, I&M's 1997 and 1998 power supply cost recovery (PSCR) reconciliation cases. In addition, the settlement suspends I&M's PSCR clause until January 1, 2004 (subject to certain contingencies) and sets I&M's base rates and PSCR factors for the suspension period.

Michigan Community Action Agency Association (MCAAA), an intervenor in Cases Nos. U-11181-R and U-11531-R, had objected to the settlement and participated in the contested case hearings required by Rule 333 prior to the Commission's issuance of the December 16, 1999 order. On January 13, 2000, MCAAA filed a petition for rehearing of the December 16, 1999 order. On February 7, 2000, I&M filed an answer.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, 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.

MCAAA argues that the settlement's treatment of the net replacement power costs incurred during the Cook outage violates MCL 460.6j(13)(c); MSA 22.13(6j)(13)(c), which requires a disallowance "unless the utility demonstrates by clear and convincing evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management." According to MCAAA, there is no record evidence to support a finding of reasonableness with respect to the outage. MCAAA says that the Commission did not

make a statutory disallowance finding for 1997 or 1998 and that it cannot make one for 1999 and thereafter in view of the settlement's suspension of PSCR proceedings.

In response, I&M says that the record in the 1997 PSCR reconciliation case failed to establish that imprudence on I&M's part was the only possible finding with respect to the Cook outage, but that it provided a basis for the reasonable compromise embodied in the settlement, which allowed I&M to recover only 15% of the outage costs. I&M says that the Commission's order appropriately finds that the partial cost recovery was reasonable. I&M further contends that the settlement itself stipulates reasonableness, which is a sufficient basis to support a finding for the partial cost recovery.

The Commission reaffirms its decision to approve the settlement, including the outage provisions, which presented a compromise solution to the cost recovery issues previously developed on the record in Case No. U-11181-R, I&M's 1997 PSCR reconciliation case. The Commission finds that the record created in the contested settlement proceedings, when viewed in context with the prior record in Case No. U-11181-R, establishes "by clear and convincing evidence" that the compromise is a reasonable allocation of responsibility for the outage costs, both for the 1997 reconciliation case as well as the succeeding years. As noted in the December 16, 1999 order, the settlement allows I&M to recover only 15% of the outage costs incurred in 1997 and 1998 and nothing thereafter. The settlement spreads the recovery of those costs over a period ending December 31, 2003 without any provision for interest. Thus, the settlement compels I&M to accept responsibility for the majority of costs, even though the underlying issues were difficult, and the outcome was in dispute. Contrary to MCAA's stated belief, the record provided substantial evidence to support I&M's position that it demonstrated a complete absence of negligence or unreasonable or imprudent management by clear and convincing evidence. Viewed as a whole, the

evidence relating to I&M's negligence was conflicting, and conflicting inferences could have been drawn from it. The allocation of cost responsibility provided by the settlement was reasonable and fair to ratepayers.

The Commission further finds that the stipulation in the settlement as to reasonableness provides corroboration for the cost recovery provisions. As discussed in the December 16, 1999 order, the objections to the settlement that MCAAA placed on the record were not persuasive. In light of the evidence on the record in both Case No. U-11181-R and the contested settlement proceedings, the limited cost recovery allowed by the settlement met the standard for recovery in MCL 460.6j(13)(c); MSA 22.13(6j)(13)(c).¹ On this issue, there is no basis for attributing error to the December 16, 1999 order or granting rehearing.

MCAAA argues that the Administrative Law Judge's rulings and the Commission's December 16, 1999 order violated various procedural rights accorded to it by Rule 333 and 1982 PA 304, as amended, MCL 460.6j et seq.; MSA 22.13(6j) et seq., and made findings contrary to the weight of the evidence. However, these arguments have already been addressed in the December 16 order, and MCAAA's repetition of them appears to be nothing more than an attempt to reargue a position or express disagreement with the Commission's decision. As such, they do not meet the standard for rehearing in Rule 403.

¹MCAAA's interpretation of the cost recovery standard in MCL 460.6j(13)(c); MSA 22.13(6j)(13)(c) implies that an outage-related issue must result in either a complete disallowance if the utility fails to demonstrate the absence of negligence by clear and convincing evidence or a complete cost recovery if the utility meets the statutory standard. This interpretation could preclude settlement of most, if not all, issues arising from prolonged outages. The Commission does not believe that MCAAA's views are consistent with a policy favoring settlement or the standards and principles of 1982 PA 304, as amended, MCL 460.6j et seq.; MSA 22.13(6j) et seq.

MCAAA argues that the settlement's provision for reopening Case No. U-11792, I&M's 1999 PSCR plan case, violates MCL 460.6j(10); MSA 22.13(6j)(10), which requires "[a] reopened power supply and cost review [to] be conducted as a contested case." MCAAA says that the settlement is ineffective until the Commission reopens Case No. U-11792 as a contested case, with public notice.

I&M responds that reopening by stipulation and settlement is permissible for purposes of MCL 460.6j(10); MSA 22.13(6j)(10). In addition, I&M contends that Case No. U-11792 is itself now moot, given that the effective date of the order approving the settlement did not permit it to bill the settlement factors until after the end of the 1999 PSCR plan year.

The Commission does not agree with MCAAA's interpretation of MCL 460.6j(10); MSA 22.13(6j)(10). The statute applies in the limited circumstance of a reopening occurring during the PSCR plan year. Under the provisions of the statute, the most likely context for reopening a plan case (upon a statutory showing of "good cause") would be to update the approved plan for changes in circumstances. In this case, in which a settlement was the basis for reopening the plan, the Commission conducted a contested case proceeding pursuant to Rule 333, and no additional proceeding was necessary, nor would it have been helpful. Moreover, the need to reopen the 1999 PSCR plan in this case dissolved once it became apparent that the settlement's revision to the billed PSCR factor would not take effect until after the plan year ended.

On December 29, 1999, I&M filed notices withdrawing its pending applications in Case No. U-11531-R, its 1998 PSCR reconciliation case, and Case No. U-12127, its 2000 PSCR plan case. Because the settlement decides Case No. U-11531-R and forecloses further proceedings in both cases, the Commission will permit withdrawal of the applications and finds that all remaining

dockets in I&M's PSCR proceedings should be closed until the suspension period imposed by the settlement ends or the Commission orders otherwise.

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 AACRS, R 460.17101 et seq.

b. The petition for rehearing should be denied.

c. These dockets should be closed.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing is denied.

B. The captioned dockets are closed.

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 March 14, 2000.

/s/ Dorothy Wideman

Its Executive Secretary

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Case No. U-11181-R et al.

Suggested Minute:

“Adopt and issue order dated March 14, 2000 denying the petition for rehearing filed by Michigan Community Action Agency Association and closing the dockets in power supply cost recovery proceedings filed by Indiana Michigan Power Company, as set forth in the order.”