

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY and)	
THE DETROIT EDISON COMPANY for)	Case No. U-11724
accounting approval of depreciation practices)	
for the Ludington Pumped Storage Plant.)	
_____)	

At the March 3, 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

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On July 1, 1998, Consumers Energy Company (Consumers) and The Detroit Edison Company (Detroit Edison) filed a joint application requesting authority to increase their respective depreciation rates¹ for the Ludington Pumped Storage Plant (Ludington Plant).

Pursuant to due notice, a prehearing conference was held on August 8, 1998 before Administrative Law Judge Theodora M. Mace (ALJ). At the prehearing conference, the ALJ granted

¹Because Consumers owns 51% of the Ludington Plant and Detroit Edison owns 49%, each of these utilities is required to calculate its own depreciation rates on an account-by-account basis.

petitions to intervene filed by the Association of Businesses Advocating Tariff Equity (ABATE) and the Attorney General.² The Commission Staff (Staff) also participated in the proceedings.

Evidentiary hearings were conducted on November 16, 1998, at which time the parties presented testimony from a total of six witnesses. The record consists of 273 pages of transcript and 18 exhibits, all of which were admitted into evidence.

Each of the parties filed briefs on December 14, 1998, and reply briefs were filed on December 23, 1998 by all of the parties except the Staff. The ALJ issued her Proposal for Decision (PFD) on February 2, 1999. ABATE and the Attorney General filed exceptions to the PFD by February 24, 1999. Replies to exceptions were filed on March 10, 1999 by Consumers and Detroit Edison.

II.

DISCUSSION

Pursuant to a prior Commission order, Consumers and Detroit Edison performed a depreciation study and proposed new depreciation rates for the Ludington Plant based on December 31, 1997 plant balances.³ According to the utilities, the study indicated that revisions to their respective depreciation rates are needed for two reasons. First, they stated that although the Ludington Plant will not be retired until the end of its operational life, individual components of the plant must be retired and replaced as they wear out. Consumers and Detroit Edison therefore recommended using

²Although the petition to intervene was filed by Frank J. Kelley, Jennifer M. Granholm subsequently replaced Mr. Kelley as Michigan's Attorney General.

³The existing depreciation rates for the Ludington Plant arose as a result of the Commission's October 20, 1993 order in Case No. U-10342, which approved a settlement agreement requiring Consumers and Detroit Edison to file an application no later than July 1, 1998 proposing new depreciation rates.

the “California Procedure” to compute the effect of these interim retirements on the Ludington Plant’s remaining service life. Tr. 166 and 245. Second, they claimed that the estimated decommissioning costs for the plant have increased. Based on an assumed service life of 55 years, Consumers asserted that making the necessary changes would raise its composite depreciation rate from its current level of 3.31% to 3.42%, thus resulting in a \$177,000 increase in its annual depreciation expense. See, Exhibit A-12. Similarly, Detroit Edison claimed that its annual depreciation expense for the Ludington Plant would rise by \$220,000, which corresponds to an increase in its composite depreciation rate from 3.00% to 3.12%. See, Exhibit A-17. Finally, the two utilities recommended that the Commission direct them to file a new depreciation study on or before July 1, 2004.

The Staff supported the recommendations of Consumers and Detroit Edison as filed in their joint application and further discussed in the utilities’ supporting testimony and exhibits.

In contrast to the Staff, ABATE and the Attorney General disagreed with several of the utilities’ recommendations. For example, they claimed that it was unreasonable for Consumers and Detroit Edison to continue using a 55-year average service life for the Ludington Plant. According to witnesses offered by the Attorney General, the service lives for the plant’s equipment and structures should be increased to 70 and 100 years, respectively, and it should be assumed that the utilities will ultimately elect to repower the plant instead of decommissioning it at the end of its current estimated service life. These two intervenors also asserted that Consumers’ and Detroit Edison’s joint request for interim adjustments was improper and that the utilities’ proposed net salvage value for the Ludington Plant was based on (1) overly pessimistic estimates of the gross value of equipment and materials available for sale once the plant is decommissioned and (2) “padded” estimates of the plant’s cost of removal. ABATE and the Attorney General further

argued that the Commission should establish a decommissioning trust fund for the Ludington Plant and require the next depreciation rate case involving the plant to be filed by July 1, 2001. These and other disputes among the parties are discussed below.

Average Service Life

In each of the previous depreciation rate cases regarding the Ludington Plant, the Commission approved the utilities' proposal to use 55 years as the plant's estimated service life. This 55-year service life assumption was based on a study conducted by Middle West Service Corporation when the plant went into service in 1973 (the Middle West study). In arriving at 55 years, the authors of the Middle West study began with the average service life of a "conventional hydraulic plant (about 75 years)," reduced that figure by 10 years to reflect "physical considerations," and reduced the result by another 10 years "to recognize the effect of economic considerations." Exhibit A-14, pp. 6-7.

As alluded to above, Consumers and Detroit Edison requested that the Commission continue applying the Middle West study's 55-year average service life estimate. This was despite the fact that it would extend nine years beyond the expiration of the Ludington Plant's operating license. In contrast, ABATE and the Attorney General proposed increasing the plant's average service life to 70 years. Their proposal was based on two factors. First, they asserted that many of the assumptions underlying the Middle West study's 10-year reduction for economic considerations have not been borne out. Second, they claimed that it would make more sense to repower the plant, instead of decommissioning it, at the end of its original operating life.

The ALJ disagreed with ABATE and the Attorney General, and recommended that the Commission continue to use the 55-year average service life estimate. Although conceding that some of

the economic considerations included in the Middle West study “had not yet been borne out,” she noted that “they may still come to fruition” before the license expires. PFD, p. 12. The ALJ further noted that despite being somewhat dated, the Middle West study represented the only comprehensive analysis of the Ludington Plant’s estimated operating life. Finally, she stated that “the sheer length of time” covered by the 70-year service life proposed by ABATE and the Attorney General “invites speculation about what could happen to the economic dynamics of power supply in the United States during that time.” Id.

ABATE and the Attorney General except to the ALJ’s recommendation and reassert their claim that a 70-year average service life should be used in computing depreciation rates for the Ludington Plant. In support of their claim, these intervenors argue that it was illogical for the PFD to continue following a 27-year old study whose assumptions have yet to be borne out. According to Charles W. King, a regulatory economist who testified on behalf of the Attorney General, as-of-yet unproven assumptions underlying the Middle West study include predictions that (1) future environmental and energy conservation requirements will result in further flattening of the daily load curve in Michigan, (2) the possible advent of electric vehicles will alter the electric usage patterns of residential customers, (3) increased conservation might reduce the use of natural gas and oil as fuels for electric generation, thus reducing both the fuel cost spread and the economic usefulness of the Ludington Plant, and (4) environmental concerns could result in fossil fuel plants being replaced by nuclear plants and, subsequently, nuclear plants being supplanted by other modes of generation. See, Tr. 33-34 and Exhibit A-14, pp. 6-7. Mr. King therefore stated that it was wrong for the authors of the Middle West study to reduce the plant’s service life based on concerns over its “long-term economic viability.” Tr. 37. This led him to conclude that the Ludington Plant’s service life should actually be 70 years. Id.

In further support of this exception, ABATE and the Attorney General contend that the ALJ erred by failing to find that the Ludington Plant will be repowered, rather than decommissioned, at the end of its current service life. According to the intervenors, the ALJ gave insufficient weight to Mr. King's statement that it would cost less to repower the plant (by replacing all mechanical equipment and renovating the more permanent structures) than to dismantle it (which would entail removing all structures, destroying the dike, and filling in the reservoir). They likewise assert that the ALJ ignored Mr. King's claim that unless there is a dramatic flattening of the load curve in the upper Midwest, some alternative source of peaking power will have to be built to replace the capacity lost by the retirement of the Ludington Plant. Finally, ABATE and the Attorney General note that, according to Consumers' witness Jerry R. Johnson, no specific plans exist for demolishing the plant. They therefore request that the Commission reject the ALJ's conclusion and adopt the 70-year service life estimate proposed by Mr. King.

In response, Consumers and Detroit Edison contend that several of the economic assumptions underlying the Middle West study are proving to be correct. For example, they note that electric vehicles are being made available to the general public, millions of dollars are being spent annually to develop commercially viable fuel cells for use as a source of distributed generation, and Detroit Edison's proposal to restart its coal-fired Connors Creek generating plant faced significant opposition on environmental grounds. The two utilities further assert that physical and operational concerns with the Ludington Plant indicate that even the 55-year service life estimate may prove to be overly optimistic. Among those concerns are the discovery of fissures in the reservoir's clay liner and the fact that the plant's operating license is set to expire 9 years before the end of its 55-year service life.

Consumers and Detroit Edison go on to assert that Mr. King's proposed use of a 70-year service life is based on several unsupported assumptions. These include assuming that (1) a 40% price differential will always exist between on-peak and off-peak power, (2) adequate off-peak power will be available at that reduced rate throughout the 70-year period, (3) the Federal Energy Regulatory Commission (FERC) will relicense the Ludington Plant, (4) the new FERC license will not contain additional conditions that alter the economics of the plant's operation, (5) no new sources of electric generation will be developed that would reduce the difference between on-peak and off-peak prices, (6) none of the economic assumptions set forth in the Middle West study will come true, and (7) revenues received during the latter stages of the 70-year service life will be adequate to justify the major renovations necessary to keep the plant in operation.

Finally, Consumers and Detroit Edison argue that notwithstanding Mr. King's claims to the contrary, they will indeed be required to dismantle the Ludington Plant. According to these two utilities, Section 28 of the operating license issued by the Federal Power Commission (FPC) for the plant states that "upon abandonment of the project the licensee shall remove all structures, equipment, and power lines from the site and restore the site to a condition satisfactory to the FPC's [now, the FERC's] authorized representative." Tr. 186. They further note that although no formal plan for demolishing the Ludington Plant has been established, this is not unreasonable when the end of the plant's operating life is still nearly 30 years away. Consumers and Detroit Edison therefore assert that the Commission should adopt the ALJ's recommendation and continue adhering to the 55-year service life estimate.

The Commission agrees with Consumers and Detroit Edison, and concludes that it should adopt the 55-year average service life estimate for purposes of this case. In reaching this conclusion, the Commission finds that certain physical, operational, and economic concerns cited by

the two utilities militate against adopting Mr. King's 70-year proposal. For example, the record reflects that, in addition to potential problems with the reservoir's liner, the Ludington Plant "would likely require major renovations to achieve a 70-year operating life." Tr. 129. The record further indicates that even if the plant's operating license were extended to cover the period proposed by Mr. King, the FERC "may impose new requirements and conditions to any relicensing, which could alter the economics of operation." Tr. 182-183. Moreover, with the advent of competition for electric generation, the nature of the electric industry can be expected to change dramatically. The potential magnitude of that change calls into question several of the assumptions underlying the position expressed by Mr. King and adopted by ABATE and the Attorney General.

The Commission therefore adopts the ALJ's recommendation regarding its continued reliance on the 55-year average service life. Nevertheless, the Commission finds that because a dramatic change in the structure of the electric generating industry is currently underway (a change that was not foreseeable when the Middle West study was completed over 25 years ago), a new, comprehensive service life study should be conducted for the Ludington Plant and presented in conjunction with the next depreciation rate case involving that plant's assets.

Interim Adjustments

As noted earlier, Consumers and Detroit Edison proposed using the California Procedure to adjust the 55-year average service life to reflect the retirement and replacement of individual components of the plant as they wear out. They argued that these interim adjustments were reasonable because, although most generating plants are fully depreciated by the end of their operating licenses, the Ludington Plant's service life (and, thus, the depreciation of its plant assets) extends

nine years beyond the expiration of its license. ABATE and the Attorney General opposed the utilities' proposal on the grounds that it would result in a double counting of those interim adjustments. In support of their claim, these two intervenors asserted that the authors of the Middle West study already accounted for the effect of interim retirements when arriving at the 55-year service life.

The ALJ recommended adopting the utilities' proposal to adjust the 55-year service life for interim retirements. According to her, the fact that the Ludington Plant's service life extends beyond the term of the plant's operating license supports making the interim adjustments requested by Consumers and Detroit Edison. In reaching that conclusion, the ALJ stated that the Middle West study did not rule out these types of adjustments.

The Attorney General excepts to the ALJ's recommendation, asserting that the PFD misses the point regarding the existence of a double count. In support of her exception, the Attorney General notes that the Middle West study began with a service life of 75 years, deducted 5 years for a lesser "capacity life" and an additional 5 years for an allegedly lower "dollar life," and then reduced the result by another 10 years to recognize the effect of certain economic considerations. Attorney General's exceptions, p. 4. According to the Attorney General, the fact that the Middle West study differentiated between capacity life and dollar life indicates that interim retirements were already accounted for in arriving at an average service life of 55 years. Although none of the parties objected to accounting for interim adjustments in that manner, she continues, they certainly did not agree to let the utilities double count that reduction in the average service life. The Attorney General therefore argues that the Commission must reject the ALJ's recommendation and deny the utilities' request to make what she perceives as duplicate adjustments for interim retirements.

In response, Consumers and Detroit Edison claim that the Attorney General's argument is based on the unfounded assumption that the second five-year adjustment set forth in the Middle West study relates to interim retirements. Moreover, these utilities contend, adopting the Attorney General's argument would serve to ignore the risk they continue to incur by basing their depreciation rates on a service life that extends nine years beyond the Ludington Plant's operating license. They therefore assert that the Commission should adopt the ALJ's recommendation and adjust the 55-year service life to reflect the effect of adjustments for interim retirements.

The Commission agrees with Consumers and Detroit Edison. As noted by the utilities, the Attorney General's exception is based on the assumption (set forth in Mr. King's direct testimony) that one of the initial downward adjustments to the Ludington Plant's potential service life represented the future effect of interim adjustments. See, Tr. 31-32. However, no evidentiary support can be found for that assumption. Likewise, the phrase "dollar life," which figures so prominently in the Attorney General's argument, is not defined in the Middle West study. Moreover, there is no indication that the authors of the Middle West study accounted in any way for the fact that the Ludington Plant's operating license would expire 9 years before the end of the 55-year service life that they proposed. See, Exhibit A-14. It seems only reasonable that had the authors accounted for such an important factor, they would have made some mention of it in their study. Finally, the Commission finds that accounting for interim retirements represents a reasonable compromise between assuming that the plant will cease operations upon the expiration of its current license, on the one hand, and assuming that it will be relicensed for a longer period, on the other. For these reasons, the Commission concludes that it should adopt the ALJ's recommendation and approve the utilities' request to include the effect of interim retirements in the computation of the Ludington Plant's depreciation rates. Moreover, in the absence of any claims that some

other methodology should be applied instead, the Commission finds that the California Procedure should be used to make those adjustments.

Net Salvage Value

The amount of depreciation to be accrued over the life of an asset is its original cost less net salvage value. Net salvage value is the difference between the gross salvage value of the property that is being retired and that property's cost of removal.⁴

As the starting point for Consumers' and Detroit Edison's estimate of the Ludington Plant's net salvage value, they offered a 1998 Decommissioning Cost Study (Exhibit A-10) prepared by the plant's manager, Mr. Johnson. According to Mr. Johnson's study, the total cost of demolishing and removing all existing structures, and restoring the plant site to its original condition, would be approximately \$147 million in 1998 dollars. This estimate assumed a contingency equal to 10% of direct costs. Moreover, Mr. Johnson indicated that the only significant difference between this decommissioning study and its predecessor (which was performed during 1993, in conjunction with the plant's previous depreciation rate case) was that the current study assumes that the reservoir's asphalt liner will be recycled, thus eliminating the need for its disposal.

Next, the utilities sponsored the testimony of Clarence M. Pitsch, who provided an estimate of the Ludington Plant's gross salvage value. Mr. Pitsch, the Director of Investment Recovery Operations in Consumers' Purchasing and Materials Department, concluded that none of the plant's components would have a resale value as useable equipment at the end of the plant's service life. Tr. 114. He therefore priced all salvageable material as scrap, arriving at a gross

⁴Positive net salvage occurs when gross salvage exceeds the cost of removal. Negative net salvage, on the other hand, occurs when the cost of removal exceeds gross salvage.

salvage figure of \$1,906,400. Exhibit A-9. When combined with Mr. Johnson's estimate of decommissioning costs, Mr. Pitsch's figure produces a net salvage value of negative \$145,093,600.

The Attorney General and ABATE took issue with those figures. Consistent with her earlier assertions, the Attorney General claimed that the Ludington Plant should be repowered instead of decommissioned. As a result, she argued that no decommissioning costs should be included in the utilities' respective depreciation rates. As for ABATE, it objected to the utilities' proposed net salvage value figures on the grounds that (1) it was wrong to include a 10% contingency factor, (2) Consumers witness Johnson improperly rounded his decommissioning cost estimate upward by \$299,600, and (3) pricing all of those assets as scrap understated the plant's gross salvage value.

The ALJ rejected the intervenors' claims and recommended that the Commission adopt the utilities' estimate of net salvage value. In making this recommendation, she again rejected as speculative the Attorney General's assumption that the Ludington Plant will be repowered (rather than decommissioned) at the end of its current service life. The ALJ went on to state that it was reasonable for Mr. Pitsch to price all of the materials obtained through decommissioning at their respective scrap values. Finally, she indicated that the utilities' use of a 10% contingency factor was consistent with past practice and that "the rounding of which ABATE complains is not unreasonable given the magnitude of the numbers being considered here." PFD, p. 17.

ABATE excepts to the ALJ's recommendation on three grounds. First, it contends that a known resale market exists for some of the Ludington Plant's assets. As a result, ABATE continues, it would be improper to price all of the material derived from decommissioning as scrap. Second, ABATE reasserts its claim that no valid basis exists for applying a 10% contingency factor to the plant's estimated decommissioning expense. Third, ABATE argues that the \$299,600 by which Mr. Johnson rounded up his estimated decommissioning costs "has nothing to with the cost

of demolishing the Ludington Plant,” is merely being used to “pad” the utilities’ depreciation rates, and should be rejected. ABATE’s exceptions, pp. 8-9.

The utilities respond by asserting that the mere existence of a resale market for some of the Ludington Plant’s assets does not mean that the equipment in question would actually be usable at the time that the plant is decommissioned and demolished. Moreover, they contend, the only testimony on this issue indicated that the equipment’s useful life (and thus the opportunity to sell it as something other than scrap) will have expired by the time that the plant is taken out of service. As for the 10% contingency factor, Consumers and Detroit Edison assert that its use is supported both by past Commission orders and authority from other industry sources. For example, they rely on favorable findings made in the Commission’s May 7, 1991 order in Case No. U-9493 and statements provided by the American Association of Cost Engineers (AACE). Finally, the utilities contend that Mr. Johnson’s decision to round his estimated decommissioning costs upward by \$299,600 was reasonable because that figure represents only one-fifth of 1% of the plant’s total demolition costs.

The Commission disagrees with the Attorney General’s claim that no decommissioning costs should be included in the utilities’ depreciation rates because the Ludington Plant should be repowered instead of decommissioned. Even if the Ludington Plant were repowered, worn out equipment would have to be replaced, thus producing some removal costs. It would therefore be inappropriate to use \$0 as the cost of decommissioning, as requested by the Attorney General.

The Commission also finds unpersuasive ABATE’s first two arguments in support of its exception. The only testimony offered on the issue of whether all assets should be treated as scrap came from Mr. Pitsch, who specifically stated that although a resale market exists for some of the equipment that will be removed from the Ludington Plant, “this equipment would have no resale

value or be useful as a piece of equipment that would still have a life in it” by the time the plant is decommissioned. Tr. 114. As for the 10% contingency factor proposed by Consumers’ witness Johnson, the Commission previously found that a factor like this “is not a hypothetical cost but, rather, it is an attempt to reflect probable costs that are not specifically quantifiable at the time the cost estimate is made.” May 7, 1991 order in Case No. U-9493, p. 14. This comports with the definition of contingencies set forth in the AACE Cost Engineers’ Notebook as follows:

Specific provisions for unforeseeable elements of cost within defined project scope; particularly important where previous experience relating estimates and actual costs has shown that unforeseeable events which will increase the costs are likely to occur.

See, Tr. 124. The Commission therefore concludes that it should adopt the ALJ’s recommendation as it pertains to (1) treating all Ludington Plant assets as scrap following the close of the plant’s useful life and (2) authorizing use of the 10% contingency factor proposed by Mr. Johnson.

Nevertheless, the Commission also concludes that it should deny the utilities’ request to approve the \$299,600 upward adjustment to Mr. Johnson’s initial decommissioning cost estimate. Although rounding is frequently used in performing estimates of this nature, and notwithstanding the fact that the Commission generally finds it to be an acceptable practice, its use in the present case raises questions of fundamental fairness and consistency.

As can be seen from the calculations on page 6 of Exhibit A-10, Consumers witness Johnson initially estimated the plant’s decommissioning costs to be \$146,700,400 (inclusive of the 10% contingency factor). Rather than reducing that estimate by a mere \$400 to reach the reasonably round figure of \$146.7 million, he elected to add \$299,600 in order to produce a slightly “rounder” number, namely \$147 million. Id. In contrast, Consumers’ other witness regarding computation of the plant’s net salvage value, Mr. Pitsch, elected not to round his estimate of gross salvage up from

its initial figure of \$1,906,400 to an even \$2 million (which would have benefitted ratepayers at the expense of the utilities). Finally, Exhibit A-12 shows that when Consumers computed its proposed depreciation rates, nearly all of the other inputs and results were accurate to the last dollar (or, in some cases, the last penny).

For these reasons, the Commission finds that the computation of the Ludington Plant's net salvage value should not include the \$299,600 upward adjustment to Mr. Johnson's initial decommissioning cost estimate,⁵ and that Consumers' and Detroit Edison's depreciation rates should be revised as set forth on Exhibit A attached to this order.

Use of Separate Life Analyses

ABATE pointed out that although Consumers and Detroit Edison relied on the same decommissioning cost study and gross salvage value estimate, they conducted and relied upon separate remaining life analyses when computing the depreciation rates for each of their respective classes of assets. ABATE questioned the need for separate life analyses where, as here, only one plant is at issue and changes to the lives of various plant assets would presumably effect Consumers and Detroit Edison equally.

In response, Detroit Edison's witness, Martin L. Heiser, noted that the two utilities maintain separate property records. Due to "timing and accounting differences between Detroit Edison and Consumers," he continued, they have different interim retirement rates. Tr. 252. According to the utilities, this has historically required them to perform and apply separate life analyses.

⁵Making this change results in a net salvage value of negative \$144,794,000. This is derived by subtracting Mr. Pitsch's estimated gross salvage figure (\$1,906,400) from the initial decommissioning cost estimate arrived at by Mr. Johnson (\$146,700,400).

Because neither ABATE nor any of the other parties requested an adjustment to the utilities' respective depreciation rates based on this issue, the ALJ recommended making no finding regarding the propriety of using separate life analyses. None of the parties except to that recommendation and the Commission finds that the ALJ's recommendation should be adopted.

Decommissioning Trust Fund

The Attorney General noted that although today's order will authorize Consumers and Detroit Edison to recover approximately \$145 million to defray the Ludington Plant's decommissioning costs, there is no assurance that those funds will be available to decommission and demolish the plant when the time comes. One of the Attorney General's witnesses, William A. Peloquin, therefore proposed ordering the two utilities to establish a decommissioning trust fund for this plant similar to those required for their respective nuclear plants. Mr. Peloquin went on to state that, although ratepayers have long paid rates that include a decommissioning cost component, his proposed trust fund should only function prospectively. According to him, this would avoid the need to go back and calculate the total amount that ratepayers have already paid toward the recovery of those costs.

Consumers and Detroit Edison opposed the Attorney General's proposal for two reasons. First, the utilities asserted that due to unique dangers posed by the use of nuclear fuel, decommissioning a nuclear plant is a vastly different proposition than decommissioning the Ludington Plant. As a result, they continued, the mere fact that decommissioning trust funds have been established for nuclear plants constitutes insufficient reason to incur the higher costs attendant with initiating and maintaining such a fund for the Ludington Plant. Second, Consumers and Detroit Edison noted that the Ludington Pumped Storage Project Settlement Agreement - FERC Offer of Settlement (the

FERC Settlement), which was signed by the utilities and the Attorney General, established a timetable and procedure to consider whether it would make sense to establish a decommissioning trust fund for this plant. The utilities therefore argued that imposing a trust fund in the context of this case would constitute a collateral attack on the FERC Settlement.

The ALJ recommended rejecting the Attorney General's proposal to establish a decommissioning trust fund. In so doing, she accepted Consumers' and Detroit Edison's arguments regarding the potential conflict with the FERC Settlement and the significant difference between the decommissioning of a nuclear plant, on the one hand, and the Ludington Plant, on the other.

The Attorney General excepts to this recommendation for several reasons. For example, she contends that the ALJ failed to provide any explanation regarding how the current situation differs from those involving the decommissioning of nuclear plants. In addition, the Attorney General claims that the ALJ offered no support for her conclusion that the use of a decommissioning trust fund for the Ludington Plant will result in a higher cost of service. She goes on to assert that even if some added expense would arise, neither Consumers nor Detroit Edison quantified the alleged higher cost of service. Finally, the Attorney General argues that the ALJ misapplied the terms of the FERC Settlement. She therefore concludes that if ratepayers are going to be required to "prepay today for over \$147 million of future speculative dismantling and decommissioning costs," they are entitled to the establishment of a decommissioning trust fund like that proposed by Attorney General witness Peloquin. Attorney General's exceptions, p. 11.

The Commission disagrees with the Attorney General's conclusion and finds that it should reject Mr. Peloquin's proposal. Notwithstanding the Attorney General's claims to the contrary, the decommissioning and dismantling of a nuclear plant presents significantly different concerns than those that will be faced when decommissioning the Ludington Plant. For example, Congress and

the Nuclear Regulatory Commission have established a multitude of standards regarding the disposition of irradiated construction materials, the reduction of residual radioactivity at the plant's former site, and the assurance of adequate funding to safely dismantle the nuclear plant and "release the property for unrestricted use." See, 10 C.F.R. § 50.2(1). Moreover, the Internal Revenue Code of 1986 and its associated regulations support the ALJ's conclusion that it would cost much more to implement a decommissioning trust fund for the Ludington Plant than for a nuclear plant. Specifically, I.R.C. § 468A provides each utility with a corporate income tax deduction equal to its annual contribution to a nuclear decommissioning trust fund, 26 C.F.R. § 1.468A-4(a) limits the tax rate that can be applied to income earned on the fund's assets, and 26 C.F.R. § 1.468A-4(c)(4) exempts that income from any other corporate tax provisions (such as the alternative minimum tax, the accumulated earnings tax, or the personal holding company tax).

Finally, as stated by Consumers witness Thomas L. Simonsen, the FERC Settlement provides that:

Five years after the effective date of the Agreement, The Detroit Edison Company and Consumers Energy will begin consulting with the Attorney General and other parties on a plan for studying the costs of: permanent non-power operation, partial project removal, or complete project removal. The Agreement, on pages 17 and 18, outlines a schedule to prepare this study and seek related FERC and MPSC approvals. There are no regulations that require Consumers Energy to establish a trust fund for removal costs as in the case of a nuclear plant. The Agreement sets forth a process to address the voluntary establishment of a trust fund following completion of studies that are discussed in Section IV.I.

2 Tr. 177. See also, Exhibit A-13. The ALJ was therefore correct in concluding that the Attorney General's proposal to establish a decommissioning trust fund at this time would directly conflict with the terms of the FERC Settlement. Furthermore, because the parties are slated to begin evaluating this issue in the first few months of 2000, little harm will arise from following the schedule to which they previously agreed.

For all of these reasons, the Commission finds that it should adopt the ALJ's recommendation and deny the Attorney General's request to establish a decommissioning trust fund for the Ludington Plant.

Effective Date for New Depreciation Rates

Consumers noted that on November 5, 1997, the FERC issued a letter order in FERC Docket No. DR98-1-000 (the November 5 order) establishing a new process for submitting and reviewing utilities' requests to change depreciation rates. According to Consumers, that process required FERC approval of any requested changes before they took effect, regardless of whether a state commission had already approved them. However, Consumers continued, the FERC order establishing the pre-approval process was subsequently vacated in Alabama Power Co v FERC, 333 US App DC 77; 160 F3d 7 (1998), which held that the FERC must undertake a formal rulemaking before implementing its new process. The Court in Alabama Power went on to remand the issue to the FERC for proceedings not inconsistent with its decision.

As a result, Consumers noted that the FERC may, at some point in the future, satisfy the rulemaking procedures demanded by the Court. Consumers went on to state that if this occurred prior to the issuance of an order in the present case, it may be necessary to seek FERC approval of the revised depreciation rates for the Ludington Plant prior to their implementation. Given these considerations, Consumers made a two-part request regarding the effective date for its new rates. First, it proposed that (barring action by the FERC) the depreciation rates approved in this case should be made effective the first day of the first full month after the Commission approves them. Second, it requested that if the FERC reinstates its filing requirement prior to issuance of the Commission's order, the new depreciation rates should be implemented on the effective date of the FERC order concurring in those rates.

Noting that none of the parties challenged that two-part request in their reply briefs, the ALJ recommended adopting Consumers' proposal.

The Attorney General excepts to that recommendation. According to her, the process initially established by the FERC did not require pre-approval by the FERC before a state commission could rule on a utility's request for new depreciation rates. Rather, she asserts, it only required that after a state commission establishes new rates, but before those new rates actually take effect, they must be submitted for review by the FERC. The Attorney General goes on to assert that whether the FERC enacts filing requirements like those vacated in Alabama Power "is pure speculation," and therefore cannot serve as a basis for the Commission's decision. Attorney General's exceptions, p. 12. Finally, she contends that granting Consumers' request would have the effect of conveying away the Commission's primary jurisdiction over depreciation rates. According to her, this should not be done "without some clear mandate of law." Id. The Attorney General therefore argues that the Commission should reject the ALJ's recommendation and have the utilities' new depreciation rates take effect on a date established by the Commission, rather than on some speculative future date.

The Commission agrees with the Attorney General and concludes that the new depreciation rates approved for the Ludington Plant should take effect on the first day of the first full month following issuance of this order. At present, no need exists for FERC approval of the utilities' new rates. Moreover, the FERC's recently vacated process never precluded state commissions from approving and implementing new depreciation rates in the absence of prior FERC approval.⁶

⁶However, it did establish a structure in which utilities might temporarily be required to keep two separate sets of books for the Ludington Plant, with one based on the depreciation rates approved by the Commission for use at retail and the other based on rates approved by the FERC for use at wholesale.

Rather, that process merely required the utility to file an application seeking FERC approval of the same depreciation rate revisions “after changed depreciation rates for accounting purposes are approved by the retail regulator, but before the change is actually made.” November 5 order, p. 3. As a result, Consumers and Detroit Edison could satisfy the FERC’s requirements (even if they are reinstated) by filing their respective applications to amend the Ludington Plant’s depreciation rates between the date that this order is issued and the first day of the following month.

Filing Date of Next Case

Consumers and Detroit Edison proposed filing their next depreciation rate case concerning the Ludington Plant on or before July 1, 2004. That date was selected to be consistent with the schedule and process set forth in the FERC Settlement regarding the development and evaluation of study plans for plant removal. These two utilities asserted that the July 1, 2004 filing date was necessary to allow time for that process to conclude. In contrast, the Attorney General argued that a much earlier filing deadline should be established. According to her, the Financial Accounting Standards Board (FASB) was on the verge of issuing depreciation accounting rule changes that might have a significant effect on the calculation of the Ludington Plant’s depreciation rates and annual depreciation expense in the future.

The ALJ agreed with Consumers and Detroit Edison. She therefore recommended that the Commission adopt the utilities’ proposal and establish July 1, 2004 as the appropriate deadline.

The Attorney General excepts to that recommendation for several reasons. For example, she claims that a July 1, 2001 filing deadline would in no way conflict with the FERC Settlement. The Attorney General goes on to contend that none of the parties dispute the fact that the FASB is considering the adoption of a new accounting standard regarding asset retirement obligations

(otherwise known as decommissioning expenses or negative net salvage value). Because estimated decommissioning costs are responsible for between 40 and 46% of the Ludington Plant's annual depreciation expense, she continues, issuance of the FASB's new standard might necessitate a significant reduction in Consumers' and Detroit Edison's depreciation rates. The Attorney General also objects to the ALJ's recommended use of open ended language (i.e., requiring filing "on or before" July 1, 2004), claiming that it would unjustifiably allow the utilities to file early if it is to their advantage and to wait until 2004 if it is not. Finally, the Attorney General asserts that, consistent with past practice, the Commission should specify the date of the underlying plant balances upon which the future filing will be based.

The Commission disagrees, at least in part, with all but the last of the Attorney General's arguments. As set forth on Exhibit A-13, the FERC Settlement states that, as of the year 2000, the parties must begin consulting with each other on a plan for studying the respective costs of (1) permanent non-power operation of the Ludington Plant, (2) partial project removal, and (3) full project removal. At the end of six months, it calls for the utilities to submit those study plans to the FERC for approval. The FERC Settlement then provides the utilities up to 24 months to conduct those studies and submit their reports to the FERC and the other parties. As a result, the schedule established by the parties to the FERC Settlement will extend approximately one year beyond the Attorney General's proposed July 1, 2001 filing deadline.

Moreover, the record indicates that it would be speculative to assume that the FASB will adopt a new accounting standard regarding decommissioning expense in the very near future. In suggesting that such a change could occur soon, Attorney General witness Peloquin referred to a FASB "exposure draft" dated February 7, 1996. 2 Tr. 271. However, Mr. Simonsen testified that the FASB had backed away from its original proposal and was planning to issue a new exposure

draft. 2 Tr. 179. This occurred on February 7, 2000, when the FASB issued its revised exposure draft. This fact, when coupled with the FASB's history of acting in a deliberate manner on all proposed changes, convinces the Commission that any new accounting rules covering decommissioning expense are at least a year away.

Furthermore, as correctly noted by the ALJ, "the Commission has the authority to change the filing schedule" if the FASB issues significantly revised rules or if any other developments arise that would substantially affect the Ludington Plant's depreciation. PFD, p. 21. A change of that nature could arise from a petition filed by any of the parties, as well as the Commission's own motion. In such a situation, the "open-ended language" to which the Attorney General excepts might actually work to her benefit.

For these reasons, the Commission finds that it should reject the Attorney General's request to establish July 1, 2001 as the filing deadline. Nevertheless, the Commission also finds that the deadline recommended by the ALJ (namely, July 1, 2004) is too distant. This is particularly true in light of the FASB's interest in revising accounting standards that could have an effect on up to 46% of the Ludington Plant's annual depreciation expense. The Commission therefore concludes that a filing deadline of July 1, 2002 should be established instead.⁷

Finally, the Commission agrees with the Attorney General's final argument and concludes that Consumers and Detroit Edison should specifically be directed to base their respective depreciation rate case filings on December 31, 2001 plant balances. As claimed by the Attorney General, this is consistent with past practice for both Consumers and Detroit Edison.

⁷Assuming the utilities work diligently, this deadline would allow Consumers and Detroit Edison to satisfy the schedule established by the FERC Settlement while avoiding any undue delay in filing their next depreciation case.

Depreciation Rates

Based on the foregoing discussion, the Commission finds that the respective depreciation rates set forth by account on Exhibit A attached to this order should be adopted for Consumers and Detroit Edison. These rates increase Consumers' composite rate for the Ludington Plant from its current level of 3.31% to 3.41%. As for Detroit Edison, they raise the existing composite rate of 3.00% to a new level of 3.13%.

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 AACS, R 460.17101 et seq.
- b. The respective depreciation rates by account set forth on Exhibit A attached to this order are reasonable and should be adopted for Consumers and Detroit Edison.
- c. Consumers and Detroit Edison should implement the revised depreciation rates as of the first day of the first full month following issuance of this order.
- d. Consumers and Detroit Edison should file their next depreciation rate application for the Ludington Plant assets on or before July 1, 2002. The application should be supported by a depreciation study using plant balances as of the close of the previous calendar year, as well as testimony and exhibits.

THEREFORE, IT IS ORDERED that:

A. The depreciation rates by account for the Ludington Pumped Storage Plant set forth on Exhibit A attached to this order are approved for use by Consumers Energy Company and The Detroit Edison Company, effective as of the first day of the first full month following issuance of this order.

B. Consumers Energy Company and The Detroit Edison Company shall file their next depreciation rate application concerning the Ludington Pumped Storage Plant assets on or before July 1, 2002. The application shall be supported by a depreciation study using plant balances as of the close of the previous calendar year, as well as testimony and exhibits.

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 E A L)

/s/ John G. Strand
Chairman

By its action of March 3, 2000.

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ Robert B. Nelson
Commissioner

THEREFORE, IT IS ORDERED that:

A. The depreciation rates by account for the Ludington Pumped Storage Plant set forth on Exhibit A attached to this order are approved for use by Consumers Energy Company and The Detroit Edison Company, effective as of the first day of the first full month following issuance of this order.

B. Consumers Energy Company and The Detroit Edison Company shall file their next depreciation rate application concerning the Ludington Pumped Storage Plant assets on or before July 1, 2002. The application shall be supported by a depreciation study using plant balances as of the close of the previous calendar year, as well as testimony and exhibits.

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

Chairman

By its action of March 3, 2000.

Commissioner

Its Executive Secretary

Commissioner

In the matter of the application of)
CONSUMERS ENERGY COMPANY and)
THE DETROIT EDISON COMPANY for)
accounting approval of depreciation practices)
for the Ludington Pumped Storage Plant.)
_____)

Case No. U-11724

Suggested Minute:

“Adopt and issue order dated March 3, 2000 authorizing Consumers Energy Company and The Detroit Edison Company to implement new depreciation rates for their respective shares of the Ludington Pumped Storage Plant assets, as set forth in the order.”