

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
of the implementation of 2000 PA 141.)
_____)

Case No. U-12464

At the October 6, 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

On August 4, 2000, the Commission issued an order rejecting Consumers Energy Company's (Consumers) interpretation of Section 10d of 2000 PA 141, MCL 460.10d; MSA 22.13(10d), as permitting an increase in base rates when its retail open access load reaches 150 megawatts. In addressing the comments filed by the parties, the Commission noted the concern of the Michigan Power Limited Partnership (MPLP) and the Ada Cogeneration Limited Partnership (Ada) that the rights of qualifying facilities with approved power purchase agreements not be impaired. In footnote 3 at page 5, the Commission declined to address that concern, finding it to be extraneous to the purpose for which the Commission had sought comments.

On September 1, 2000, the MPLP and Ada filed a petition for rehearing. They assert that it was error for the Commission to fail to state whether it intended the order to deny Consumers the right to recover the avoided costs set forth in the power purchase agreements with the MPLP and

Ada. They also assert that the Commission's failure to address the issue will permit Consumers to continue to argue that a regulatory disallowance has occurred and may therefore result in further federal court litigation to ensure that the qualifying facilities receive full recovery of previously approved avoided cost payments.

On September 20, 2000, Consumers filed a response. It asserts that the concern of the MPLP and Ada is extraneous to the matter in dispute in this docket and premature because Consumers has not sought to claim a "regulatory-out" based on the August 4, 2000 order.

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

Subsection 10a(8) of 2000 PA 141 provides in part that the "rights of parties to existing contracts and agreements in effect as of January 1, 2000 between electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, shall not be abrogated, increased, or diminished by this act . . ."

MCL 460.10a(8); MSA 22.13(10a)(8). Consequently, the Legislature did not intend the rate reduction and rate freeze provisions of Section 10d to impair any existing contracts with qualifying facilities, and the Commission cannot implement that section in a manner that impairs those contracts. The MPLP and Ada say that Consumers has claimed that the August 4, 2000 order constitutes a disallowance of previously approved avoided cost payments under their contracts,

while Consumers denies that it has so claimed. The Commission need not resolve that dispute. To be clear, and to avoid unnecessary relitigation of the issue, the Commission's interpretation of Section 10d in the August 4, 2000 order was intended to be consistent with the statute and did not result in any disallowance of Consumers' right to full recovery from its customers of all avoided costs payable to the MPLP and Ada pursuant to their power purchase agreements with Consumers.

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 petition for rehearing should be granted.

THEREFORE, IT IS ORDERED that the Commission's interpretation of Section 10d in the August 4, 2000 order was intended to be consistent with the statute and did not result in any disallowance of Consumers Energy Company's right to full recovery from its customers of all avoided costs payable to the Michigan Power Limited Partnership and the Ada Cogeneration Limited Partnership pursuant to their power purchase agreements with Consumers Energy Company.

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 October 6, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated October 6, 2000 clarifying that the August 4, 2000 order did not result in any disallowance of Consumers Energy Company's right to full recovery from its customers of all avoided costs payable to the Michigan Power Limited Partnership and the Ada Cogeneration Limited Partnership pursuant to their power purchase agreements, as set forth in the order.”