

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY to recover)	
electric restructuring implementation costs for the)	Case No. U-12891
12-month period ended December 31, 2000.)	
_____)	

At the November 7, 2002 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On March 30, 2001, Consumers Energy Company (Consumers) filed an application for authorization to recover \$25,149,000 of electric restructuring implementation costs incurred in calendar year 2000,¹ plus post-2000 carrying costs.²

At a prehearing conference on June 18, 2001, Administrative Law Judge James N. Rigas (ALJ) granted leave to intervene to the Association of Businesses Advocating Tariff Equity (ABATE) and Attorney General Jennifer M. Granholm (Attorney General). The Commission Staff (Staff) also participated. On October 29, 2001, the ALJ conducted an evidentiary hearing, at which Consumers

¹ The proposed implementation costs for 2000 include \$150,000 actually incurred in 1999. Those costs are related to Consumers' restructuring of its dispatch coordination with The Detroit Edison Company upon the discontinuation of their power pool arrangement, the Michigan Electric Coordinated Systems.

² The proposed implementation costs for 2000 include carrying costs accrued up to the end of 2000.

presented four witnesses in support of its application and the Staff presented a witness proposing to disallow \$5,048,000 of direct labor costs and \$341,000 of employee retraining costs (plus \$173,000 of carrying costs related to both disallowances). The Staff's disallowance related to labor (including overhead) that, in its view, duplicated the operation and maintenance (O&M) expense recovered in Consumers' base rates. Consumers, the Staff, and ABATE filed briefs, and Consumers, the Staff, and the Attorney General filed reply briefs.

On January 22, 2002, the ALJ issued a Proposal for Decision recommending adoption of the Staff's disallowance and conditional approval of the other implementation costs for deferred recovery. On February 5, 2002, Consumers filed exceptions. On February 20, 2002, the Attorney General and the Staff filed replies to exceptions.

In its exceptions, Consumers argues that the ALJ erred in recommending disallowance of the labor costs. Consumers says that it is undisputed that those costs were both prudently incurred and directly related to electric restructuring. Consumers further asserts that the Staff's reasoning regarding whether the costs were incremental to the O&M expense recovered in base rates is flawed. According to Consumers, declines in overall electric O&M expense and employee headcounts since its last base rate case do not indicate whether the labor resources assigned to the implementation functions were incremental in nature. Consumers says that the aggregate O&M expense numbers cited by the Staff are far more encompassing in scope and mask changes in specific types of cost. Moreover, Consumers observes, the Staff's analysis included gas as well as electric employees in its headcount comparisons, but Consumers' electric-only headcount increased from 1998 to 2000.

Consumers contends that the costs at issue are recoverable under the October 24, 2000 order in Cases Nos. U-11955 and U-11956 (addressing 1998 implementation costs for Consumers and The

Detroit Edison Company [Detroit Edison], respectively) and the July 11, 2001 order in Case No. U-12358 (Consumers' 1999 implementation costs), reh den order dated July 23, 2002. It says that the standard set forth in those orders requires "an adequate showing that [the labor] costs were in addition to the employee-related costs typically incurred by a utility operation in providing electric service in a reasonable, efficient manner." Order dated October 24, 2000, Cases Nos. U-11955 and U-11956, at 9. It argues that it would not have incurred the costs, or undertaken the underlying activities, but for restructuring. It further argues that MCL 460.10p explicitly acknowledges its right to recover labor costs that it incurred to retrain displaced employees.

Consumers explains that 70 of its employees working on restructuring activities, on either a full- or part-time basis, accounted for 116,608 hours in 2000, of which 84,017 were direct labor hours and 32,591 were chargeback hours. It further classifies the direct labor hours in terms of whether they represent new hires, the transfer of an employee from the gas business to an electric restructuring function, backfilling jobs of reassigned electric employees by hiring new employees, paying overtime, and reallocating the workload of existing employees. It explains that chargeback hours represent services performed by either the Information Services and Technology unit or the Meter Technology Center and Meter Services unit, both of which are internal support organizations staffed by persons that do not report to Consumers' electric operation. It says that chargeback services are no different than contracting for outside consulting services. Consumers asserts that it did not present this type of evidence in Case No. U-11955, but that the additional detail and analysis it presented in this case support full recovery of the labor costs.

In reply, the Attorney General argues that the Staff's proposed disallowance is consistent with prior orders that provide for recovery of incremental costs only. The Attorney General further

contends that MCL 460.10p(2) classifies employee retraining costs as stranded costs, which Consumers cannot recover as implementation costs.

The arguments advanced by Consumers to support its claim that some of its workforce costs should be allocated to restructuring functions and recovered as implementation costs are not different in any material respect from those it made in Cases Nos. U-11955 and U-12358, in which the Commission disallowed the same types of expenses. Despite claims by Consumers that the labor costs relate to added employees, transferred employees whose old jobs were backfilled, the payment of overtime, and the use of chargeback labor, the prior orders held that Consumers had failed to prove that the challenged costs were incremental to the employee-related costs typically incurred by a utility operation in providing electric service in a reasonable, efficient manner. In Cases Nos. U-11955 and U-11956, the Commission stated:

The redeployment of members of an existing workforce is not necessarily an unusual occurrence in large organizations. A reassignment can be short-term, temporary, or routine in nature. It may reflect efficiencies attained in preexisting work functions or the elimination of redundant positions. Unless the cost would not have been incurred, and represents a task or activity that would not have been performed, but for restructuring, it is more properly classified as the type of expense assigned to base rates.

October 24, 2000 order at 9-10 (footnote omitted). The order further emphasized that “implementation costs are non-recurring costs that the utilities incur in addition to the operational costs that they already recover in their base rates and are necessary to accomplish the changes required by restructuring.” *Id.* at 3. The Commission reaffirms those determinations and finds that they apply with equal force to this case.

The mere fact that Consumers labels some costs as retraining costs does not automatically qualify them for recovery. As noted in the July 11, 2001 order in Case No. U-12358, at 7, the Customer Choice and Electricity Reliability Act, MCL 460.10 et seq., “does not guarantee the

recovery of all of a utility's employee retraining and relocation costs." Rather, the statute provides for recovery of only those "audited and verified employee-related restructuring costs that are incurred as a result of the amendatory act that added this section [2000 PA 141, or Act 141] or as a result of prior commission restructuring orders, including . . . employee retraining programs . . . that have been approved and found to be prudently incurred by the commission." MCL 460.10p(2). Incurring costs to retrain employees formerly assigned to year-round outage-related tasks, as claimed by Consumers, is consistent with improving the electric utility's operational efficiency and achieving cost savings through the elimination of redundant positions. As further noted in Case No. U-12358, "[n]othing in Act 141 or the Commission's prior restructuring orders in any way obligates an electric utility to alter its methodology for performing scheduled outages." July 11, 2001 order at 7. Thus, the retraining costs do not qualify as implementation costs, absent the requisite showing that they were "a result of" a restructuring mandate imposed by Act 141 or Commission order.

Consumers argues that the analytical detail it provided for its labor costs in this case was not on the record in Case No. U-11955. Nevertheless, it is remarkably similar to the evidence that the Commission rejected in Case No. U-12358, and Consumers has presented nothing that would justify a different treatment for what appear to be essentially the same types of costs. Any difference or elaboration in the arguments marshaled by Consumers in this case is not adequate to persuade the Commission that the labor costs are incremental, that they would not have been incurred but for restructuring, or that the underlying activities would not have been performed but for restructuring.

Consumers makes an additional argument that diverting part of the revenue requirement in its current base rates to cover its implementation costs would be retroactive ratemaking and would thus

have the effect of reducing rates in violation of the rate freeze imposed in MCL 460.10d. The Commission finds no merit in this argument, as Consumers' base rates will not change in consequence of this order. See order dated July 23, 2002, Case No. U-12358, at 8. Foreclosing recovery of non-incremental costs does not violate either the statutory rate freeze or the retroactive ratemaking prohibition. The rate freeze provisions in MCL 460.10d do not create an entitlement on Consumers' part to a deferred recovery of all labor costs, whether incremental or not, that it incurs during the freeze.

The ALJ's recommendation to make the recovery of implementation costs conditional incorporates prior Commission rulings. In the order in Cases Nos. U-11955 and U-11956, at 5, the Commission stated: "If subsequent events reveal that costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the progress to retail open access, the Commission reserves the right to undertake another review of those costs and may foreclose their recovery." The Commission reaffirmed this determination in the July 11, 2001 and July 23, 2002 orders in Case No. U-12358 as well as the July 23, 2002 order in Case No. U-12892 (Detroit Edison's 2000 implementation costs).

Consumers seeks a determination that it has an unconditional right to recover its implementation costs. It says that it has proven, without dispute, that it prudently incurred the costs. It contends that making the costs subject to future disallowance is incompatible with the prudence standard because recovery cannot be made to depend upon the ultimate success or failure of an undertaking in hindsight. It says that a conditional recovery of prudent costs would violate its federal and state constitutional rights to due process, which protect it against arbitrary or unfair ratemaking.

The Commission provided the rationale for imposing conditions on the deferred recovery of implementation costs in Cases Nos. U-11955 and U-11956, as follows:

[T]he Commission would emphasize that simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. Expenditures associated with the implementation of the retail open access programs must produce results. Procedures, policies, methods, or electronic data interfaces that prove to be ineffective, inefficient, or unworkable may not entitle the company to recover the costs of those systems.

Because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Consumers' and Detroit Edison's implementation programs at this time. The Commission notes, however, that it expects Consumers and Detroit Edison to file information in their 2000 and 2001 true-up cases from which the Commission can determine the effectiveness of the implementation costs that the companies seek to recover.

Order at 4-5; see order dated July 11, 2001, Case No. U-12358, at 10. Neither Michigan public utility statutes nor prior Commission orders recognize an unqualified right to recover any or all costs that a utility may attempt to classify as related to implementation. The Commission is not proposing to disallow prudent costs with the benefit of hindsight, but rather it is recognizing that it is not possible to undertake a piecemeal review of costs incurred in each year of a project spanning multiple years. An informed evaluation of prudence requires the project to be reviewed in its entire context.

However, nothing in this or prior orders should be viewed as foreclosing Consumers from seeking a determination from the Commission at an appropriate time in the future that assures recovery of all or a portion of its implementation costs at the conclusion of the rate freeze. To seek such a determination, Consumers should file an application and supporting documentation that provides the Commission with a factual basis for reviewing the success of Consumers' implementation efforts. Specifically, the Commission is looking for evidence that any component, system, or procedure that is necessary for a retail access program to fully function is in place,

completely operational, and capable of seamlessly performing its role in conjunction with the other necessary components, systems, and procedures. Simply spending funds on a new component, system, or procedure is not sufficient to demonstrate that the expenditure furthered the utility's ability to conduct a retail access program in a manner that promotes customer choice and fair competition among suppliers. Notice of the application should be provided in accordance with the directions of the Commission's Executive Secretary. Any interested party may request a hearing as provided in the notice.

Consumers proposes to recover its implementation and carrying costs through a surcharge assessed to all retail customers, including full service and open access customers, over a five-year period after the rate freeze expires. It says that there is no reason why the Commission should defer a decision approving its proposal.

As stated in the July 11, 2001 order in Case No. U-12358, at 11-12, and the October 24, 2000 order in Cases Nos. U-11955 and U-11956, at 12, it is not necessary or appropriate to address a cost recovery mechanism at this time.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. Implementation costs of \$19,587,000 incurred by Consumers for 2000, including carrying charges accrued through year-end 2000, should be approved for deferred recovery, subject to the conditions stated in this order.

THEREFORE, IT IS ORDERED that implementation costs of \$19,587,000 incurred by Consumers Energy Company for 2000, including carrying charges accrued through year-end 2000, are approved for deferred recovery, subject to the conditions stated in this order.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of November 7, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

THEREFORE, IT IS ORDERED that implementation costs of \$19,587,000 incurred by Consumers Energy Company for 2000, including carrying charges accrued through year-end 2000, are approved for deferred recovery, subject to the conditions stated in this order.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of November 7, 2002.

Its Executive Secretary

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_____)

Case No. U-12891

Suggested Minute:

“Adopt and issue order dated November 7, 2002 approving retail open access program implementation costs for 2000 by Consumers Energy Company, as set forth in the order.”