

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY for)	Case No. U-13162
approval of long-term power purchase agreements.)	
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At the May 16, 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 November 1, 2001, Consumers Energy Company (Consumers) filed an application for ex parte approval of three long-term power purchase agreements pursuant to MCL 460.6j. On December 20, 2001, the Commission approved the agreements as reasonable and in the public interest. Because the relief sought in the application did not increase the cost of service, the Commission issued the order without providing notice or an opportunity for hearing, pursuant to MCL 460.6a(1).

On January 14, 2002, Attorney General Jennifer M. Granholm (Attorney General) filed a petition for clarification or rehearing. She objects to the failure of the order to indicate that the Commission will consider in future power supply cost recovery (PSCR) cases the reasonableness and prudence of the costs arising out of the three agreements. She acknowledges that because Consumers' rates are currently frozen, there is no effect on rates at this time. But, she argues,

because PSCR proceedings will not resume until approximately two years from now and because there may be different Commissioners at that time, the Commission should clarify that the reasonableness and prudence of the costs will be reviewed in appropriate future PSCR proceedings. If the Commission intended its order to be a final determination of the reasonableness and prudence of the contracts, she says that the order is unlawful because MCL 460.6a(1) requires the Commission to conduct a hearing before making that determination.

On February 4, 2002, Consumers filed a response. It argues that the Legislature did not intend the approval granted pursuant to MCL 460.6j to be as meaningless as the Attorney General proposes, but rather intended that once the approval is granted, the costs are not subject to repeated future review and possible disallowance. It says that MCL 460.6a(1) does not require a hearing at this time because rates have not increased as a result of the approval and that the cited provision will require a hearing after the rate freeze only if the contracts result in an increase in rates at that time.

The Commission denies the Attorney General's petition for clarification or rehearing. MCL 460.6a(1) does not require a hearing at this time. Because of the rate freeze, customers' rates were not affected by the December 20 order. Because the effect on rates after the rate freeze is speculative, the Commission cannot agree with the Attorney General that a hearing will necessarily be required at that 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. The Attorney General's petition for clarification or rehearing should be denied.

THEREFORE, IT IS ORDERED that Attorney General Jennifer M. Granholm's petition for clarification 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.

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 May 16, 2002.

/s/ Dorothy Wideman

Its Executive Secretary

b. The Attorney General's petition for clarification or rehearing should be denied.

THEREFORE, IT IS ORDERED that Attorney General Jennifer M. Granholm's petition for clarification 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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of May 16, 2002.

Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated May 16, 2002 denying Attorney General Jennifer M. Granholm’s petition for clarification or rehearing, as set forth in the order.”