

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** for )  
accounting approval to continue deferral and )  
amortization of certain tax-related assets )  
associated with transmission facilities. )  
\_\_\_\_\_)

Case No. U-13224

At the June 6, 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 December 12, 2001, Consumers Energy Company (Consumers) filed an application for approval of accounting related to its sale of transmission facilities to an independent transmission company. Consumers stated that it has an asset recorded on its books in accordance with Statement of Financial Accounting Standard 109 (FAS 109) for federal income tax benefits associated with the transmission facilities, which were previously flowed through to customers, and a corresponding deferred tax liability. Consumers requested authority to (i) continue deferral and amortization of the FAS 109 asset after the sale of the transmission facilities, (ii) record a deferred income tax benefit when the FAS 109 deferred tax liability is extinguished upon completion of the sale, and (iii) reduce the FAS 109 asset through tax expense over a twenty-year period beginning when the sale is completed.

On December 20, 2001, the Commission approved the application because it found the requested accounting to be reasonable and in the public interest. It noted that the proposed accounting would allow Consumers to reduce the FAS 109 asset over a time period that approximated the time during which the reduction would have occurred in the absence of a sale of the transmission facilities. It concluded that requiring Consumers to record the income tax expense significantly earlier than if it had not sold the transmission facilities would be an unintended consequence of Consumers' compliance with the requirement of Section 10w of 2000 PA 141 (Act 141), MCL 460.10w, that it join an approved regional transmission facility or divest itself of its transmission assets. Because the relief requested by the application would not increase rates or charges for any customer, the Commission found that ex parte approval was appropriate.

Also on December 20, 2001, Attorney General Jennifer M. Granholm (Attorney General) filed a request that the Commission deny the application or set it for hearing.

On January 22, 2002, the Attorney General filed a petition for rehearing. She contends that the continued amortization of the deferred tax asset is lawful and reasonable only until the sale of the transmission facilities is completed. She says that after the sale, and without the order that the Commission issued, generally accepted accounting principles and the Commission's Uniform System of Accounts would require the company to remove both the tax asset and the tax liability from its balance sheet. The Attorney General also argues that allowing Consumers to continue the deferral and amortization is unlawful because Consumers would thus recover revenue related to assets that it no longer owns and that are no longer used and useful. She also contends that the accounting approved by the Commission authorizes the company to recover from its customers the associated revenue requirement and will increase its cost of service. She thus concludes that

MCL 460.6a(1) requires the Commission to conduct a contested case hearing before deciding whether to approve the application.

Consumers filed a response on February 12, 2002. It says that the Attorney General's petition incorrectly assumes that the Commission's order approved rate relief. In fact, it says, it requested only accounting authority, which is all the order granted. It says that the Attorney General's "used and useful" argument is irrelevant, because the physical transmission assets are not at issue, and is incorrect, because the Commission can authorize an amortization without regard to whether the assets are currently used and useful. It says that a hearing was not required because the approved accounting did not increase the cost of service, because its rates cannot change until at least December 31, 2003 pursuant to MCL 460.10d, and because the order did not authorize any rate recovery.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R460.17403, 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.

The Commission concludes that the Attorney General's petition for rehearing should be denied. The December 20, 2001 order approved Consumers' request for accounting authority related to the sale of its transmission assets. The Commission continues to find that approval to be appropriate, and the Attorney General's argument about used and useful assets does not persuade the Commission otherwise. Furthermore, the order did not approve any change in rates, and thus

MCL 460.6a(1) does not require a hearing. Attorney General v Public Service Commission, 227 Mich App 148, 154-155; 575 NW2d 302 (1997) lv den 459 Mich 910; 589 NW2d 282 (1998). If Consumers seeks at some future time to increase its rates as a result of the accounting authority granted by the December 20, 2001 order, the Attorney General will have an opportunity to raise the relevant issues 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 petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Attorney General Jennifer M. Granholm 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 June 6, 2002.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Suggested Minute:

“Adopt and issue order dated June 6, 2002 denying the petition for rehearing filed by Attorney General Jennifer M. Granholm, as set forth in the order.”