

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the approval of a code of conduct)	
for CONSUMERS ENERGY COMPANY and)	Case No. U-12134
THE DETROIT EDISON COMPANY.)	
_____)	

At the May 28, 2003 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

ORDER TO SHOW CAUSE

On February 20, 2003, the Commission issued an order in Case No. U-12134, which, among other things, granted a request by Consumers Energy Company (Consumers) to extend until December 31, 2003 the waiver that the Commission granted Consumers from the full functional separation requirement for the company’s Appliance Service Plan (ASP) program. However, the Commission found that certain conditions should be placed upon the waiver. The order states in part:

“Therefore, the Commission finds that until December 31, 2003, Consumers shall operate its ASP program without using messages printed on its bills, bill inserts, advertising, and other such promotional materials included with customers’ bills. . . . If there is ever a question regarding Consumers’ compliance with this provision, the burden of going forward with evidence shall be on Consumers to establish its compliance”

On April 1, 2003, the Commission issued an order in Case No. U-13601, a complaint filed by Lynn L. Briggs against Consumers, alleging that Consumers had violated the code of conduct by

including advertising for the ASP program in its billing inserts. At that time, the Commission found that:

For the period to which the complaint relates, Consumers had a temporary waiver of the requirements that Mr. Briggs asserts Consumers violated. Therefore, the Commission concludes that the ALJ properly granted Consumers' motion for summary disposition. Should Mr. Briggs bring to the Commission's attention violations of the February 20 order, appropriate action will be taken.

Id., p. 4.

On April 24, 2003, the Commission received a letter from Mr. Briggs asserting that Consumers had again used its newsletter, a billing insert, to promote its ASP program in a billing that Mr. Briggs received about April 1, 2003. Mr. Briggs asserts that Consumers has thereby violated the cease and desist provisions of the Commission's February 20, 2003 order in Case No. U-12134.

On May 12, 2003, the Commission received a complaint from Phil Forner concerning the same subject matter and essentially the same allegations.

The Commission concludes Consumers should demonstrate its compliance with the Commission's February 20, 2003 order in Case No. U-12134. Therefore, this case is remanded to the Administrative Law Judge Division for a hearing at which Mr. Briggs and Mr. Forner will have an opportunity to present evidence that Consumers violated the Commission's February 20, 2003 order in Case No. U-12134 and Consumers will have an opportunity to demonstrate its compliance or to show cause why it should not be found in violation of that order.

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 AACCS, R 460.17101 et seq.

b. A hearing should be held to provide Mr. Briggs and Mr. Forner an opportunity to present evidence of the alleged violation and Consumers an opportunity to demonstrate its compliance or to show cause why it should not be found in violation of the Commission's February 20, 2003 order in Case No. U-12134.

THEREFORE, IT IS ORDERED that this case is remanded to the Administrative Law Judge Division for a hearing consistent with the purposes outlined 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 E A L)

/s/ Laura Chappelle
Chairman

By its action of May 28, 2003.

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ Robert B. Nelson
Commissioner

amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. A hearing should be held to provide Mr. Briggs and Mr. Forner an opportunity to present evidence of the alleged violation and Consumers an opportunity to demonstrate its compliance or to show cause why it should not be found in violation of the Commission's February 20, 2003 order in Case No. U-12134.

THEREFORE, IT IS ORDERED that this case is remanded to the Administrative Law Judge Division for a hearing consistent with the purposes outlined in this order.

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

By its action of May 28, 2003.

Commissioner

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Case No. U-12134

Suggested Minute:

“Adopt and issue order dated May 28, 2003 remanding this case to the Administrative Law Judge Division for a hearing on the alleged violation of the Commission’s February 20, 2003 order by Consumers Energy Company, as set forth in the order.”