

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** for certain )  
determinations pursuant to Sections 32(c) and (d) )  
of the Public Utility Holding Company Act of 1935 )  
and for accounting approval for the transfer of )  
certain assets. )  
\_\_\_\_\_ )

Case No. U-12369

At the October 23, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**OPINION AND ORDER**

On April 3, 2000, Consumers Energy Company (Consumers) filed an application requesting  
determinations pursuant to Sections 32(c) and (d) of the Public Utility Holding Company Act of  
1935 (PUHCA), 15 USC 79z-5a(c) and (d), and approval of accounting entries necessary for the  
transfer of Consumers' Cobb Units 1-3 to an affiliate, CMS Generation Michigan Power, L.L.C.,  
(CMS-Michigan Power), an exempt wholesale generator under PUHCA.

On April 18, 2000, Energy Michigan filed an answer and request for hearing. On April 19,  
2000, the Department of the Attorney General (Attorney General) filed a notice of intervention  
and request for hearing. On April 21, 2000, the Association of Businesses Advocating Tariff  
Equity filed a petition to intervene and request for hearing.

On May 3, 2000, the Commission issued an order requiring Consumers to answer a series of questions about the proposed transfer of Cobb Units 1-3. On May 10, 2000, Consumers filed its answers. On May 12, 2000, the Attorney General filed a response to Consumers.

Cobb Units 1 and 2 commenced commercial operation in 1948, and Cobb Unit 3 commenced operation in 1950. Consumers removed the units from active service in 1990. It converted Unit 2 to natural gas and reactivated it in 1999. It planned to convert Units 1 and 3 to natural gas and expected that they would be operational by the summer of 2000. In total, the units will be capable of generating approximately 180 megawatts of capacity. Consumers proposes to transfer the units to CMS-Michigan Power at twice the net book value as of the date of retirement, plus the actual costs of repowering the units. It says that if the application is granted, it will not seek to recover in rates any of the costs of restoring the units to commercial operation. It represents that none of the costs of repowering the units are reflected in its electric rates, although it concedes that the rates in effect on October 24, 1992 reflected the original cost, and PUHCA therefore requires Consumers to seek a determination from the Commission that the transfer will benefit consumers, is in the public interest, and does not violate state law before the units can be considered an eligible facility under PUHCA.

Consumers says that allowing the units to be an eligible facility under PUHCA is reasonable because the units will provide needed additional in-state capacity to meet summer peak demands, the transfer will cause no increase in Consumers' rates or stranded costs, CMS-Michigan Power will assume the full risk of recovering the costs of returning the units to service, the capacity will be made available to retail marketers participating in the open access program, the arrangement does not violate any state law, and its proposal is substantially identical to the transfer approved

for The Detroit Edison Company (Detroit Edison) in the February 3, 2000 order in Case No. U-12266.

The Commission concludes that it should not approve the application. The proposed transaction is not substantially identical to the transaction that the Commission approved for Detroit Edison in Case No. U-12266. Among other things, Detroit Edison proposed to transfer an out-of-service plant to an affiliate that would be responsible for, and accept the risks of, repowering the plant. Consumers proposes to complete the repowering of the Cobb units, after which it will transfer the units to an affiliate. The Commission therefore cannot conclude at this time that the proposed transfer will benefit customers or be in the public interest, as required by PUHCA. This decision is without prejudice to the filing of another application when the circumstances would support a conclusion that customers and the public interest would be served by the transfer.

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, 1999 AC, R 460.17101 et seq.
- b. Consumers' application should be denied.

THEREFORE, IT IS ORDERED that application filed by Consumers Energy Company 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/ J. Peter Lark

Chair

( S E A L )

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of October 23, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

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Commissioner

By its action of October 23, 2003.

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Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated October 23, 2003 denying the application filed by Consumers Energy Company seeking certification for its proposed transfer of Cobb Units 1-3, as set forth in the order.”