

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
PHILLIP D. FORNER against)	Case No. U-13089
CONSUMERS ENERGY COMPANY.)	
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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

OPINION AND ORDER

On February 20, 2003, the Commission issued an order directing Consumers Energy Company (Consumers) to cease and desist from further violations of the code of conduct adopted in Case No. U-12134 and further ordering an investigation to determine the amount of the subsidy that is created by use of its billing machinery and envelopes by the utility's unregulated services.

On March 24, 2003, Consumers filed a petition for rehearing alleging two assignments of error. First, Consumers asserts that the Commission erred in concluding that the code of conduct applies to its gas utility operations. The utility argues that the record in this proceeding is insufficient to reach that conclusion and that the Commission failed to provide any legal justification for its conclusion. Second, Consumers asserts that the Commission erred in finding that a subsidy exists between its regulated gas utility operations and its unregulated appliance service plan (ASP) program. Consumers argues that there is no evidence supporting a Commission

finding of a subsidy. Consequently, Consumers requests that the Commission reconsider its decision to require Consumers to perform a cost analysis of its billing machinery and supplies.

On April 14, 2003, Phil Forner and the Michigan Alliance for Fair Competition (MAFC) each filed responses opposing Consumers' petition for rehearing. Mr. Forner argues that Consumers' petition does not satisfy the Commission's rehearing standard and should therefore not be granted. Mr. Forner states that the Commission properly determined that the code of conduct established in Case No. U-12134 does apply to Consumers' ASP program and that a cost analysis is necessary because a subsidy does exist between the regulated utility and the unregulated ASP program. Mr. Forner asserts that Consumers is "merely expressing disagreement" with the Commission's decision in this case and that Consumers has failed to identify any error, any newly discovered evidence, facts or circumstances arising after the hearing, or any unintended consequences resulting from compliance with the Commission's order that would warrant rehearing.

The MAFC asserts that Consumers' arguments in favor of a rehearing are "incorrect and without merit." MAFC response, p. 2. Additionally, the MAFC asserts that Consumers' petition should be denied because it merely "rehashes the same issues and arguments previously ruled upon in the proceeding." *Id.*, p. 3. The MAFC asserts that the Commission was correct to apply the code of conduct to an affiliate of Consumers. Moreover, the MAFC contends that Consumers should bear the responsibility of conducting a cost analysis of its billing machinery and envelopes to account for all costs. The MAFC points out that the administrative law judge in this proceeding issued a Proposal for Decision finding Consumers had violated the code of conduct by placing promotional inserts for the ASP program in its envelopes and that Consumers failed to except to that finding.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACRS, R. 460.17403, 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.

After reviewing the record, the Commission concludes that Consumers' application should be denied. Consumers' petition for rehearing fails to raise any new issues for the Commission's consideration and the Commission believes that there is ample support for its February 20, 2003 order in this proceeding. The Commission considered and rejected Consumers' position that the code of conduct does not apply to its ASP program assigned to Consumers' gas utility division in its February 20, 2003 order in this proceeding and in Case No. U-12134. The Commission believes that the ASP program is being operated by an affiliate of the electric utility within the meaning of Section 10a(4) of the Customer Choice and Electricity Reliability Act and the code of conduct.

Likewise, the Commission disagrees with Consumers' position that no subsidy exists between its regulated operations and its unregulated operations. The record shows that Consumers permitted bill inserts advertising the ASP program in its electric utility bills. The record also establishes that the utility's electric customers pay for the postage, the billing envelopes, and the billing machinery, and that the ASP program benefited from the cost-free use of this equipment. The Commission correctly determined that this violates the code of conduct and ordered the utility to perform a cost analysis so that costs may be appropriately allocated between the utility and its

unregulated programs. For all of the foregoing reasons, the petition for rehearing should be denied.

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 AACRS, R 460.17101 et seq.

b. The petition for rehearing of the February 20, 2003 order should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing of the Commission's February 20, 2003 order 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 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

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

By its action of May 28, 2003.

Commissioner

Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated May 28, 2003 denying Consumers Energy Company’s petition for rehearing, as set forth in the order.”