

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion)	
regarding administration and operation of the)	Case No. U-13129
Low-Income and Energy-Efficiency Fund.)	
_____)	

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

ORDER DENYING REHEARING

On November 20, 2001, the Commission issued an order (November 20 order) setting forth a framework for implementing and administering the Low-Income and Energy-Efficiency (Fund) Fund, created by Section 10d(7) of 2000 PA 141, as amended, (Act 141), MCL 460.10d(7).

On December 20, 2001, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition for rehearing.

Responses were due on January 10, 2002. No responses were filed.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, 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.

ABATE argues that the Commission failed to follow the rulemaking requirements of the Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201 et seq., in establishing the standards to protect customers and promote energy efficiency as set forth in Section 10d(7) of Act 141. MCL 460.10d(7). According to ABATE, the APA requires the Commission to hold a hearing, solicit comments, and adhere to other rulemaking procedures as a prerequisite to adopting standards pursuant to Section 10d(7).

ABATE also argues that there are unintended consequences of the Commission's order. Specifically, ABATE complains that the funding mechanism approved by the Commission will assist energy customers throughout the entire state, which will harm The Detroit Edison Company (Detroit Edison) and its customers by requiring them to subsidize natural gas customers and customers outside of Detroit Edison's service territory.

Finally, ABATE argues that the funding split is not equitable and that more of the money should go to benefit non-residential customer classes. According to ABATE, 75% of the money is going to help low-income customers and only 25% to energy efficiency programs for the other classes of customers.

The Commission finds that ABATE's petition for rehearing should be rejected. The Commission is a quasi-legislative/quasi-judicial decision-making body. Courts have recognized that the Commission may implement policy through a case-by-case approach as well as through the rulemaking process set forth in the APA. Indeed, in Northern Michigan Exploration Co v Public Service Comm, 153 Mich App 635; 396 NW2d 487 (1986), the Court of Appeals rejected an argument that the Commission must resort to the rulemaking procedures in the APA for

establishing gas well proration standards by stating that “...it is settled that an agency has the option of setting standards either pursuant to the rulemaking provisions of the APA or case-by-case through adjudication.” 153 Mich App at 649. Ordinarily, policy associated with the Commission’s ratemaking functions is adopted by order, not rulemaking. Section 10d of Act 141 clearly addresses utility rates and the Commission’s ratemaking functions. Therefore, the Commission finds that its November 20 order was a proper exercise of its ratemaking and policymaking authority. Unlike other sections of Act 141, Section 10(d) does not require the Commission to adopt rules or standards. As noted on page 5 of the November 20 order, the Legislature formally appropriated funding for the Fund in 2001 PA 119, 2002 PA 527, 2003 PA 167. Given that the Commission must periodically report on the Fund to the Legislature and that the Legislature annually appropriates the funding for the program, any concern that the implementation of the Fund by the Commission could be inconsistent with the intent of the Legislature rings hollow.

The Commission also rejects ABATE’s argument that the November 20 order resulted in unintended consequences. One of ABATE’s arguments is the that some of the money from the Fund, which is being funded by Detroit Edison’s excess securitization savings, could benefit persons other than Detroit Edison’s ratepayers. ABATE contends that Detroit Edison’s ratepayers should only “subsidize” Detroit Edison’s customers, not customers of other utility companies.

The Commission finds that the Legislature provided the Commission with broad discretion to select the beneficiaries of the Fund. Further, the Commission addressed this point in the November 20 order as follows:

To clarify concerns raised by a few, the Commission interprets Section 10d(6) to provide the basis for funding programs that affect all types of energy assistance and efficiency, not merely electricity, and to cover programs that extend throughout the entire state, not merely Detroit Edison’s service territory. The wording of Section

10d(6) does not support a more restrictive interpretation. Detroit Edison's comments in this proceeding do not suggest that the benefits of the program should be limited to its own customers.

November 20 order, Case No. U-13129, p. 5-6. Nothing in ABATE's petition for rehearing persuades the Commission to change its interpretation of Section 10d(7).

Finally, the Commission rejects ABATE's contention that the Commission should reconsider the November 20 order because it states an intention that 75% of the monies available from the Fund should benefit residential customers and 25% of the available funds for programs should benefit all classes of customers. In addressing the disbursement of the Fund among customer classes, the Commission noted that the 75%/25% split was a projection, not a binding decision. Rather, the Commission indicated that it did "not intend to make binding decisions regarding how to allocate the funding until it reviews actual proposals." November 20 order, Case No. U-13129, p. 5. Accordingly, ABATE's concerns were premature, but it is free to challenge the individual decisions made by the Commission in disbursing available funds.

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. ABATE's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the Association of Businesses Advocating Tariff Equity's petition for 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/ 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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By its action of October 23, 2003.

Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated October 23, 2003 denying the Association of Businesses Advocating Tariff Equity’s petition for rehearing of the Commission’s November 20, 2001 order, as set forth in the order.”