

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY for)	Case No. U-13750
confirmation of compliance with MCL 460.10f.)	
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At the September 11, 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 APPROVING SETTLEMENT AGREEMENT

On March 31, 2003, Consumers Energy Company (Consumers) filed an application requesting confirmation that Consumers is in compliance with Section 10f of the Customer Choice and Electricity Reliability Act, 2000 PA 141, (Act 141), MCL 460.10f, which establishes a market power test that Consumers must meet before the Commission may increase Consumers' rates for the sale of electricity. Under Section 10f, if Consumers' generation capacity exceeds its retail sales load (including a reasonable reserve margin) and it has commercial control over more than 30% of the relevant market, it must take steps to divest, sell, or transfer generating capacity.

Consumers alleged in its application that its generation capacity does not exceed its retail sales load. Consumers stated that its sales load, with a 15% reserve margin, is 9,172 megawatts (MW). The application also indicated that the amount of its generating capacity is 8,265 MW. Therefore, Consumers concluded that its capacity did not exceed its sales load.

Consumers also alleged that it does not have commercial control over more than 30% of the relevant market. According to Consumers, the relevant market is Michigan's lower peninsula, which has a total market capacity of 30,683 MW. Dividing its generating capacity of 8,265 MW by the total market capacity of 30,638 MW, Consumers concluded that it has commercial control of 27% of the total market, which is less than the threshold established by the Act.

On May 15, 2003, the Midland Cogeneration Venture Limited Partnership (MCV) and the Association of Businesses Advocating Tariff Equity (ABATE) attended a prehearing conference before Administrative Law Judge, Barbara A. Stump. The Commission Staff (Staff) also participated in the proceedings.

Subsequently, Consumers, Staff, and the MCV entered into a settlement agreement resolving all issues in the case. ABATE signed a statement of non-objection to the stipulation.

Under the settlement agreement, attached as Exhibit A, the parties agree that Consumers meets the market test set forth in Section 10f.

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. The settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. The Commission confirms that Consumers Energy Company is in compliance with Section 10f of the Customer Choice and Electricity Reliability Act, 2000 PA 141; MCL 460.10f.

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 September 11, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

B. The Commission confirms that Consumers Energy Company is in compliance with Section 10f of the Customer Choice and Electricity Reliability Act, 2000 PA 141; MCL 460.10f.

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

Chair

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Commissioner

By its action of September 11, 2003.

Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated September 11, 2003 approving the settlement agreement and confirming that Consumers Energy Company is in compliance with MCL 460.10f, as set forth in the order.”