

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
INDIANA MICHIGAN POWER COMPANY for)	
approval of a power supply cost recovery)	Case No. U-13919
plan and for authorization to charge monthly power)	
supply cost recovery factors for calendar year 2004.)	
_____)	

At the August 1, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

1. Procedural History

On May 31, 2005, the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM) filed a petition for reopening and rehearing of the Commission's April 28, 2005 order in this matter, in which the Commission approved Indiana Michigan Power Company's (I&M) 2004 power supply cost recovery (PSCR) plan and factors. MEC/PIRGIM contend that, pursuant to Rules 401 and 403, R460.17401 and R460.17403, the decision of the Commission must be reopened and reheard because there has been a change in the facts or law that requires development of a full and complete record, and/or because of newly discovered evidence or a claim of error.

Responses in opposition to MEC/PIRGIM's petition for reopening and rehearing were filed on June 21, 2005, by I&M and the Commission Staff (Staff).

2. Positions of the Parties

In its April 28, 2005 order, the Commission rejected several arguments made by MEC/PIRGIM concerning spent nuclear fuel (SNF). The Commission concluded that I&M had not acted unreasonably or imprudently in its handling of SNF payments, and found that I&M should not unilaterally cease making payment of its SNF fees to the Department of Energy's (DOE) Nuclear Waste Fund, despite the federal government's ongoing default on its obligation to build and operate a geologic repository for SNF. The Commission found that an interruption of payments could risk several adverse consequences, including non-renewal of I&M's nuclear power plant license, suspension of the standard contract between I&M and the DOE, and I&M's lack of access to any federal repository for SNF that may eventually be operational. *See*, April 28, 2005 order in Case No. U-13919, pp. 10-11. The Commission found that PSCR customers are responsible for the payment of SNF fees, because the fees cover disposal costs pursuant to MCL 460.6j(1)(a). *Id.* The Commission further found that the contested PSCR case is not the proper forum in which to interject broad-based SNF issues. *Id.* at pp. 12-13.

MEC/PIRGIM contend that the Commission's April 28, 2005 order should be reopened and reheard because the Commission erred in several respects on these issues. MEC/PIRGIM argue that the Commission's finding that I&M has been reasonable and prudent in its handling of SNF fees is incorrect, because I&M provided no information in its 2004 plan as to the steps that I&M intends to take to enforce its standard contract, to request a reduction in fees from the DOE, or to gain permission to use an escrow trust for the fees. MEC/PIRGIM themselves point out that they have made these same arguments before, in their initial brief and their exceptions.

MEC/PIRGIM argue that the Commission misconstrued their position, in that they state that they never asserted that I&M should cease making payments, but rather that I&M's shareholders should make the payments, rather than I&M's ratepayers. MEC/PIRGIM argue that the Commission has failed to determine that ratepayers are not paying for unnecessary expenses, or that ratepayers are paying the minimum possible amount for SNF fees. MEC/PIRGIM argue that, because SNF fees are subject to 1982 PA 304 (Act 304), it must follow that the review of such fees should take place in a PSCR proceeding. MEC/PIRGIM assert that the Commission's actions are arbitrary and capricious, contrary to Act 304, in violation of the hearing requirements of the Administrative Procedures Act, and in violation of due process and equal protection principles.

The Staff argues that MEC/PIRGIM's petition fails to meet the requirements of Rules 401 and 403, because it does not set forth any newly discovered evidence, nor show any need for receiving further evidence, nor does it contain any new arguments.

I&M argues that MEC/PIRGIM make no real effort to satisfy the requirements of Rules 401 or 403, and simply reargue the presentations previously made in this case. I&M argues that MEC/PIRGIM fail to show that a reopening is necessary for the development of a full and complete record or that there has been a change in conditions of fact or law such that the public interest requires reopening. I&M argues that MEC/PIRGIM merely disagree with the Commission's findings. I&M argues that the record in the case shows that continued payment of SNF fees is reasonable and prudent, and that MEC/PIRGIM ignore the fact that the Commission reviewed the reasonableness and prudence of these costs as it is obligated to do pursuant to MCL 460.6j(6). I&M points out that, having found the costs to be reasonable and prudent, there is no legal basis for shifting these costs to shareholders.

I&M also points out that it is legally obligated to pay the SNF fees, in order to retain its nuclear power plant license and its ability to access the planned federal repository. I&M further points out that escrowing of the funds is disallowed under the standard contract, and that one federal court has ruled that utilities may not escrow the funds, but must seek relief under the standard contract. I&M also points out that it pays the minimal amount of fees required under the standard contract.

3. Discussion

Rule 401 allows for the record of a proceeding to be reopened for the purpose of receiving further evidence when a reopening is necessary for the development of a full and complete record, or there has been a change in conditions of fact or law such that the public interest requires the reopening. R460.17401. The Commission may reopen a proceeding on the application of a party filed prior to the expiration of the statutory time period for rehearing. *Id.* Rule 403 provides that a petition for rehearing may be filed with the Commission within 30 days after service of the decision being petitioned, and may be based on a claim of error in fact or law, or on a claim of newly discovered evidence arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the order.

The Commission has stated on numerous occasions that an application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. *See*, October 14, 2004 order in Case No. U-13716, p. 2. An application for reopening requires a showing of a change in fact or law, such that the record in the case can no longer be considered full or complete.

MEC/PIRGIM make no effort whatsoever to present new evidence or even a new argument. MEC/PIRGIM cite no change in fact or law. Every substantive argument made by MEC/PIRGIM

in their petition was made in their initial brief, and many of them were repeated thereafter in their reply brief, exceptions and replies to exceptions. MEC/PIRGIM make no convincing claim of error. The Commission finds that MEC/PIRGIM's petition demonstrates no grounds for reopening or rehearing and denies the petition.

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.*; 1982 PA 304, as amended, MCL 460.6h *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 petition for reopening/rehearing filed by MEC/PIRGIM should be denied.

THEREFORE, IT IS ORDERED that the petition of the Michigan Environmental Council and the Public Interest Research Group in Michigan for reopening and/or 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
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of August 1, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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