

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
CONSUMERS ENERGY COMPANY for)	
approval of a power supply cost recovery)	Case No. U-14274
plan and factors for calendar year 2005.)	
_____)	

At the June 30, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

OPINION AND ORDER

I. History of Proceedings

On September 30, 2004, Consumers Energy Company (Consumers) filed an application, together with supporting testimony and exhibits, seeking approval of its power supply cost recovery (PSCR) plan and factors for the 12-month period ending December 2005. In so doing, Consumers seeks to implement a PSCR factor of \$0.00737 per kilowatt-hour (kWh) for each month during calendar year 2005, although capped at \$0.00350 per kWh for residential customers. According to the utility, this lower factor represents the maximum amount it can impose on its residential customers pursuant to Section 10d(2) of 2000 PA 141(Act 141), MCL 460.10 *et seq.*

Pursuant to due notice, a prehearing conference was conducted on November 9, 2004 by Administrative Law Judge Mark E. Cummins (ALJ). At the prehearing conference, timely petitions to intervene filed on behalf of the Michigan Environmental Council and the Public

Interest Research Group in Michigan (MEC/PIRGIM), the Residential Ratepayer Consortium (RRC), Attorney General Michael A. Cox (Attorney General), Adrian Energy Associates, L.L.C., Cadillac Renewable Energy, L.L.C., Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, Hillman Power Company L.L.C., T.E.S. Filer City Station Limited Partnership, Viking Energy of Lincoln, Inc., and Viking Energy of McBain, Inc. (collectively, the qualifying facilities), and the Midland Cogeneration Venture Limited Partnership (MCV) were granted. Consumers and the Commission Staff (Staff) also participated in the proceedings, during which a schedule was established for the remainder of the case.

Evidentiary hearings were conducted on March 4 and 8, 2005. Consumers presented the testimony of ten witnesses. The Attorney General presented the testimony from two witnesses. The RRC and the Staff each presented the testimony of one witness. The record consists of 460 pages of transcript and 24 exhibits, all of which were received into evidence.

On March 25, 2005, Consumers, the Staff, the Attorney General, the RRC, and MEC/PIRGIM filed briefs. On April 12, 2005, reply briefs were filed by Consumers, the Staff, the Attorney General, and the RRC.¹

On May 12, 2005, the ALJ issued his Proposal for Decision (PFD).

On May 26, 2005, exceptions to the PFD were filed by Consumers, the Attorney General, the RRC, and MEC/PIRGIM. On June 6, 2005, replies to exceptions were filed by Consumers, the Attorney General, and the RRC.

¹The qualifying facilities and the MCV did not sponsor testimony and did not actively participate in the briefing phase of this case.

II. Discussion

The ALJ first found that the decisions underlying Consumers' five-year forecast are reasonable and prudent, and should be approved by the Commission. He then discussed the disputed issues pertaining to the company's 2005 PSCR plan, which he listed as: (1) transmission-related expenses; (2) oxides of nitrogen (NO_x) emission allowance costs; (3) federally-mandated spent nuclear fuel (SNF) disposal fees; (4) the utility's proposal to increase the PSCR factors charged to residential customers to offset any rate decreases approved for implementation between June 5, 2000 and the close of 2005; (5) Consumers' request for deferred recovery of all PSCR costs in excess of those available for collection from its residential customers during the 2005 plan year; (6) the treatment of net revenues arising from third-party sales; and (7) the reasonableness and prudence of certain natural gas transportation charges arising from the utility's operation of its Karn 3 and 4 generating units.

a. Transmission Related Expenses

The ALJ recommended that the Commission include Consumers' transmission related expenses in the computation of its PSCR factor, as requested by Consumers. According to Exhibit A-2, these expenses will total \$87,225,841 during 2005. However, Consumers points out that \$66,008,981 of transmission expenses are already built into its base rates and that another \$5,908,332 of these revenues should be deducted as ancillary service revenue, which means that only the net incremental amount of \$15,308,528 should be collected from its PSCR customers during 2005.

The Attorney General excepts to this recommendation despite acknowledging numerous Commission rulings in favor of the rate treatment requested by Consumers.² According to the Attorney General, the Commission simply cannot and should not allow any transmission related expenses to flow through the PSCR clause. Arguing that the Commission has no common law powers and is limited to exercising only the powers clearly granted to it by the Legislature, the Attorney General states that the Commission may not base its decisions on speculation as to what the Legislature may have intended if the sale of Consumers' transmission assets pursuant to MCL 460.10w(1) had occurred before or at the passage of 1982 PA 304 (Act 304). The Attorney General stresses that historically, transmission expenses were included in base rates. Absent authorization from the Legislature and revision of the Commission's Uniform System of Accounts (USOA), the Attorney General insists that the Commission is powerless to allow Consumers to recover its transmission related expenses through its PSCR clause.

Finally, assuming for the sake of argument that the Commission is authorized to include transmission related expenses in Consumers' PSCR factor, the Attorney General maintains that the record does not support a determination that such a decision would be just or reasonable. He reasons that the automatic recovery of such costs is not sound ratemaking, that transmission costs are demand-related and should not be recoverable on a consumption basis, and that the Commission has previously denied recovery through the PSCR factor of other costs that are more closely related to fuel costs.

²See, the September 16, 2002 order in Case No. U-12725, the March 12, 2003 order in Case No. U-13107, the July 23, 2003 order in Case No. U-13688, the November 23, 2004 order in Case No. U-13808, and the February 28, 2005 order in Case No. U-13917.

In response, Consumers simply argues that the Attorney General's position regarding transmission expenses was considered and rejected by the Commission in its February 28, 2005 order in Case No. U-13917.

The Commission finds that the Attorney General's exception should be rejected. The Commission's previous rulings, including its November 23, 2004 order in Case No. U-13808 and its February 28, 2005 order in Case No. U-13917 expressly approved the inclusion of transmission expenses in the 2004 PSCR factors established for The Detroit Edison Company and Consumers, respectively. Further, the similar ruling in the September 16, 2002 order in Case No. U-12725 was upheld on appeal, albeit in an unpublished opinion.³

The Attorney General's arguments simply ignore the Commission's broad ratemaking authority. Moreover, his attempt to rely on the USOA is equally flawed. The Commission has frequently pointed out that various accounting principles do not limit the Commission's ability to craft just and reasonable rates or to dictate recovery of fuel costs. It is a longstanding principle that the company's accounting treatment does not dictate the Commission's ratemaking decisions. November 16, 1999 order, Case No. U-11636, at 36; December 7, 1989 order, Cases Nos. U-8678, U-8924, and U-9197, at 14-15; August 4, 1987 order, Case No. U-8681, at 25-26; August 4, 1987 order, Case No. U-8680, at 25." July 11, 2001 order, Case No. U-12342, at 27. Further, nothing in the Attorney General's argument provides any reason to conclude that the use of the term "booked costs" in Sections 6j(a) and (b) of Act 304, MCL 460.6j(a) and (b), was limited to specific USOA accounts to the exclusion of other USOA accounts as contended by the Attorney General. Indeed, MCL 460.6j(a) and (b) describes a utility's ability to recover "the booked costs,

³See, the Court of Appeals' May 11, 2004 decision in the unpublished *per curiam* opinion in *Michigan Environmental Council v Public Service Comm*, (Docket Nos. 244354 and 246744), which holds that the allowance of transmission costs as a PSCR cost is within the Commission's broad ratemaking authority.

including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility.” Nowhere in MCL 460.6j(a) and (b) is there any reference to the USOA or any indication that recovery of such costs is entirely dependent upon the account into which the costs are booked.

b. NO_x Emission Allowance Costs

A national system of emission allowances permits every power plant to emit pollution up to a designated level. Specifically, each plant is allotted a base number of allowances for use over the course of a 12-month period. These allowances serve as a ceiling on the amount of pollutants respective plants can emit. If a plant exceeds the ceiling level of allowances assigned for that year, it can either make use of previously-assigned (but as-of-yet unconsumed) allowances that it banked in prior years or purchase additional allowances from others who have no need to utilize their full allotments.

Consumers proposed including, as part of its total 2005 PSCR expenses, \$10,642,807 in NO_x emission allowance costs as shown on Exhibit A-11. The utility’s proposed expense item reflects the total cost of all previously-obtained NO_x emission allowances that it plans to use during 2005, as well as all allowances allocated to Consumers by the United States Environmental Protection Agency or purchased from other entities for use during 2005.

The Attorney General and the RRC opposed Consumers’ proposal for the same reasons expressed with regard to system transmission costs. According to them, NO_x emission allowance costs do not fall within the types of costs that may be passed through to PSCR customers via the PSCR factor.

The Staff recommended granting Consumers' proposal regarding NO_x emission allowance costs on the grounds that "the appropriate treatment of these expenses . . . was determined in U-13917, Consumers' 2004 plan case." The Staff's brief, p. 2.

The ALJ recommended approval of Consumers' proposal to include NO_x emissions allowance costs as part of its total PSCR expenses. In so doing, the ALJ noted that electric utilities generally treat the value of emissions allowances as a booked cost of fuel both for purposes of economic dispatch and when buying and selling power. Therefore, he concluded that it would be appropriate to allow Consumers to recover such costs pursuant to Act 304.

The Attorney General excepts to this recommendation on the ground that Act 304 contains no clear and unmistakable language permitting the recovery of such costs in a utility's PSCR factor. The Attorney General reiterates that the Commission simply does not have any authority to expand its subject-matter jurisdiction beyond the limits imposed by the Legislature. According to the Attorney General, NO_x expenses belong in Consumers' operation and maintenance expenses because they fail to qualify as booked costs of fuel.

In reply, Consumers again cites the February 28, 2005 order in Case No. U-13917 and points out that the Attorney General's argument was fully considered and rejected in that proceeding.

The Commission finds that the Attorney General's exception should be rejected. In its February 28, 2005 order in Case No. U-13917, the Commission rejected the Attorney General's argument as follows:

The Commission finds that the Attorney General's exception should be rejected. The Commission has previously approved inclusion of NO_x emission allowances in Detroit Edison's PSCR factor. See, the November 23, 2004 order in Case No. U-13808, p. 112.

Order, Case No. U-13917, p. 9.

Therefore, the Commission finds that the ALJ's recommendation to allow Consumers to recover its 2005 NOx emission allowance expenses of \$10,642,807 through its PSCR factor should be affirmed.

c. Backfilling Capped PSCR Factors

It is undisputed that Consumers is precluded from charging its residential customers the full \$0.00737 per kWh PSCR factor requested in its application pursuant to the rate caps imposed under Act 141.⁴ Accordingly, although Consumers requested authority to charge the full PSCR factor on its commercial and industrial customers, it is limited to charging its residential customers only \$0.00350 per kWh during the 2005 plan year. In its application, Consumers indicates that it should be allowed to increase its PSCR factor for these customers in an amount equivalent to any decrease in non-PSCR rates for capped customers that have decreased since June 5, 2000 or that may decrease during 2005. This proposal to increase the PSCR factor applied to residential customers during 2005 by an amount commensurate with any other rate reductions is generally referred to as "backfilling."

The Attorney General and MEC/PIRGIM opposed Consumers' backfilling proposal. They contended that it conflicts with Act 141 and must therefore be rejected. In support of this contention, the Attorney General and MEC/PIRGIM stated that although Section 10d(2) of the Act prohibits rate increases for various classes of customers, it does not preclude rate reductions for those same customers. Further, they insisted that, because Act 141 contains no clear and

⁴Section 10d(1) of Act 141 reduced the electric rates paid by Consumers' residential customers by 5% as of May 1, 2000. Section 10d(2) of Act 141 provided that those newly reduced residential rates would remain capped at that level through December 31, 2005. These two provisions also capped the rates for small commercial and industrial customers through December 31, 2004, and froze the rates for Consumers' large commercial and industrial customers through December 31, 2003.

unmistakable language indicating that when some rates are reduced then other rates can be raised by the same amount, the Commission is statutorily barred from ruling to the contrary. It is further argued that, because the utility's backfilling proposal does not relate to any actual identified expense and is not related to any cost item specifically identified in Act 304, it is beyond the scope of this PSCR proceeding. The Attorney General and MEC/PIRGIM therefore asked that Consumers' backfilling request be denied and that the utility be authorized to charge residential customers no more than \$0.00257 per kWh, which represents its PSCR factor at the time Act 141 took effect.

The ALJ rejected the position supported by the Attorney General and MEC/PIRGIM. Citing Section 10d(2) of Act 141, the ALJ stated that "[t]he repeated use of the plural term 'rates' throughout Section 10d(2) reflects an intent to cap the total of all rates charged to a particular customer, rather than capping each and every component of those rates." PFD, p. 22. Thus, the ALJ reasoned that although Section 10d(2) bars Consumers from collecting additional amounts from its residential customers until January 1, 2006, it does not foreclose netting increases against decreases.

The Attorney General and MEC/PIRGIM except to the ALJ's recommendation. According to them, because the PSCR factor in effect on June 5, 2000 was \$0.00257 per kWh, Consumers' proposal to charge residential customers at the rate of \$0.0035 per kWh during 2005 violates Section 10d(2) of Act 141. Citing the December 18, 2003 order in Case No. U-13808, the Attorney General and MEC/PIRGIM insist that Section 10d(2) does not preclude rate reductions for PSCR customers. Rather, they stress that the ALJ's interpretation must be incorrect because it effectively nullifies the concept of capped rates. Further, they contend that the ALJ had to exceed the scope of Act 304 in order to approve the backfilling of non-PSCR costs. Indeed, they argue

that allowing backfilling is tantamount to permitting Consumers to extend the Big Rock Point nuclear decommissioning surcharge beyond its December 31, 2003 termination date.

Consumers simply responds that the Commission resolved this issue in its February 28, 2005 order in Case No. U-13917.

The Commission finds that the ALJ's recommendation should be adopted. In several recent cases, the Commission has ruled that electric utilities may use backfilling to adjust their respective PSCR factors. In its November 23, 2004 order in Case No. U-13808, the Commission stated that "rate caps permit netting of rate reductions against rate increases such that as long as the total rates paid by the customer do not increase, rate adjustments are permissible." Order, Case No. U-13808, p. 77. Further, as noted by Consumers, in its February 28, 2005 order in Case No. U-13917, the Commission authorized Consumers to increase its 2004 PSCR factors for residential and small commercial and industrial customers to reflect non-PSCR rate decreases occurring during 2004.

d. Deferred Recovery of Excess PSCR Costs

Consumers also sought approval to defer for future recovery costs that, if not for the cap applicable to its residential customers' rates, would be recoverable through the PSCR factor. The same issue was presented in Consumers' 2004 PSCR case.

In its brief, Consumers stated that, because the Commission resolved this issue in its February 28, 2005 order in Case No. U-13917 by reserving determination of the issue until the conclusion of Case No. U-14148, and because the parties failed to address this issue, that the Commission should adhere to its previous determination.

The Staff and the RRC agreed that the issue should be deferred at this time. The Attorney General and MEC/PIRGIM argued that the Commission should immediately decide the issue.

According to them, Consumers' proposal is an attempt to circumvent the rate cap established for its residential customers under Section 10d(2) of Act 141. They also insisted that this proposal is beyond the scope of an Act 304 case.

The ALJ was persuaded that Consumers' proposal to defer consideration of this issue to Case No. U-14148 was reasonable and should be adopted.

In their exceptions, the Attorney General and MEC/PIRGIM reiterate the arguments presented to and rejected by the ALJ. Consumers tersely responds that the Commission has already resolved this issue and need not revisit it in this proceeding.

The Commission finds that the ALJ's recommendation should be adopted. In Case No. U-13917, the Commission found that to the extent that Act 141 allows Consumers to recover such unrecovered costs from capped customers, the actual costs incurred, the proper allocation of such costs, carrying charges, and the method of recovery would need to be resolved in a future case. The Commission noted that Consumers had requested recovery of those costs in Case No. U-14148. Nothing in this proceeding convinces the Commission that it should abandon its plans to address this issue in Case No. U-14148.

e. Net Revenue from Third-Party Sales

The issue of the appropriate treatment of third-party sales revenues⁵ garnered a great deal of attention in this proceeding. Specifically, the parties have debated the amount of these revenues that should be credited against Consumers' PSCR costs, relative to the amount that should be used to mitigate stranded costs caused when choice customers leave the utility's power supply system.

⁵Third-party sales revenues consist of payments the utility receives from selling unneeded capacity or energy to parties other than its own customers. These sales arise when Consumers' own load is less than the capacity it maintains or the energy it generates, either from its own power plants or through purchases from various non-utility generators.

The application proposed crediting only \$17,420,000 of Consumers' expected \$92,525,000 in net third-party sales revenue against its 2005 PSCR costs. This amount corresponds to the amount of such revenue that was incorporated into the utility's frozen PSCR factor from February 11, 1998 through December 31, 2003. The utility proposed allocating the remaining \$75,105,000 of its net third-party sales revenue to future stranded cost proceedings to offset production fixed costs.

The Staff and the RRC proposed implementing different methodologies that would allocate more of these net revenues to offset PSCR costs and less to offset stranded costs. According to the Staff, the "net proceeds from third-party sales should be allocated to PSCR customers in proportion to the level of production fixed costs that is considered paid by PSCR customers."

3 Tr. 214. The Staff reasoned that because PSCR customers are assumed to contribute their full share of production fixed costs, only reduced recovery due to customer choice could cause the allocation of the net proceeds to fall below 100%. Based upon the level of production fixed costs allocated to PSCR customers in Case No. U-14098 (Consumers' 2003 stranded cost case), as well as the proportion of Consumers' total 2005 sales that are expected to come from choice customers, the Staff estimated that PSCR customers would pay 94.8% of the utility's production fixed costs. Therefore, the Staff concluded that PSCR customers should be credited with at least 94.8% of Consumers' net revenue from third-party sales during 2005--or \$87.714 million--against Consumers' 2005 PSCR costs. Because Consumers' proposal already credits \$17.42 million to PSCR customers, the Staff concludes that an additional \$70,294,000 should be deducted from Consumers' 2005 PSCR costs.

The RRC argued that Consumers overstated the excess third-party sales revenue by assigning the average PSCR cost rather than the incremental cost to such sales. The RRC contended that an

incremental cost of \$22.70 per megawatt-hour (MWh) should be applied when computing net third-party sales, instead of the average PSCR cost of \$17.36 per MWh forecast by Consumers.

The Attorney General supported the Staff, with one exception. Specifically, the Attorney General opposed automatically concluding that some portion of Consumers' net revenue from third-party sales resulted from choice customers' migration to the utility's choice rates. The Attorney General asserted that the Commission should adopt the Staff's methodology with the proviso that Consumers must demonstrate that a portion of third-party revenues actually resulted from capacity and energy available because of migration to choice service.

Eventually, Consumers abandoned its original position in favor of an approach similar to that of the Staff. However, it opposed the positions taken by the RRC and the Attorney General concerning the treatment of net revenue from third-party sales.

The ALJ found that the methodology proposed by the Staff, which allocates net revenue from third-party sales in direct proportion to the amount of production fixed costs (including purchase power agreement capacity charges and summer capacity option costs) assigned to PSCR customers, should be used in this proceeding. The ALJ concluded that the RRC's proposal to employ incremental power costs when computing net proceeds, conflicted with the consistent use of average power costs in previous stranded cost cases, and should therefore be rejected. Regarding the Attorney General's suggested modification, the ALJ found that it should be rejected. According to the ALJ, the mere determination that stranded costs exist will satisfy the concerns raised by the Attorney General.

Exceptions to the PFD on this issue were filed by the Attorney General, Consumers, and the RRC.

The Attorney General maintains that the Commission should rule that the Staff's formula does not correctly implement the mitigation procedure set in Case No. U-12639. According to the Attorney General, when Consumers incurs net stranded costs, Consumers should be required to demonstrate what portion of third-party revenues actually resulted from capacity and energy made available because of migration to choice service. The Attorney General insists that only that portion of expense and revenue should be excluded from Consumers' PSCR reconciliations and applied to the Case No. U-12639 mitigation procedure. The Attorney General argues that if third-party sales are not made only because some customers elected choice service, then neither the related PSCR expense nor the related revenues should be excluded from the PSCR reconciliation.

According to Consumers, the Commission should not consider adoption of the ALJ's recommendation in a vacuum. According to Consumers, there is a close relationship between the Staff's proposal in this case and stranded cost calculation that should be incorporated by the Commission in its decision concerning third-party revenues.

The RRC insists that the Commission should find that the incremental cost methodology should be applied to third-party sales.

The Commission finds that the merits of this dispute should be deferred to Consumers' 2005 PSCR reconciliation proceeding. The issues of stranded costs and the use of third-party sales revenues are highly contentious. The Commission is not persuaded that issues of this importance should be resolved in the context of a PSCR plan proceeding, especially when they involve a purported \$70 million shifting of revenues between PSCR customers and choice customers. The effect of this determination means that, for purposes of the calculation of Consumers' 2005 PSCR factor, the factor originally proposed by the company should be adopted.

f. SNF Disposal Fees

Consumers' 2005 PSCR factor includes SNF disposal fees totaling \$6,699,379, which are associated with the one mill per kWh surcharge mandated by the Nuclear Waste Policy Act of 1982, 42 USC 10101 *et seq.*, the proceeds of which are remitted to the United States Department of Energy (DOE) for SNF disposal.

MEC/PIRGIM argued that none of Consumers' projected 2005 SNF disposal fees should be recovered from utility customers. Concerned by the DOE's default on its contractual obligation to open and operate an SNF disposal facility by 1998, MEC/PIRGIM insisted that recovery of these fees through the PSCR process should be denied to protect PSCR customers. MEC/PIRGIM assert that Act 304 does not allow such recovery. MEC/PIRGIM also assert that Consumers failed to show that its request to recover these costs is reasonable and prudent, which is based on MEC/PIRGIM's contention that Consumers has failed to take reasonable measures to protect its PSCR customers.

The ALJ rejected MEC/PIRGIM's proposed disallowance. In so doing, the ALJ noted that the Commission has uniformly denied such attempts to interject broad-based SNF issues into individual contested cases.

MEC/PIRGIM excepts to the ALJ's recommendation by arguing that the Commission should affirmatively declare that rate review remedies for SNF disposal costs are within the scope of Act 304, which is an argument with which the Commission has repeatedly disagreed. The same issue was presented by MEC/PIRGIM in Consumers' 2004 PSCR case and it was rejected by the Commission as follows:

The Commission remains convinced that the efforts of the MEC/PIRGIM to interject broad based SNF issues into various types of individual contested cases is misplaced. In its November 20, 2001 orders in Cases Nos. U-12613 and U-12615, the Commission rejected similar efforts by MEC/PIRGIM to interject SNF issues

into PSCR proceedings. In so doing, the Commission recognized that the SNF disposal issues confronting the electric utility industry are significant and that a solution will not be implemented any time soon. However, the Commission found that the MEC/PIRGIM's proposals did not have much bearing on the reasonableness or prudence of a utility's management. The Commission expressed its belief that (1) the problem was much larger than any individual utility's nuclear operation, (2) feasible alternatives to the construction of a permanent repository are not readily apparent, and (3) the Commission is unable to find that individual utilities are acting imprudently. Moreover, the Commission was persuaded that the MEC/PIRGIM's remedial proposals are beyond the scope of PSCR proceedings. The Court of Appeals has upheld the Commission on this issue. See, *Michigan Environmental Council v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, decided December 9, 2003, Docket No. 240406.

February 28, 2005 order, Case No. U-13917, p. 11.

The Commission is not persuaded that MEC/PIRGIM's exception should be granted.

g. Karn 3 and 4 Gas Transportation Costs

During the course of the hearings, it was disclosed that Consumers was seeking recovery of the costs associated with 491,205 thousand cubic feet (Mcf) of gas to be consumed at Consumers' Karn 3 and 4 generation facilities during 2005, at a cost of \$4,902,725, which computes to a \$9.98 per Mcf cost of gas. The Attorney General contended in his brief that the Commission should subject these costs to further scrutiny in Consumers' 2005 PSCR reconciliation case because this source of supply required Consumers to use an affiliated company's pipeline (Saginaw Bay Pipeline), which engendered payment of a \$200,000 per month demand fee. Consumers opposed deferral of this issue on the ground that the Attorney General cited no evidence to support a finding that this aspect of the company's PSCR plan was unreasonable or imprudent. Moreover, Consumers asserted that because the cost of the transportation contract in question is based on a transportation contract that was approved by the Commission in Case No. U-12220, no basis exists for granting the Attorney General's request.

The ALJ expressed some concern regarding the high per Mcf cost of transportation that Consumers envisions paying for use of the Saginaw Bay Pipeline during 2005. However, he noted that Consumers presented evidence that the high price is justified by the need for a secure supply of gas to the Karn plants throughout the PSCR plan year.

In his exceptions, the Attorney General contends that the ALJ overlooked the fact that Consumers' dealings with an affiliated company "shifts the burden of persuasion" away from Consumers. Citing an admission that Consumers could use its own natural gas system to deliver gas to Karn during the summer months and a dearth of evidence that Consumers would use the Karn plant other than during peak summer months, the Attorney General maintains that the ALJ should have recommended deferral of this issue to the reconciliation proceeding. Indeed, citing *S C Gray, Inc v Ford Motor Co*, 92 Mich App 789, 804; 286 NW2d 34 (1979), the Attorney General insists that even uncontradicted testimony may be rejected.

Consumers' response was limited to the simple explanation that the company had included testimony in its 2004 PSCR reconciliation case about this fuel arrangement.

Given that Consumers has interjected the issue into its 2004 PSCR reconciliation proceeding, the Commission finds that the Attorney General's exception is essentially moot. Accordingly, for the purposes of Consumers' 2005 PSCR plan, the Karn-related natural gas costs will be included in the company's PSCR factor, but subject to reconsideration in the company's 2004 and 2005 reconciliation proceedings.

h. Application for Leave to Appeal.

On April 26, 2005, Energy Michigan filed a petition for late intervention. Responses to that petition were submitted on May 3 and 4, 2005 by Consumers and the Attorney General, respectively.

On May 12, 2005, the ALJ issued his PFD. In doing so, the ALJ denied Energy Michigan's petition to intervene.

On May 17, 2005, Energy Michigan filed an application for leave to appeal the ALJ's decision to reject its April 26, 2005 petition for late intervention. Energy Michigan asserts that good cause exists for granting intervenor status at this time. According to Energy Michigan, the notice and application were defective due to their failure to apprise interested parties that matters affecting the allocation of net revenues from third-party sales, which could affect the methodology for determining net stranded costs, could be controlled by the outcome of this proceeding. Energy Michigan further contends that Consumers' application and the caption of this proceeding fail to reference any possibility of the revision of the method approved by the Commission in Cases Nos. U-12639, U-13380, and U-14098 regarding calculation of stranded costs or in the methodology of allocating third party sales revenues between bundled and choice customers. Energy Michigan asserts that because the outcome of this proceeding could control determinations to be made in Case No. U-13917-R, Consumers' 2004 PSCR reconciliation proceeding, and Consumers' 2004 stranded cost case, which has yet to be filed, the Commission should, at a minimum, reverse the ALJ's ruling and allow Energy Michigan to file exceptions and replies to exceptions.

On May 31, 2005, Consumers and the Staff filed responses in opposition to Energy Michigan's application for leave to appeal. Consumers points out that its September 30, 2004

filing contained detailed and explicit testimony that was sufficient notice to engender a response from both the Staff and the RRC concerning the proposed treatment of excess third-party sales revenues. The Staff argues that the notice in this case was adequate and that the ALJ properly rejected the untimely petition to intervene. The Staff also stresses that granting the application for leave to appeal is inappropriate because it violates the principle set forth in Rule 337 of the Commission's practice rules that an applicant for leave to appeal an interlocutory determination must establish that granting its application "will materially advance a timely resolution of the proceeding." R 460.17337. Finally, the Staff insists that Energy Michigan will not suffer any prejudice if its application for leave to appeal is denied.

The Commission agrees with the ALJ that Energy Michigan's petition for late intervention should not be granted. The Commission is concerned that allowing a tardily-filed intervention at this stage of the proceedings would establish an unsettling precedent for other cases. In any event, because the Commission deferred the stranded cost/third-party sales revenues issues to Consumers' 2005 PSCR reconciliation proceeding, the issues that gave rise to Energy Michigan's April 26, 2005 petition for late intervention are no longer at issue in this proceeding and Energy Michigan's application for leave to appeal may be dismissed as moot.

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' 2005 PSCR plan should be approved.
- c. The application for leave to appeal filed by Energy Michigan should be denied.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's 2005 power supply cost recovery plan is approved.

B. Consumers Energy Company is authorized to implement a power supply cost recovery factor of up to \$0.00737 per kilowatt-hour in its monthly bills to its retail electric customers who are not subject to the rate caps set forth in Section 10d(2) of 2000 PA 141 during the plan year.

However, in order to maintain compliance with Section 10d(2) of 2000 PA 141, the applied power supply cost recovery factor shall be capped at \$0.00350 per kilowatt-hour for residential customers.

C. Consumers Energy Company shall file with the Commission, within 30 days, tariff sheets consistent with the findings in this order.

D. If Consumers Energy Company desires to apply a lesser power supply cost recovery factor than that approved by this order, it shall notify the Commission ten days prior to the use of the lesser factor and shall file during that billing month a tariff sheet showing the lesser factor applied.

E. The application for leave to appeal filed by Energy Michigan 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/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of June 30, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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

Chairman

Commissioner

Commissioner

By its action of June 30, 2005.

Its Executive Secretary