

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

At the September 20, 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**

On July 29, 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 June 30, 2005 order approving Consumers Energy Company's (Consumers) 2005 power supply cost recovery (PSCR) plan and factors pursuant to 1923 PA 94, MCL 460.351 and Rules 401 and 403 of the Commission's Rules of Practice and Procedure, R 460.17401 and R 460.17403.

Consumers filed a response in opposition to MEC/PIRGIM's petition for reopening and rehearing on August 19, 2005. The Commission Staff also filed a response on August 19, 2005, urging the Commission to deny the petition because MEC/PIRGIM have not met the requirements of Rules 401 and 403.

Pursuant to the Commission's rules, there are two situations where the Commission may revisit a previously issued order. 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 when there has been a change in conditions of fact or law such that the public interest requires the reopening. R 460.17401. After an order is issued, the Commission may only reopen a proceeding on its own motion or 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, and may be based on a claim of error in fact or law, 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. R 460.17403.

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. The foundation for the petition in this case is similar to the arguments made by MEC/PIRGIM in Consumers' 2004 PSCR case, where the Commission definitively stated that Rules 401 and 403 are not met by a mere recitation of previously considered arguments. *See*, August 1, 2005 order in Case No. U-13917, p. 4. The reopening and rehearing of a previously issued Commission order does not operate as a form of appeal to the Commission.

MEC/PIRGIM present no new evidence or argument, and 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 those arguments were repeated thereafter in their reply brief and exceptions. Those arguments were rejected in the June 30 order. MEC/PIRGIM make no convincing claim of error. Therefore, the Commission finds that MEC/PIRGIM's petition fails to meet the requirements for granting reopening or rehearing.

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 or 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 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 September 20, 2005.

/s/ Mary Jo Kunkle  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of September 20, 2005.

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Its Executive Secretary