

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the formal complaint of the)
 Michigan Environmental Council, Public Interest)
 Research Group In Michigan, and Michigan)
 Consumer Federation, for commencement of a)
 generic investigation and contested case, for review)
 and audit of books and records, for establishment)
 of separate additional external nuclear plan site)
 decommissioning trusts, and for adoption of)
 additional ratemaking remedies relating to spent)
 nuclear fuel fees and costs collected in rates)
 by nuclear utilities serving Michigan, including)
 Consumers Energy Company, The Detroit Edison)
 Company, Indiana Michigan Power Company,)
 d/b/a American Electric Power, Wisconsin Electric)
 Power Company, and Wisconsin Public Service)
 Corporation.)
 _____)

Case No. U-13771

At the February 9, 2006 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

OPINION AND ORDER

Procedural History

On March 23, 2003, the Michigan Environmental Council, the Public Interest Research Group in Michigan, and the Michigan Consumer Federation (collectively, the Complainants) filed a complaint seeking relief on various issues related to spent nuclear fuel (SNF). The Complainants named as respondents utilities that have nuclear power facilities that serve Michigan customers.

On May 30, 2003, The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), Indiana Michigan Power Company, d/b/a American Electric Power (I&M), Wisconsin Electric Power Company (Wisconsin Electric), and Wisconsin Public Service Corporation (WPS Corp) (collectively, the Respondents),¹ filed five separate motions to dismiss pursuant to R 460.17513.

The Complainants filed a response in opposition to the motions on July 11, 2003. Oral argument took place before Administrative Law Judge Sharon L. Feldman (ALJ) on June 23, 2004.

The ALJ issued a Proposal for Decision (PFD) on March 10, 2005. All of the parties filed exceptions to the PFD on April 7, 2005. The Complainants, the Respondents, and the Commission Staff (Staff) filed replies to exceptions on May 26, 2005. On September 20, 2005, the Commission issued an order dismissing the complaint, without prejudice, for failure to state a *prima facie* case. The Commission observed that under 1999 AC R 460.17501 (Rule 501) and 1999 AC R 460.17505 (Rule 505), a complaint brought before the Commission is limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility and that specific allegations of the same must be made. The Commission found that the Complainants had failed to meet the requirements of Rule 501 and Rule 505.

On October 25, 2005, the Complainants filed a petition for rehearing and reconsideration under 1923 PA 94, MCL 460.351 *et seq.*, and 1999 AC R 460.17401 (Rule 401) and R 460.17403 (Rule 403). The Complainants argue that the Commission misconstrued Rules 501 and 505 and

¹The five nuclear power plants located in Michigan are Big Rock Point (Consumers), Palisades (Consumers), Donald C. Cook 1 and 2 (I&M), and Fermi 2 (Detroit Edison). These plants are currently storing their own SNF. The Wisconsin Electric and WPS Corp nuclear power plants are located in Wisconsin, and none of the SNF from those plants is stored in Michigan.

had therefore improperly dismissed their complaint. On November 10, 2005, the Respondents and the Staff filed answers opposing the request for rehearing.

Positions of the Parties

The Complainants argue that in dismissing their complaint, the Commission failed to follow the Michigan Court Rules, which are incorporated by reference into the Commission's Rules of Practice and Procedure. The Complainants claim that their complaint was as specific as the subject matter permits and that the matters alleged gave adequate notice to the Respondents of the Complainants' claims. The Complainants conclude that, contrary to the Commission's finding, the complaint stated a *prima facie* case.

The Complainants further argue that the Commission's dismissal of the complaint, without providing any alternative action or relief, was error and constituted a failure by the Commission to uphold its ratemaking duties. The Complainants cite *City of Detroit v Public Service Comm*, 308 Mich 706; 14 NW2d 784 (1944), in support of their claim. The Complainants argue that under *City of Detroit*, the Commission cannot abdicate its duty to balance the interests of ratepayers with those of shareholders regarding the payment of SNF costs.

The Complainants argue that the Commission's dismissal of the case was unreasonable, in light of the long history of the case and the fact that several of the key SNF issues were in fact addressed by the ALJ after briefing and arguments. Rather than dismissing the complaint, the Complainants assert that the Commission should either provide more guidance on the proper forum for addressing SNF issues or, alternatively, apply Michigan's liberal rules for amendment of complaints.

Finally, the Complainants claim that their petition for rehearing meets the criteria under Rule 403 because they provided additional evidence that ratepayers are paying fees for SNF

disposal while the federal government remains in breach of its contract with the utilities to receive and dispose of SNF. Moreover, the Complainants assert that after this case was filed the utilities have continued in their failure to take reasonable actions to enforce the SNF contracts with the federal government. The Complainants conclude that this additional evidence provides a clear basis for the Commission to reverse its order and reinstate the Complainants' case.

The Respondents and the Staff argue that the petition for rehearing fails to meet the standards for rehearing under Rule 403, that the Complainants have merely restated the same arguments already considered and rejected by the Commission, and that the Complainants simply disagree with the Commission's decision to dismiss the complaint.

Discussion

Rule 401 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17401, provides that a proceeding may be reopened for the purpose of receiving new or additional evidence to complete the record or if there has been a change in fact or law such that the public interest is served by reopening the proceeding. Because the complaint was dismissed on its face, the Commission finds that Rule 401 is inapplicable here.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, 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.

The Commission finds that the Complainants have failed to present new evidence, or a change of law or fact that would justify rehearing. The Complainants' substantive arguments are essentially the same as those made in their initial brief, most which were repeated thereafter in their exceptions to the PFD. Because the Complainants have made no convincing claim of error, the Commission finds that their petition demonstrates no grounds for 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.*; 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 rehearing filed by the Complainants should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by the Michigan Environmental Council, the Public Interest Research Group in Michigan, and the Michigan Consumer Federation 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 February 9, 2006.

/s/ Mary Jo Kunkle
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated February 9, 2006 denying the petition for rehearing filed by the Michigan Environmental Council, the Public Interest Research Group in Michigan, and the Michigan Consumer Federation, as set forth in the order.”