

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY for authority to)	
increase its rates for the generation and distribution)	Case No. U-14347
of electricity and other relief.)	
_____)	

At the October 12, 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

ORDER DENYING PETITION FOR REHEARING

On January 23, 2006, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition for rehearing and clarification of the Commission’s December 22, 2005, order (December 22 order), which established new retail electric rates for Consumers Energy Company (Consumers). On February 13, 2006, Consumers and the Commission Staff (Staff) filed responses to ABATE’s petition for rehearing.

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.

Transmission Expenses

ABATE argues that the Commission does not have authority to include transmission expenses in a utility's power supply cost recovery (PSCR) factor for the reasons stated in its exceptions to the Proposal for Decision (PFD). Specifically, ABATE claims that the language of MCL 460.6j(1)(a) does not permit PSCR treatment of transmission costs.

The Staff and Consumers reply that the Commission indeed has the authority to include transmission expenses in PSCR proceedings and that the recovery of transmission expenses through the PSCR was upheld by the Court of Appeals in *Michigan Environmental Council v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, decided May 11, 2004 (Docket Nos. 244354 and 246774).

The Commission agrees with Consumers and the Staff and observes that it has consistently rejected ABATE's position on this issue. Furthermore, rehearing is not simply an opportunity to restate arguments that were presented below and rejected by the Commission. The Commission therefore finds that ABATE's claim fails to meet the standards of Rule 403.

Automatic Tracking of Utility Expenses

ABATE argues that the Commission lacks authority to approve automatic tracking mechanisms for expense items such as pension and other post employment benefits (OPEB) expenses for reasons stated in its exceptions to the PFD.

Consumers and the Staff disagree, arguing that under 1939 PA 3, MCL 460.6 *et seq.*, and MCL 460.551 *et seq.*, the Commission has authority to approve tracking mechanisms and that the mechanisms approved in this case represent reasonable ratemaking practice.

The Commission agrees with Consumers and the Staff and finds that under its general ratemaking authority, the Commission may allow a utility to recover reasonable expenditures such as pension and OPEB expenses. In addition, the level of expenditures for these categories was set through a contested case proceeding, and any adjustment to these expenditures through the tracking mechanism will be made after an annual filing followed by notice and an opportunity for a hearing.

Tariff Issues

ABATE claims that the tariffs that Consumers submitted pursuant to the December 22 order were not consistent with the terms of the order. Specifically, ABATE claims that the December 22 order required that each customer class should receive an equal percentage rate increase. According to ABATE, a review of Consumers' proposed tariffs, filed on January 6, 2006, demonstrates that rate increases were unequally allocated. ABATE states that it expected that corrected tariffs would be submitted, but revised tariffs were not available as of the filing date of this petition.

Consumers replies that it filed revised tariff sheets on January 26, 2006. Consumers observes that Energy Michigan also filed a petition for rehearing objecting to the proposed tariffs and that the petition was withdrawn after Energy Michigan had an opportunity to examine the revised tariffs. Consumers asserts that its January 26, 2006 filing of corrected tariffs resolved ABATE's objections as well. Moreover, Consumers claims that ABATE failed to identify specific objections to the rate design to allow a definitive response from Consumers or to allow the

Commission to grant ABATE any relief. The Commission agrees with Consumers, that ABATE failed to provide specific examples of how the tariffs violated the December 22 order so that appropriate relief, if required, could be provided.

Furthermore, the Commission approved Consumers' revised tariffs on February 9, 2006 finding that the computational errors in the original tariffs were corrected in the revised tariff sheets that Consumers filed on January 26, 2006. This issue is therefore moot.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 *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. ABATE's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the request for rehearing and clarification filed by the Association of Businesses Advocating Tariff Equity 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 October 12, 2006.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of October 12, 2006.

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