

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

OPINION AND ORDER

On March 13, 2006, Attorney General Michael A. Cox (Attorney General) filed a petition for rehearing of the Commission’s February 9, 2006 order that authorized Consumers Energy Company (Consumers) to revise certain tariff sheets and rates. On March 17, 2006, the Commission Staff (Staff) filed a response to the Attorney General’s petition for rehearing. On March 29, 2006, Consumers filed its response.

Procedural History

On December 17, 2004, Consumers applied for authority to raise its electric rates. On December 22, 2005, the Commission issued an order finding that Consumers has an annual revenue deficiency and ordering Consumers to file redesigned rates and modified tariff sheets conforming to the Commission’s findings by January 10, 2006. On January 6, 2006, Consumers

filed the redesigned rates and modified tariff sheets. Then, on January 10, 2006, Consumers supplemented its January 6 filing, and the Commission authorized Consumers to implement the revised rates on a service-rendered basis the next day and required Consumers to file revised rate schedules within 30 days for review using normal rate case procedures. The Commission noted that its order did “not signify approval of the proposed tariff sheets submitted by Consumers” and that the tariff sheets were to be “reviewed and filed by the Commission Staff (Staff) in accordance with normal rate case procedures.” Order, January 10, 2006, p. 2.

On January 26, 2006, Consumers filed corrected versions of some of the sheets it submitted on January 6.¹ Consumers explained that it made an error while preparing the original sheets, and it asked the Commission to approve the corrected sheets “as soon as possible.” On February 9, 2006, the Commission issued an order approving the revised tariff sheets.

Issues

The Attorney General argues that the corrections to the tariff sheets were adopted improperly and, therefore, are unlawful. The Attorney General argues that the Commission’s February 9 order was unlawful because it was issued without public notice and a hearing and because it authorized Consumers to collect rates higher than those approved in the Commission’s January 10 order. The Attorney General further argues that Consumers’ January 26 filing was actually an improper request to alter previously approved rates without public notice or a hearing, in violation of MCL 462.24 and 460.6a(1). Relying on MCL 462.1, 462.16, and 460.57, the Attorney General also argues that the Commission’s order allowing Consumers to implement the corrected tariff sheets violates the filed rate doctrine. Finally, the Attorney General argues that both the

¹The corrected sheets were listed in Consumers’ January 26 filing and attached to the Commission’s subsequent order.

Commission's January 10 and February 9 orders improperly delegated its power to review and approve filed rates to the Staff.

The Staff responds that the Attorney General's petition is without merit and does not provide a basis for rehearing. The Staff argues that rates were not increased except by the Commission's December 22 order, and that the tariff sheets subsequently filed were simply Consumers' attempts to comply with that rate increase. The Staff further notes that both of the Commission's subsequent orders gave Consumers 30 days in which to file tariff sheets that conformed to the December 22 rate increase and that the Staff's role was simply to verify that the filed tariffs did so. The Staff also argues that the Commission's direction to the Staff to review and file the tariff sheets was not an improper delegation of authority because the Commissioners are not expected to proofread hundreds of tariff sheets without help from the Staff, whose functions include making sure that tariff sheets correctly reflect the Commission's orders. Moreover, the Staff argues, it was the Commission, and not the Staff, who approved the underlying rate increase and authorized Consumers to implement the revised rates. The Staff further argues that the filed rate doctrine is inapplicable here, where there is no suggestion that the utility is attempting to charge anything other than the filed rate.

Consumers argues that the Attorney General's petition does not satisfy the requirements for a rehearing. Consumers further argues that the Attorney General's objections are groundless and that the Commission made no legal error:

Neither the January 10 nor the February 9 Orders did anything more than accept filings that had been made pursuant to the Commission's December 22 Order allowing for the rate increase. The February 9 Order was merely ministerial in nature, and did not represent a "new" rate increase. That Order simply adopted a correction that was necessary in order to conform to the December 22 Order. The

approved rates were designed to secure the revenue requirements established in the December Order.

Answer of Consumers, March 29, 2006, p. 3.

Consumers also rejects the Attorney General's reading of MCL 460.57; Consumers emphasizes the language of that statute giving the Commission power to "adopt rules and regulations governing the presentation of the schedules and desired changes, and action on the schedules, and shall have full authority to regulate the procedure to be observed." Consumers argues that the Commission's authority to regulate the ratemaking procedure and its broad ratemaking authority are sufficient to justify approving the tariff sheets that reflect the previously approved rate increase. "If the Commission has the authority to authorize the increase, it logically must have the corresponding authority to approve the tariff sheets reflecting the authorized increase." *Id.*, p. 5.

Discussion

Rule 403, R 460.17403(1) of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, governs requests for rehearings:

A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all parties to the proceeding.

Rule 403 provides that a petition for rehearing must 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 rehearing.

There is no basis for rehearing the Commission's February 9 order because accepting the corrected tariff sheets served only to implement the rate increases that the Commission approved after extensive notice and comment in this docket. Further, the Attorney General does not allege—and the record nowhere suggests—that the corrected tariff sheets impose rates higher than those that the Commission had already approved. The issue is simply that, because of Consumers' error, the first-filed tariff sheets did not all reflect the entire approved rate increase; the corrected sheets served only to bring the Consumers' rate book into conformance with the Commission's previous order. Moreover, the Commission did not allow Consumers to impose the corrected rates retroactively; they became effective only after the Commission's February 9 order. Thus, at no point were ratepayers required to pay any rate higher than the rates shown on a filed tariff and at no point did a filed tariff sheet impose a rate higher than that approved by the Commission.

The Attorney General's theory that the Commission is required to give public notice and hold hearings to accept corrected tariff sheets that bring the rate book into conformance with Commission orders is entirely without merit.

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. The rehearing request should be denied.

THEREFORE, IT IS ORDERED that Attorney General Michael A. Cox's petition for 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 October 12, 2006.

/s/ Mary Jo Kunkle
Its Executive Secretary

THEREFORE, IT IS ORDERED that Attorney General Michael A. Cox's petition for 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

Chairman

Commissioner

Commissioner

By its action of October 12, 2006.

Its Executive Secretary