

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

On January 23, 2006 Consumers Energy Company (Consumers) filed a petition for rehearing of the December 22, 2005 order (December 22 order) approving an electric rate increase for the utility. On February 13, 2006, the Commission Staff (Staff) and Constellation NewEnergy, Inc. (NewEnergy) filed responses to the 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.

Availability of Rate E-2 to Retail Open Access Customers

In its December 22 order, the Commission approved a new economic development rate, Rate E-2, which applies to new load of one megawatt or greater from either existing or new customers. December 22 order, pp. 76-77. According to the order, Rate E-2 is available to retail open access (ROA) customers. Consumers asserts that the skewing¹ that is built into primary rates is eliminated in the design of Rate E-2. However, Consumers claims that because of the overall rate design approved by the Commission in the December 22 order, ROA customers are already paying a distribution rate that is based on cost of service if these customers receive service under the primary rate. Thus, Consumers maintains that Rate E-2 would provide no additional advantage to ROA customers. Consumers therefore requests that the Commission modify rate E-2 to clarify that it is only available to full service customers.

In its reply to Consumers' petition, the Staff agrees that the availability of Rate E-2 should be limited to full service customers for the reasons stated in Consumers' petition.

NewEnergy argues that there is no basis for rehearing or clarification of this issue because the availability of Rate E-2 to ROA customers was addressed below and supported by the Staff. NewEnergy asserts that Consumers chose not to address the issue in its exceptions to the Proposal for Decision and further, that Consumers provides no justification for reconsideration of the Commission's decision.

The Commission agrees with Consumers and the Staff that because of the rate design approved in the December 22 order, ROA customers will receive no advantage by requesting service under Rate E-2 rather than the primary rate. Specifically, because ROA customers pay cost-based distribution rates and will not be subject to an additional charge for rate skewing under

¹Rate skewing is the difference between the revenues generated by the rates in effect for each class (i.e., residential, commercial, and industrial) and their cost responsibility.

the primary rate, there is no advantage to making Rate E-2, which also provides for cost-based distribution rates, available to ROA customers. Thus, the availability of Rate E-2 will likely cause unnecessary confusion for ROA customers. The Commission therefore finds that the availability of Rate E-2 should be limited to full service customers only.

Rate Skewing

Consumers argues that the Commission erred in failing to eliminate rate skewing, despite substantial evidence in favor of deskewing. Rather than eliminate subsidies, the Commission instead determined that commercial and industrial (C&I) customers should continue to subsidize residential customers. Consumers maintains that rate skewing disadvantages C&I customers and encourages them to move to other states or make uneconomic decisions to switch to ROA services.

The Staff argues that the phasing out of rate skewing is a policy decision left to the discretion of the Commission. Moreover, the Staff disagrees that the Commission is not addressing rate skewing; the fact that the Commission did not set a specific date to realign rates does not mean that rate skewing will continue indefinitely. The Staff observes that the Commission's December 22 order "demonstrates a continued interest in cost of service studies to provide guidance in setting rates"² and that the opportunity exists for the Commission to further address deskewing in future rate cases.

NewEnergy argues that the issue of rate skewing was fully addressed in the rate case and that the Commission's decision on how to manage deskewing was reasonable. Therefore, NewEnergy asserts that Consumers offers no rational basis for revisiting the Commission's decision.

The Commission finds that Consumers simply reiterates arguments made by several of the parties over the course of this proceeding. Rehearing is not an opportunity to reargue settled

²Staff's response to Consumers' and ABATE's petitions for rehearing, p. 4.

issues or express disagreement with the Commission's order. Moreover, the Commission is not persuaded that it reached an incorrect conclusion regarding rate skewing and finds that its December 22 order includes an explanation of the Commission's conclusions on this issue that adequately sets forth its reasoning. Consumers' petition therefore fails to meet the standards of Rule 403.

Stranded Costs

Consumers argues that the Commission's decision concerning stranded costs should be clarified. Consumers points to the Commission's statements that "production fixed costs cease to be stranded" and "it has provided for full recovery of Consumers' net stranded costs, as required by [2000 PA 141] Act 141." Consumers maintains that the Commission must clarify that these findings regarding the utility's net stranded costs do not mean that the December 22 order has permanently fulfilled the Commission's obligations under Act 141.

The Staff disagrees with Consumers and argues that the Commission fully explained how it has provided Consumers with full recovery of its net stranded costs. Furthermore, the Staff argues that the Commission's order is consistent with Section 10a(12) of Act 141, MCL 460.10a(12) and that the perpetual assessment of stranded costs to choice customers contravenes the intent of Act 141.

NewEnergy argues that there is no need for clarification of the Commission's order because the order does not affirmatively preclude Consumers from filing a stranded cost proceeding in the future.

The Commission notes that Consumers' stranded costs were fully addressed in the Commission order issued on September 26, 2006 in Case No. U-14526. 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. Consumers' petition for rehearing and clarification should be denied, except as provided in this order.

THEREFORE, IT IS ORDERED that:

A. The request for rehearing and clarification filed by Consumers Energy Company is denied except as provided in this order.

B. Within 30 days, Consumers Energy Company shall file revised tariff sheets consistent with this order.

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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