

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) Case No. U-15245
rates for the generation and distribution of)
electricity and for other relief.)
_____)

At the June 26, 2007 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

OPINION AND ORDER

On March 30, 2007, Consumers Energy Company (Consumers) filed an application requesting a \$143.5 million rate increase recovery, as well as recovery of costs associated with the sale of its Palisades nuclear power plant and Big Rock spent nuclear fuel storage installation. Consumers also seeks authority to revise its electric rules, regulations, and tariffs including a new market-based energy rate, a new low income rate, a new educational institutional rate, grandfathering of the current senior citizen rate, and rates that Consumers states will better reflect service voltage and load factor. Furthermore, Consumers proposes that the Commission design rates that will reduce the skewing of Consumers' rate structure by approximately 20% per year over a five-year period.

On June 13, 2007, the Commission Staff (Staff) and Consumers filed a joint motion seeking Commission authority for the Staff to retain the services of two independent

consultant experts to be financed by Consumers. One consultant is needed to make an assessment of Consumers' environmental compliance programs and the other is needed to make an assessment of issues concerning Consumers' load study and class cost of service study.

Specifically, the Staff argues that it is currently participating in three major rate cases that were filed with the Commission within the last six months. The Regulated Energy Division has a total of 71 open dockets. Retaining independent expert consultants will allow the thorough and expeditious investigation and analysis of Consumers' application.

The joint motion proposes that Consumers solicit bids from experts after obtaining the scope of the necessary work from the Staff. Subsequently, all bid responses would be submitted only to the Staff. The Staff stresses that it would retain exclusive discretion to select the consultants from the bids submitted and supervise all of the experts' work. Consumers agrees to pay for the Staff's consultants but would "in no way be responsible for their hiring, supervision, conclusions, reports, or expert witness testimony if needed." Joint motion, p. 2. The Staff argues that Consumers is willing to pay the consultants' fees and emphasizes that the Staff will have exclusive control and responsibility for hiring and supervising the consultants and for the decisions regarding the use of the consultants' work products.

Constellation NewEnergy, Inc. (Constellation), filed a response in support, with modification, of the joint motion on June 15, 2007. In its response, Constellation acknowledges the constraints on the Staff's resources and supports the joint motion's proposal to have Consumers pay for the Staff's consultants' fees. However, Constellation suggests that Consumers should not solicit consultant bids for the Staff, but rather the Staff

should contact and solicit its own experts with other parties weighing in on the solicitation process. Constellation is willing to assist the Staff in referring it to qualified consulting firms.

On June 18, 2007, Energy Michigan filed its reply to the joint motion. Energy Michigan argues that it is imperative that the Staff remain absolutely independent in these proceedings. As a result, Energy Michigan suggests that the Staff, not Consumers, formulate the list of consultants to be contacted about the bidding process. Furthermore, Energy Michigan encourages the Staff to contact such consulting firms as: the Brattle Group, Boston Pacific, Christensen and Associates, and NERA. Energy Michigan also emphasizes that the Staff should have strict and exclusive control over the scope of the work performed by the consultants by determining the subjects to be explored and the depth of such an exploration.

On June 20, 2007, Attorney General Michael A. Cox (Attorney General) filed comments opposing the joint motion on several grounds. First, the Attorney General argues that the Staff has not demonstrated that the Commission has budgetary constraints that would necessitate the use of outside monies. Additionally, the Attorney General argues that the Commission does not have authority to approve alternative funding and likens the payment of the consultants to a gift or loan that the Commission is not authorized to receive. Further, the Attorney General asserts that the arrangement gives the appearance of impropriety.

On June 25, 2007, the Staff filed an answer asserting that Consumers' rate case filing "requires extensive review of complex issues, some of them involving technical environmental matters." p. 5. Additionally, the Staff points out that, in Case No. U-14838, the Attorney General agreed in a settlement agreement that it was reasonable and in the public interest for the utility to hire an outside consultant, whose selection was approved by

the Staff, to monitor the impact of the utility's performance excellence process on service quality. The Staff also points to the Commission's approval of a third-party consultant in Case No. U-14031.

The Commission finds no merit in the Attorney General's argument that the Staff has not proven that the Commission, as well as the State of Michigan, are under financial constraints. Both the Department of Labor & Economic Growth, the body under which the Commission serves, and the Department of Management and Budget (DMB), have placed severe restrictions on the purchasing of goods and services by agencies. With the exception of very specific circumstances that do not apply in this case, agencies have been directed to defer purchases until the beginning of the next fiscal year on October 1, 2007.¹ The Commission finds that such constraints, along with the Commission's current budget, prevent the Staff from hiring expert consultants using agency monies.

The Commission does not interpret this unique situation as the receipt of a gift or a loan from Consumers as suggested by the Attorney General. Nor is this the first time the Commission has required the utility to provide the Staff with an expert consultant. In Case No. U-4331, the Commission directed the Staff to conduct an inquiry into the planning and construction activities of Consumers Power Company² and its management of the Marysville project in Commission order dated November 9, 1973. Order, p. 12. In order to complete the investigation, the Commission ordered the applicant to "[e]mploy such design, construction, accounting, and management specialists to be selected by the Staff as they

¹On April 23, 2007, in accordance with a series of Executive Directives issued by Governor Jennifer M. Granholm, the DMB directed that purchasing and contracting of non-essential products and services be deferred for the remainder of the fiscal year ending September 30, 2007.

²Now known as Consumers.

deem necessary.” Id. The investigation, including the specialists’ work, was placed “under the exclusive control and supervision of the Staff.” Id. In a different proceeding, the Commission also set aside millions of dollars from Consumers’ demand side management budget in order to provide the Staff and other members of the evaluation working group with independent contractors “to provide information associated with the tracking, process evaluation, and impact evaluation activities associated with [Consumers’] DSM programs.” Commission order dated September 25, 1991, Case No. U-9346, p. 24. In fact, the Attorney General was a member of the evaluation working group and thus received the benefit of a consultant paid for by the utility.

Additionally, the Legislature authorized the Commission to “require the electric utility to hire consultants chosen by the [C]ommission to assist the [C]ommission in evaluating those issues the application [for construction of major electric transmission lines] raises.” MCL 460.568(3). The Commission finds it very telling that the Legislature did not view the hiring of consultants in that situation as gifts or loans by the utility to the Commission. The Commission finds that the instant situation constitutes a similar hiring of consultants chosen by the Staff to assist the Commission in evaluating issues raised by Consumers’ rate increase application and does not amount to the unauthorized receipt of a gift or loan from the utility to the Commission.

Provided the budget allowed it, the Staff would be able to begin the solicitation process according to the ordinary course of business within the Executive Branch. The monies used to pay for the expert consultants would come out of the Commission’s budget which is appropriated by the Legislature and assessed to all regulated utilities pursuant to MCL 460.112.

Constellation and Energy Michigan raised the possibility of the Staff soliciting bids directly from consultants. This is simply not feasible under current state policy. Requests for proposals for the hiring of expert consultants must be solicited by the Purchasing Operations division of the DMB. Likewise, the Staff cannot directly contract for the services of the independent consultants; contracts must be made between the independent consultants and the State of Michigan if they are to be paid out of public funds. However, the Commission understands and acknowledges Constellation's and Energy Michigan's concerns regarding the selection of the independent consultants to be contacted. The Staff will be responsible for providing a list of names and contact information to Consumers from which the company will solicit consulting bids.

Given the financial and employee resource constraints currently experienced by the Staff, the Commission finds that it is in the public interest to authorize the Staff to retain, at Consumers' expense, the services of independent consultants to assess Consumers': 1) environmental compliance programs and 2) load study and class cost of service study. In order to avoid any appearance of impropriety, the Staff shall provide Consumers with a list of qualified consulting firms for Consumers to inform these firms of the bidding process. Consumers shall be responsible for drafting the legal contracts with the Staff-selected vendors and for payments under the contracts based on information provided by the Staff regarding the scope of the work to be performed. The Staff shall have ultimate control over the nomination, selection, supervision, conclusions, reports, and possible expert testimony of the consultants. Consumers' sole involvement in the Staff's retention of consultants shall be limited to the administration of the solicitation of bids from the Staff-selected vendors, the contracting of services, and the payment of the consulting fees.

The Commission finds that the events precipitating the joint motion have created an exceptional and rare situation. With the great restrictions placed upon the Commission's finances, the Staff's employee resource constraints, and the absolute necessity of a thorough and timely review of Consumers' application, the Commission finds that the public interest of the ratepayers and shareholders of the utility would best be served by granting the joint motion.

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 joint motion should be granted.

c. The Staff should retain full control over the nomination, selection, supervision, conclusions, reports, and possible expert testimony of the consultants.

d. Consumers' only involvement should be to administer the solicitation of expert consultant bids from a list of vendors provided by the Staff, to draft the vendor contracts based on information provided by the Staff regarding the scope of the work to be performed, and to reimburse the consultants chosen by the Staff.

THEREFORE, IT IS ORDERED that:

A. The joint motion of the Commission Staff and Consumers Energy Company is granted.

B. The Commission Staff shall retain exclusive control over the nomination, selection and supervision, conclusions, reports, and possible expert testimony of the consultants.

C. Consumers Energy Company's sole involvement in the retention of consultants shall be

limited to administer the solicitation of the expert consultant bids, to draft the contract for services based on information provided by the Staff regarding the scope of the work to be performed, and the payment of the consulting fees.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chairman

(S E A L)

/s/ Monica Martinez

Commissioner

By its action of June 26, 2007.

/s/ Mary Jo Kunkle

Its Executive Secretary

limited to administer the solicitation of the expert consultant bids, to draft the contract for services based on information provided by the Staff regarding the scope of the work to be performed, and the payment of the consulting fees.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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By its action of June 26, 2007.

Its Executive Secretary