

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY for approval)	
of a power supply cost and for authorization of)	Case No. U-15001
monthly power supply cost recovery factors for)	
calendar year 2007.)	
_____)	

At the April 22, 2008 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On September 29, 2006, Consumers Energy Company (Consumers) filed an application seeking approval of a power supply cost recovery (PSCR) plan and monthly PSCR factors for the 12-month period ending December 31, 2007. Included in the company’s plan were amounts associated with PSCR underrecoveries related to 2005 and 2006. Consumers proposed to recover these previous years’ underrecoveries by including them in the self-implemented PSCR factors applicable on and after January 1, 2007. Consumers further proposed to self-implement PSCR factors for each month in calendar year 2007 of up to \$0.01435 per kilowatt-hour (kWh) for residential customers and up to \$0.01601 per kWh for commercial and industrial customers.

Pursuant to due notice, a prehearing conference was conducted on November 21, 2006, by Administrative Law Judge James N. Rigas (ALJ), and intervention was granted to the Association

of Businesses Advocating Tariff Equity (ABATE), Attorney General Michael A. Cox (Attorney General), the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM), the Michigan Cogeneration Venture Limited Partnership (MCV), Michigan Power Limited Partnership, and Ada Cogeneration Limited Partnership. The Commission Staff (Staff) also participated in the proceedings.

On November 29, 2006, the Staff filed a motion for approval of a temporary order establishing PSCR factors pursuant to MCL 460.6j(8). On December 21, 2006 the Commission issued an order approving temporary factors.¹ The Commission also approved Consumers' proposal to roll its 2005 and 2006 PSCR underrecoveries into the 2007 PSCR factors, and granted continuing authority to roll prior year under/overrecoveries into future PSCR plans.

Evidentiary hearings were held on December 7, 2006, and July 10 and 17, 2007. Consumers, the Staff, MEC/PIRGIM, and the Attorney General presented witnesses. The record consists of 451 pages of transcript and 27 exhibits.

On September 28, 2007, the ALJ issued a Proposal for Decision (PFD).

On October 22, 2007, Consumers, the Attorney General, and MEC/PIRGIM filed exceptions. On November 2, 2007, Consumers, the Staff, the Attorney General, ABATE, MEC/PIRGIM, and the MCV filed replies to exceptions.

In the PFD, the ALJ addressed the following five contentious issues. The Commission makes its findings of fact and conclusions of law with respect to each issue seriatim.

¹Exhibit A-1 shows the projected 2007 PSCR factor for residential customers as \$0.01436 per kWh, which includes the company's projected 2006 PSCR underrecovery of \$123,641,000. Originally, Consumers calculated the 2005 PSCR underrecovery attributable to commercial and industrial (C&I) customers as \$39,137,892. However, in briefs on the Staff's motion, Consumers explained that the correct amount for the 2005 C&I underrecovery was \$36,343,289, which results in a 2007 PSCR factor applicable to C&I customers of \$0.01589 per kWh.

1. Distribution of Proceeds From SO₂ Allowance Sale

Consumers' sulfur dioxide (SO₂) emissions during 1990-1992 formed the baseline for the SO₂ allowances granted to Consumers by the Environmental Protection Agency (EPA) for subsequent years. During those subsequent years, Consumers reduced its use of high-sulfur eastern coal and increased its use of low-sulfur western coal, thereby reducing its need for the SO₂ allowances it had been granted and freeing the allowances for sale. On February 1 and 14, 2006, Consumers sold a total of 40,000 excess SO₂ allowances in two transactions, resulting in sale proceeds of \$58,673,414. Consumers proposes allocating 50% of this revenue to PSCR customers and retaining 50% for the company to be used on projects that enhance electric distribution and generation reliability and customer service.

Consumers also received \$3,459,830 from EPA auctions of allowances in 2004-2006, and Consumers requests that the Commission determine the fate of these proceeds in the company's next rate case. Thus, Consumers has a total of \$62,133,244 in revenues associated with allowance sales.

The ALJ agreed with the positions of the Staff, the Attorney General, and MEC/PIRGIM, and found that 100% of the sale proceeds should be used to benefit PSCR customers. The ALJ noted that if the company incurred SO₂ allowance costs in the future, it would expect full recovery of those costs from PSCR customers and concluded that, where customers will shoulder the full cost, they should receive the full benefit. This treatment also corresponds with the treatment of emission allowance costs associated with oxides of nitrogen (NO_x), which are included in PSCR expenses and offsets. The ALJ also agreed with the Attorney General's argument that because Consumers recovered the costs of fuel related to the emissions during the baseline years from

PSCR customers, the sale revenues should be treated as PSCR offsets. The ALJ recommends that the Commission reduce the 2006 underrecovery by \$62,133,244 in the 2006 PSCR reconciliation.

In its exceptions, Consumers objects to the ALJ's rejection of its sharing proposal, which it characterizes as equitable, based upon past actions taken by the company to reduce the need for the allowances.

In his exceptions, the Attorney General urges the Commission to make its findings on this issue in Consumers' 2006 reconciliation proceeding, Case No. U-14701-R, rather than in this proceeding, under the dictates of MCL 460.6j(3)-(6). The Attorney General argues that factoring the allowance decision into the calculation of the 2007 PSCR factor would shift the booked revenues and expenses from one year to another.

In replies to exceptions, the Staff, the Attorney General, MEC/PIRGIM, and ABATE argue in favor of adopting the ALJ's recommendation.

The Commission finds that this issue should be addressed in Case No. U-14701-R, which is issued simultaneously with this order.

2. Treatment of NERC Dues

For calendar year 2007, Consumers has \$310,897 in incremental dues (over the amount in base rates) paid to the North American Electric Reliability Council (NERC). Consumers states that as of January 1, 2007, the Federal Energy Regulatory Commission (FERC) has ruled that these dues are a mandatory expense. Consumers argues that the dues expense should be shifted from recovery in base rates to recovery in the PSCR process, because the dues are mandatory and are related to transmission, and because such treatment will ensure that choice customers do not pay this expense twice (to their generation supplier and to Consumers).

The ALJ recommends that the NERC dues continue to be recovered through base rates.

Consumers objects to this recommendation, arguing that these costs are similar to other MISO²-related costs included in the PSCR.

The Attorney General argues in favor of adopting the ALJ's recommendation.

The Commission finds no justification for departing from the current practice of recovering reliability council dues through base rates, and adopts the recommendation of the ALJ. Further, they should be collected in that part of base rates only paid by full service customers.

3. Proposed Tariff Language

Consumers requests that the Commission approve revised tariff language that the company believes is necessary to accommodate the roll-in method approved by the Commission in its December 21 order.

The ALJ agreed with the Staff, and found that the tariff revision is unnecessary.

In its exceptions, Consumers argues that the tariff will provide future customers with continuing and adequate notice of an element of the PSCR factor.

The Attorney General argues in favor of adopting the ALJ's recommendation.

The Commission agrees with the recommendation of the ALJ and finds that the revised language is unnecessary. The roll-in method has been implemented for years by other utilities with no additional tariff language. The Commission's December 21, 2006 order provides sufficient authority for the ongoing use of the roll-in method. *See*, December 21 order, p. 7.

4. The MCV Power Purchase Agreement

Consumers is a purchaser of the MCV facility's output pursuant to a power purchase agreement (PPA) signed in 1987. In its November 9, 2006 order in Case No. U-14981, the

²Midwest Independent Transmission System Operator, Inc.

Commission approved a settlement agreement authorizing the sale of other interests held by Consumers in the MCV generating facility. As part of that settlement agreement, Consumers agreed to make a filing no later than May 1, 2007, discussing “the Company’s plans and potential alternative consequences related to exercising its rights under the regulatory out clause in the PPA.” November 9, 2006 order in Case No. U-14981, pp. 2-3, Exhibit A, ¶ 6. Consumers presented testimony in this proceeding showing that it had satisfied this requirement.

In response to that testimony, the Attorney General argued that exercise of the regulatory out clause of the MCV PPA (which had been suspended until September 15, 2007) will allow Consumers to adjust the amount that it pays to the MCV under the PPA to match the amount the Commission has allowed Consumers to recover from retail customers. On this basis, the Attorney General urges the Commission to require Consumers to exercise the regulatory out clause.

Consumers argues that issues related to the MCV PPA have no impact on the company’s PSCR factor. Consumers requests that the Commission find that a proceeding should be initiated on its own motion to consider the cost recovery issues associated with the regulatory out clause, and that other issues should be addressed in the proceeding initiated by MCV, Case No. U-15320.

The ALJ agreed with Consumers and the MCV, and found that no action should be taken in this proceeding relating to the MCV PPA. The ALJ noted that interested parties may address the implications of the exercise of the regulatory out clause in Case No. U-15320.

Consumers takes exception to the ALJ’s failure to recommend that another separate proceeding should be commenced on the Commission’s own motion.

The Attorney General objects to the ALJ’s decision not to address the issue, arguing that MCL 460.6j(6) requires the Commission to address the issue in this proceeding where it provides that the Commission shall evaluate the reasonableness and prudence of the decisions underlying

the PSCR plan and shall ensure that all appropriate actions are taken to minimize the cost of fuel. The Attorney General points out that the MCV PPA was approved by the Commission and therefore underlies, in some sense, the PSCR plan.

In reply, Consumers argues that the Commission should act on the issue in Case No. U-15320, and ABATE argues that no separate hearing is required.

In its reply, the MCV argues that Consumers' decision in this matter is a management decision over which the Commission lacks jurisdiction. *See, Union Carbide v Public Service Comm*, 431 Mich 135, 162; 428 NW2d 322 (1988). The MCV also points out that the record in this matter is wholly inadequate for determining whether Consumers should be ordered to exercise the regulatory out clause.

The Commission adopts the recommendation of the ALJ. This PSCR plan proceeding is not the appropriate forum in which to take up the issue of whether Consumers should be ordered to exercise the regulatory out clause. The Attorney General and all other parties are free to explore this issue in Case No. U-15320. Consumers presented testimony on this issue simply to show its compliance with requirements of the settlement agreement in Case No. U-14981. The PSCR plan reflects the contracts that are in place during the PSCR year, which include the MCV PPA. The Commission is not persuaded that MCL 460.6j requires the Commission to decide contract and preemption issues not presented to the Commission in this matter by the utility. These issues should be decided in the matter that has been opened by the MCV for that purpose.

5. DOE D&D Fund Assessments

Consumers requests recovery of \$1,314,619 in costs associated with assessments placed upon Consumers by the Department of Energy's (DOE) uranium enrichment facilities' decontamination and decommissioning (D&D) fund. The fund is financed, in part, through the collection of special

assessments on utilities. Consumers states that the FERC has ruled that the assessments are a necessary and reasonable cost of fuel and fully recoverable in rates in the same manner as other fuel costs. Consumers states that the amount sought in this proceeding results from the fact that the D&D assessments were estimated at the time of their securitization at \$16,073,556, but that actual assessments were \$17,388,175. Consumers requests that the difference be included in the 2007 PSCR factor.

Noting that the factor remains the same whether this expense is included in 2006 or 2007, the ALJ recommends that the shortfall be approved and included for recovery in the 2007 PSCR factor.

The Attorney General takes exception to the approval of the D&D assessments for recovery in PSCR expense on grounds that Consumers did not provide satisfactory proof that it did not already recover the shortfall amount.

MEC/PIRGIM also excepts to the approval of the D&D assessments for recovery in PSCR expense. MEC/PIRGIM argues that Consumers has double recovered D&D fund expenses for 2000-2003 through both PSCR base rates and securitization. MEC/PIRGIM argues that the Commission should require Consumers to credit these amounts, with interest, to PSCR customers.

In reply to MEC/PIRGIM, Consumers points out that the D&D assessment was collected from customers only once, through securitization, and was not included in PSCR plans. 3 Tr 128-140. Consumers contends that the Attorney General has not provided any reasoned argument for rejecting the ALJ's recommendation, pointing out that, as the ALJ stated, it was inconsistent with the rate freeze to track and reconcile individual costs incurred during that period. PFD, p. 25.

The Commission addresses this issue in Consumers' 2006 reconciliation proceeding, Case No. U-14701-R, issued simultaneously with this order.

THEREFORE, IT IS ORDERED that the application for a power supply cost recovery plan and monthly factors filed by Consumers Energy Company for calendar year 2007, as modified by this order, is approved.

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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of April 22, 2008.

Mary Jo Kunkle, Executive Secretary