

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to order Consumers Energy Company to show cause	)	
why it should not be found in violation of the	)	Case No. U-16113
Commission's December 22, 2005 order in	)	
Case No. U-14347.	)	
_____	)	

At the October 13, 2009 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 TO SHOW CAUSE**

On December 22, 2005, the Commission issued an order in Case No. U-14347 that authorized Consumers Energy Company (Consumers) to increase its rates for the sale of electric power by \$86,149,000 on an annual basis. Among other forms of regulatory relief, the Commission authorized Consumers to establish a forestry expense tracking mechanism and a fossil fueled plant operation and maintenance (O&M) expense tracking mechanism.

The Commission approved the forestry expense tracking mechanism out of concern that the quality of service then being experienced by Consumers' customers would likely be enhanced if the utility had more funds available with which to perform tree trimming and line clearance activities.

In the December 22 order, the Commission observed:

The Commission agrees with the ALJ's finding that the company's tree trimming and line clearance programs have been unsatisfactory in recent years. As discussed previously, in the past few years, Consumers has sacrificed necessary expenditures for tree trimming and line maintenance so that the company could increase its cash flow and fund employee bonuses. Thus, the Commission further finds that funds for this program should be closely monitored through annual reporting.

December 22, 2005 order, Case No. U-14347, p. 54.

While the Commission declined to authorize Consumers' recovery of the total amount requested by Consumers for future tree trimming and line clearance activities, the Commission was persuaded to approve \$28.3 million for forestry activities in 2006 subject to certain conditions. The Commission essentially doubled the amount expended by the utility during 2005 for forestry activities in hopes that there would be "an improvement in reliability, translated into fewer average annual outage minutes per customer." Order, Case No. U-14347, p. 55. However, out of concern that these funds actually be used for their intended purpose, the Commission explicitly ordered "that this funding is subject to the annual reporting requirement proposed by the Staff and recommended by the ALJ and is subject to refund if not spent." Order, Case No. U-14347, p. 55. Toward that end, the Commission made it abundantly clear that its "authorization of this amount for forestry expenses is conditioned upon a binding commitment from Consumers that the funds will be used solely for forestry and line clearing activities and an explicit waiver of its right to object to the refund provision on grounds of retroactive ratemaking." Order, Case No. U-14347, p. 55.

The fossil fueled plant O&M expense tracking mechanism was adopted out of concern that the difference between Consumers' and the Commission Staff's (Staff) positions for the utility's recovery of its fossil fueled plant O&M expenses was significant. Consumers had originally

calculated a total of \$119,778,893 for 2006 for fossil fueled plant O&M, but increased that amount to \$130,219,000 during rebuttal. The Staff supported incorporating Consumers' original proposed spending levels into rates, but suggested that, because of the difficulty in accurately predicting the actual level of Consumers' O&M expenses, a portion of the expenses should be tracked annually and subject to refund if not spent. Ultimately, the Commission opted to authorize Consumers to recover fossil fueled plant O&M expense in the annual amount of \$119,778,893 along with the Staff's proposed annual tracker mechanism.

In ordering paragraph "L" of the December 22, 2005 order, the Commission provided:

L. Consumers is directed to submit a letter, signed by the Chairman of Consumers on behalf of the company, which agrees to make the additional forestry expenditures as well as the additional fossil and nuclear operations expenses or to refund any unexpended amounts to its customers. The letter shall also contain a waiver of Consumers' right to object to the refund provisions on grounds of retroactive ratemaking and an agreement to submit annual tracking reports regarding forestry and tree-trimming to the Staff.

December 22, 2005 order, Case No. U-14347, p. 92.

By letter dated January 6, 2006, Consumers responded to the Commission's order. In pertinent part, the text of the January 6, 2006 letter reads as follows:

This letter is provided in response to Ordering Paragraph L of the Commission's December 22, 2005 Opinion and Order in Case No. U-14347. While the rates authorized pursuant to the procedure outlined in the December 22, 2005 order are in effect, Consumers Energy agrees as follows:

(1) if, in calendar year 2006 and in succeeding calendar years, Consumers Energy expends less than \$28.3 million for forestry (e.g., tree trimming, line clearing) expenses as described in that order, it will refund the amount by which its actual forestry expenses are less than \$28.3 million;

(2) if, in calendar year 2006 and in succeeding calendar years, Consumers Energy expends less than \$119,778,893 for fossil-fueled generating plant other operation and maintenance expense, it will refund the amount by which its actual fossil-fueled other operation and maintenance expenses are less than \$119,778,893, provided that the refund obligation for any single calendar year will not exceed \$9,688,000;

(3) if, in calendar year 2006 and in succeeding calendar years, Consumers Energy expends less than \$117,986,000 for nuclear-fueled generating plant other operation and maintenance expense, it will refund the amount by which its actual nuclear-fueled other operation and maintenance expenses are less than \$117,986,000, provided that the refund obligation for any single calendar year will not exceed \$2,015,000;

(4) Consumers Energy agrees to waive its right to object to the foregoing refund obligations on grounds of retroactive ratemaking;

(5) Consumers Energy agrees to submit to the MPSC Staff annual tracking reports identifying forestry expenses.

Signatories of this letter were David W. Joos, President and CEO of CMS Energy Corporation and Consumers Energy Company and Ken Whipple, Chairman of the Board, CMS Energy Corporation and Consumers Energy Company.

The Commission is informed that Consumers' 2007 report on fossil fueled plant O&M expense, nuclear O&M expense, and forestry expenses and line clearing activities, which was submitted to the Staff on April 10, 2008, reveals that during 2007 Consumers underspent by \$6,503,420 for forestry expenses and line clearing activities during 2007 and underspent by \$7,584,328 for fossil fueled plant O&M expense during 2007. The Commission also is informed that, to date, Consumers has not refunded either the underspent \$6,503,420 for forestry expenses and line clearing activities or the underspent \$7,584,328 for fossil fueled plant O&M expense to its customers.<sup>1</sup>

Therefore, the Commission finds that it should order Consumers to show cause why it should not be found in violation of the Commission's December 22, 2005 order in Case No. U-14347. Accordingly, Consumers is directed to file a response in this docket by 5:00 p.m. on October 30, 2009. Consumers' response shall explain why the refunds required by the December

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<sup>1</sup>The Commission also has received a report indicating that the utility underspent its authorized forestry expenditures by another \$2,647,606 during 2008, which has not yet been refunded.

22, 2005 order have not yet occurred. Consumers' response shall be accompanied by prefiled direct testimony, exhibits, work papers, and affidavits supporting the accuracy of the calculations prepared by persons with actual knowledge of the details of Consumers' positions. The responsive pleading, prefiled direct testimony, exhibits, and other supportive documentation shall provide the Commission with thorough and complete details regarding the utility's expenditures for fossil fueled plant O&M expense, nuclear O&M expense, and forestry expenses and line clearing activities for each of the calendar years 2006, 2007, and 2008, as well as a summary of all available data for the forestry expenditures for 2009.<sup>2</sup> For the years 2006, 2007, and 2008, Consumers shall calculate interest on any annual amounts by which the utility underspent its fossil fueled plant O&M expense, nuclear O&M expense, and forestry expenses and line clearing target amounts at the company's authorized rate of return on common equity. The company should also address in its response why it should not be fined by the Commission for failing to refund amounts that have been underspent in an apparent violation of the December 22, 2005 order in Case No. U-14347. Consumers' response shall be filed in this docket. Consumers shall serve copies of its response and copies of this order on all parties to Case Nos. U-14347, U-15245, and U-15645.

A prehearing conference in this matter has been scheduled for 9:00 a.m. on November 19, 2009 before Administrative Law Judge Barbara A. Stump. Petitions for leave to intervene in this matter shall be filed by November 12, 2009.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets Website at: [michigan.gov/mpscedockets](http://michigan.gov/mpscedockets). Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in

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<sup>2</sup>Consumers sold its Palisades Nuclear Plant to Entergy Nuclear Palisades, LLC, during 2007. See, Case No. U-14992. Moreover, issuance of the June 11 and 19, 2008 orders in Case No. U-15245 eliminated concern over the fossil fueled plant O&M tracker and raised the amount for the forestry and line clearing expenses.

Word or PDF format, as an attachment to an email sent to [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov). If you require assistance prior to e-filing, contact Commission staff at (517) 241-6170 or by e-mail at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov). Comments and other documents received in this matter will become public information, posted on the Commission's website, and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company has until 5:00 p.m. October 30, 2009 to file its response to this order to show cause as described in the order.

B. Consumers Energy Company shall serve a copy of its response and a copy of this order on all parties to Case Nos. U-14347, U-15245, and U-15645.

C. Petitions for leave to intervene in this matter shall be filed by November 12, 2009.

D. Consumers Energy Company shall attend the prehearing conference in this matter, which is scheduled for 9:00 a.m. on November 19, 2009 before Administrative Law Judge Barbara A. Stump.

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

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Steven A. Transeth, Commissioner

By its action of October 13, 2009.

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Mary Jo Kunkle, Executive Secretary