

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 recovery plan)	Case No. U-15415
and authorization of monthly power supply)	
cost recovery factors for the calendar year 2008.)	
_____)	

At the March 5, 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 DENYING REHEARING

On September 28, 2007, Consumers Energy Company (Consumers) filed an application with supporting testimony and exhibits requesting approval of its power supply cost recovery (PSCR) plan, five-year forecast, and monthly PSCR factors for calendar year 2008 pursuant to 1982 PA 304, MCL 460.6j (Act 304).

On November 11, 2008, the Commission issued an order in which it found, among other things, that urea cost could be recovered through Consumers' PSCR factor. The Commission determined that Act 304, which authorizes in the PSCR clause recovery of booked costs including "disposal and reprocessing costs" includes chemical additives such as urea, which limits the amount of nitrogen oxide emissions. The Commission observed that nitrogen oxide is a waste product of coal combustion that must be disposed of through the use of additives like urea, or that

must otherwise be addressed through the purchase of pollution allowances. The Commission concluded that allowing the recovery of urea expense as a disposal cost of the fuel burned by the utility was consistent with the language of MCL 460.6j(1)(a).

On December 15, 2008, the Attorney General filed a petition for rehearing in which he argued that the plain language of MCL 460.6j(1)(a) does not permit the inclusion of chemical additives like urea to the PSCR clause. The Attorney General asserted that while he does not contest that the cost of urea may be a reasonable and prudent expense, these costs are neither a booked cost of fuel burned nor a booked cost of purchased and net interchanged power transactions as provided under Act 304.

In response, Consumers argues that the Attorney General's petition does not provide the proper grounds for granting a petition for rehearing under 1999 AC, R 460.17403 (Rule 403). According to Consumers, none of the arguments in the Attorney General's petition point to an error, newly discovered evidence, or an unintended consequence resulting from the Commission's decision. Consumers adds that, "The Attorney General's criticism of the Order is generally based on the concept that the powers granted to the Commission derive solely from the statutes enabling Commission action. However, that principle is not in doubt in this case. Rather, the proper question is whether the term 'disposal costs . . . of fuel burned by the utility for electric generation,' . . . includes the costs relating to the disposal of nitrogen oxide (NOx), as the Commission has determined in the Order." Consumers' answer to the Attorney General's petition, p. 3.

The Commission Staff likewise argues that the Attorney General's petition should be denied on grounds that the Attorney General has had the opportunity to present, and has presented, his arguments regarding whether urea is considered a disposal cost of fuel burned.

Rule 403 of the Commission's Rules of Practice and Procedure 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. As the Commission has often stated, 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.

The Commission finds that the Attorney General's petition for rehearing should be denied because the basis of the petition is disagreement with the Commission's interpretation of the scope of "disposal costs" in MCL 460.6j(1)(a). The Attorney General's petition is simply a reiteration of the arguments made in his reply brief in this case. Attorney General's reply brief, pp. 1-2. These arguments were fully considered and rejected in the Commission's November 11, 2008 order. Therefore, the Commission finds that the Attorney General's petition for rehearing does not meet the standard set forth in Rule 403 and should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by the Attorney General 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

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of March 5, 2009.

Mary Jo Kunkle, Executive Secretary