

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)	Case No. U-15645
distribution of electricity and for other relief.)	
_____)	

At the April 22, 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

On October 6, 2008, Governor Jennifer M. Granholm signed Public Act 286 of 2008 (the Act), amending Public Act 3 of 1939; MCL 460.6 *et seq.* Section 6a(1) of the Act sets out certain requirements and procedures for electric utility rate cases. Section 6a(1) provides that:

If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. . . . For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges.

Section 6a(1) further provides that such implementation may not take place prior to the commencement of the projected test year (if a projected test year has been used in developing the requested rates and charges), and that, if the implemented rate exceeds the rate authorized in the final order, the excess shall be refunded to customers with interest. MCL 460.6a(1).

On November 14, 2008, Consumers Energy Company (Consumers) filed an application requesting a \$215 million rate increase, and other relief. The application relies on a 2009 projected test year. A prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ) on December 18, 2008. Several petitions to intervene were granted, including the petition filed by the Association of Businesses Advocating Tariff Equity (ABATE). The schedule for the proceeding provides for the filing of testimony by the Commission Staff (Staff) and intervenors by April 27, 2009, and rebuttal testimony by May 18, 2009, with cross-examination taking place during mid-June, briefing in July, and issuance of a Proposal for Decision in September. The Commission must issue a final order by November 14, 2009. MCL 460.6a(2).

On April 9, 2009, ABATE filed a motion for a temporary order to prevent or delay the implementation of new rates by Consumers on May 14, 2009 – the date that is 180 days from the date of Consumers’ rate case filing. The motion was not accompanied by a hearing date. Under the Commission’s Rules of Practice and Procedure, 1999 AC, R 460.17335(3), the deadline for responses to motions is calculated according to the hearing date. In the absence of a hearing date, on April 15, 2009, the Commission sent a letter to all parties informing them that responses to ABATE’s motion will be due May 1, 2009.

This proceeding is the first rate case to make its way through the Commission following the effective date of the Act. The Act resulted in the setting of new – and exceedingly short – timeframes for concluding rate cases. Despite the aggressive schedule set in this proceeding, as it currently stands, there will be no record evidence available to the Commission on which to base a decision on a temporary order by May 14, 2009. In particular, the Commission finds that a decision on whether there is good cause to prevent or delay the implementation of new rates should not be made in the absence of additional information regarding what the new rates will be.

Prior to the enactment of Act 286, existing rates were conclusively deemed to be just and reasonable, and any unapproved rate increase implemented *ex parte* was conclusively unreasonable and unlawful. *Northern Michigan Water Co v Public Service Comm*, 381 Mich 340, 352-353; 161 NW2d 584 (1968). Act 286 has radically revised the regulatory paradigm.

Although the Commission still has an obligation to “hear and pass upon” all matters relating to electric utility regulation under MCL 460.6, the Act appears to have grafted a modified “file and use” approach for proposed rates absent “good cause” for the Commission to either prevent or delay the use of filed rates by the utility.

In addition to these concerns, the Commission is mindful of its duty to achieve rate realignment within a specified period, and of the potential conflict between this mandate and the Legislature’s grant of authorization to the utility to implement a rate increase through equal percentage increases to base rates across all classes. MCL 460.6a(1); MCL 460.11(1).

In order to address these concerns and ABATE’s motion, the Commission directs Consumers to file, by April 29, 2009, tariffs that Consumers proposes to implement anytime after May 14, 2009, and prior to November 14, 2009. This filing date will provide Consumers with an (albeit short) opportunity to review the Staff’s and the intervenors’ testimony prior to the tariff filing. All parties will be able to respond to the proposed tariffs, if they so choose, in their May 1 responses. In addition, the Commission finds that the ALJ should conduct a hearing on ABATE’s motion at 9:00 a.m. on May 5, 2009. The hearing must, of necessity, be extremely abbreviated. At the hearing, Consumers is directed to provide one witness to support the justness and reasonableness of the proposed tariffs. Other parties may be prepared to present one witness, if they so choose. The time allotted to each party will be set by the ALJ at the hearing.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company shall file, by April 29, 2009, tariffs that it proposes to implement anytime after May 14, 2009, and prior to November 14, 2009.

B. Parties shall respond to the April 9, 2009 motion for a temporary order by May 1, 2009.

C. A hearing will be held on the April 9, 2009 motion for a temporary order at 9:00 a.m. on May 5, 2009. At the hearing, Consumers Energy Company will provide a witness to support the justness and reasonableness of the proposed tariffs.

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

By its action of April 22, 2009.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner