

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

At the May 12, 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 November 14, 2008, Consumers Energy Company (Consumers) filed an application requesting a \$215 million rate increase, and other relief. A prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ) on December 18, 2008. Intervention was granted to a number of parties, including Philip Forner.

On February 18, 2009, Mr. Forner filed a third discovery request upon Consumers. In this request, Mr. Forner sought the names and addresses of all of the electric utility customers enrolled in Consumers' appliance service plan (ASP) program during 2007 and 2008, indicating his willingness to enter into a nondisclosure agreement if necessary. On March 2, 2009, Consumers filed its response, objecting to the request as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and outside the scope of this proceeding. Following a further

e-mail request for the information, Mr. Forner filed a motion¹ to compel discovery, arguing that the names and addresses are necessary in order to verify the accuracy of the total count of ASP customers that had been provided to Mr. Forner in response to earlier discovery requests.

3 Tr 55-56.

On March 28, 2009, Consumers filed its response to the motion to compel.

On March 31, 2009, at the conclusion of the hearing on the motion, the ALJ denied the motion, finding that the names and addresses of all ASP customers were not relevant or likely to lead to the discovery of admissible evidence. The ALJ reasoned that a list of names would not allow Mr. Forner to verify whether any names had been excluded. She indicated that requesting the source of the total number would be a logical way to verify the information. She further indicated that she was unaware of any rate cases where customer names were required in order to set rates. Finally, she noted that even if she agreed that the names are relevant, MCR 2.302(c) provides her with the authority to protect customers from “the potential unwanted invasion of their privacy.” 3 Tr 69.

On April 14, 2009, Mr. Forner filed an application for leave to appeal the ALJ’s ruling. Mr. Forner asserts that a ruling on the application will materially advance a timely resolution of the proceeding and will prevent substantial harm to himself and to Consumers’ electric utility ratepayers. *See*, 1999 AC, R 460.17337 (Rule 337).

Mr. Forner argues that a general rate case must be based upon the utility’s total cost of providing service, and that total cost must include the allocation of electric utility costs directly attributable to the ASP. *See*, MCL 460.6a(2)(b), 460.10a(7), and 460.10a(8). Mr. Forner asserts that Consumers uses assets, facilities, personnel, and services paid for by electric utility ratepayers

¹This was Mr. Forner’s second motion to compel in this proceeding. The first motion was settled. 2 Tr 47-50.

(such as an 800- number, payment processing, and postage) to administer the ASP, although the program is operated by the gas utility portion of Consumers, and the gas utility receives all the related revenues. Mr. Forner asserts that Consumers' application includes a \$235,000 reduction in operations and maintenance (O&M) expenses for allocation of costs to the ASP. Mr. Forner asserts that billing and other services provided by the electric utility constitute a subsidy that must be properly accounted for in order to reduce electric utility rates.

On April 28, 2009, the Staff filed a response to the application. The Staff argues that names and addresses are not relevant to this rate case. The Staff describes the history of the code of conduct and the ASP program, pointing out that costs and revenues associated with the ASP are included in the calculation of the company's gas rates only. The Staff further notes that all of Mr. Forner's issues regarding the billing subsidy and postage costs were addressed in the Commission's February 9, 2006 order in Case No. U-14329, and affirmed by the Court of Appeals in *Forner v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2008 (Docket No. 270941). *See, also*, June 10, 2008 order in Case No. U-15245, pp. 34-36.

On May 1, 2009, Consumers filed a response in opposition to Mr. Forner's application.

Rule 337 establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review. An appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

The Commission finds that the application for leave to appeal should be granted because a decision on this motion to compel will materially advance a timely resolution of this matter and provide guidance to the parties regarding discovery.

The Commission adopts the ALJ's well-reasoned ruling. Mr. Forner has failed to demonstrate that the list of names and addresses is relevant; it will neither serve the purpose that Mr. Forner claims that it will serve, nor is it reasonably calculated to lead to the discovery of admissible evidence in this rate proceeding.

THEREFORE, IT IS ORDERED that the application for leave to appeal is granted and the relief requested is denied.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of May 12, 2009.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner

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Case No. U-15645

Suggested Minute:

Case No. U-15645 involves an application for leave to appeal the denial of a motion to compel. The order before you grants the application and denies the requested relief.