

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of **CONSUMERS** )  
**ENERGY COMPANY** for authority to increase its )  
rates for the generation and distribution of )  
electricity and for other relief. )  
\_\_\_\_\_ )

Case No. U-15645

At the August 11, 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), MCL 460.6a(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 11(1) of the Act, MCL 460.11(1), provides:

This subsection applies beginning January 1, 2009. Except as otherwise provided in this subsection, the commission shall phase in electric rates equal to the cost of providing service to each customer class over a period of 5 years from the effective date of the amendatory act that added this section.

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. The Commission Staff (Staff) participated. Intervention was granted to, among others, the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM), and the Michigan Cable Television Association (MCTA).

On May 12, 2009, the Commission issued an order addressing the statutory authorization of a self-implemented rate increase by Consumers, as provided for in Section 6a(1). In the May 12 order, the Commission found that the two sections of the Act quoted above are in conflict. Section 6a(1) provides for utility self-implementation of an across-the-board rate increase under certain circumstances, while Section 11(1) directs the Commission to realign rates so that commercial and industrial rates are no longer subsidizing residential rates, and rates become based on the actual cost to provide service. The Commission found that self-implementation, if allowed to reflect an across-the-board increase across all rate classes, could result in a percentage rate increase for some rate classes that is greater than what Consumers proposes for its final rate structure, including rate classes that have been identified as having rates in excess of the cost of providing service. Although the Act provides for a refund of amounts charged that are greater than what is approved in the final order, the Commission found that the rate refund mechanism may not necessarily result in a refund that equals the amount of any overcharge for these identified rate classes. This result would be in direct conflict with the Commission's statutory mandate under Section 11(1) to realign rates.

To reconcile these sections of the Act, the Commission found that, if Consumers chose to self-implement a rate increase, it must implement the increase by applying a rate design derived in

accordance with the rate design included in its November 14, 2008 application. The Commission noted that the final rate design would be addressed in the final order.

On June 11, 2009, MCTA filed a petition for rehearing. On July 2, 2009, MEC/PIRGIM and the Staff filed responses, and on July 3, 2009, Consumers filed a response.

MCTA seeks rehearing under 1999 AC, R 460.17403 (Rule 403) of the May 12 order on grounds that the Commission must correct the self-implemented rate increase for the unmetered service rate, Rate GU. MCTA argues that, since the only rates authorized for self-implementation in the May 12 order are based on Consumers' filed application, and this rate has subsequently been discovered to have been calculated incorrectly in the cost of service study accompanying that application, the rate must be changed for the interim self-implementation period. MCTA contends that Consumers has freely admitted the mistake in discovery responses. MCTA argues that, absent rehearing, Rate GU customers will experience a 16.6% interim increase in their electric rates based on faulty data. MCTA contends that the surcharge for Rate GU is 133% greater than what the amount would have been if the Commission had authorized a self-implemented rate increase of 7.1% that would have been applied across-the-board to all rate classes.

MCTA argues that, since the May 12 order, new evidence has come to light showing that Consumers used flawed load profile data in its application. MCTA maintains that this renders the May 12 order, in this respect, unjust and unreasonable, and rehearing should be granted and the Rate GU should be corrected to reflect only the 7.1% increase that would have resulted from an across-the-board rate increase. MCTA attaches to its petition copies of the April 2009 discovery responses in which Consumers admits an error in the load profile used for Rate GU.

In response, Consumers states that “there indeed was an error in calculation of the Cost of Service Study for Rate UR and Rate GU in [the] initial filing. However, MCTA is simply incorrect that the error had any impact whatsoever on the interim rates.” Consumers’ answer to the petition for rehearing, p. 1. Consumers states that the cost of service information submitted with its application shows a revenue deficiency associated with Rate GU that is overstated by \$512,000. Consumers further states that “for rate design purposes the production costs were reduced by \$1,040,000 in order to mitigate a 40-percent increase for this customer group,” rendering, according to Consumers’ argument, the Rate GU error more than offset by the reduction in production costs. Consumers contends that for Rate GU design purposes, the company did not rely on the cost of service study, and the error was “not translated into the rate increase.” Consumers’ answer to the petition for rehearing, p. 2.

The Staff urges the Commission to deny the petition for rehearing, because MCTA’s concern with rate design issues is no different than the “myriad of concerns” that all the parties have with the filing. The Staff argues that such issues should be addressed in the final order, where refunds for any overcharges, with interest, can be authorized.

MEC/PIRGIM also urges the Commission to deny the petition for rehearing because MCTA simply seeks preferential treatment relative to the interim rate increase. MEC/PIRGIM argues that, if MCTA is entitled to interim rate relief, then all rate classes that received a rate increase greater than the 7.1% across-the-board proposal are also entitled to relief. MEC/PIRGIM points out that all rate classes can seek refunds in the final order.

The Commission agrees with the Staff and finds that rate design issues are appropriately addressed in the final order. MCTA has not presented an error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance

with the order. While Consumers admitted in April to an error regarding Rate GU that exists in the cost of service study, Consumers also indicated in its April discovery responses that it did not rely on the results of the cost of service study in designing the rate for this customer class that is reflected in the November 14 application. It was the rate design proposed in the November 14 application (and not the cost of service study) that was relied upon by the Staff in designing a rate schedule that could be used by the company for a self-implemented rate increase. Thus, the “error” that MCTA cites was not relied upon by the Commission in the May 12 order, nor is it newly discovered, did not arise after the hearing, and has not resulted in unintended consequences. Thus, the petition for rehearing does not meet the standards of Rule 403 and is denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by the Michigan Cable Telecommunications Association 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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

---

Orjiakor N. Isiogu, Chairman

---

Monica Martinez, Commissioner

---

Steven A. Transeth, Commissioner

By its action of August 11, 2009.

---

Mary Jo Kunkle, Executive Secretary