

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

At the January 25, 2010 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On November 14, 2008, Consumers Energy Company (Consumers) filed an application requesting a \$215 million rate increase above the retail electric base rates established in the June 10 and 19, 2008 orders in Case No. U-15245.

On December 18, 2008, a prehearing conference was conducted by Administrative Law Judge Sharon L. Feldman (ALJ) at which she granted, *inter alia*, the petitions to intervene submitted by Attorney General Michael A. Cox (Attorney General); the Association of Businesses Advocating Tariff Equity (ABATE); the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM); Energy Michigan; and Phillip Forner. The Commission Staff (Staff) also participated in the proceedings.

On November 2, 2009, the Commission issued an order (November 2 order) finding that Consumers is experiencing an annual jurisdictional revenue deficiency in the amount of

\$139,411,000. However, due to Consumers' self-implementation of a rate increase on May 14, 2009, the Commission further found that Consumers' current rates for the sale and distribution of electric power are too high and directed the company to reduce rates by \$39,589,000 on an annual basis.

On November 5, 2009, Consumers filed proposed rates and tariff sheets, but failed to provide the related workpapers. On November 6, 2009, Consumers filed amended proposed rates and tariff sheets accompanied by the required workpapers. On November 12, 2009, the Commission issued an order approving the amended rates and tariff sheets.

On November 30, 2009, the Attorney General filed a petition for rehearing pursuant to 1999 AC, R 460.17403 (Rule 403). On December 2, 2009, Consumers, Energy Michigan, MEC/PIRGIM, and Mr. Forner filed petitions for rehearing, and ABATE filed a petition for rehearing, clarification, and stay.

On December 21, 2009, Consumers and the Staff filed responses to the Attorney General's petition for rehearing. On December 22, 2009, the Attorney General filed a response to Consumers' petition. On December 23, 2009, ABATE filed a response to Consumers' petition; the Staff filed responses to ABATE, Consumers, Energy Michigan, and Mr. Forner; Consumers filed responses to ABATE, Energy Michigan, Mr. Forner, and MEC/PIRGIM; and Energy Michigan filed responses to Consumers and ABATE.

This order will address each of the six petitions.

Consumers' Petition for Rehearing

Consumers seeks rehearing on three issues: decoupling, forestry expense, and Rate E-1. Beginning with decoupling, Consumers seeks clarification that the revenue decoupling mechanism (RDM) is a pilot program and that its continuation beyond the initial year is subject to review.

Consumers avers that clarification of this issue will allow the company to follow accounting practices that will “more accurately” reflect the true financial impact of the mechanism on Consumers, because the company will know that its revenues will be subject to modification. Consumers also requests a change to the effective date of decoupling from December 1, 2009, to May 14, 2009, in order to correspond to the date of implementation of rates in this case. May 14, 2009, is the date on which Consumers chose to begin self-implementation of higher rates, which were subsequently found by the Commission to be excessive and subject to refund. Consumers argues that May 14, 2009 is the true effective date of final rates in this case, and that the RDM should be coincident with that date. Consumers contends that this would allow for recognition of the company’s substantial efforts in 2009 toward implementation of its energy optimization plan (EOP).

In response, Energy Michigan states that the order is clear that the decoupling program is a pilot program that the Commission intends to evaluate. Energy Michigan objects to Consumers’ request to make the RDM retroactive to May 14, 2009, noting that Consumers’ proposal would result in basing rates on 2009 actual sales, thus essentially changing the test year. Energy Michigan points out that Consumers is in a position to know whether its actual 2009 sales data is more advantageous than the projected 2009 data. Energy Michigan urges the Commission to reject this request.

The Attorney General also urges the Commission to reject the retroactive application of the RDM, arguing that the company seeks the change in order to recover millions of dollars in lost electric sales resulting from the colder than normal summer of 2009, which has nothing to do with energy conservation. The Attorney General also points out that Consumers knows but does not reveal how much the request for retroactive application will cost customers. The Attorney General

contends that the request should be rejected because its full impact is not revealed by the petitioner.

ABATE also argues that adoption of the May 14 effective date would constitute illegal retroactive ratemaking. ABATE points out that Consumers' request is not supported by any evidence in the record.

The Commission finds that Consumers' petition for rehearing on these two decoupling issues meets the requirements of Rule 403 and the petition is granted. While the November 2 order appears to be clear that the decoupling mechanism is a pilot program, and that the Commission intends to review several aspects of the program after the first year of real world experience, the Commission hereby clarifies that order to explain that, concomitant with the initial reconciliation, the Commission intends to approve operation of the decoupling mechanism for the initial year, with continuation being subject to review as described in the order. November 2 order, p. 54.

With regard to Consumers' second argument, the Commission finds that final rates became effective on November 13, 2009, not May 14, 2009. November 12, order, p. 3. Self-implemented rates are, by definition, not final rates set by the Commission, but rather rates set and implemented by the utility. The Commission finds that backdating the effective date of the mechanism would violate the prohibition against retroactive ratemaking.

With respect to forestry expense, Consumers objects to the Commission's decision to adopt \$30.3 million as the base level of expense. Consumers again argues that the rates implemented by the November 2 order are effective as of May 14, 2009, and that, at that time, the company was subject to the requirements of the previous rate case order (Case No. U-15245) in which the Commission adopted \$41.5 million as the base level of forestry expense. The company contends that from May 14 to November 13 it was obligated to spend at the \$41.5 million annual amount,

but that it is now allowed to recover only at the \$30.3 million annual amount. Consumers argues that this is an unjust and unintended consequence of the November 2 order. Consumers maintains that this mismatch should be corrected by either revising the November 2 order to adopt \$41.5 million as the base level, or directing that the refund for that time period be calculated on an annualized \$150,644,000 rate increase (simply increasing the rate increase to reflect the difference in the two forestry base levels).

In response, the Staff argues that Consumers' petition does not meet the requirements of Rule 403, but simply argues that the amount adopted is insufficient and reargues in favor of the amount the company requested.

The Commission agrees with the Staff. Consumers simply disagrees with the Commission's choice. Noting that Consumers filed a new rate case on January 22, 2010, the Commission again reminds Consumers that each new rate case filing now puts all rates into play, as a result of the Legislature's decision to authorize the utility to self-implement new rates 180 days from that filing. The petition for rehearing on the issue of forestry expense is denied.

With respect to Rate E-1, Consumers objects to the Commission's decision to leave power supply cost recovery (PSCR) costs for Rate E-1 customers out of the PSCR reconciliation process. Consumers points out that actual experience typically varies from the assumptions that underlie a ratemaking calculation, and argues that MCL 460.6j(14) and 6j(15) require the Commission to reconcile all PSCR costs, including those associated with the economic development rate, rather than relying on estimates.

The Staff again points out that the company is attempting to relitigate this issue.

This argument was offered by Consumers in the rate case proceeding. Consumers' petition for rehearing adds nothing new to the arguments on this issue considered and rejected by the Commis-

sion in the November 2 order, pp. 83-84. Consumers' petition for rehearing on the issue of Rate E-1 is denied.

Energy Michigan's Petition for Rehearing

Energy Michigan argues that the tariffs filed by Consumers on November 6 and adopted by the Commission on November 12, 2009, reflect incorrect distribution charges for retail open access (ROA) general educational institution (GEI) customers on rates GS, GSD, GP, and GPD. Energy Michigan contends that the proposed education credits should not have been accepted as filed.

Energy Michigan complains that the education discounts established in Case No. U-15245 more than doubled in the present case for rates GS, GSD, GP, and GPD. Energy Michigan states that the distribution per kilowatt-hour (kWh) charge net of the education credit is higher for an ROA education customer than it is for a bundled education customer on the same rate, and argues that this result necessitates rehearing and rejection of the filed tariffs. Energy Michigan states that since per kilowatt (kW) maximum demand rates are the same for ROA and bundled service, ROA educational institution customers will pay more for delivery service than bundled customers. Energy Michigan contends that there should be no difference in the two rates.

Energy Michigan argues that it is a mistake for rates GP and GPD, and for rates GS and GSD, to have the same education credits for both power supply and delivery. Energy Michigan posits that since these rates have different cost allocations, they should have different education credits. Energy Michigan further argues that distribution charges for GEI service for these rates are lower than for corresponding non-GEI rates. Energy Michigan contends that this result is inconsistent with the Staff's cost of service study (COSS).

Finally, Energy Michigan objects to the fact that rates GS, GSD, GP, and GPD for bundled customers have summer and winter power supply prices, but the education credit remains the same throughout the year. Energy Michigan asserts that education customers, under the new tariffs, pay about 15% of winter fixed production costs, but 46% of summer fixed costs. Energy Michigan requests that the GEI discounts be revised to provide separate summer and winter production costs.

In response, Consumers asserts that Energy Michigan's petition fails to state a basis for rehearing, because it does not rely on newly discovered evidence, facts or circumstances arising subsequent to the close of the record, or unintended consequences of the order. Consumers points out that in the November 12 order the Commission found that the GEI credits as listed in the tariff filing of November 6 were consistent with the November 2 order. Consumers "acknowledges that there may be many different ways to calculate the GEI credits, but parties cannot make new proposals at any time." Consumers' response to Energy Michigan's petition for rehearing, p. 3. Consumers argues that the appropriate time to make a proposal about cost allocation and tariffs was in the prefiled testimony, not at the rehearing stage.

Consumers maintains that Energy Michigan had the opportunity to review the COSS filed by the Staff and the company throughout the hearing stage of this proceeding. Consumers points out that the issue of whether credits should be calculated on a class basis rather than separated by rate schedule could have been raised in the case but was not. Consumers argues the same point with respect to the question of whether rates should reflect separate summer and winter charges.

The Staff, likewise, responds that Energy Michigan had every opportunity to bring up these issues in the hearing phase of the case, and the petition does not meet the requirements of Rule 403. The Staff asserts that the Commission was correct in finding that the company's

redesigned rates and tariffs are consistent with the findings of the November 2 order. The Staff argues that, though all the information that Energy Michigan relies on was available, Energy Michigan never raised these concerns or addressed the proposed distribution charges during the proceeding. The Staff notes that Energy Michigan never afforded itself of the opportunity to cross examine Staff or company witnesses on these issues.

The Commission agrees with the Staff and Consumers and finds that Energy Michigan's petition does not meet the requirements of Rule 403. Energy Michigan's concerns regarding cost allocation issues related to the education credits should have been raised during the proceeding. The COSS was available to Energy Michigan, as it was to every party. New proposals about cost allocation and rates are not appropriate at the rehearing stage. Energy Michigan never raised questions regarding whether the Staff's COSS properly allocated costs among the education rate classes, whether the credits should be given by rate class or rate schedule, or whether the credits should be seasonal. The COSS used to develop the filed rates was the COSS adopted by the Commission in its order. Energy Michigan does not dispute this point. The petition for rehearing is denied.

The Attorney General's Petition for Rehearing and ABATE's Petition for Rehearing, Clarification, and Stay

ABATE and the Attorney General argue that the Commission's interpretation of MCL 460.6a(1) is erroneous and may have significant unintended consequences in future rate proceedings. According to ABATE, the Commission incorrectly found that the language of the statute mandates the use of a projected test year. ABATE claims that the plain language of the statute gives the utility discretion to file its case on the basis of projected costs and revenues, but the statute does not require the Commission to use those projections. Likewise, the Attorney General argues that there is nothing in the Act 286 amendments that requires other parties to rely

on the utility's test year projections, and that by making this a requirement, the Commission unlawfully adds new language to the statute. The Attorney General also points out that the Commission's conclusion (i.e., that historical data will only be used where there is a clear demonstration that this information is a more reasonable reflection of the utility's costs of service than the company's projection) impermissibly shifts the burdens of proof and persuasion from the utility to the other parties in the case. ABATE and the Attorney General recommend that on rehearing, the Commission should adopt the findings of the Proposal for Decision (PFD).

In response, the Staff urges the Commission to clarify the meaning of the November 2 order to confirm that Act 286 did not abrogate the Commission's discretion to consider and evaluate all methods for projecting costs and revenues nor its mandate to set just and reasonable rates. The Staff further requests that the Commission:

[R]ecognize that the Staff did not rely on historical data as the determinant of just and reasonable rates. As noted previously, Staff respectfully requests that the Commission acknowledge that its Staff made a thorough review of the utility's case, including the costs that [it] estimated based on historical experience and those that it included because it would like to have additional rate revenues in the future beyond the levels that it has spent in the past. Saying that Staff relied only on historical data as its determinant of just and reasonable rates misstates Staff's case, and Staff asks that the Commission clarify that this aspect of its Opinion and Order misstates Staff's presentation.

Staff's answer to Attorney General's petition for rehearing, p. 5 (emphasis in original).

In its response, Consumers argues that the Commission's determination was fully consistent with the language in Act 286. Consumers asserts that the November 2 order merely expressed the Commission's decision that the parties and the Commission must give due consideration to the utility's projections and that to do otherwise would render the language in Section 6a(1) of Act 286 meaningless.

The Commission agrees that the amended Section 6a(1) explicitly provides that the utility may rely on projected costs and revenues in its rate application. The Commission also finds that utility projections may be afforded some deference, provided the projections are supported by credible evidence. However, nothing in MCL 460.6a(1) constrains the Commission to using a utility's cost and revenue projections, particularly if the utility's case is unsupported and amounts to a substantial deviation from historical data. As the Commission discussed in the January 11, 2010 order in Case No. U-15768 *et al.*, pp. 9-10 (January 11 order):

[T]he Staff and intervenors should direct their focus “upon the strengths and weaknesses of the evidentiary presentations of the parties regarding specific expense and revenue projections.” . . . In a case where a utility decides to base its filing on a fully projected test year, the utility bears the burden to substantiate its projections. Given the time constraints under Act 286, all evidence (or sources of evidence) in support of the company's projections should be included in the company's initial filing. If the Staff or intervenors find insufficient support for some of the utility's projections they may endeavor to validate the company's projection through discovery and audit requests. If the utility cannot or will not provide sufficient support for a particular revenue or expense item (particularly for an item that substantially deviates from the historical data) the Staff, intervenors, or the Commission may choose an alternative method for the projection.

The Commission notes that the Staff clearly undertook a complete review of the company's evidence and relied on updated historical information only when it felt that the company's projections were not sufficiently supported. Likewise, the ALJ extensively reviewed and carefully weighed the evidence by all parties in the case in establishing her recommendation for just and reasonable rates.

In addition to their objections regarding the test year, the Attorney General and ABATE repeat the arguments that they made throughout the proceeding regarding the Commission's alleged lack of authority to institute a decoupling program. The Attorney General further repeats his argument that, “in the alternative, decoupling should be tied to sales reductions caused by EO programs.”

Attorney General's petition for rehearing, p. 14. In response, the Staff points out that the Attorney General and ABATE are simply rearguing their positions and are not entitled to rehearing.

The Staff is correct. These arguments were addressed by the Commission in the November 2 order, and the Attorney General and ABATE have simply used these petitions for rehearing to express disagreement with the Commission's decision to adopt a pilot decoupling program.

In a related exception, ABATE argues that there should be a downward adjustment to Consumers' authorized return on equity (ROE) to reflect the company's reduced business risk as a result of the decoupling mechanism and other trackers. The Commission disagrees at this time.

As the Commission discussed in the January 11 order, p. 21:

The adoption of trackers for uncollectibles, storm expense, and revenue decoupling in particular, may have an effect on the risk profile of the company, such that a reduction in ROE may be justified as more risk is shifted from the company to its ratepayers. However, the degree to which the company's risk is altered by the implementation of an RDM and other trackers is dependent on the design of those mechanisms. At this point, the revenue decoupling programs for both gas and electric are pilot programs and any changes to a utility's risk profile cannot be assessed without information on the actual performance of the specific RDM, coupled with the other trackers. The Commission therefore encourages the Staff and other intervenors to submit, in the company's next rate case, analyses, regarding whether Detroit Edison's ROE should or should not be adjusted on the basis of the company's experience with the RDM and other trackers.

The Commission clarifies that it encourages the Staff and other parties to provide similar analyses on whether Consumers' ROE should be adjusted in the future on the basis of the company's experience with the various trackers approved in the November 2 order.

ABATE also requests rehearing on the Commission's decision to allocate the remaining balance of the Palisades Nuclear Plant (Palisades) proceeds to all rate classes, without making allowance for the \$36.04 million previously refunded to residential customers only. ABATE argues that this determination contradicts prior Commission orders and Section 85 of the Administrative Procedures Act. ABATE contends that when the Commission identified the

Palisades funds for refund, it created a property right “that was illegally interfered with by the Commission when it allocated funds that would, under previous Commission orders, be refunded to commercial and industrial customers.” ABATE’s petition for rehearing, p. 11. Further, ABATE argues that any refunds should be stayed pending judicial review of the Commission’s decision.

In response, the Staff urges the Commission to grant ABATE’s petition to further clarify the Commission’s rationale for not making an allowance for the refund to residential customers provided for in the May 12, 2009 order in this docket (May 12 order).

In its response, Consumers explains that in the May 12 order, the Commission directed the company to design self-implemented surcharges in a manner consistent with the company’s proposed rate design, rather than as an equal-percentage increase. As a result, self-implementation surcharges significantly increased rates for residential customers while the increases for commercial and industrial customers were much more modest, or even negative in the case of some large primary customers. To mitigate the substantial rate shock to residential customers, the Commission ordered a \$36.04 million refund of the Palisades funds to residential customers only.

Consumers adds that ABATE fails to acknowledge that the Commission ordered the company to file a final reconciliation of the Palisades refund at the same time that it files its reconciliation of its self-implemented rate increase, thereby providing the Commission with the opportunity to perform a combined review of the self-implemented rates with the Palisades refund. Consumers recommends that the Commission defer its decision on ABATE’s claim until those reconciliation proceedings.

The Commission finds that Consumers’ explanation captures the Commission’s rationale for providing an offset to residential ratepayers at the time that self-implemented rates went into

effect. As the Commission observed in the May 12 order, the effect of rate shock on residential customers was of great concern to the Commission, especially in light of the fact that most commercial and industrial customers were facing much more modest increases, and, as Consumers points out, some industrial primary customers were seeing a rate decrease.

ABATE posits that by identifying and ordering a refund of Palisades proceeds in previous cases the Commission somehow vested ABATE with a property right entitling its members to a “fair share” of the proceeds. The Commission disagrees and notes that ABATE presented this argument without legal support.

The Commission observes that in *Attorney General v Public Service Comm*, 249 Mich App 424; 642 NW2d 691 (2002), *lv den* 467 Mich 930 (2002), the Court of Appeals held that no vested rights were impaired when the Commission dismissed a power supply cost recovery reconciliation case in which The Detroit Edison Company (Detroit Edison) identified an overcollection of \$13 million for refund to ratepayers. Likewise the Court found that no contract rights had been impaired when the Commission dismissed a request to refund \$18.9 million in Fermi 2 capacity performance standard amounts as provided in a settlement agreement approved in 1988. *See*, Case No. U-8789. The Court specifically held:

We agree with appellees that no contract rights are implicated in this case. Although Edison and certain customers, including ABATE, had entered into a 1988 stipulation and settlement agreement in MPSC Case No. U-8789 that provided for a 1999 refund of \$18.9 million in Fermi 2 capacity performance standard amounts, the settlement agreement did not establish traditional contract rights in the refund. Because the MPSC has primary jurisdiction to regulate all public utilities and their rates and conditions of service, see M.C.L. § 460.6, the settlement agreement was without effect unless approved by the MPSC, which it did in an “Order Approving Settlement Agreement,” entered on December 27, 1988. However, the final paragraph of that order provided as follows:

The Commission specifically reserves jurisdiction of the matters herein contained and the authority to issue such further order or orders as the facts and circumstances may require.

Thus, to the extent that any “rights” to refundable amounts were created in MPSC Case No. U-8789, such rights are dependent, not on vested contract rights, but on the provisions of the MPSC’s approval order. However, given that the MPSC reserved jurisdiction to issue further orders in the case as necessary, any claim to a vested interest in the refund amounts was vitiated.

249 Mich App at 434-435.

ABATE points to the Commission’s March 27, 2007 order in Case No. U-14992 and the Commission’s June 10, 2008 order in Case No. U-15245 where the Commission identified and approved proceeds from the Palisades sale for refund to customers. In the March 27, 2007 order, ordering paragraph Q, the Commission directed:

Consumers Energy Company shall use 2006 calendar year actual sales data to determine the appropriate equal mills per kilowatt-hour negative surcharge factor to apply to customers’ bills for the remaining months of 2007 and all of 2008 as set forth in the order. Within two weeks of closing, Consumers Energy Company shall file a report in this docket describing the amount of the proceeds and the calculation of the equal mills per kilowatt-hour negative surcharge factor. Any interested person shall file comments regarding the accuracy of the calculation within seven days of Consumers Energy Company’s filing. Absent further order of the Commission, Consumers Energy Company shall implement the negative surcharge in accordance with the methodology approved by this order at the beginning of the first billing cycle that is more than 30 days following the filing of the report regarding the calculation of the equal mills per kilowatt-hour negative surcharge factor.

* * *

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

March 27, 2007 order in Case No. U-14992, pp. 101-102; 103.

Similarly, in the June 10, 2008 order in Case No. U-15245, ordering paragraph E, the Commission directed:

Consumers Energy Company shall file a final Palisades Nuclear Power Plant reconciliation within 30 days of the date of issuance of this order. The reconciliation shall address final amounts of transaction costs, identify all decommissioning and other funds relating to Palisades, compute interest on amounts subject to refund, and set forth a computation of a negative surcharge to spread the refund over nine months.

June 10, 2008 order in Case No. U-15245, p. 108.

Again, the Commission retained jurisdiction and the discretion to “issue further orders as necessary.” As the Court held in *Attorney General, supra*, “to the extent that any ‘rights’ to refundable amounts were created . . . such rights are dependent, not on vested contract rights, but on the provisions of the MPSC’s approval order. However, given that the MPSC reserved jurisdiction to issue further orders in the case as necessary, any claim to a vested interest in the refund amounts was vitiated.” In light of the foregoing, the Commission finds that ABATE’s argument is unavailing and the Commission rejects ABATE’s request for rehearing on the issue of the allocation of the remaining Palisades refunds.

Finally, ABATE claims that the Commission erred in approving funding for the Low Income and Energy Efficiency Fund (LIEEF) as part of Consumers’ cost of service. ABATE argues that the Act 286 amendments left the Commission without authority to continue funding the LIEEF.

The Commission observes that there were exhibits and some testimony in the record reflecting the inclusion of the LIEEF in Consumers’ case, and ABATE made no objection to the LIEEF expense on the record, in its briefing, or in its exceptions to the PFD. ABATE first raises this concern in a petition for rehearing.

The Commission finds that ABATE’s legal analysis on this issue is flawed. As the Commission discussed in the January 11 order, pp. 51-53:

The Attorney General and ABATE correctly point out that Section 10d(6) was not included in the Act 286 amendments. However, as the Court of Appeals pointed out:

MCL 460.10d(6) delineates a source for funding the LIEEF, but does not restrict funding of the LIEEF to excess securitization savings. We find it inconsistent for the Legislature to have mandated the creation of the LIEEF and yet, using appellants’ logic, to have restricted the funding source to securitization savings “if” they exceeded a specified level. MCL 460.10d(7). The LIEEF obviously could not be administered if there were no monies in it, and the PSC therefore had to take measures to secure funding in order to

fulfill its statutorily imposed duty to administer the LIEEF. *In re Consumers Energy*, 279 Mich App 180, 191; 756 NW2d 253 (2008).

Since the enactment of the Act 286 amendments, the Legislature has twice referenced the LIEEF in subsequent bills that were signed into law last year. 2009 PA 130, an appropriations bill that was signed by the Governor on October 29, 2009, contained a specific appropriation of \$90,000,000 for the “low income and energy efficiency fund.” As the Court noted in *In re Consumers Energy*, *supra*, through its annual appropriation, “the Legislature has indicated its intent for the continuation of the LIEEF . . . beyond the initial six-year period.”

Again, on December 14, 2009, the Governor signed into law 2009 PA 172 (Act 172). Act 172 was part of a package of bills that provide shut off protections for customers of municipal utilities. Section 9p(1) of Act 172 provides that in the event of a violation of the shutoff protections for customers of municipal utilities:

The attorney general, on his or her own motion or upon a referral from the commission in a case of serious injury or death, or any customer of a municipally owned electric or natural gas utility may commence a civil action for injunctive relief or imposition of a civil fine as provided in subsection (3) against that municipally owned electric or natural gas utility if the utility fails to meet the applicable requirements of this act.

Section 9p(3) provides for the award of costs, fees, and fines and specifically provides that, “A civil fine ordered under this section shall be deposited in the low income and energy efficiency fund.”

The primary goal of statutory interpretation is to ascertain and give effect to legislative intent. *Casco Twp. v Secretary of State*, 472 Mich. 566, 571; 701 NW2d 102 (2005). The Commission finds that, as Detroit Edison pointed out, the elimination of Section 10d(6) by the Act 286 amendments merely removed a portion of the statute that was no longer relevant to funding of the LIEEF. Nevertheless, the Legislature has evinced a clear intent to continue the LIEEF by continuing to appropriate funds for the program and by the passage of Act 172 that provides an additional source of funds for the LIEEF.

ABATE’s petition for rehearing on this issue is therefore granted and the relief requested is denied.

Mr. Forner’s Petition for Rehearing

In his petition for rehearing, Phillip Forner requests that the Commission reconsider its decision concerning the allocation of costs associated with the company’s appliance service

program (ASP). Mr. Forner asserts that the Commission failed to consider the amendments to 2008 PA 286 in making its determination regarding the allocation of costs of Consumers' ASP and that the Commission failed to provide him a full hearing on the issues.

In response, the Staff and Consumers assert that Mr. Forner's petition for rehearing does not meet the standard for rehearing set forth in Rule 403. Further, the Staff argues that Mr. Forner simply reiterates arguments that he made in this proceeding and in previous cases. Consumers adds that Mr. Forner provided no authority or argument regarding why the Commission's decision on this issue in this case, or in previous cases, was in error.

The Commission agrees with Consumers and the Staff that Mr. Forner's petition for rehearing does not meet the standard for rehearing under Rule 403. As the Commission has repeatedly observed, a petition for rehearing is not an opportunity to express disagreement with the Commission's decision on matters that were fully litigated. Mr. Forner's petition for rehearing is therefore denied.

MEC/PIRGIM's Petition for Rehearing

In its petition for rehearing, MEC/PIRGIM asserts that the Commission reached the correct result in finding that liability to the U.S. Department of Energy (DOE) for pre-1983 disposal of spent nuclear fuel should be removed from rate base. MEC/PIRGIM contends, however, that the Commission failed to deduct \$44,138,000 in DOE liability principal from net plant.

MEC/PIRGIM points out that the parties agreed that the principal and accumulated interest portions of pre-1983 DOE liability sum to approximately \$162 million and that the Commission agreed with the ALJ that both the principal and interest portions of DOE liability should be deducted from the company's rate base. The Commission adopted the company's rate base

projection, minus DOE liability interest, but failed to remove the \$44 million principal from the company's net plant amount.

MEC/PIRGIM also points out that the Commission found an amount of \$519,510 should be recognized as the interest cost assigned to the DOE liability but that the Commission did not make a corresponding correction to its cost of capital calculation. According to MEC/PIRGIM, because the DOE liability interest expense is accounted for as an expense, DOE liability should be assigned a cost rate of 0% in the company's capital structure. MEC/PIRGIM adds that if this correction entails too much complexity, the company should be instructed to correct the calculation in its next rate case.

In response, Consumers argues that the ratemaking adopted by the Commission in the November 2 order was intended to be temporary and that the company disagrees with some aspects of the Commission's decision on this issue. Consumers contends that given the complexity of the process of removing DOE liability from rate base and establishing an external trust, the Commission's intent was to begin the procedure in this case and complete it in the company's next rate proceeding.

The Commission finds that MEC/PIRGIM's petition for rehearing should be granted. In the November 2 order, the Commission adopted the company's revised projection for net plant but, in an oversight, failed to deduct the \$44 million DOE liability from Consumers' rate base. As a result, Consumers is collecting approximately \$4 million in additional revenue to which it is not entitled. The Commission therefore finds that Consumers shall correct its rate base calculation as follows:

Jurisdictional Rate Base Summary

Net Plant	\$5,907,041,000
Working Capital	\$239,806,000
Less DOE Principal	(\$44,138,000)
Total Rate Base	\$6,102,709,000

The Commission also agrees with MEC/PIRGIM that the company should correct the cost rate for pre-1983 DOE liability in its capital structure at this time.

As a result of the revisions discussed above, Consumers' jurisdictional base revenue deficiency for the test year is computed as follows:

Rate Base	\$6,102,709, 000
Rate of Return	6.97%
Income Required	\$425,969,000
Adjusted Net Operating Income	\$343,643,000
Income Deficiency ¹	\$82,326,000
Revenue Multiplier	1.6323
Revenue Deficiency	\$134,381,000

Accordingly, Consumers shall rerun the cost of service study provided by the Staff and file revised rates and tariff sheets, along with calculations and workpapers, conforming to the Commission's findings in this order, by 12:00 p.m. on or before February 22, 2010, and shall serve copies on all parties to this proceeding on the date of its filing. Parties to this case may file comments on the revised rates and tariff sheets by 12:00 p.m. on March 8, 2010. Consumers shall

¹The income deficiency is measured from the level of rates authorized in the utility's most recently completed rate case, Case No. U-15245.

also update its January 6, 2010 filing for authority to issue refunds of self-implementation surcharges by February 22, 2010 to reflect the revised revenue deficiency calculated in this order.

THEREFORE, IT IS ORDERED that:

A. The petitions for rehearing filed by Phillip Forner, and Energy Michigan are denied.

B. The petitions for rehearing filed by Consumers Energy Company, and Attorney General Michael A. Cox are granted in part and denied in part.

C. The petition for rehearing, clarification, and stay filed by the Association of Businesses Advocating Tariff Equity is granted in part and denied in part.

D. The petition for rehearing filed by the Michigan Environmental Council and Public Interest Research Group in Michigan is granted.

E. Consumers Energy Company shall file revised rates and tariff sheets, along with calculations and workpapers, conforming to the Commission's findings in this order, by 12:00 p.m. on February 22, 2010, and shall serve copies on all parties to this proceeding on that date. Parties to this case may file comments on the filed rates and tariff sheets by 12:00 p.m. on March 8, 2010.

F. Consumers Energy Company shall update its January 6, 2010 filing for authority to issue refunds of self-implementation surcharges by February 22, 2010, to reflect the revised revenue deficiency calculated in this order.

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

Greg R. White, Commissioner

By its action of January 25, 2010.

Mary Jo Kunkle, Executive Secretary