

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)	Case No. U-15675
plan and factors for 2009.)	
_____)	

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

OPINION AND ORDER

On September 30, 2008, Consumers Energy Company (Consumers) filed this application for approval of its 2009 power supply cost recovery (PSCR) plan and factors. On November 25, 2008, a prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ). At that time, the ALJ recognized the following intervenors: Attorney General Mike A. Cox (Attorney General), Michigan Environmental Council (MEC), the Commission Staff (Staff), Midland Cogeneration Venture Limited Partnership, Hemlock Semiconductor Corporation, Midland Power Limited Partnership, Ada Cogeneration LP, and Cadillac Renewable Energy LLC.¹

¹By ruling issued April 1, 2009, the ALJ granted the petition to intervene of the Association of Businesses Advocating Tariff Equity (ABATE), which had filed a timely petition to intervene, but did not appear at the initial prehearing conference.

An evidentiary hearing was held on March 26, 2009. At that time, the ALJ bound in the pre-filed testimony of Consumers' witnesses, some of whom were available for cross-examination. The record consists of 202 pages of transcript and 26 exhibits that were admitted into evidence.

On June 22, 2009, the ALJ issued her Proposal for Decision (PFD) in which she recommended that the Commission approve Consumers' plan and authorize the company to implement a PSCR factor of up to \$0.02619 per kilowatt-hour (kWh) for 2009. She further recommended that the Commission decline to rule on the recovery of revenues lost by virtue of the discount associated with Rate E-1. The ALJ also recommended that the Commission explicitly not approve Consumers' five-year requirements forecast, but leave to the reconciliation any costs resulting from the overestimation of requirements. The ALJ further recommended that the Commission explicitly not approve Consumers' coal supplier credit policy and direct the company to provide additional analysis of that policy in future PSCR plan cases. Finally, the ALJ recommended that the Commission approve the contracts entered as Exhibits A-18, A-19, and A-20 as requested by the company.

On July 14, 2009, Consumers and the Attorney General filed exceptions to the PFD. On July 28, 2009, these parties filed replies to exceptions.²

Sales Forecast and Authorized Factor

The Attorney General argues that the Commission should amend Consumers' proposed PSCR plan and factor to reflect a more current forecast of needed capacity and energy. He insists that the results identified in Consumers' forecast exhibits are higher than current information would

²In addition, the docket reflects a filing by MEC in which it merely states agreement with the Attorney General's exceptions.

support and complains that the ALJ improperly recommended that the Commission neither approve nor disapprove of the forecast.

The Attorney General argues that in Exhibit A-25, the company predicts a 2009 peak demand of 8,910 megawatts (MW) and 2009 total generation of 41,582 gigawatt-hours (GWh). More recently, Consumers has forecasted generation totaling 39,389 GWhs for 2009. *See*, Case No. U-15645, Consumers' general rate case. Given the state of Michigan's economy, the Attorney General argues, the Commission should take official notice that the economy is declining, with bankruptcy filings by General Motors Corporation and Daimler-Chrysler Corporation, for example. Because Consumers uses an economic dispatch method to supply the electrical needs of its customers, the Attorney General argues that the lower the needed supply, the lower the costs per energy unit. The Attorney General argues that the Commission should reduce the generation forecast by 5% to 39,389 GWhs, which should lower system costs for that generation by at least 5%. He states that his conservative 5% reduction in PSCR costs would reduce the PSCR factor to \$0.024881. In his view, the Commission should adopt that lower factor for purposes of this case.

The Attorney General agrees with the ALJ's statement that the evidence does not require the Commission to disapprove Consumers' forecast. However, he states that the evidence does support a conclusion that Consumers projected excessive sales and peak demand, both of which inflate the PSCR factor. The Attorney General argues that Consumers admits its proposed factor is dependent upon projected sales for the PSCR period. The Attorney General argues that merely finding no contrary evidence on such issues as economic dispatch or the power supply cost summary should not shift the burden of proof from the company to other parties in the case.

Consumers responds that the ALJ properly rejected the Attorney General's position for a number of good reasons: (1) any discrepancy between the forecast and the actual sales will be

addressed in the reconciliation portion of this proceeding; (2) Consumers continuously reviews throughout the year its forecast and supplies to meet those forecasts; (3) Consumers charges a factor based on the most recent available information; (4) the Commission has addressed possible differences between forecasts in the plan case and actual experience in Case No. U-15415; (5) forecast changes do not constitute a basis for finding that the forecasting method is flawed or that the forecast was unreasonable when it was made; and (6) no party identified any specific decisions or cost items that are unreasonable.

Consumers answers the Attorney General's argument that the ALJ recommended neither approval nor disapproval of the forecast by pointing out that the PFD recommends the Commission approve the plan case, which necessarily includes the 2009 forecast. It argues that the Attorney General has not responded to the company's argument that if reduction of costs are considered, so should the reduction in the number of energy units for which the PSCR factor will be charged.

The Commission is not persuaded that it should impose a 5% reduction in the PSCR factor based on an assumed 5% reduction in sales forecast. When sales forecasts are reduced, costs might diminish, but so do the units over which the costs are spread. Therefore, a one to one reduction proposed by the Attorney General is not intuitively correct. The Commission acknowledges that the company uses an economic dispatch method, which means that the lowest cost energy should be used to meet the company's daily requirements. Thus, while there might be some reduction in per unit costs, the Commission finds that the record is not sufficient to conclude with any certainty that a 5% reduction in the PSCR factor is appropriate. Moreover, Consumers is authorized by this order to implement a factor "up to" the stated amount. That leaves the company free to employ a lesser factor should it determine it is reasonable to do so. The statute creates

sufficient incentive for aiming as accurately as possible for the actual cost recovery, in the interest differential created by statute. *See*, MCL 460.6j(16). Therefore, the Commission concludes that denying the Attorney General's exception will not cause the company to act unreasonably to the harm of ratepayers.

As to the need to approve a forecast, the Commission finds that MCL 460.6j(6) contains no such requirement. While the Commission is charged to "evaluate decisions underlying the 5-year forecast" there is no approval requirement. Rather, the Legislature intended only that the Commission's evaluation of a utility's 5-year forecast should form the basis for the Commission to "indicate any cost items in the 5-year forecast that, on the basis of the present evidence, the Commission would be unlikely to permit the utility to recover from its ratepayers" in a future rate case or PSCR proceeding. MCL 460.6j(7) supports the conclusion that the ALJ's recommendation to approve the company's plan as filed inherently includes approval of the forecast. However, approval of the forecast merely means that the forecast is a reasonable one for the plan when it is submitted. It does not suggest a guarantee of accuracy. Forecasts will vary up and down from actual results; and the "most current" forecast will, of necessity, change from time to time. PSCR cases must be concluded at some point.

Rate E-1

Consumers proposed to recover through its 2009 PSCR factor revenues that will be lost to it by virtue of its Rate E-1, which is a discount applied to certain customers. The ALJ determined that Consumers' allocation of the revenues it received from these customers was not required or authorized by Commission order, and the record lacked evidence concerning the underlying determination of that allocation. She found the company's proposed allocation of these revenues

arbitrary. The ALJ concluded that the issue of recovery of these revenues should be addressed in a general rate case, not a PSCR proceeding.

Consumers excepts to the ALJ's recommendation to exclude from the 2009 PSCR factor the recovery of revenues lost as a result of Rate E-1. Consumers argues that its allocation determinations were not arbitrary, but were explained by its witness' description of the following:

- 1) Rate E-1 revenues were applied to the base PSCR factor and surcharges (e.g. securitization surcharge, the security recovery factor, and the regulatory asset related to MCL 460.10d(4)), and
- 2) the remaining amount was applied to the annual PSCR factor to be set in this case. It is the resulting difference between the remaining amount applied and the factor set here that Consumers proposed be collected through the 2009 PSCR factor.

Consumers insists that Mr. Miller's calculation of Rate E-1 underrecovery relates only to PSCR costs and surcharge costs. Thus, it argues, there can be no double recovery, and there is no need to await a general rate case to determine the amounts.

Consumers further argues that the PFD failed to answer the utility's arguments addressing the propriety of recovering the missing revenue through the PSCR factor. Consumers projects that it will experience a \$22 million shortfall in revenues as a result of excluding these costs from the PSCR factor. It argues that failure to authorize recovery of these costs is inconsistent with the origin of Rate E-1, and would be a violation of Act 304.

The Attorney General responds that these costs lie outside the limited scope of a PSCR plan case, are not properly PSCR costs, and their inclusion may result in double recovery. Among the costs that are not PSCR costs, the Attorney General argues, are the nuclear decommissioning surcharge, the regulatory asset surcharge, the security recovery factor, and the securitization bond and tax surcharges. He argues that merely because Consumers deducts those surcharges from the

rate in E-1 does not make them PSCR costs. Moreover, the Attorney General argues, the Rate E-1 discount was part of the revenue requirements calculation in Case No. U-15245, where it is reflected in the cost of service allocations and rate design.

The Attorney General points out the Staff's objection to the company's proposal is an attempt to recover from PSCR customers a discount afforded to a customer pursuant to tariff. Rate E-1 was approved in an *ex parte* order in Case No. U-14692. In the order approving the tariff, the Commission indicated that Consumers was not seeking any ratemaking determinations or any change in the rates or cost of service to other customers at that time. The order directed that should the company later seek to recover the discount from other customers, it must meet "the burden of establishing that its proposed cost recovery is reasonable and prudent and in the best interest of all ratepayers." November 22, 2005 order in Case No. U-14962, p. 2. According to the Attorney General, the approval for recovery of the discount occurred in Consumers' most recent completed rate case, Case No. U-15245. He argues that the Commission has held previously that discounts should be treated as other rate case revenue requirement items, subject to revisions in subsequent rate cases.

In the November 2, 2009 order in Case No. U-15645, the Commission found that the Rate E-1 discount should not be used to reduce PSCR revenues. It further found that the discount should be treated the same as other discounted or subsidized rates, with the revenue recovery associated with Rate E-1 spread to all customers, including ROA customers, on the basis of energy use. Because the Commission has already dealt with this issue in the general electric rate case, there is no need to further address it here. *See*, the November 2, 2009 order in Case No. U-15645, pp. 84-86.

Consumers' Credit Policy

In dealing with concerns expressed by MEC and the Attorney General on this issue, the ALJ recommended that the Commission neither approve nor disapprove the company's credit policy, but rather require further analysis. She explained that the credit policy at issue has been in effect for all CMS Energy subsidiaries, including Consumers, since 2003. It is designed to protect the corporation and its shareholders from the risk of default by the vendor party to a commodity contract. It is not applicable to contracts with retail customers, but does apply to contracts Consumers makes for coal purchases. Consumers' witnesses acknowledged that the policy could limit the suppliers from which the company would purchase coal, which might create upward pressure on coal costs. The ALJ reasoned that the Commission should require the company to provide information on the effect the credit policy had on prices in its PSCR reconciliation case.

Consumers excepts to the portion of the PFD that recommends formally requiring information be filed regarding the credit policy. Consumers states that it is already required by statute to identify PSCR expenses, including coal expense, for each PSCR plan year, and information concerning fuel costs for the next five-year period. MCL 460.6j(4)-(7). If the ALJ was suggesting that the company should attempt to forecast which coal providers in the next five years will default, or are likely to default, and the effect of any such default on coal prices, Consumers argues it is an impossible task. According to Consumers, the credit policy was established to deal with the uncertainty of predicting future defaults as a tool for use when the company negotiates or considers fuel contracts.

Consumers also excepts to the recommendation in the PFD that "the Commission make clear that Consumers Energy's specific coal supplier credit policy is not approved." Consumers states

that it did not request Commission approval of this credit policy and requests that the Commission neither approve nor disapprove of that policy.

The Commission finds that there is no need for it to approve or disapprove the credit policy. Use of the policy is a company decision that is not directly subject to Commission mandate or prohibition. However, should its use result in the company incurring unreasonable or imprudent costs, the Commission may disallow recovery of any excess costs through the PSCR process. The utility has the statutory burden of presenting evidence in support of recovering its PSCR costs, and other parties may challenge costs that they believe are excessive due to company decision making. The Commission accepts Consumers' acknowledgement that it must produce relevant evidence concerning the effect of its credit policy in the reconciliation case, and the probable effect in the plan cases. The Commission is not persuaded on this record that Consumers' use of the credit policy has unreasonably increased the purchased coal costs for 2009.

Miscellaneous Issues

A. Purchased Power Contracts

Consumers requested approval of three power purchase agreements. No party specifically objected to these contracts, which are in the record as Exhibits A-18, A-19, and A-20. In the absence of objection, the ALJ recommended Commission approval of these contracts. The Commission approves these three contracts.

B. Urea Expenses

Consumers requested that the Commission approve the inclusion of urea expenses as a PSCR cost. The Commission granted a similar request in Case No. U-15415. No objections were raised here that would persuade the Commission otherwise. Therefore, the Commission grants Consumers' request.

C. Change Required by Case No. U-15645

In its November 2, 2009 order in Case No. U-15645, the Commission set a new level for PSCR costs included in base rates. Using the base PSCR provided in that order, the approved PSCR factor should be \$0.00391 per kWh.

Conclusion

Based on the above arguments, discussion, and conclusions reached, the Commission hereby approves a PSCR factor for 2009 of up to \$0.02619 (\$0.0391 after rates implemented in Case No. U-15645) per kWh, as shown on Exhibit A-1, line 14 and modified to reflect the change in the PSCR base made in Case No. U-15645.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company is authorized to charge a power supply cost recovery factor of up to \$0.02619 (\$0.00391 after rates implemented in Case No. U-15645) per kilowatt-hour for 2009.

B. The power purchase contracts that were filed in this proceeding as Exhibits A-18, A-19, and A-20 are approved.

C. Within 30 days of the date of this order, Consumers Energy Company shall file tariff sheets reflecting the findings and conclusions 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