

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
PENINSULAR GAS COMPANY for cost)
recovery of environmental assessment and) Case No. U-11127
remediation costs and for authority to increase)
its rates for the sale of natural gas.)
_____)

At the April 23, 1999 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On July 31, 1997, the Commission issued an order authorizing Peninsular Gas Company (Peninsular) to implement a surcharge to recover the costs associated with the assessment and remediation of environmental contamination at a site owned by the company. The order provided for Peninsular's customers to pay 75% of the reasonable and prudent expenses, with the balance to be borne by the company. The order also required reconciliation proceedings.

On January 11, 1999, the Charter Township of Calumet, which had previously participated in the case, filed a petition requesting that the Commission immediately end the surcharge. The offered reason was a December 21, 1998 letter from the Michigan Department of Environmental Quality (DEQ) to Peninsular's attorney stating that the DEQ would incur the costs of all remedial activity and assume full responsibility for the customers' share of the costs. Calumet argued that

because the DEQ had decided to assume responsibility for the portion of costs assigned to customers, the Commission should end the surcharge and commence a final reconciliation.

On February 2, 1999, the Commission issued an order authorizing Peninsular to continue the surcharge until it had recovered the portion of costs assigned to ratepayers, but only for costs incurred through December 21, 1998. The order further provided that, upon recovery of that amount, Peninsular was to terminate the surcharge if the DEQ had taken over the project and was to file exhibits reconciling the revenues and expenses associated with the surcharge. If none of the parties requested a hearing within 60 days of service of the reconciliation exhibits, the order required Peninsular to make any refund required by its proposed reconciliation. If any party requested a hearing, the order required a contested case proceeding.

On March 2, 1999, Attorney General Jennifer M. Granholm filed a petition for rehearing. She expresses concern that the February 2, 1999 order changed the reconciliation procedures established by the July 31, 1997 order, in particular by limiting discovery and shifting the burden of going forward. On March 23, 1999, Peninsular filed a response.

The Commission did not change its prior order with respect to the reconciliation. The Commission did adopt Peninsular's proposal that might avoid the need to conduct a contested case if the parties agree that Peninsular's proposed reconciliation is proper. If any party requests a hearing within 60 days of service of the reconciliation exhibits, a contested case proceeding will be held. All of the usual rules will apply, including the right to conduct discovery, and Peninsular will bear the burden of going forward and the burden of persuasion.

On March 4, 1999, Peninsular filed a petition for rehearing. It says that in agreeing to waive its right to a hearing and to cease collecting the surcharge, it did not expect that the Commission would terminate its right to use the surcharge to recover costs incurred after December 21, 1998. It says

that, notwithstanding the DEQ's letter of December 21, 1998, it has incurred some costs after that date related to preparing for the DEQ to assume responsibility for the clean-up. It requests that it be permitted to seek recovery in the reconciliation case of reasonable and prudent costs incurred after December 21, 1998 related to winding up its role in the clean-up.

The Commission continues to find the December 21, 1998 date to be appropriate for determining whether costs are recoverable through the surcharge and reconciliation. The order does not prevent Peninsular from recovering costs incurred after that date, but only requires that those costs be treated like all other expenses that are recoverable in a rate case.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.
- b. The order should be clarified as requested by the Attorney General.
- c. Peninsular's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the February 2, 1999 order is clarified as requested by the Attorney General and the petition for rehearing filed by Peninsular Gas Company 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, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

By its action of April 23, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated April 23, 1999 clarifying the February 2, 1999 order as requested by the Attorney General and denying the petition for rehearing filed by Peninsular Gas Company, as set forth in the order.”