

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 distribution of natural)	Case No. U-13000
gas and for other relief.)	
_____)	

**CONCURRING AND DISSENTING OPINION OF
COMMISSIONER ROBERT B. NELSON**

(Submitted November 7, 2002)

I support the opinion issued today in this proceeding to the extent that it authorizes an increase in natural gas distribution rates for Consumers Energy Company (Consumers) by \$47.2 million on an annual basis. I believe that Consumers has demonstrated a revenue deficiency in that amount. However, I must dissent from the remainder of the majority opinion inasmuch as it authorizes an increase in natural gas distribution rates which recognizes an equity infusion by CMS Energy Corporation (CMS) in January 2002 in Consumers' capital structure, the inclusion of an inappropriate accounting change and an inflated cost of common equity.

The majority opinion allows Consumers to increase its common equity for purposes of computing its overall cost of capital by including \$150 million in equity that was transferred to Consumers by CMS, Consumers' parent corporation, on January 3, 2002, one day prior to the filing of Consumers' rebuttal testimony in this case. In my view, Consumers has failed to demonstrate that this last minute equity infusion actually produced the result intended- to maintain and increase Consumers' credit rating by improving its equity ratio. Moreover, the record in this case provides no assurance that the equity infusion will remain with Consumers long enough to

produce a benefit to ratepayers proportionate to the benefit that inclusion of the equity in the company's capital structure will have to Consumers. Accordingly, I would agree with Staff and the Attorney General and disallow the recognition of the capital infusion for purposes of this case.

The current financial condition of Consumers and its parent, CMS, are legitimate concerns for this Commission. However, our foremost responsibility is to protect Consumers' ratepayers. Not only does this entail making sure that rates that we authorize are based on competent, material, and substantial evidence, but it also involves the adoption of a capital structure that truly reflects the business risk of a regulated utility. In addition to rejecting the recognition of the capital infusion, I would adopt a cost of common equity for Consumers that is within the range of Staff witness Ballinger's recommendation (10.75-11.25%) and authorized returns recently approved by the Commission (Cf., Wisconsin Electric Power Co., U-12725). I would provide for a slight increase from the midpoint of Mr. Ballinger's range to address Consumers' concern about his arithmetical errors and find that an 11.15% return on common equity is appropriate.

I also take issue with the majority with regard to the recognition of an accounting change designed to "true-up" accounting practices carried over from prior years. In my view, Consumers has not provided adequate record support for its position and it should not be permitted to manipulate the implementation of accounting changes to optimize its rate relief. As Staff has asserted, Consumers was able to capitalize costs that it should have expensed by delaying implementation of the accounting change from the time when the opportunity first arose (1996-7) until 2002. It now seeks to not only have the Commission use an inflated rate base to set rates, but to allow it to recover the full amount of the formerly capitalized expenses as other O&M expenditures.

Had Consumers immediately implemented the accounting change in 1996-7, over-allocated support costs would not be included in 2000 historical year plant balances and both Consumers' and Staff's 2002 test year plant balances would be dramatically different. This Commission must continue to monitor the accounting practices of utilities under our jurisdiction and recognize in rates only those practices that are in compliance with generally accepted accounting principles.

MICHIGAN PUBLIC SERVICE COMMISSION

Robert B. Nelson, Commissioner