

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-13730
gas and for other relief.)	
_____)	

At the December 2, 2004 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER GRANTING REHEARING

On October 14, 2004, the Commission issued its order in this docket granting Consumers Energy Company (Consumers) an increase in its annual gas revenues of \$58,124,000 through a two-year surcharge to the company's existing rates for gas service, subject to certain conditions (October 14 order). On October 18, 2004, Consumers and CMS Energy Corporation (CMS) filed their agreement to those conditions. On October 19, 2004, Consumers filed a petition for clarification and rehearing of the October 14 order. On November 2, 2004, the Commission Staff (Staff) filed its answer. On November 3, 2004, the Association of Businesses Advocating Tariff Equity (ABATE) filed its answer. On November 9, 2004, Attorney General Michael A. Cox (Attorney General) filed his answer.

In its petition, Consumers notes that the October 14 order's conditions require refund of surcharge revenues if the company's rate of return on common equity exceeds its authorized

11.4% rate. Consumers also notes that the October 14 order's conditions will require the company's sole shareholder, CMS, to increase Consumers' equity level to at least \$2,300 million by 2005; that level of equity will then be considerably in excess of the capitalization percentages approved in Case No. U-13000, the company's last general rate case. Given these two conditions of the October 14 order, Consumers points to the footnote on Attachment B to the order. The company believes that the footnote requires clarification or correction. The company states that Attachment B provides a pro forma explanation of how the yearly rate-of-return-on-common-equity calculation must be performed to determine if Consumers has exceeded its authorized rate and, thus, must refund surcharge revenues. The company states that the attachment's footnote appears to require use of the Case No. U-13000 capital structure, rather than the then-existing company capital structure, when performing the yearly calculation, which effectively will disregard the equity infusions required by the October 14 order. In the company's view, use of the prior capital structure when performing the yearly rate-of-return calculation will not accurately represent the company's actual earnings and financial position for that period—it would almost certainly result in an overstatement of Consumers' actual rate of return because of the mathematics involved in performing the calculation. Consumers believes that this is an unintended consequence of the October 14 order, which should be revised by the Commission.

Consumers also notes that the October 14 order requires the yearly calculation of the company's rate of return on common equity to be weather normalized. The company argues that weather normalizing the calculation will not reflect the actual financial results for that yearly period; and, accordingly, will not create the Commission's intended economic effect for the rate-of-return refund mechanism. In the company's view, the Commission intended that over the approximately two-year term of the surcharge, if the company's actual return on equity exceeded

11.4%, then the excess would be returned to Consumers' customers. As an example, the company notes, if colder-than-normal weather occurs during the surcharge period, causing increased gas send-outs and increased revenue, weather normalizing that data will reduce any increased revenue. Consequently, actual data may show the need for a surcharge refund, but no such refund would occur because weather-normalized data would smooth and, most probably, eliminate the increased revenue. The company notes that weather normalization is appropriate when setting rates for a future period, as in a rate case where questions of future sales levels must be reviewed. However, the company continues, when determining possible refund amounts in the context of the Commission's two-year surcharge mechanism, use of weather normalization may not achieve the Commission's intended result. The company asks that the Commission revise the October 14 order to provide for use of Consumers' actual achieved rate of return on common equity.

ABATE does not support Consumers' request as it relates to the weather-normalization adjustment for the company's yearly rate-of-return calculation. ABATE notes that weather normalization is typically used in ratemaking for gas utilities because sales of natural gas are highly dependent upon temperature, and because gas deliveries can vary dramatically from year to year depending upon the heating degree days experienced each year. In ABATE's view, weather normalizing Consumers' rate of return will smooth the calculation, removing any extreme volatility that occurs from year to year. While noting Consumers' argument that weather normalization may result in reducing any possible refund that might occur during colder-than-normal periods, ABATE also argues that weather normalization may also require a refund during warmer-than-normal periods—although Consumers' actual financial results may show that a refund is not to occur. In ABATE's view, this anomaly is merely a result of the rate-setting process. Consequently, ABATE argues, Consumers' request should be denied.

The Attorney General opposes Consumers' request to use the company's actual equity structure within the rate-of-return calculation for the October 14 order's refund mechanism. He argues that inasmuch as Consumers' base rates were not re-established by the October 14 order, the Commission must utilize Consumers' equity structure as established by Case No.U-13000. While the Attorney General acknowledges Consumers' argument that use of that prior equity structure will not recognize the equity infusions required to comply with the October 14 order's conditions, he argues that this fact is inherent in the continuation of the base rates established in Case No. U-13000. In the Attorney General's view, the Commission may not recognize the equity required to be infused into Consumers under the conditions of the October 14 order.

The Attorney General also opposes Consumers' request to use the company's actual (not weather-normalized) data. In the Attorney General's view, the October 14 order provides for use of weather-normalized data. Thus, Consumers cannot meet the Commission's rehearing standards—use of weather-normalized data was not an unintended consequence of the order. Accordingly, the Commission should deny Consumers' rehearing request.

The Staff supports Consumers' requests. In the Staff's view, the Commission should evaluate the company's rate of return on equity over the two-year term of the surcharge using the actual current level of equity invested in Consumers when the calculation is performed. Moreover, the Staff continues, the rate-of-return calculation should not incorporate a weather-normalization adjustment; it should use the company's actual financial data.

Discussion

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from

compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission has reviewed Consumers' rehearing request, and finds that the issues raised by the company are an unintended result of the October 14 order. The Commission intended that Consumers' actual financial performance should be measured over the course of the surcharge period to determine if any surcharge revenues would be refunded under the mechanism established by the October 14 order. Accordingly, the company is correct that the actual current level of equity invested in Consumers should be used when calculating the yearly rate of return. In similar manner, the company is correct that actual (not weather-normalized) results should be used when performing the calculation required by the refunding mechanism established by the October 14 order. While ABATE and the Attorney General are correct that weather normalization is effective when projecting sales levels for a future test period in a rate case, that is not the question presented for the period of the surcharge. As stated in the October 14 order, the Commission intends that Consumers recover only those amounts necessary to achieve the company's stated financial goals, and that any amount above that necessary level should be returned to Consumers' ratepayers.¹ Use of Consumers' actual current level of equity and the company's actual (not weather-normalized) financial results will achieve that stated goal, and the Commission finds that the October 14 order should be revised accordingly.

¹October 14, 2004 order in Case No. U-13730, page 33.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. The petition of Consumers for clarification and rehearing should be granted.
- c. The October 14 order should be revised to provide that: 1) Consumers' actual current level of equity invested in the company, and 2) the company's actual (not weather-normalized) financial data, should be used for the rate-of-return calculation under the refunding mechanism established by the October 14 order.

THEREFORE, IT IS ORDERED that:

- A. The petition of Consumers Energy Company for clarification and rehearing is granted.
- B. The October 14, 2004 order issued in this docket, Case No. U-13730, is revised: 1) to remove all references to weather-normalized data on page 33 and Attachment B, and 2) to provide in Attachment B that Consumers Energy Company's actual current level of invested equity shall be used when calculating the annual rate of return on equity required by that 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, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of December 2, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of December 2, 2004.

Its Executive Secretary