

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY for)	
accounting and ratemaking approval of)	Case No. U-12999
depreciation rates for gas utility plants.)	
_____)	

At the March 29, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

ORDER GRANTING WAIVER

On October 14, 2004, the Commission issued its order in this docket, Consumers Energy Company's (Consumers) application for accounting and ratemaking approval of revised depreciation rates for its gas utility plant, Case No. U-12999 (October 14 order). That order established the filing date for Consumers' next gas depreciation case as well as the appropriate year-end natural gas utility plant balance data to be used within that future filing. On December 2, 2004, the Commission issued its order on rehearing, which did not change either of these two requirements. On February 14, 2005, Consumers filed its petition for waiver of the October 14 order's two filing requirements. On February 17, 2005, the Association of Businesses Advocating Tariff Equity (ABATE) filed its answer opposing Consumers' request. On March 7, 2005, Attorney General Michael A. Cox (Attorney General) filed his answer opposing Consumers' request.

In its petition, Consumers notes two requirements for its next gas depreciation case: 1) the case is to be filed concurrently with the company's next general gas rate case, and 2) the case is to use Consumers' natural gas utility plant balances as of December 31 of the calendar year immediately preceding the filing date. Consumers argues that because of intervening factors occurring since issuance of the October 14 order, these two requirements must be revised.¹ In Consumers' view, these intervening factors are the timing of the company's next general gas rate case (which determines the filing date of the depreciation case), and the revised schedule in the Commission's generic proceeding, Case No. U-14292, which will address appropriate accounting and ratemaking treatment for Statement of Financial Accounting Standards No. 143 (that standard established procedures for the recording of certain asset retirement obligations and may have an impact upon depreciation practices for Commission-jurisdictional entities). Neither of these intervening factors were known as of the date of the October 14 order, and each has an impact upon the filing of the next depreciation case.

Consumers notes that the surcharge authorized by Case No. U-13730² expires two years from its effective date. In order for Consumers to have new general gas rates in effect at, or near the time of, expiration of that surcharge, the company will need to file its next general gas rate case in mid-2005, which will require that the company's next depreciation case also be filed in mid-2005. However, Consumers notes, the schedule established for the generic depreciation proceeding, Case No. U-14292, will not allow a final Commission decision before the end of 2005. In Consumers' view, the decision in that generic depreciation case, most probably, will have a dramatic impact upon the format and content of the company's next depreciation filing. Moreover, the company

¹ The October 14 order provided for such revisions if necessary; Case No. U-12999, order issued October 14, 2004, page 18.

² Consumers most recent general gas rate case, order issued October 14, 2004.

states, the October 14 order also required Consumers to undertake a study of the company's net-salvage values and to file its report of that study with the Commission Staff on or before December 31, 2005. Because of the mid-2005 filing date for the rate case and the depreciation case, neither the results of the generic proceeding nor the net-salvage value study will be available for inclusion in the depreciation filing. In the company's view, without the net-salvage value study information or the benefit of the outcome of the generic proceeding, Consumers' depreciation filing will be incomplete and valueless for review by the Commission.

To alleviate these obstacles to a more complete and informed filing, Consumers would delay the filing of its next gas depreciation case until a date on or before 150 days after the latter of: 1) the issuance of a final order in the generic depreciation proceeding, or 2) the filing date of its net-salvage value study as required by the October 14 order. The company acknowledges that the depreciation rates authorized within its to-be-filed gas depreciation case may have an important impact upon a component of its revenue requirement, and the resulting rates, established within the company's next general gas rate case. Because of this, the company offers that if a final order in the to-be-filed gas depreciation case is not issued concurrently with a final order in the company's next general gas rate case, then at the Commission's discretion the results of the to-be-filed depreciation case may be incorporated into Consumers' revenue requirement and general gas rates through use of a surcharge-type mechanism (which could be either positive or negative).

In addition, the company notes that the October 14 order also required use of Consumers' natural gas utility plant balances as of December 31 of the calendar year immediately preceding the filing date of the depreciation case. Consumers states that use of preceding-year data becomes problematic if the filing date of the depreciation case occurs prior to June 1 of a calendar year—data from the preceding year may not yet be available or properly analyzed. To eliminate this

problem, Consumers requests that the Commission revise the data requirement: 1) to use plant balances as of December 31 of the calendar year immediately preceding the filing date if the filing is made on or after June 1 of a calendar year; or 2) to use plant balances as of December 31 of the calendar year prior to the calendar year immediately preceding the filing if the filing is made between January 1 and May 31 of a calendar year.

ABATE opposes Consumers' request to delay the filing date for the company's next gas depreciation case, as well as Consumers' request regarding the appropriate year-end natural gas utility plant account data. ABATE notes that the outcome of the generic depreciation proceeding may have a significant impact upon a component of Consumers' revenue requirement, which will be reviewed within the company's next general gas rate case. In ABATE's view, to de-couple the depreciation review from this next general gas rate case may mean that Consumers' general gas rates could be higher than appropriate until such time as revised depreciation practices can be incorporated into Consumers' revenue requirement and the resulting general gas rates.

ABATE would have Consumers file its depreciation case as originally ordered—with amendment filings to be made after the generic proceeding's final decision. In ABATE's view, this would create a procedural vehicle for the Commission to incorporate the results of the generic proceeding into Consumers' depreciation practices, and then to synchronize those new depreciation practices and rates with the results of the company's next general gas rate case. To do less, ABATE argues, might allow new general gas rates to become effective without consideration of the effect of revised depreciation rates on the company's revenue requirement. In that event, ABATE continues, the revenue requirement effect of any revised depreciation rates would not be considered until a future general gas rate case—pushing forward the ratepayer benefits of any depreciation rate reductions that might occur.

ABATE notes that Consumers argues that the company's net-salvage value study will be highly beneficial to the Commission's review of Consumers' depreciation practices, necessitating a delay in the projected mid-2005 filing of the depreciation case to allow that study's inclusion within the delayed filing. However, ABATE continues, the filing date of Consumers' net-salvage value study is completely within the company's control; the company could file the study well before the required December 31, 2005 date and solve its own availability dilemma.

Lastly, ABATE argues that Consumers, as well as its parent CMS Energy Corporation, are reporting companies under the federal securities laws and must file audited financial reports with the United States Securities and Exchange Commission (SEC) within 90 days of fiscal year-end. Consequently, ABATE argues, Consumers must have its natural gas utility plant balances available well before June 1 of each year, and the Commission should reject Consumers' request to vary the year-end natural gas utility plant balance data that will be used in the company's next depreciation filing.

The Attorney General argues that the Commission's procedural rules prevent it from revising the October 14 order. The Attorney General states that taken together, Rule 401 and Rule 403, 1999 AC, R460.17401 and R460.17403, provide that a case may only be re-opened before the time period for filing a petition for rehearing has expired—30 days after service of the October 14 order. The Attorney General states that the relevant 30-day time period has long expired and, accordingly, the Commission may not now entertain any revision in its October 14 order. Because of this, the Attorney General states, the Commission is without power to amend its prior order, and Consumers' request must be rejected.

Even if the Commission determines that it may entertain Consumers' request, the Attorney General argues, the company's request is neither just nor reasonable. In the Attorney General's

view, Consumers can simultaneously file a depreciation rate application and a general rate application in mid-2005, which will allow the synchronization of potential changes in depreciation rates and depreciation expense with future retail rate changes. The Attorney General argues that to delay the filing of Consumers' depreciation case may force retail gas customers to wait for depreciation expense relief until long after new rates become effective as a result of the company's next general gas rate case.

Lastly, the Attorney General echoes ABATE's argument regarding revision of the appropriate utility plant balance data, stating that Consumers must file its financial reports with the SEC and with this Commission. Thus, the Attorney General continues, Consumers would have the necessary year-end natural gas utility plant balances available and should be able to include those in its depreciation filing.

Discussion

The Commission has reviewed and understands the Attorney General's argument regarding rehearing requests under Rule 401 and Rule 403. However, the Commission views the waiver request as appropriate because a possible change of filing date was separately contemplated and provided for by the October 14 order. That order allowed for the possible change of filing date due to events occurring within the generic depreciation proceeding, Case No. U-14292.³ To whatever extent necessary, the Commission finds that good cause exists to accept Consumers' request and to waive the Commission's procedural rehearing rules. All parties to the October 14 order have been provided notice of the change of filing date proposal, and those that wished to have filed answers to that proposal.

³ See, n. 1, *supra*.

On October 14, 2004, when the Commission's orders in Consumers' Cases Nos. U-12999 and U-13730 and in the generic depreciation proceeding, Case No. U-14292, were each issued, the Commission did not know when Consumers would file its next general gas rate case. Consequently, the date established within the October 14 order for the filing of Consumers' next gas depreciation case was coordinated with the company's next general gas rate case filing. However, the Commission noted that a different filing date might become appropriate because of events within the generic proceeding.⁴ The filing date of Consumers' next general gas rate case now appears more certain, and the previously assumed filing date for the depreciation case is rendered inappropriate because of the unavailability of information necessary to make that depreciation filing complete and useful to the Commission. Quite simply, that information will not exist as of the depreciation case's projected filing date. The Commission sees little economic sense in requiring Consumers to prepare and then to file a *pro forma*-type document that will be of little use to the Commission when omitted, but necessary, information becomes available and a re-filing must be made.

The Commission is very interested in the net-salvage value study that Consumers has undertaken, and it understands ABATE's argument that an earlier filing date is within Consumers' control. However, it was (and remains) the Commission's judgment that the study must be thorough and complete; therefore, Consumers should be given the time to complete the study. Thus, December 31, 2005 remains an appropriate filing date. But, Consumers is reminded that the Commission views the study as a prudent and necessary component of the company's next depreciation review; a perfunctory document will not suffice.

⁴ *Id.*

Additionally, the schedule established by the Commission for the generic depreciation proceeding has been changed and lengthened by Administrative Law Judge Daniel E. Nickerson, Jr., after agreement by all of that proceeding's parties and a showing of good cause.⁵ The amended schedule provides for a proposal for decision in the late fall 2005, which would not permit Consumers to incorporate those results within a depreciation case to be filed during mid-2005.

The Commission believes that the revised schedule within the generic proceeding, when coupled with Consumers' waiver request, ensures that the company's depreciation case will not be filed until mid-2006. This will make virtually impossible a corresponding amendment to the next general gas rate case to include revised depreciation rates. Such a state of events is directly contrary to the Commission's intent that the company's revised depreciation rates were to be coordinated with new general gas rates. Additionally, as the Attorney General has properly pointed out, de-coupling the depreciation and rate cases will essentially guarantee that retail customers must continue to await any possible depreciation expense relief. Although the Commission appreciates the need for the schedule within the generic proceeding, the Commission is also determined to shorten as much as possible any time in which retail rates reflect out-of-date depreciation rates.

Thus, the Commission finds that the company's proposed 150-day time period to prepare its depreciation filing is too long. The Commission believes that a 90-day lead time is sufficient to prepare and file the depreciation case. And to some extent, this should mitigate the Attorney General's and ABATE's concerns as should Consumers' offer of the surcharge mechanism.

⁵ Case No. U-14292, 1 Tr. 13.

For these reasons, the Commission finds the filing date for Consumers' next depreciation case should be revised. Consumers should file its next gas depreciation case on or before the date that is 90 days after the latter of: 1) the issuance of a final order in the generic proceeding, Case No. U-14292, or 2) the filing date of Consumers' net-salvage value study as required by the October 14 order.

In doing so, the Commission understands ABATE's and the Attorney General's arguments regarding the need to incorporating new depreciation rates within the revenue requirement determination conducted during Consumers' next general gas rate case, and the possible effect of new depreciation rates upon the company's general gas rates. Thus, the Commission finds appropriate Consumers' offer that if a final order in the company's next gas depreciation case is not issued concurrently with a final order in the company's next general gas rate case, then at the Commission's discretion the results of the to-be-filed depreciation case may be incorporated into Consumers' revenue requirement and general gas rates through use of a surcharge-type mechanism (which may be either positive or negative). Consumers should also include this offer as part of its next general gas rate case filing.

In a similar manner, while much of Consumers' audited financial data may be available within 90 days from fiscal year-end, it is also true that the final audited year-end data must be analyzed, placed into form, and the depreciation filing (together with its supporting documents) created. Accordingly, the Commission finds reasonable Consumers' request to use different year-end natural gas utility plant balances depending upon when during a calendar year Consumers' depreciation filing occurs. Therefore, Consumers' next depreciation filing: 1) shall use natural gas utility plant balances as of December 31 of the calendar year immediately preceding the filing date if the filing is made on or after June 1 of a calendar year; or 2) shall use natural gas utility

plant balances as of December 31 of the calendar year prior to the calendar year immediately preceding the filing if the filing is made between January 1 and May 31 of a calendar year.

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. Consumers' petition for waiver should be granted.

c. Consumers should file its next gas depreciation case on or before the date that is 90 days after the latter of: 1) the issuance of a final order in the generic depreciation proceeding, or 2) the filing date of the company's net-salvage value study as required by the October 14 order.

c. In its next gas depreciation case, Consumers should use natural gas utility plant balances as of December 31 of the calendar year immediately preceding the filing date if the filing is made on or after June 1 of a calendar year; or natural gas utility plant balances as of December 31 of the calendar year prior to the calendar year immediately preceding the filing if the filing is made between January 1 and May 31 of a calendar year.

d. If a final order in Consumers' next gas depreciation case is not issued concurrently with a final order in the company's next general gas rate case, then, at the Commission's discretion and as proposed by Consumers, the results of the to-be-filed depreciation case may be incorporated into Consumers' revenue requirement and general gas rates through use of a surcharge-type mechanism (which may be either positive or negative). Consumers should include this offer within its next general gas rate case filing.

THEREFORE, IT IS ORDERED that:

A. The petition for waiver of Consumers Energy Company filed on February 14, 2005 is granted.

B. Consumers Energy Company shall file its next gas depreciation case on or before the date that is 90 days after the latter of: 1) the issuance of a final order in the generic depreciation proceeding, Case No. U-14292, or 2) the filing date of the company's net-salvage value study as required by the October 14, 2004 order in Case No. U-12999.

C. Consumers Energy Company shall use, in its next gas depreciation case, natural gas utility plant balances as of December 31 of the calendar year immediately preceding the filing date if the filing is made on or after June 1 of a calendar year; or natural gas utility plant balances as of December 31 of the calendar year prior to the calendar year immediately preceding the filing if the filing is made between January 1 and May 31 of a calendar year.

D. If a final order in Consumers Energy Company's next gas depreciation case is not issued concurrently with a final order in the company's next general gas rate case, then, at the Commission's discretion, the results of the to-be-filed depreciation case may be incorporated into Consumers Energy Company's revenue requirement and general gas rates through use of a surcharge-type mechanism (which may be either positive or negative), as later determined appropriate by the Commission. Consumers Energy Company shall include this surcharge mechanism within the company's next general gas rate case filing.

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
Chairman

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of March 29, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
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depreciation rates for gas utility plants.)
_____)

Case No. U-12999

Suggested Minute:

“Adopt and issue order dated March 29, 2005 granting Consumers Energy Company’s petition for waiver, revising the date upon which the company must file its next gas depreciation rate case, and revising the data for natural gas utility plant balances that must be used in that gas depreciation case, as set forth in the order.”