

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of joint application of)
PRESQUE ISLE ELECTRIC & GAS CO-OP and)
THE TOWNSHIP OF ALLIS to fix and determine) Case No. U-15342
rates and charges for the retail sale of natural gas)
in the township.)
_____)

At the November 12, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER DENYING REHEARING

This case was initiated by a joint application by Presque Isle Electric & Gas Co-op (Presque Isle) and the Township of Allis (Allis) that was filed on August 3, 2007. The application was filed pursuant to the Commission's authority under 1919 PA 419, MCL 460.54. A prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ) on September 27, 2007, at which Presque Isle and Allis appeared. The Commission Staff (Staff) also participated in the proceedings.

Evidentiary hearings were held on January 30 and 31, 2008 and the parties filed briefs on February 22, 2008 and reply briefs on March 14, 2008. On April 23, 2008, the ALJ issued her Proposal for Decision (PFD). Presque Isle and Allis filed exceptions on June 18, 2008 and Presque Isle, Allis, and the Staff filed replies to exceptions on July 2, 2008.

On July 10, 2008, Presque Isle filed a motion to reopen the proceedings. On December 23, 2008, the Commission issued an order in which it remanded the case for further development of the record.

A prehearing conference for the reopened case was held on January 12, 2009 and an evidentiary hearing was held on March 20, 2009. The parties filed initial briefs on April 21, 2009 and reply briefs on May 7, 2009. The ALJ issued her second PFD on May 13, 2009. Allis filed exceptions on May 29, 2009 and Presque Isle and the Staff filed replies to exceptions on June 5, 2009.

On August 25, 2009, the Commission issued an order in this proceeding approving a gas commodity rate and gas distribution rates for service to the Allis provided by Presque Isle. On September 15, 2009, in response to a motion filed by Presque Isle, the Commission revised its order to clarify that the approved rates were placed into effect for service rendered on and after August 26, 2009.

On September 24, 2009, Allis filed a petition for rehearing arguing that the Commission erred in including interest costs for Presque Isle's area expansion program (AEP) into the rates charged to Allis. Allis claims that the Commission's findings, that the cost of long-term debt associated with the AEP was not central to the case, and that there was insufficient evidence in the record to disallow the cost, were incorrect. According to Allis, the record was replete with evidence concerning the AEP; and that evidence was discussed extensively in the PFD.

The Staff argues that Allis's petition should be denied on grounds that it does not meet the standard for rehearing set forth in 1999 AC, R 460.17403 (Rule 403), and because the Commission did not err in its findings and conclusions.

Presque Isle likewise argues that Allis's petition does not meet the Rule 403 standard for rehearing and adds that Allis' petition contradicts the testimony of its own witness who did not recommend the AEP disallowance on the evidentiary record.

Findings of Fact and Conclusions of Law

The Commission's Rules of Practice and Procedure, Rule 403, provides the basis for granting rehearing:

A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon.

In addition, the Commission has repeatedly stated that a petition for rehearing is not an opportunity for a party to reargue a position or express disagreement with a Commission order.

The Commission finds that Allis's petition for rehearing should be denied because Allis is simply taking the opportunity to express disagreement with the Commission's decision. Allis does not make any claim of legal or factual error or any unintended consequences as a result of the Commission's decision.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by the Township of Allis 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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of November 12, 2009.

Mary Jo Kunkle, Executive Secretary