

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY for)	
accounting approval of depreciation rates for)	Case No. U-15629
gas utility plant.)	
_____)	

At the February 8, 2010 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On July 31, 2008, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting approval of revised depreciation accrual rates for accounting and ratemaking purposes for the company's gas utility plant. Consumers also requested a determination that it had substantially complied with the June 26, 2007 order in Case No. U-14292 (June 26 Order).

On November 26, 2008, a prehearing conference was conducted before Administrative Law Judge James N. Rigas (ALJ). The ALJ granted petitions to intervene filed by Attorney General Michael A. Cox (Attorney General) and the Association of Businesses Advocating Tariff Equity (ABATE). The Commission Staff (Staff) also participated in the proceeding.

On December 3, 2008, Consumers filed a partial settlement agreement in this docket in which the parties agreed that the Commission should authorize the company to implement a proposed

depreciation schedule from the date that Consumers implemented the settled retail rates in Case No. U-15506, until the Commission issued a final order in this proceeding. On December 23, 2008, the Commission approved the settlement agreement.

On September 29, 2009, the Commission issued an order in which it approved the continued use of the traditional straight-line depreciation method, coupled with the use of the Staff's proposed standard retirement units (SRUs) on a going-forward basis, as the most appropriate means of addressing future removal costs for Consumers' gas plant. The Commission noted that the net present value approach proposed by the Attorney General does not comport with depreciation methods recommended by authoritative sources on depreciation accounting. The Commission further observed that the Attorney General's proposed method significantly decreases the cash flows available to utilities to meet their infrastructure and other public service obligations. This, in turn, has a negative financial effect on both the utility and its customers by requiring that such obligations be met with more expensive sources of external financing and by driving up the cost generally of obtaining money in the capital markets.

On October 29, 2009, Consumers and the Attorney General filed petitions for rehearing. On October 30, 2009, the Attorney General filed a revised petition for rehearing. On November 11, 2009, ABATE filed a response to the Attorney General's petition and on November 19, 2009, Consumers and the Staff filed responses to the petitions for rehearing.

In its petition for rehearing, Consumers requests that the Commission align the implementation date for the new SRUs with the date of the final order in Case No. U-15986, Consumers gas division's current rate proceeding. Consumers asserts that it does not object to the implementation of the Staff's SRUs, only that the date of implementation should coincide with new rates to avoid the unintended consequence of shifting certain retirement units from capital to operations and

maintenance (O&M) expense outside of a final rate order. In its reply, the Staff supported Consumers' request.

In his petition for rehearing, the Attorney General argued that the Commission erred in its decision by failing to balance the interests of ratepayers with that of the company. According to the Attorney General, the Commission's decision to continue to use the traditional straight-line depreciation method for removal costs, rather than adopting the approach proposed by the Attorney General, will result in increasing all Consumers' future revenue requirements to the detriment of ratepayers. The Attorney General adds that the Commission failed to address all of the relevant findings in Case No. U-14292 and therefore implicitly reversed these findings without explanation.

The Attorney General argues that the reasons the Commission stated for its approval of the traditional straight-line depreciation method are not supported by evidence on the record, are specious, or overstate the evidence in the record. Specifically, the Attorney General argues that the Commission's rejection of his proposed method was in error because his witness used the same cost of removal projections that the company used, but discounted those future costs to arrive at current rates.

The Attorney General claims that although the Commission's finding that his proposed change in depreciation method reduces cash flow to the utility is correct, it is nevertheless "specious and hypocritical." Attorney General's petition for rehearing, p. 8. According to the Attorney General, a reduction in cash flow, which would result in some negative financial effects on the company, does not comport with the Commission's mandate to set just and reasonable rates that balance the interests of the company and its ratepayers and creates an unjustifiable difference in the Commission's findings in the September 29, 2007 order in Case No. U-14292.

Finally, the Attorney General claims that the Commission erroneously found that most other state commissions have rejected the net present value approach. According to the Attorney General, while it is true that most states continue to use the traditional method, this is not the same as affirmatively rejecting the use of the present value method.

In its purported response to the Attorney General, ABATE argues that the Commission should reconsider its decision and either adopt the method proposed by the Attorney General or the average cost method supported by ABATE.

In response to ABATE, the Staff and Consumers argue that ABATE's filing was in fact a petition for rehearing that was untimely filed. The Staff and Consumers therefore urge the Commission to disregard ABATE's filing or, in the alternative, find that ABATE's petition does not meet the standard for rehearing under 1999 AC, R 460.17403 (Rule 403).

In response to the Attorney General, the Staff and Consumers argue that the petition for rehearing does not meet the requirements of Rule 403. According to them, the Attorney General has not identified any new evidence nor has he pointed to any mistake of fact or error of law. The Staff and Consumers argue that the Attorney General merely reiterates his arguments made in the proceedings below. The Staff adds that the Attorney General's argument, that the Commission implicitly overturned its findings in Case No. U-14292, is misplaced. According to the Staff, Case No. U-14292 was a generic proceeding in which the Commission requested "additional information [that] will allow the Commission to assess the propriety of the different proposals and the efficacy of implementing for each individual utility." June 26, 2007 order in Case No. U-14292, p. 33. The Staff claims that the Commission made no determination as to the preferred method for calculating future costs of removal in that order and thus there was no precedent set by the order. Consumers adds that, contrary to the Attorney General's claim, the

record fully supports the Commission's decision and that the Attorney General merely restates the evidence and arguments he presented in his briefs.

Findings of Fact and Conclusions of Law

The Commission finds that ABATE's "response" to the Attorney General's petition for rehearing was in fact a petition for rehearing, and was not a response to the Attorney General's filing. Rule 403(1) of the Commission's Rules of Practice and Procedure provides that a petition for rehearing shall be filed within 30 days after the issuance of the Commission's order.

ABATE's petition for rehearing was not filed until November 11, 2009, 43 days after the Commission issued and served its order. ABATE's petition for rehearing is therefore rejected as not timely filed.

Rule 403 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. As the Commission has often stated, 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 rehearing.

The Commission finds that the Attorney General's petition for rehearing should be denied because the basis of the petition is disagreement with the Commission's decision that the traditional straight-line method should continue to be used for calculating cost of removal expense. The Commission adds that it is neither "specious" nor "hypocritical" to consider the effect of a change in cost of removal expense on the company's cash flow and capital requirements and determine on the basis of evidence in the record that such a significant change could lead to an

overall adverse result for the company and its customers. The Attorney General's petition is simply a rehash of the evidence he presented and a reiteration of the arguments made previously. This evidence and the arguments were fully considered and rejected in the Commission's September 29, 2009 order. Therefore, the Commission finds that the Attorney General's petition for rehearing does not meet the standard set forth in Rule 403 and should be denied.

Finally, the Commission finds that Consumers' petition for rehearing should be granted along with the requested relief. The Commission agrees with Consumers and the Staff that the implementation date for the Staff's SRUs should coincide with the date of the final order in Case No. U-15986, Consumers gas division's current rate proceeding, to avoid the unintended consequence of shifting certain retirement units from capital to O&M expense outside of a final rate order.

THEREFORE, IT IS ORDERED that:

- A. The petition for rehearing filed by the Consumers Energy Company is granted.
- B. Consumers Energy Company shall begin implementation of new standard retirement units for gas plant on the date of issuance of the final order in Case No. U-15986.
- C. The petitions for rehearing filed by the Association of Businesses Advocating Tariff Equity and by Attorney General Michael A. Cox are 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

Greg R. White, Commissioner

By its action of February 8, 2010.

Mary Jo Kunkle, Executive Secretary