S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS ENERGY COMPANY** for approval of a special contract for electric service with Steelcase, Inc.	)	Case No. U-12060

At the December 6, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER APPROVING SPECIAL CONTRACT

On August 3, 1999, Consumers Energy Company (Consumers) filed an application for approval of a special contract with Steelcase, Inc.

Steelcase, which has facilities in Grand Rapids and Lowell, Michigan, currently meets its electric power needs through the purchase of electric service from Consumers. The application states that, due to competitive pressures, Steelcase has considered purchasing electric service from alternative suppliers or shifting its manufacturing processes out of Michigan.

In response to Steelcase's situation, Consumers negotiated a special contract for electric service with Steelcase, a copy of which is attached to the application as Attachment A. The contract states that Consumers will provide firm service to Steelcase's four Michigan facilities. The contract provides for a negotiated pricing structure that may be subject to adjustment, depending upon the price of power determined at the Cinergy hub. However, Steelcase will not be subject to any charges in excess of those that would otherwise be incurred under Consumers' standard tariffs. The special contract expires on December 31, 2001.

Consumers states that the contract is the product of good faith negotiation and compromise between itself and Steelcase. It says that the parties negotiated the contract in light of competitive options available to Steelcase, and it asserts that the rates and other terms and conditions specified in the contract are reasonable and in the public interest.

Discussion

The Commission concludes that it should approve this contract as reasonable and in the public interest. In reaching this conclusion, the Commission finds, in the absence of a reason to believe otherwise, that the parties to the contract protected their own interests and reached a mutually beneficial bargain. The Commission also finds that Consumers should have leeway to negotiate prices and other terms as it sees fit, except when the contract provisions would violate statutes, rules, or Commission orders, would run afoul of clearly established Commission policies, would harm other ratepayers, or would otherwise detract from the public interest. On the other hand, the ratemaking treatment to be accorded to these contracts is within the Commission's exclusive domain.

There are clear benefits in the contract for Consumers, including increased sales to this customer. There are clear benefits to the customer, including a reduction in cost. There are benefits for other customers, including retaining the contribution of the customer to system fixed costs. There are benefits to the general public, including the economic effects of potentially expanding employment in the state.

The Commission also finds that other customers and the public interest can be adequately protected. The primary concern in this regard is the future ratemaking treatment of the rate discounts offered by the contracts. This concern can be addressed by applying the principles set forth in the Commission's March 23, 1995 order in Case No. U-10646 that approved contracts between The Detroit Edison Company (Detroit Edison) and General Motors Corporation, Ford Motor Company, and Chrysler Corporation and the Commission's October 25, 1995 order in Case No. U-10961 that approved a contract between Consumers and General Motors. The Commission said that it would not make a definitive ruling on the future ratemaking effects of the contracts, but discussed the general standards that should guide future Commission action:

> "[T]he contracts are the product of Detroit Edison's negotiations. It follows that Detroit Edison should assume full responsibility for negotiating the discounted prices and that its shareholders should expect to absorb much, if not all, of any revenue shortfall caused by the pricing and other contract provisions that the utility negotiates. Therefore, unless Detroit Edison can make a compelling showing why a different ratemaking treatment is justified, the Commission will not permit Detroit Edison to reallocate the costs of serving contract customers to other ratepayer classes. To make a compelling showing for a different treatment, Detroit Edison would bear a substantial burden. This burden would require, at a minimum, a clear, convincing, and unequivocal demonstration either (1) that the contract prices and terms are justified on the basis of the cost of service, or (2) that the benefits for other (non-participating) ratepayers are substantial and have a value that outweighs the costs that are not recovered from the contract customers. Either showing would require support from a cost-of-service study that identifies and quantifies all costs incurred under the contracts. In addition, both showings would require Detroit Edison to demonstrate that its service provided in conjunction with the contracts has not, and will not in the future, impede the development of competition in its service territory.

March 23, 1995 order, Case No. U-10646, p. 21.

The Commission also indicated that other ratepayers should be protected from any underrecoveries of power supply costs and other surcharges and that if average power supply costs increased as a result of incremental load attributable to the contracts, the added costs would be treated the same as any other category of unrecovered cost created by the contracts. Id., p. 20. To facilitate implementation of these protections, the Commission required Detroit Edison to treat service under the contracts as a separate rate class for purposes of cost allocation studies in future rate cases and to file annual reports showing actual contract revenues and hypothetical tariff rate revenues using the same billing determinants.

The Commission concluded that, taken as a whole, these protections increased the incentive for the utility to negotiate for the benefit of all customers and decreased the likelihood that contract customers would be subsidized by other customers. The Commission did not find it in the public interest for a utility to negotiate contracts under the belief that the Commission would necessarily shift to other customers the full discount offered by the contracts.

If, in future proceedings, Consumers seeks to increase other customers' rates as a result of this contract, it is on notice that the principles discussed in the March 23, 1995 order in Case No. U-10646 and the October 25, 1995 order in Case No. U-10961 should apply. Furthermore, Consumers will be required to account for the contract as a separate rate class in future cost of service studies and to file annual reports of actual contract revenues and hypothetical tariff rate revenues using the same billing determinants.

With respect to the potential anti-competitive effects of special contracts, the Commission has previously indicated that special contracts would no longer be approved unless they contained reasonable provisions allowing the customer to "opt-out" of the contract to participate in a competitive market. June 5, 1997 order, Case No. U-11290, joint concurring opinion. The special contract is consistent with the goal of customer choice because it permits Steelcase to remove all of its facilities from the contract to participate in the retail open access program. Moreover, the contract term expires on December 31, 2001, which is consistent with the retail open access schedule providing choice to all customers on January 1, 2002. Accordingly, the Commission finds that the special contract is consistent with the standard established in Case No. U-11290.

Finally, because approval of this contract does not increase any customer's rates, the Commission finds that it may approve the contract without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a(1); MSA 22.13(6a)(1).

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The special contract is reasonable and in the public interest, and should be approved.

c. Ex parte approval of the application is appropriate.

THEREFORE, IT IS ORDERED that the special contract between Consumers Energy Company and Steelcase, Inc., is approved.

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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 6, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Commissioner

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Commissioner

By its action of December 6, 1999.

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Its Executive Secretary

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Suggested Minute:

> "Adopt and issue order dated December 6, 1999 approving the special contract for electric service between Consumers Energy Company and Steelcase, Inc., as set forth in the order."