

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
CONSUMERS ENERGY COMPANY to recover	)	
implementation costs for the 12-month period	)	Case No. U-12358
ended December 31, 1999.	)	
_____	)	

At the July 11, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On March 31, 2000, Consumers Energy Company (Consumers) filed an application seeking authorization to recover from its ratepayers \$30,152,000 in expenditures made during the 12-month period ended December 31, 1999 to implement a retail open access program in accordance with previous orders of the Commission in Cases Nos. U-11290 et al. Subsequently, Energy Michigan, Attorney General Jennifer M. Granholm (Attorney General), and the Association of Businesses Advocating Tariff Equity (ABATE) filed petitions to intervene. The Commission Staff (Staff) also participated in the proceedings.

Pursuant to due notice, a prehearing conference was conducted on July 6, 2000 by Administrative Law Judge James N. Rigas (ALJ). At the prehearing conference, the petitions to intervene filed by Energy Michigan, the Attorney General, and ABATE were granted without objection and

a schedule for the hearing was established. In addition, statements were placed on the record by Brian Bellville and Victor Mier of Prescott, Michigan concerning their service quality concerns.

The evidentiary hearing was conducted on January 10, 2001. Five witnesses testified and six exhibits were received into evidence. On January 31, 2001, briefs were filed by Consumers, ABATE, and the Staff. On February 14, 2001, reply briefs were filed by Consumers and ABATE.

On April 4, 2001, the ALJ issued a Proposal for Decision (PFD), which recommended that Consumers should be authorized to recover \$30,152,000 from its ratepayers for its 1999 implementation expenditures. On April 18, 2001, ABATE and the Staff filed exceptions to the PFD. On April 30, 2001, Consumers filed a reply to exceptions.

Labor Costs

William J. Kusiak, a public utility auditor in the Commission's Electric Division, proposed that \$4,996,000 of Consumers' 1999 implementation expenses be disallowed. According to Mr. Kusiak, this adjustment would remove all of Consumers' labor expenses and related overheads. He stated that Consumers' 1999 labor-related implementation expenses should not be considered to be incremental because Consumers' current rates, which were established by the February 5, 1996 order in Case No. U-10685, include \$524,000,000 for other operation and maintenance (other O&M) expenses, whereas Consumers' 1999 other O&M expenses amounted to only \$516,610,000 on a non-jurisdictional basis. In addition, Mr. Kusiak observed that Consumers' rates are based on a test year that contained an employee count of 8,938 employees, whereas Consumers' actual year end 1999 employee count was only 8,736 employees. Finally, Mr. Kusiak noted that his testimony on this issue is consistent with the Staff's position in Case No. U-11955,

which involved Consumers' request for recovery of implementation expenses incurred through 1998.

Carl A. Gilzow, Consumers' electric restructuring implementation project manager, supported his company's claim for full recovery of all labor-related implementation costs incurred during 1999. He maintained that Mr. Kusiak's calculations need to be restated in order to understand the flaws in the Staff's position. According to Mr. Gilzow, the Staff's proposed disallowance of \$4,996,000 should be broken down as follows:

Labor (excluding employee impact expenses) ¹	\$3,369,000
Employee impact expenses-Labor component	\$1,150,000
Employee impact expenses-Non-labor component	\$331,000
Total employee impact expenses	\$1,481,000
Carrying costs	\$146,000
Total Staff adjustment	\$4,996,000

Mr. Gilzow explained that 57 of Consumers' employees worked either full or part-time on the implementation project. Consumers' total labor expense of \$3,369,000 represents 100,007 hours of labor, which is comprised of 66,157 direct labor hours and 33,850 chargeback² hours. According to Mr. Gilzow, all of these labor hours should be considered to be incremental because they involved either newly hired employees (10,000 hours), transferred employees whose old positions were backfilled with newly hired replacements (26,421 hours), the payment of overtime (452

¹"Employee impact expense" is Consumers' terminology. Although not explicitly defined, the record evidences that this category of expenses includes costs associated with the retention, retraining, and relocation of Consumers' employees.

²Chargeback labor is performed by Consumers' internal support organizations, which then charge the cost of their labor to the electric restructuring project.

hours), an employee transferred from the company's Gas Division (2,080 hours), chargeback labor (33,850 hours), or use of existing employees whose existing work was either deferred, performed by other employees, or subject to non-paid overtime (27,204 hours).

Further, Mr. Gilzow contended that Mr. Kusiak's comparison of the test year and 1999 year-end employee counts was flawed. Mr. Gilzow stated that a more appropriate comparison would be between Consumers' 1998 and 1999 year-end employee counts, which demonstrates a net increase of 133 employees during 1999.

Next, Mr. Gilzow criticized Mr. Kusiak's unexplained disallowance of all \$1,481,000 of Consumers' proposed employee impact costs. Mr. Gilzow testified that this category of expenses is comprised of a labor-related component (\$1,150,000) and a non-labor component (\$331,000). According to Mr. Gilzow, the most significant portion of the labor-related component of the employee impact costs was due to the elimination of Consumers' Traveling Repair Crew (TRC), which was a constant workforce that would travel from site to site to perform maintenance tasks during scheduled outages. He explained that the TRC was eliminated because electric restructuring has changed the way that outages are scheduled. Whereas outages were formerly scheduled throughout the year, they are now being scheduled for off-peak periods in the spring and fall, which makes maintenance of a year-round workforce noneconomic. Rather, Consumers opted to replace the TRC with outside contractors.

Mr. Gilzow stated that the elimination of the TRC necessitated transferring 43 employees into substation construction jobs. Six other TRC employees became meter readers. Citing Section 10p(2) of 2000 PA 141 (Act 141), MCL 460.10p(2); MSA 22.13(10p)(2), Mr. Gilzow insisted that the \$924,000 cost of retraining and relocating these TRC employees cannot be disallowed.

Mr. Gilzow also contended that the restructuring of the electric industry has made certain of Consumers' employees more valuable due to their expertise in the scheduling and controlling of bulk power flows. According to Mr. Gilzow, Consumers was forced to pay such employees a premium in order to retain their services. Therefore, he argued that the \$344,000 in signing and retention bonuses and additional compensation paid to these 28 employees during 1999 is recoverable in this proceeding.

Finally, Mr. Gilzow explained that the \$331,000 non-labor component of employee impact costs relates to materials and other expenses associated with the elimination of the TRC and the retention of the 28 power transmission experts.

The Commission finds that Consumers' request for recovery of the \$3,369,000 of labor expenses (excluding employee impact expenses) should be denied. After weighing the evidence, the Commission is not persuaded those labor expenses were incremental to Consumers' restructuring implementation efforts.

In its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission disallowed the same types of expenses as are involved in this proceeding. Despite claims in that case by Consumers that these types of labor costs should have been determined to be incremental because they related to added employees, transferred employees whose old jobs were backfilled, the payment of overtime, and the use of chargeback labor, the Commission found that Consumers failed to prove that the challenged costs were in addition to the employee-related costs typically incurred by a utility operation in providing electric service in a reasonable, efficient manner.

The Commission finds that the evidence proffered by Consumers in this proceeding is remarkably similar to that submitted in Cases Nos. U-11955 and U-11956. Again, the vast majority of the contested labor expenses stem from the transfer of resources from other areas

within Consumers' corporate structure. In Cases Nos. U-11955 and U-11956, the Commission stated:

The redeployment of members of an existing workforce is not necessarily an unusual occurrence in large organizations. A reassignment can be short-term, temporary, or routine in nature. It may reflect efficiencies attained in preexisting work functions or the elimination of redundant positions. Unless the cost would not have been incurred, and represents a task or activity that would not have been performed, but for restructuring, it is more properly classified as the type of expense assigned to base rates.

October 24, 2000 order, Cases Nos. U-11955 and U-11956, pp. 9-10.

Moreover, in Cases Nos. U-11955 and U-11956, the Commission also clearly indicated that “implementation costs are non-recurring costs that the utilities incur in addition to the operational costs that they already recover in their base rates and are necessary to accomplish the changes required by restructuring.” Order, p. 3, (emphasis added). The necessary implication of this language is that a utility not only must demonstrate that its labor expenditures were reasonably and prudently incurred in furtherance of its implementation program, but also must prove that such labor expenditures are not already being recovered in its existing rates. Accordingly, the Staff's analysis weighs heavily against allowing Consumers to recover the labor expenses at issue in this proceeding. Mr. Kusiak's testimony confirms that Consumers' 1999 other O&M expenses were over \$7 million less than the amount collected in its current rates. Further, Mr. Kusiak established that the actual number of employees working for Consumers as of December 31, 1999 was 202 less than the number of employees reflected in its current rates. Therefore, the Commission finds that the \$3,369,000 reduction proposed by Mr. Kusiak should be adopted.

The Commission also finds that the \$1,481,000 reduction proposed by Mr. Kusiak that is associated with the labor and non-labor components of Consumers' 1999 employee impact expenses should be adopted. The burden is on Consumers to establish that an expense for which it

seeks recovery is related to electric restructuring. The Commission is not persuaded that Consumers has met this burden with regard to the disputed employee impact expenses.

In his testimony, Mr. Gilzow argued that all of the retraining and relocation costs associated with Consumers' decision to eliminate its TRC are recoverable pursuant to Section 10p(2) of Act 141 because the decision to change its methodology for performing outages was attributable to electric restructuring. The Commission disagrees.

Section 10p(2) of Act 141 does not guarantee the recovery of all of a utility's employee retraining and relocation costs. Rather, this legislation is limited to "audited and verified employee-related restructuring costs that are incurred as a result of the amendatory act that added this section or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have been approved and found to be prudently incurred by the commission." MCL 460.10p(2); MSA 22.13(10p)(2), (emphasis added). Nothing in Act 141 or the Commission's prior restructuring orders in any way obligates an electric utility to alter its methodology for performing scheduled outages. Further, the Commission is not persuaded by Mr. Gilzow's testimony that the commencement of electric restructuring constituted the impetus for Consumers' 1999 decision to eliminate its TRC. It is more likely, based on evidence developed in other Commission proceedings³ that Consumers abandoned year-round scheduled outages due to the tight summertime electric supply situation in this state during recent years.

³ See, the April 14, 1998 orders in Cases Nos. U-10840, U-11677, and U-11678, the January 19, 1999 order in Case No. U-11889, the January 19, 2000 order in Case No. U-12292, and the November 2, 2000 order in Case No. U-12702.

The Commission made a similar determination in Cases Nos. U-11955 and U-11956. In response to Consumers' contention that severance expenses attributable to a workforce reduction at three of its power plants were recoverable as implementation costs, the Commission stated:

Thus, Consumers had an ongoing responsibility to its ratepayers to implement efficiency measures to reduce its cost of service prior to restructuring, and the advent of restructuring does not discharge the company of this responsibility. Consumers does not explain any connection between its efforts to reduce its employee count and the Commission's initiation of restructuring proceedings. Absent a showing that restructuring caused the costs to be incurred, a utility could use restructuring as an opportunity to recoup out-of-pocket costs for efficiency measures that it would have undertaken in any event.

October 24, 2000 order, Cases Nos. U-11955 and U-11956, pp. 10-11.

Accordingly, the Commission finds that Consumers' request for recovery of the \$924,000 associated with Consumers' decision to eliminate its TRC should be denied.

Additionally, the Commission is not convinced that Consumers should be permitted to recover the \$344,000 in signing and retention bonuses and additional compensation paid to the 28 employees with expertise in the scheduling and controlling of bulk power flows. The Commission finds that the ability of these employees to command higher salaries is not related to Consumers' implementation of a retail open access program. Rather, the Commission concludes that these employees were performing preexisting work functions and that the expenses of retaining them more properly should be assigned to base rates.

Given that the Commission rejected Consumers' attempt to recover the labor component of its proposed employee impact expenses, the Commission finds that recovery of the \$331,000 non-labor component should also be denied.

Conditional Recovery

In its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission explicitly indicated that the incurrence of implementation costs for activities that prove to be ineffective, inefficient, or unworkable may not entitle a utility to recover the costs of those activities. Accordingly, the Commission cautioned the parties that its findings were conditional. In so doing, the Commission stated:

If subsequent events reveal that costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the progress to retail open access, the Commission reserves the right to undertake another review of those costs and may foreclose their recovery.

October 24, 2000 order, Cases Nos. U-11955 and U-11956, pp. 4-5.

ABATE's effort to have a similar condition incorporated into the PFD was rejected. The ALJ indicated that the Commission's June 5, 1997 order in Case No. U-11290 embraced the use of the prudence standard for determining whether implementation would be recoverable. According to the ALJ, use of the prudence standard "requires that decisions be evaluated based on what was known at the time the decisions were made, not on circumstances that become known after the fact." PFD, pp. 7-8.

In its exceptions, ABATE contends that the ALJ ignored the Commission's order in Cases Nos. U-11955 and U-11956 and the similar ruling in the March 29, 2001 order in Case No. U-12359, which involves a request by The Detroit Edison Company (Detroit Edison) for recovery of its 1999 implementation costs. According to ABATE, the recovery of Consumers' 1999 implementation costs should be conditional.

In response, Consumers contends that the Commission's determination to make recovery of Consumers' pre-1999 implementation costs conditional in Cases Nos. U-11955 and U-11956 was

specific to that case. Further, Consumers insists that the fact that the Commission took a similar approach in Case No. U-12359 is irrelevant. According to Consumers, because the evidence presented in this proceeding establishes that the decisions underlying its 1999 implementation expenditures were prudent, there is no reason for the Commission to make the recovery of those costs conditional.

The Commission finds that its prior decisions on this issue are not irrelevant and that they should have been heeded by the ALJ. In reserving the right to undertake another review of implementation costs at issue in Cases Nos. U-11955, U-11956, and U-12359, the Commission observed:

Because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Consumers' and Detroit Edison's implementation programs at this time. The Commission notes, however, that it expects Consumers and Detroit Edison to file information in their 2000 and 2001 true-up cases from which the Commission can determine the effectiveness of the implementation costs that the companies seek to recover.

October 24, 2000 order, Cases Nos. U-11955 and U-11956, p. 5.

The reasons for the Commission to reserve judgment in Cases Nos. U-11955, U-11956, and U-12359 still remain. Therefore, the Commission agrees with ABATE that the Commission should indicate in its final order in this proceeding that it again reserves the right to undertake another review of Consumers' 1999 implementation expenditures.

Methodology for Cost Recovery

In its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission also indicated that a final determination of the methodology for cost recovery should be deferred "until pending questions regarding the stranded cost recovery mechanism are resolved." Order, Cases

Nos. U-11955 and U-11956, p. 12. Issues related to the determination of Consumers' and Detroit Edison's net stranded costs are being litigated in Case No. U-12639.

ABATE requested the ALJ to defer determination of a recovery mechanism for Consumers' 1999 implementation costs until Case No. U-12639 is completed. The ALJ rejected this request. In so doing, he reasoned that consideration of the proper method for determining net stranded costs should not preclude the Commission from addressing proposals related to a surcharge methodology.

In its exceptions, ABATE contends that the ALJ ignored the Commission's order in Cases Nos. U-11955 and U-11956 and a similar ruling on this issue embodied in the March 29, 2001 order in Case No. U-12359. According to ABATE, a final determination regarding the recovery methodology should be made in Case No. U-12639, not this case.

Consumers defends the ALJ's ruling by arguing that information that was not available at the time that the record was developed in Cases Nos. U-11955 and U-11956 is now available. Citing the testimony of Francis A. Ernst, Jr., its Executive Director of Rates and Electric Strategic Business Unit Planning, Consumers argues that the record in this proceeding is sufficient for a determination regarding the effects that the passage of Act 141 and 2000 Public Act 142 (Act 142), MCL 460.10 et seq.; MSA 22.13(10) et seq., might have on the outcome of this proceeding. According to Mr. Ernst, because Consumers has not sought to securitize any of its implementation costs, Consumers' situation is distinguishable from Detroit Edison's. For this reason, Consumers insists that there is no reason to delay determination of the recovery mechanism for Consumers' 1999 implementation costs until Case No. U-12639 is completed.

The Commission finds that Consumers' request for immediate determination of a recovery mechanism for its 1999 implementation costs should have been rejected by the ALJ. In its

October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission clearly stated that determination of the methodology for cost recovery of Consumers' and Detroit Edison's implementation costs should await resolution of questions regarding the stranded cost recovery mechanism. Further, there is no urgent need to address this issue. It is undisputed that Consumers is currently statutorily precluded by Section 10d(1) of Act 141 from increasing its current retail rates for at least 2 ½ years. MCL 460.10d(1); MSA 22.13(10d)(1). Accordingly, the Commission finds that the relief requested in ABATE's exception should be granted. The Commission's decision to delay determination of the methodology for cost recovery eliminates any need to address ABATE's third exception, which concerns the reasonableness of the specific cost recovery methodology recommended by the ALJ.

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. Implementation costs of \$25,156,000 incurred by Consumers during 1999 should be approved for deferred recovery, subject to the conditions stated in this order.

THEREFORE, IT IS ORDERED that implementation costs of \$25,156,000 incurred by Consumers Energy Company during 1999 are approved for deferred recovery, subject to the conditions stated in this 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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of July 11, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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

Chairman

Commissioner

Commissioner

By its action of July 11, 2001.

Its Executive Secretary

In the matter of the application of)
CONSUMERS ENERGY COMPANY to recover)
implementation costs for the 12-month period)
ended December 31, 1999.)
_____)

Case No. U-12358

Suggested Minute:

“Adopt and issue order dated July 11, 2001 approving retail access program implementation costs incurred during 1999 by Consumers Energy Company, as set forth in the order.”