

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Case No. U-12358

On August 10, 2001, Consumers filed its Petition for Rehearing (“Consumers’ Petition”) relating to the Michigan Public Service Commission’s (“MPSC” or “Commission”) July 11, 2001 Opinion and Order in the above-captioned case (“July 11 Order”). In its Petition, Consumers contends that the Commission’s reservation of the right to undertake another review of Consumers’ implementation expenditures for the reasons set forth in the July 11 Order, as well as the reasons set forth in prior Commission Orders in Case Nos. U-11955, U-11956, and U-12359, was inappropriate and constituted error. (Consumers’ Petition, pp 2-3). However, contrary to Consumers’ contention, these issues were addressed in the case below and the Commission properly determined that Consumers’ recovery of these implementation costs should explicitly be made conditional. The Commission did not commit error, and Consumers’ Petition should be denied.

In addition, Consumers contends that certain labor costs, employee retraining costs, and other employee impact costs should be approved for deferred recovery, contrary to the Commission's explicit finding that such costs be disallowed. (See, Consumers' Petition, pp 1-2). Again, these issues were argued below and properly addressed by the Commission in its July 11 Order. Consumers' Petition should be denied.

ARGUMENT

A. Consumers' Petition should be dismissed as not properly before the Commission under Rule 403 of the Commission's Rules of Practice and Procedure.

As the Commission has noted in numerous opinions:

“Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17403, 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. 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 a rehearing.” (July 24, 2001, Order in Case No. U-12540, pp 1-2).

Consumers' Petition does nothing more than reargue its positions below. For example, Consumers addressed in its Reply Brief ABATE's suggestion that determination of recoverability of implementation costs be made contingent as required by the Commission's prior Orders. (Consumers' Reply Brief, pp 9-12). The arguments raised in Consumers' Petition are nothing more than an attempted expansion of the arguments it made in its Reply Brief below, as well as regurgitation of issues raised in its Initial Brief. This provides no basis for the granting of a petition for rehearing under Commission Rule 403.

Similarly, Consumers addressed at length the issue of the recovery of labor costs and the position taken by Staff to reject such recovery in its reply brief below. (Consumers' Reply Brief, pp 1-8). Just because Consumers is seeking another opportunity to argue its position or express disagreement with the Commission's decision is not an appropriate reason for the granting of a petition for rehearing.

In this case, Consumers does nothing more reiterate and attempt to expand upon arguments which it had the opportunity to make below, which it did make below, and which have already been addressed by the Commission in its July 11 Order. Consumers' Petition is not properly before the Commission under Rule 403, and it should be denied by the Commission.

B. The Commission properly made recovery of Consumers' implementation costs conditional.

As ABATE argued below, the Commission, in its October 24, 2000 Order in Case No. U-11955, explicitly made recovery of implementation costs conditional. (See, ABATE's Initial Brief, pp 5-6; ABATE's Exceptions, pp 7-8). The Commission required Consumers to file information so that the Commission could determine the effectiveness of the implementation costs, and also stated that if subsequent events reveal that the costs were inappropriate or ineffective, the Commission could foreclose recovery of those costs:

Implementation Costs

Prior to discussing the implementation costs actually incurred during and before 1998, the Commission would emphasize that simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. Expenditures associated with the implementation of the retail open access programs must produce results. Procedures, policies, methods, or electronic data interfaces that prove to be ineffective, inefficient, or unworkable may not entitle the company to recover the costs of those systems.

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.

For purposes of the present case, the Commission has reviewed the expenditures on the record and has granted deferred recovery as appropriate. However, it would caution the parties that these findings are conditional. 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 in Case No. U-11955, pp 4-5).

In the case below, ABATE requested that the Commission make any recovery permitted in this case conditional as well, and that the Commission subject the implementation costs requested in this case to the scrutiny discussed in its October 24, 2000 Order with regard to 1998 implementation costs. (See, ABATE's Initial Brief, pp 5-6; ABATE's Exceptions, pp 7-8). The Commission was correct in adopting this approach. (July 11 Order, pp 9-10).

The Commission also took such an approach in its Order in MPSC Case No. U-12359 with regard to Edison. It made Edison's recovery of implementation costs subject to the conditions set forth in the Commission's Orders in Case Nos. U-11955, U-11956 and U-12478. (March 29, 2001 Order in MPSC Case No. U-12359, pp 2-3). The Commission properly adopted similar conditions upon the recovery by Consumers of its implementation costs and holding that such costs should be subject to the conditions set forth in the Commission's Orders in Case Nos. U-11955, U-11956 and U-12505 (the Consumers' securitization case corresponding to Edison's U-12478) (July 11 Order, pp 9-10, 12).

As noted above, Consumers' Petition does nothing other than reargue its position in response to ABATE's argument below. The earlier cases cited by Consumers were not cases under 2000 PA 141 ("PA 141"), nor were they cases relating to the implementation of customer choice, direct access or retail open access. As such, the Commission is correct in reviewing implementation costs by recognizing that simply incurring costs alone is not sufficient, but that to be prudent, expenditures must produce results.

PA 141 makes it clear that implementation costs are to be "as determined by the Commission." MCL 460.10a(1). Moreover, the purposes of PA 141 make it clear that the Act is "[t]o ensure that all persons in this state are afforded safe, reliable electric power at a **reasonable rate.**" MCL 460.10(2)(d) (emphasis added). In providing for reasonable rates, it is the Commission's duty to undertake the very investigations and evaluations discussed in the July 11 Order. The Commission would be derelict in its duty if it were to simply approve recovery of costs without such investigations. Moreover, the Commission has long stated that such evaluations are proper in connection with the implementation of customer choice. Therefore, despite Consumers' continued attempt to write orders for the Commission by sending letters and other documents after the fact, the Commission has been and continues to be quite clear that it will uphold its statutory obligations to ensure that only appropriate implementation costs are recovered.

The fact that there is little or no customer choice in Michigan after years of "experimental programs" and new legislation, shows that the Commission is correct in making recovery of these implementation costs conditional. Otherwise, it would seem that the Commission has no choice but to deny recovery of these costs because they have not been shown to produce results. The Commission itself is being prudent in deferring a determination with

regard to these matters until such time as there is some meaningful implementation of customer choice in Michigan. The Commission's reasoning is sound, and Consumers' effort to reiterate its position below and expand upon it in a petition for rehearing should be rejected.

C. The Commission's July 11 Order is correct in disallowing labor related costs.

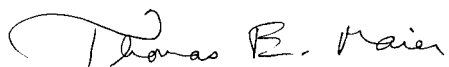
In Consumers' Petition, Consumers also restates its positions below with regard to disallowance of labor related costs. These positions were argued at length by Consumers and Staff on the record and in their respective briefs. ABATE supports the positions taken by Staff below in requesting disallowance of these costs, and believes that the Commission was correct in the way these items were treated in its July 11 Order. As above, Consumers' Petition is nothing more than an attempt at a second bite of the apple as regards these arguments. It should be similarly rejected by the Commission as improper under Rule 403. Nonetheless, the reasons for disallowing the costs stated by Staff in its briefs and exceptions more than support the determination by the Commission in its July 11 Order.

CONCLUSION

For the reasons set forth above, the Commission should deny Consumers' Petition for Rehearing with regard to the July 11 Order in the above-captioned case.

Respectfully submitted,

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