

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

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 April 28, 2004 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On July 11, 2001, the Commission approved recovery of \$25,156,000 for expenditures made by Consumers Energy Company (Consumers) during the 12-month period ended December 31, 1999 to implement a retail open access (ROA) program in accordance with previous orders of the Commission in Cases Nos. U-11290 et al. However, the Commission deferred immediate recovery of that amount by Consumers. In so doing, the Commission indicated that its July 11, 2001 determination was conditional and subject to additional review. Citing its October 24, 2000 order in Cases Nos. U-11955 and U-12956, the Commission held that recovery of implementation costs should be conditioned upon the success of the utility in implementing its ROA program. According to the Commission, the record in the case did not provide a basis for concluding that the utility's ROA program was sufficiently successful to merit full recovery of implementation costs.

Consumers appealed the July 11, 2001 order to the Michigan Court of Appeals. On April 1, 2004, the Court of Appeals found that the Commission should not have adopted a methodology that deferred determination of the amount to be recovered by Consumers indefinitely:

Nonetheless, we conclude that in requiring that the PSC “provide for full recovery” of implementation costs in an order adopted by January 1, 2002, the Legislature did not intend to allow the PSC to adopt a methodology that would indefinitely defer the determination of the amount to be allowed. An approval made contingent on future unknown facts that may indeed eradicate the initial approval is not a provision for full recovery. We note that in Consumers Energy Co v MPSC, unpublished opinion per curiam of the Court of Appeals, decided November 18, 2003 (Docket Nos. 241990 and 241991), this Court held that deferral of ROA implementation expenses was proper since the evidence was insufficient to allow the PSC to accurately determine the proper amount of implementation costs and whether those costs were prudently incurred. However, at oral argument in this case, the PSC did not dispute that its intent was to defer making a determination until the rate freezes imposed by MCL 460.10d(2) had expired. Under this statute, a freeze is in effect until January 1, 2005 for commercial and manufacturing customers, and until January 1, 2006 for residential customers. Moreover, at oral argument, the PSC took the position that it had the authority to defer the determination of implementation costs virtually indefinitely. We conclude that this is inconsistent with legislative intent, and that the Legislature contemplated that the PSC would make a timely determination regarding Consumers’ implementation costs. Accordingly, we find it necessary to remand so that the PSC can make such a determination.

Slip decision, p. 3.

The Court of Appeals ordered the Commission to convene a hearing and to issue an order that provides for full recovery of Consumers’ 1999 implementation costs. The procedure established by the Court for the remand proceeding allows for discovery by the Commission and the filing of data by Consumers that “Consumers believes is germane to the issue of its right to recover its implementation costs.” Slip decision, p. 4.

The Commission notes that in its June 2, 2003 order in Case No. U-13715, the Commission granted Consumers authority to securitize all \$25,156,000 of the implementation costs that were reviewed and approved by the Commission’s final order in Case No. U-12358, including carrying

costs at 7%.¹ Given that the order in Case No. U-13715 postdates the July 11, 2001 order in this proceeding and predates the April 1, 2004 order of the Court of Appeals, the Commission finds that Consumers should have the option of choosing whether it prefers to recover its approved implementation costs pursuant to the Commission's final order in Case No. U-13715 as part of its second securitization filing, or whether the company would prefer to withdraw the implementation costs from consideration in Case No. U-13715 and have their recovery controlled by this proceeding. Consumers should be directed to file its decision by May 7, 2004 in this docket. If Consumers chooses the latter approach, the Commission intends to authorize recovery of such implementation costs through use of surcharges on all customer classes that coincide with the expiration of the Act 141 rate caps.² The rate cap on large manufacturing and commercial customers expired January 1, 2004. The rate cap on small manufacturing and commercial customers will expire on January 1, 2005. The rate cap on residential customers will expire on January 1, 2006.³

¹ The total amount of implementation costs approved for securitization by Consumers in the June 2, 2003 order was \$64,108,000, which also includes Consumers' non-incremental implementation costs incurred for 1998 and 2000. The implementation costs for 1998 and 2000 were approved for deferred recovery in Cases Nos. U-11955 and U-12891, respectively.

² See, MCL 460.10d(2). Consumers' May 7, 2004 filing should include proposed surcharges and documentation of their derivation for use in this proceeding.

³ In the event that Consumers chooses to withdraw its implementation costs from Case No. U-13715, it should make a corresponding filing in Case No. U-13715 to that effect.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Consumers should be ordered to make a filing in this docket by May 7, 2004 for the purpose of exercising the option of recovering its approved implementation costs in Case No. U-13715 or in this proceeding.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company shall make a filing in this docket by May 7, 2004 for the purpose of exercising the option of recovering its approved implementation costs in Case No. U-13715 or in this proceeding.

B. Consumers Energy Company shall simultaneously serve a copy of its May 7, 2004 filing on all parties to this proceeding and Case No. U-13715.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of April 28, 2004.

/s/ Mary Jo Kunkle

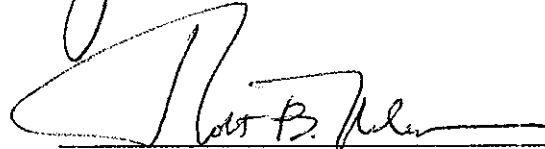
Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION




Chair


Commissioner


Commissioner

By its action of April 28, 2004.


Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-13991

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on April 28th 2004, A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.



Signature Not
Verified

Patricia Fronta

Digitally signed by
Patricia Fronta
DN: cn=Patricia Fronta,
o=MPSC, c=US
Date: 2004.04.30
09:25:42 -04'00'

Patricia Fronta

Subscribed and sworn to before me
this 28th day of April 2004



Signature
Not Verified

Catherine H.
Bowers

Digitally signed by
Catherine H. Bowers
DN: cn=Catherine H.
Bowers, o=Michigan Public
Service Commission,
ou=Regulatory Affairs,
Executive Secretary
Section, c=US
Date: 2004.04.30 09:56:27
-05'00'

Notary Public, Eaton County, Michigan
Acting in Ingham County
My Commission expires November 22, 2004

SERVICE LIST
CASE NO. U-12358

Mr. Michael D. VanHemert
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201-2276

Mr. Steven D. Hughey
Assistant Attorney General
6545 Mercantile Way, 2nd Floor
Lansing, MI 48910 ID MAIL

Mr. Richard Chambers
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201-2276

Mr. Eric J. Schneidewind
Varnum, Riddering, Schmidt & Howlett
The Victor Center
201 N. Washington Square, Ste. 810
Lansing, MI 48933

Mr. Donald E. Erickson
Assistant Attorney General
Special Litigation Division
525 W. Ottawa, 6th Floor
G. Mennen Williams Bldg.
Lansing, MI 48933 ID MAIL

Mr. Robert A. Strong
Clark Hill PLC
255 S. Woodward Ave. Ste. 301
Birmingham, MI 48009

Mr. James N. Rigas
PSC – ALJ Division
6545 Mercantile Way, 2nd Floor
Lansing, MI 48911 ID MAIL

**SUBSCRIPTION LIST
ALL ELECTRIC ORDERS**

Database Services
Lexis Nexis
P.O. Box 933
Dayton, OH 45401

Mr. Michael Peters
Michigan Electric Cooperative
2859 W. Jolly Rd.
Okemos, MI 48864

Mr. Phillip Cross
Public Utilities Reports, Inc.
8229 Boone Blvd., Ste. 401
Vienna, VA 22182

Ms. Monica Martinez
Senate Democratic Staff
Romney Building
Lansing, MI

ID MAIL

Mr. John Pestle
Varnum, Riddering, Schmidt & Howlett
Bridgewater Place
P.O. Box 352
Grand Rapids, MI 49501-0352