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July 13, 2006

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
PO Box 30221
Lansing, MI 48909-7721

Re: Case No. U-14593
Great Wolf Lodge v Cherryland Electric
Cherryland's Reply to GWL's Petition for Rehearing

Dear Ms. Kunkle:

Attached please find for paperless filing Cherryland Electric Cooperative's Reply to Great Wolf Lodge's Petition for Rehearing and Proof of Service in the above-captioned matter.

If there are any questions, please contact me.

Sincerely,

DYKEMA GOSSETT PLLC

Christine Mason
Soneral

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Enclosures

cc: Tony Anderson
Service List

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of GREAT)
WOLF LODGE against CHERRYLAND)
ELECTRIC COOPERATIVE regarding the)
charging of an unauthorized rate and the)
terms of a proposed electric service)
contract.)
_____)

Case No. U-14593 (Paperless)

**CHERRYLAND ELECTRIC COOPERATIVE'S REPLY TO
GREAT WOLF LODGE'S PETITION FOR REHEARING**

Introduction

The Great Wolf Lodge of Traverse City, LLC (Lodge) requests rehearing of the Michigan Public Service Commission's ("Commission") May 25, 2006 Order. The Commission should deny the Lodge's request for such extraordinary relief because the Lodge has failed entirely to demonstrate that the Commission's decision is improper because of errors, newly discovered evidence or unintended consequences. Instead, the Lodge improperly uses its Rehearing Petition as an opportunity to re-argue its previously asserted and rejected positions.

History of Proceedings

In Case No. U-13716, Cherryland Electric Cooperative (Cherryland) applied for Commission approval to implement a tariff rate for Large Resort Service (LRS). At that time, only the Lodge was eligible for the proposed LRS tariff, which was based on the cost to serve the Lodge. In its July 22, 2004 Order, the Commission denied

Cherryland's request. The Commission did, however, find that the LRS rate "should be approved on a temporary basis for one year from the date of this order or the date that a special contract becomes effective, whichever occurs first." (U-13716 Order, p 12).

In November 2004, because the Lodge was not meeting the minimum load requirements for the LRS rate and because Cherryland did not want to incur additional regulatory fines for not charging the Lodge according to an approved rate reflecting the Lodge's actual load, Cherryland began applying its large commercial and industrial (LCI) tariff rate rather than the LRS rate. On July 13, 2005, the Lodge filed a two-count Complaint against Cherryland. Count I of the complaint alleged that Cherryland's application of the LCI tariff rate violated the Commission's July 22, 2004 Order in Case No. U-13716 and MCL 460.552, which permits electric utilities to charge only Commission-approved rates for electric service. The Lodge requested a partial refund of its electric bill, that the Commission order Cherryland to return the Lodge to the LRS rate, and that the Commission fine Cherryland for violating the Commission's July 22, 2004 Order. Count II of the Complaint asked the Commission to declare that the Lodge was free to receive all electric components (generation, transmission, and distribution service) from a provider of its choosing "upon termination of its temporary contract with Cherryland." The Complaint also requested that the Commission order Cherryland to cooperate in the transfer of facilities to any new provider and that the Commission order "that Cherryland execute a contract with Great Wolf Lodge reflecting the rulings requested in this count."

On August 30, 2005, Cherryland filed a Motion for Summary Disposition arguing that Count I of the complaint should be dismissed because the Lodge consistently failed

to meet the parties' agreed-upon threshold requirements for the LRS rate and Cherryland risked the imposition of additional fines from the Commission if it failed to charge the Lodge pursuant to a Commission-approved tariff that reflected the Lodge's actual load. Cherryland also argued that Count II should be dismissed because the Lodge's request to have choice in all electric components (generation, transmission and distribution) was inconsistent with Michigan statutes and prior Commission Orders.

After multiple briefing opportunities, the Administrative Law Judge (ALJ) issued a Proposal for Decision on October 24, 2005 that ruled in favor of the Lodge on Count I and in favor of Cherryland on Count II. The ALJ also ordered the parties to file a stipulation regarding the difference between what the Lodge had been charged under the LCI tariff and what the Lodge would have paid if the LRS rate had been applied. On November 7, 2005, the Lodge and Cherryland cross-appealed the ALJ's ruling.

On February 22, 2006, after an opportunity for briefing, the ALJ issued his Proposal for Decision regarding damages. Exceptions and replies to exceptions were filed on March 15, 2006 and March 29, 2006, respectively.

On May 25, 2006, the Commission issued its 19-page Order in this case finding that: (1) the Lodge should have been charged the LRS rate from July 22, 2004 until July 21, 2005; (2) Cherryland must refund \$72,550.16 to the Lodge; (3) under Rule 411, Cherryland is the proper provider of electric service to the Lodge; and (4) Count II of the complaint must be dismissed. The Lodge filed its Rehearing Petition with the Commission on June 23, 2006.

Discussion

I. Rehearing Is Granted Only Under Limited Circumstances.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, 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. In considering such requests, the Commission repeatedly has 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 a rehearing.

(Case U-14193 Order, p 6-7.)

II. The Lodge's Rehearing Petition Should Be Denied Because It Does Not Satisfy Any Of The Grounds For Granting Rehearing.

The Lodge alleges seven (7) grounds as the basis for its rehearing request: (1) it desires a hearing on all disputed provisions of a special contract; (2) it disagrees with the Commission's conclusion that Rule 411 prevents the Lodge from seeking all components of electric service from another provider; (3) it disagrees with the Commission's determination that the Lodge was an existing customer and premises under Rule 411 in 2001; (4) it disagrees with the Commission's application of Rule 411 because it believes such application results in the Lodge being "forced" to stay with Cherryland for electric service; (5) it disagrees with the Commission's conclusion that Cherryland applied the LCI rate because it was concerned about incurring further regulatory fines from the Commission; (6) it disagrees with the Commission's

determination that Cherryland should refund \$72,550.16 to the Lodge without interest; and (7) it disagrees with the Commission's determination that the Commission intended the Lodge to receive the LRS rate until July 22, 2005 or the parties entered into a special contract, whichever occurred first. None of these arguments are sufficient for the Commission to grant rehearing, however, because they are merely a rehash of arguments previously made and rejected by the Commission. They also fail to establish that the Commission committed any error requiring reversal or that unintended consequences will result.

A. The Lodge's Rehearing Petition Merely Rehashes Arguments Previously Made and Rejected By The Commission.

The Lodge's Rehearing Petition is nothing more than the Lodge's attempt to obtain another opportunity to argue its positions and express disagreement with Commission decisions. The Lodge has submitted ten (10) lengthy briefs in this case alone. As demonstrated by the following chart, all of the arguments presented in the Lodge's Rehearing Petition have been submitted to the Commission for consideration in the Lodge's previously filed pleadings:

Lodge Rehearing Argument	Examples Of Prior Pleadings That Address This Argument
The Commission should hold a hearing on all disputed contract provisions	1/13/06 Initial Brief, p 9 3/15/06 Exceptions, pp 11-12

Rule 411 does not prevent the Lodge from seeking all components of electric service from another provider	9/6/05 Replies to Motion for Summary Disposition, pp 11-16 9/23/05 Supplemental Memorandum Opposing Summary Disposition of Count II of Complaint, pp 2-4 11/7/05 Appeal of ALJ Ruling Recommending Dismissal of Count II of Complaint, pp 11-15 11/21/05 Response to Cherryland's Appeal of October 24, 2005 Ruling, pp 12-13 1/20/06 Reply Brief, p 9 3/15/06 Exceptions, p 12
The Lodge was not an existing customer and premises under Rule 411 in 2001	9/6/05 Replies to Motion for Summary Disposition, pp 11-16 9/23/05 Supplemental Memorandum Opposing Summary Disposition of Count II of Complaint, pp 2-4 11/7/05 Appeal of ALJ Ruling Recommending Dismissal of Count II of Complaint, pp 11-15 11/21/05 Response to Cherryland's Appeal of October 24, 2005 Ruling, pp 12-13 1/20/06 Reply Brief, p 9 3/15/06 Exceptions, p 12

The Lodge should not be “forced” to stay with Cherryland for electric service and Cherryland engaged in alleged wrongful behavior	9/6/05 Replies to Motion for Summary Disposition, pp 11-16 9/23/05 Supplemental Memorandum Opposing Summary Disposition of Count II of Complaint, pp 2-4 11/7/05 Appeal of ALJ Ruling Recommending Dismissal of Count II of Complaint, pp 2, 6, 8, 15 1/13/06 Initial Brief, pp 8-9 1/20/06 Reply Brief, p 7 3/15/06 Exceptions, p 10-13
Cherryland applied the LCI rate for alleged heavy-handed motives	9/6/5 Replies to Motion for Summary Disposition, p 7 11/21/05 Response to Cherryland’s Appeal of October 24, 2005 Ruling, pp 5-12 12/2/05 Brief on Damages, pp 2-5 1/13/06 Initial Brief, pp 7-8 1/20/06 Reply Brief, p 7 3/15/06 Exceptions, pp 9-10 3/29/06 Replies to Exceptions, pp 6-9
The Lodge should receive interest	12/2/05 Brief on Damages, pp 4-5 1/13/06 Initial Brief, pp 12-14 1/20/06 Reply Brief, pp 6-9 3/29/06 Replies to Exceptions, p 3

Application of the LRS rate should extend beyond July 22, 2005	12/2/05 Brief on Damages, p 2 1/13/06 Initial Brief, p 11 1/20/06 Reply Brief, pp 3-5, 9 3/15/06 Exceptions, pp 13-16 3/29/06 Replies to Exceptions, p 3
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Consequently, all the arguments raised in the Lodge's Rehearing Petition were thoroughly considered by the Commission in issuing its May 25, 2006 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." (U-14193 Order, p 6-7).

B. Rehearing Should Be Denied Because The Commission Did Not Err In Granting Summary Disposition Without Holding A Hearing On All Disputed Provisions Of The Proposed Special Contract.

The Lodge argues at pages 3 through 5 of its Rehearing Petition that rehearing should be granted because the Commission did not hold a hearing on all the disputed provisions of the proposed special contract between Cherryland and the Lodge. While the Lodge did attach a proposed special contract to its Complaint, Count II of the Complaint only requested that the Commission determine whether the Lodge may elect to receive all electric components from a provider of its choice. Count II stated:

COUNT II – REQUEST FOR COMMISSION DETERMINATION OF A DISPUTED CONTRACT ISSUE PER THE COMMISSION'S ORDERS IN CASE NO. U-13716 AND U-14240

43. Great Wolf Lodge realleges and reasserts all preceding allegations as if fully set forth herein.

44. Per the Commission's invitation in Case Nos. U-13716 and U-14240, Great Wolf Lodge respectfully requests the Commission's action to resolve issues relating to the scope of Great Wolf Lodge's right to select its own electric provider at the end of the period of the proposed temporary contract, which issues the parties are unable to resolve on their own.

45. Cherryland's insistence that Great Wolf Lodge agree to contract language that would make Great Wolf Lodge a Cherryland customer in perpetuity is unreasonable in that it seeks to impose upon Great Wolf Lodge an obligation that the law does not empower Cherryland to impose. Rather, Great Wolf Lodge has, by law, full choice of electric providers not only for generation service, but also for transmission and distribution service.

WHEREFORE, Great Wolf Lodge respectfully requests that the Commission, per its orders in Case Nos. U-13716 and U-14240, issue a ruling that will provide for "resolution of [this] underlying dispute" regarding the terms of the proposed Cherryland/Great Wolf Lodge contract. Case No. U-14240, Order dated October 14, 2004, p. 2, and that the Commission grant the following relief:

- 1) Declare that, upon termination of its temporary contract with Cherryland, Great Wolf Lodge may elect to receive all components of electric service from any provider of its choosing;
- 2) Declare that, if Great Wolf Lodge elects to receive electric service from another provider, Cherryland shall fully cooperate in the transfer of service to that new provider, including without limitation the transfer of any necessary facilities to the new provider on reasonable terms, the removal of any Cherryland facilities that need to be removed in order to allow the provision of service by a new provider, the termination of Great Wolf Lodge's membership in Cherryland, and any other actions that are reasonably necessary;
- 3) Order that Cherryland execute a contract with Great Wolf Lodge reflecting the rulings requested in this count; and
- 4) Such other and further relief as the Commission deems just and reasonable. (Complaint, pp 9-10).

Other allegations in the Complaint also demonstrate that the Lodge's concern was its ability to choose all components of electric service. See e.g. Complaint, ¶¶ 12, 38-40.

Further, even a cursory review of the redlined agreement attached as Exhibit A to the Complaint reveals that the only substantive issue in dispute was whether Cherryland had the right to be the Lodge's electric distribution provider. The other suggested revisions are editorial corrections or update the contract to reflect the fact that previous anticipated events have actually occurred due to the passage of time. The Commission, therefore, did not err in resolving this single issue and rehearing is not warranted.

C. Rehearing Should Be Denied Because The Commission Did Not Err In Concluding That Rule 411 Does Not Allow The Lodge To Receive All Components Of Electric Service From A Provider Other Than Cherryland.

The Lodge argues at pages 5 through 12 of its Rehearing Petition that the Commission erred in applying Rule 411 and that the Lodge was not an existing customer under Rule 411. The Lodge also argues that the Commission is ratifying "illegal behavior." The Lodge is simply wrong.

The Commission was correct when it found that "[i]t is undisputed that the [Lodge] premises was an existing customer of Cherryland under Rule 411 in 2001" because "Cherryland had provided service to a farmhouse located on the [Lodge] premises for many years before GWL purchased the property." (Order, p 16). Even the Lodge conceded this point, stating:

The long vacant Oleson farmhouse had previously received electric service from Cherryland, but this service had been deactivated several years earlier. However, a service drop running from one of Cherryland's distribution lines (which traversed the property) to the Oleson farmhouse had never been removed. (Lodge Initial Brief, pp 4-5).

The Lodge seeks rehearing because it disagrees with the Commission's interpretation and application of Rule 411. The Lodge's position is contrary to several Commission Orders, including the recent Orders issued in Case Nos. U-14193 (June 7, 2005) and Case No. U-13764 (April 20, 2004). Cherryland thus was, and continues to be, entitled to serve the Lodge premises under Rules 411(11) and (2). Accordingly, the Rehearing Petition should be denied because there is no legal merit to the Lodge's claim that Cherryland engaged in illegal or wrongful conduct, or that the Lodge should be able to take all components of electric service from a provider of its choice.

D. Rehearing Should Be Denied Because The Commission Did Not Err In Finding That Cherryland's Interpretation Regarding The Applicability Of The Minimum Usage Requirements Was Not So Clearly Unreasonable.

The Lodge complains at pages 12 through 15 of its Rehearing Petition that "[t]he Commission should take a second look at the ALJ's reasoning, the evidence, and to Cherryland's [alleged] improper motives, and should assess a fine in this proceeding." The Lodge's request should be outright rejected because it does not even allege that any of the rehearing standards are satisfied.

The Lodge's request also should be denied because there is sufficient grounds for the Commission's finding. In November 2004, after the Commission dismissed Cherryland's application seeking approval of a special contract and after the Lodge failed to execute a special contract with Cherryland, Cherryland began charging the Lodge under its LCI tariff. The reason Cherryland began charging the LCI rate was because the Lodge failed to satisfy the 50% load factor/1,500 kW load threshold requirements under the proposed LRS tariff. Rather than risk another substantial fine because the Lodge was not meeting the necessary threshold requirements and thus it

was not satisfying either the executed Agreements' terms or the LRS tariff provisions, Cherryland applied the LCI tariff because that is the tariff applicable to the Lodge's actual load. See Cherryland Correspondence to the Lodge, attached as Exhibit G to Cherryland's Application for Leave to Appeal. Cherryland informed Commission Staff that the Lodge was using less load than required under the LRS tariff and Staff responded that Cherryland should follow the LRS tariff. Indeed, in its pleadings submitted to the Commission in this case, Staff advocated the same interpretation of the July 22, 2005 Order as that held by Cherryland. Consequently, Cherryland's interpretation was not unreasonable and the Commission should deny the rehearing request.

E. Rehearing Should Be Denied Because The Commission Did Not Err In Awarding A Refund Without Interest.

The Lodge argues at pages 15 through 18 of its Rehearing Petition that the Commission erred in awarding a refund without interest. The Lodge's concerns ring hollow in light of the fact that the Lodge refused to accept the \$72,550.16 refund that Cherryland attempted to make to the Lodge in June 2006 in order to comply with the Commission's May 25, 2006 Order.

Moreover, the Lodge has not been harmed in any way. In fact, the Lodge received the benefit of the LRS rate for almost three (3) years whereas special contracts are generally only approved for a term of up to two years.¹ The LRS received the benefit of this rate even though it consistently failed to meet the minimum usage requirements and even though no special contract was in place.

¹ Permanent electric service was initiated on November 11, 2002.

As Cherryland also explained in its prior submissions to the Commission, no statute or administrative rule specifically authorizes the Commission to award interest to the Lodge where billing errors are made. The fact that the Lodge cannot identify one specific interest rate proves that no statute or administrative rule authorizes the Commission to impose interest. The Commission would not have to “guess” at what interest rate to apply if the Commission possessed clear and unmistakable power to levy interest. The Lodge’s own Rehearing Petition even recognizes that this case does not present a situation where interest is mandated by statute. On page 17 of its Rehearing Petition, the Lodge quotes a portion of text from *Michigan Law of Damages and Other Remedies* that explicitly states: “Michigan courts have, therefore, recognized a distinction between interest included as an element of damages and interest on a judgment . . . The former has evolved judicially; the latter is purely statutory.” (citations omitted) (emphasis added). Because no money judgment is at issue in this case, there is no statutory basis for awarding the Lodge interest.

Finally, Cherryland began billing the Lodge under the LCI tariff starting in November 2004 based on its good faith interpretation of under what circumstances it could apply the LRS rate to the Lodge pursuant to the Commission’s July 22, 2004 Order. The Lodge sat on its hands for approximately 240 days until it brought its Complaint against Cherryland on July 13, 2005, not too coincidentally just days before the end of the one-year period specified by the Commission to enter into a special contract ended on July 22, 2005. During this entire period between November 2004 and July 13, 2005, the Lodge was clearly aware that it was being billed under the LCI tariff rate, yet strangely never raised the issue of it being charged an incorrect rate with

the Commission until days before the July 22, 2005 deadline to have a special contract approved or by any measure having to revert to Cherryland's tariff rates. Accordingly, the Commission should deny the Lodge's rehearing request.

F. Rehearing Should Be Denied Because The Commission Did Not Err In Refusing To Apply The LRS Rate On A Continuous Basis.

The Lodge argues at pages 18 through 21 of its Rehearing Petition that the Commission should grant rehearing and apply the LRS on a continuous basis in order to avoid the unintended consequence of rewarding Cherryland or providing a windfall to Cherryland. This argument should be rejected because it is contrary to the Commission's plain language in its July 22, 2004 Order in Case No. U-13716 where the Commission stated it was only approving use of the LRS tariff rate on a temporary basis.

Moreover, extending the application of the LRS rate would only provide a windfall to the Lodge. The Lodge had the benefit of the LRS rate for almost three (3) years even though no special contract was in place, largely because of the Lodge's erroneous insistence that it was entitled to choice in electric distribution.

Finally, the Lodge complains Cherryland is rewarded because the Lodge is now "stuck" with the LCI rate. Special contracts and special rates are never guaranteed. Instead, the parties must agree upon the terms and secure appropriate regulatory approval for those terms. The LCI rate is the same rate schedule that applies to all other customers with similar characteristics to the Lodge. As such, the Lodge's Rehearing Petition should be denied.

CONCLUSION

Rehearing is extraordinary relief. The Lodge's Rehearing Petition should be denied because it merely rehashes arguments previously made and rejected by the Commission and satisfies none of the stringent standards for granting rehearing.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Attorneys for Cherryland Electric
Cooperative

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of GREAT)
WOLF LODGE against CHERRYLAND)
ELECTRIC COOPERATIVE regarding the)
charging of an unauthorized rate and the)
terms of a proposed electric service)
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Case No. U-14593 (Paperless)

PROOF OF SERVICE

STATE OF MICHIGAN)
)
) SS.
COUNTY OF INGHAM)

Jeanne M. Beachnau, an employee of Dykema Gossett PLLC, being first duly sworn, deposes and says that on the 13th day of July, 2006, she served a copy of Cherryland Electric Cooperative's Reply to Great Wolf Lodge's Petition for Rehearing upon persons listed in the attached Service List at their respective addresses, by enclosing copies of the same in an envelope properly addressed, and by depositing said envelope in the United States Mail with postage thereon having been fully prepaid.

Jeanne Beachnau

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Jeanne M. Beachnau

Subscribed and sworn before
me this 13th day of July, 2006.

Christine M. Kischnick

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Christine M. Kischnick, Notary Public, Tuscola County, MI
Acting in Ingham County, Michigan
My Commission Expires: 09/21/07

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