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M E M O R A N D U M

March 4, 2010

TO: Nuclear Waste Strategy Coalition
c/o Martez Norris

VIA E-Mail

FROM: Don L. Keskey *DLK*
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RE: State Escrow Trust for SNF fees
Michigan Public Service Commission (MPSC) Case
No. U-15645, In Re Consumers Energy Company;
MPSC orders dated November 2, 2009 and January 25, 2010

This memo reports the results of litigation before the Michigan Public Service Commission (MPSC) in a recent electric rate case, In Re Consumers Energy Company, MPSC Case No. U-15645, which resolved several issues concerning Spent Nuclear Fuel (SNF) fees, and the handling of "SNF fee debt" held by CECo relating to nuclear energy generated and sold prior to April 7, 1983¹ I represented two intervenors in this case on these issues, including the Michigan Environmental Council (MEC) and the Public Interest Research Group in Michigan (PIRGIM).²

The SNF issues litigated in U-15645 related to: (1) CECo's inclusion of the principal and accumulated interest of the SNF fee debt (totaling approximately \$162 million) in its rate base; (2) CECo's inclusion of the SNF fee debt in its capital structure (at the 91-T bill interest rate that the U.S. Treasury Department calculates for accumulated SNF fee debt); (3) CECo's request to recover the costs of an annual bank letter of credit³ and (4) intervenors MEC/PIRGIM's opposition to CECo's recovery of the above costs⁴ and intervenors' advocacy of an external MPSC interest bearing escrow trust to be funded by CECo for the entirety of the SNF fee debt.

On a combined basis, the MPSC's November 2, 2009 order, and January 25, 2010 order on rehearing in U-16545, undertook the following action: (1) removed all of the SNF fee debt

¹ The Standard Contract between nuclear utilities and the U.S. Department of Energy provided the option for a utility to defer payment of SNF fees for the pre-1983 generation until such time that DOE accepts the utility's SNF for disposal.

² This firm is also representing another intervenor, Michigan's Community Action Agencies, via their association, the Michigan Community Action Agency Association (MCAAA), on these issues in related cases

³ The bank letter of credit purported to guarantee CECo's payment of the SNF fee debt if it became payable to the Nuclear Waste Fund - a guarantee instrument that Entergy Nuclear Palisades required of CECo as the purchaser of CECo's Palisade Nuclear Plant and as the successor owner of the SNF (ISFSI) sites at both Palisades and at the fully decommissioned Big Rock Plant site.

⁴ Michigan's ratepayers fully paid CECo for the SNF fee debt in rates over a period ending in the early 1990's.

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from CECo's rate base; (2) recalculated the SNF fee debt in CECo's cost of capital calculation to assign a zero cost to the SNF fee debt balance; (3) denied any recovery of CECo's costs for the bank letter of credit applicable to the SNF fee debt; and (4) granted significant relief with respect to the establishment of the escrow trust.⁵ In light of these determinations, the MPSC order (p 47) recognized the interest cost on the accumulated fee debt for the 2009 test year (at the T-Bill rate of 0.32%, or \$519,510) as an offset to net operating income for ratemaking purposes.⁶ The November 2, 2009, MPSC order (p 15) stated as follows with respect to the trust remedy:

The Commission also agrees with MEC/PIRGIM that segregating pre-1983 DOE liability into a trust fund has become necessary because of the uncertainty surrounding future payment of the funds, and because the liability has grown quite large. The Commission therefore directs Consumers to present a proposal to establish a trust for pre-1983 DOE liability in the company's next rate case if filed on or before January 3, 2011. Otherwise, the company shall file the proposal to establish a trust for its pre-1983 DOE liability in a new docket on January 4, 2011. The proposal shall include a recommendation for the period during which the accrued funds will be deposited into the trust and recommended guidelines for prudent management of the funds.

CECo recently filed its new electric rate case, U-16191, on January 22, 2010, wherein the MPSC will have an opportunity to decide upon the above details concerning the escrow trust. CECo's January 22, 2010 application in its new pending electric rate case states as follows on page 5, paragraph 10:

In its November 2, 2009 Case No. U-15645 Order, the Commission directed that the Company address in its next electric rate case, if filed before January 2011, the establishing of a trust related to disposal costs for spent nuclear fuel associated with pre-April 7, 1983 nuclear generation which are owed to the Department of Energy under the Nuclear Waste Policy Act. Consumers Energy addresses the trust option and other options for this liability in its filing in this case.

This firm has intervened in CECo's new rate case on behalf of MCAAAA, and expects to further pursue the SNF fee escrow trust remedy in that case. Please advise me if you have any questions regarding this matter.

DLK/cjd

Attachments

⁵ The relevant pages of the MPSC's orders which discuss these SNF fee issues are attached; see MPSC Order, U-15645, dated November 2, 2009, pages 1, 9-15, 20-22, 47 and 94; Order on Rehearing, dated January 25, 2010, pages 1, 17-21; the orders and case documents are available on the MPSC website (access the MPSC Home Page, click on "Documents Library", then click on "Electronic Case Filings", then enter 15645 in the blank box, then click on any document you want under "Document No").

⁶ Presumably, this amount would be added to the amount to be placed into the escrow trust.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **CONSUMERS**)
ENERGY COMPANY for authority to increase its)
rates for the generation and distribution of)
electricity and for other relief.)
_____)

Case No. U-15645

At the November 2, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On November 14, 2008, Consumers Energy Company (Consumers) filed an application requesting a \$215 million rate increase above the retail electric base rates established in the June 10 and 19, 2008 orders in Case No. U-15245. Consumers asserted that its request for rate relief is based on 2009 test year data that establishes a need for additional revenue due to (i) new investment in distribution facilities, generation plant, and new technology; (ii) ongoing investments in Clean Air Act and other electric utility assets in order to provide reliable service to the company's customers and comply with environmental and legal requirements; (iii) ongoing efforts to strengthen its capital structure and balance sheet in light of declining sales and the current Michigan economy; and (iv) increases in operation and maintenance (O&M) costs.

For future guidance, the Commission's expectation is that the parties will fully document the basis for their test year projections by offering into evidence detailed supporting explanations and underlying assumptions rooted in expected business, financial, and economic circumstances. Rate applications may not rely on undocumented estimates of future ratemaking expenses and revenue criteria. When necessary, parties should provide competing projections, with a similar basis of support. The record thus created should lend itself to a comparative review of the reasonableness and prudence of the projections. Historical data may play a role, but ordinarily will not be the controlling factor except in circumstances that clearly demonstrate that it is a more fair and reasonable reflection of the utility's cost of service, relative to projected data.

III.

RATE BASE

A utility's rate base consists of the capital invested in used and useful plant, less accumulated depreciation, plus the utility's working capital requirements. In Consumers' case, rate base also includes liability to the U.S. Department of Energy (DOE) for pre-1983 disposal of spent nuclear fuel (SNF). The ALJ summarized the positions of the parties regarding total rate base as follows:

Consumers Energy initially proposed a rate base of \$6,292,682,000 on a total electric basis, consisting of \$5,929,987,000 in net plant, \$242,080,000 in working capital, and an additional amount of \$120,615,000 for the interest portion of its DOE liability, and excluding certain energy efficiency and renewable energy plant covered by 2008 PA 295. Mr. Rasmussen's testimony acknowledges that the company's proposed rate base is approximately \$700 million more than the rate base the Commission approved for test year 2008 in Case No. U-15245, which roughly translates to approximately half the company's requested revenue increase. Through modifications made in its briefs, as discussed below, Consumers Energy now proposes a slightly smaller rate base, reflecting minor reductions in net plant and the interest component of the DOE liability.

Staff initially proposed a rate base of \$6,260,589,000 consisting of net utility plant of \$5,900,552,000 on a total company basis, working capital of \$241,567,000, and

DOE Liability of \$118,470,000. Note that Staff's rate base calculations are generally presented on a total electric basis, although final rates will be set on the basis of the company's jurisdictional revenue requirement. The company took issue with Staff in its rebuttal case for not translating its revenue requirements calculations from a total electric basis to a jurisdictional basis. In its briefs and the attached appendices, the company often presents Staff's total company numbers as appropriate to compare with the company's jurisdictional numbers, which is not correct. While Staff has not expressly addressed the company's rebuttal testimony on this issue or the presentation in its initial brief directly, Staff did develop jurisdictional factors consistent with its cost of service study, discussed in section IX. Nonetheless, for ease of comparison, the following discussion will focus on total electric amounts.

PFD, pp. 20-21 (footnotes omitted).

A. Net Plant

Net plant is comprised of total utility plant-in-service, plant held for future use, plus construction work in progress (CWIP), less depreciation. The positions of the parties are explained on pages 21-27 of the PFD and are not repeated here. The dispute over net plant amount again centers on the method that Consumers used in its test year projections compared to the method used by the Staff. In keeping with its utility budget approach, Consumers' witnesses testified to a number of proposed additions to both distribution and generation plant including its planned AMI program. Consumers calculated a net utility plant amount of \$5,907,649,000. The Staff, on the other hand, began with 2007 historic test year plant in service and provided for growth in plant to determine the 2009 plant in service. This allowance was calculated by taking the five year average of plant additions net of retirements, adjusted for annual projected inflation. The allowance was then added to plant totals to calculate the projected plant in service for 2007, 2008, and 2009. The Staff calculated a net plant amount of \$5.9 billion on a total electric basis.

The ALJ recommended that the Commission adopt the Staff's plant balances including amounts for plant-in-service, CWIP, and depreciation. The ALJ noted there was only a \$29.4 million difference on a total company basis between the company's net plant amount and that

proposed by the Staff. The ALJ added that both Consumers and the Staff had amended their positions on the amount that should be included in net plant for AMI and those modifications reduced the difference to about \$5.6 million.⁴ The ALJ observed that when using the company's actual expenditures for 2008, the company's budgets were overstated, thus calling into question the reliability of the company's projections.

Consumers takes exception to the ALJ's recommendations arguing that the difference between the Staff's and the company's net plant balances are not minimal. Consumers argues that the company's witnesses testified at length about planned production and distribution capital additions and that the ALJ erroneously rejected the company's evidence.

In reply, the Staff maintains that Consumers' evidence was not disregarded as the company claims; the ALJ simply found that the method used by the Staff in projecting plant balances was more reasonable and accurate. The Staff adds that Consumers failed to address the fact that under the time constraints of the case, the Staff and other parties were not able to analyze and verify the company's projections. The Staff reiterated that Consumers' estimates for production and distribution capital additions were presented in broad categories with testimonial support comprised of descriptions of certain projects. According to the Staff, this was insufficient information for other parties to undertake a thorough review, necessitated by the fact that these projects are regularly subject to modification in scope, cost, and timing. Further, the Staff asserts that Consumers' testimony failed to provide the information to adequately validate the company's projected production and distribution additions; while the Staff's position was based on historical data appropriately adjusted.

In light of the above determination regarding the appropriate test year, the Commission finds

⁴The treatment of expenses for AMI is discussed in more detail, *infra*.

Consumers' method for estimating net utility plant to be the most reasonable. A key difference in method relates to their treatment of capital expenditures. In keeping with its forward-looking approach, Consumers' witnesses projected and justified capital expenditures that bridge the period between historical data and the projected test year. While others disputed Consumers' approach, they did not undermine the legitimacy of the projects that Consumers used as the basis for its capital expenditures or call into question the need for those projects.

B. Working Capital

The ALJ recommended a total company working capital requirement of \$242,080,000. There were no exceptions filed. The Commission therefore adopts a working capital requirement of \$239,806,000 on a jurisdictional basis.

C. Pre-1983 DOE Liability

As the ALJ explained, DOE liability represents Consumers' responsibility for the disposal costs of SNF associated with pre-1983 nuclear power generation at the Palisades Nuclear Power Plant (Palisades), which the utility has since sold.⁵ Pursuant to the Nuclear Waste Policy Act of 1982, which gave the federal government responsibility for disposing of SNF, the DOE began collecting a fee of 1 mill per kilowatt-hour (kWh) of nuclear power generation, on a going-forward basis, with a one-time charge assessed for previous generation. The DOE gave utilities three options to pay the fee for pre-1983 nuclear generation. Consumers opted to defer payment up to the time of disposal, subject to the accumulation of interest at the 13-week Treasury bill rate, estimated by the Staff at 0.32% for 2009, and agreed to by the company in its brief.

Both Consumers and the Staff included pre-1983 DOE liability in the company's rate base with the principal amount of \$44 million as an offset to the depreciation reserve, and \$118 million

⁵See, the Commission's March 27, 2009 order in Case No. U-14992.

in accumulated interest since 1983, on a total company basis, included as a separate line item. The total amount of \$162 million is also included in the company's capital structure as an element of long-term debt. Consumers noted that the purpose of the ratemaking treatment (i.e., including the pre-1983 DOE liability in rate base and capital structure) is to allow the company to recover the annual interest on the current liability, while benefiting the ratepayers by recognizing the amount of the liability as a source of low-cost capital.

MEC/PIRGIM argued that including the pre-1983 DOE liability in both rate base and capital structure is a ratemaking error that is contrary to what the Commission intended when it approved the utility's choice to defer payment to the DOE. According to MEC/PIRGIM, this treatment instead produces a significant overrecovery of interest costs. MEC/PIRGIM calculated the effect of excluding the pre-1983 DOE liability from rate base while giving the ratepayers the benefit of the low-cost DOE liability in the capital structure. According to MEC/PIRGIM, its analysis indicates that Consumers recovers an additional \$12 million to \$17 million over the necessary revenue requirement for DOE interest by also including the pre-1983 DOE liability in its rate base.

MEC/PIRGIM further argued that the pre-1983 DOE liability should be placed into a trust because that treatment would be consistent with the fact that ratepayers paid the principal amount years ago, it would save Consumers letter of credit fees, and it would protect ratepayer funds in the event that the DOE finally disposes of the SNF. Given the disarray in the DOE's disposal program and its failure to meet the 1998 deadline to begin accepting fuel for disposal, MEC/PIRGIM also contends that segregation of the funds into a trust would ensure the availability of the funds to provide for whatever disposal costs are ultimately required.

The Staff argued that the issue of ratemaking treatment of pre-1983 DOE liability should be deferred to a future rate case with Consumers required to provide a complete analysis of the effects

of alternative treatments.

The ALJ found that the magnitude of the overrecovery demonstrated by MEC/PIRGIM was too large for the issue to be deferred to a future rate case. The ALJ reviewed Commission orders from 1978 forward in an attempt to determine the logic behind the ratemaking treatment but was unable to completely reconstruct the history associated with the Commission's decision to include DOE liability in rate base. According to the ALJ, it appeared that while the inclusion of pre-1983 DOE liability in rate base in 1991 was an effort to correct an accounting entry, it was not clear that the ratemaking treatment was expected to continue indefinitely. The ALJ added, "One key principle stands out, and has not been disputed or contradicted by any party in this proceeding: In its decision, the Commission accepted Consumers Energy's representation that the purpose of the two steps was only to allow the company to collect interest on the DOE liability on a going forward basis, and not to collect interest that had accrued on the DOE liability from April 7, 1983 forward. Indeed, Consumers Energy has continued to acknowledge this." PFD, p. 42. The ALJ further noted that MEC/PIRGIM raised this issue in Case No. U-15245 but it did not provide a detailed technical analysis as it did here.

The ALJ recommended that pre-1983 DOE liability should be removed from rate base and that future interest should be recovered by including the funds in capital structure. The ALJ also rejected MEC/PIRGIM's recommendation that the accrued funds be placed in a trust, in light of previous Commission orders finding that a trust was unnecessary.

Consumers takes exception to the ALJ's recommendation, arguing that there is no reason to change the longstanding treatment of pre-1983 DOE liability. Consumers adds that the ALJ attempted to reconstruct a record from 20 years ago and admitted that she did not understand the Commission's reasons for including pre-1983 DOE liability in rate base. Consumers also observes

that the ALJ's recommendation to remove pre-1983 DOE liability from rate base, but leave it in capital structure, provides ratepayers with a benefit without an offsetting cost.

The Staff did not object to excluding pre-1983 DOE liability from rate base but observed that continuing to include it in capital structure would not accomplish the ALJ's objective. Instead, the Staff recommends removing DOE liability from rate base and including annual interest as an expense.

The Commission finds Consumers' arguments unpersuasive and agrees with the ALJ that the analysis performed by MEC/PIRGIM is compelling. The Commission adopts the ALJ's recommendation. The Commission agrees with the Staff that simply leaving the pre-1983 DOE liability in Consumers' capital structure will not accomplish the recovery of on-going interest costs and that therefore an expense item must be added to O&M to cover interest cost.

The Commission also agrees with MEC/PIRGIM that segregating pre-1983 DOE liability into a trust fund has become necessary because of the uncertainty surrounding future payment of the funds, and because the liability has grown quite large. The Commission therefore directs Consumers to present a proposal to establish a trust for pre-1983 DOE liability in the company's next rate case if filed on or before January 3, 2011. Otherwise, the company shall file the proposal to establish a trust for its pre-1983 DOE liability in a new docket on January 4, 2011. The proposal shall include a recommendation for the period, during which the accrued funds will be deposited into the trust and recommended guidelines for prudent management of the funds.

D. Rate Base Summary

In light of the preceding discussion, the Commission finds that Consumers' jurisdictional 2009 test year rate base is set at \$6,146,847,000, comprised of net utility plant of \$5,907,041,000 and a working capital allowance of \$239,806,000.

The ALJ observed that it was difficult to determine the reason for the Staff's exclusion of the supplementary revolver fees but found that in Consumers' previous rate case, Case No. U-15245, the LIBOR rate plus a 35 basis point spread was used in computing the company's short-term debt rate. The ALJ therefore recommended adopting the Staff's cost of short-term debt.

The Commission notes that there have been significant changes in the credit market since 2007, when Case No. U-15245 was in process, with higher fees being charged to customers across the board. The Commission further finds that the Staff failed to effectively rebut the inclusion of the additional 173 basis points for supplemental revolver fees. The Commission therefore adopts a short-term debt amount of \$72 million at a cost of 3.41%.

2. Long-term Debt

Long-term debt is comprised of fixed rate issuances and variable rate issuances. The Staff calculated a long-term debt balance of \$4,151,384,615 while Consumers initially used a long-term debt balance of \$4,146,000,000. These differences were attributable to the Staff's use of more recent information about the timing of certain debt issuances. The Staff also used an updated interest calculation for pre-1983 DOE liability resulting in an approximately \$2 million difference. The Staff calculated \$162,346,000 for current DOE liability and Consumers estimated \$164,901,000 for current DOE liability. Subsequently, Consumers accepted the Staff's updated estimate for DOE liability and included the total of principal and interest of \$162,346,000 in the company's capital structure.

Consumers initially proposed a long-term debt cost of 5.85%, while the Staff proposed a cost of 5.55%. The difference was related to the treatment of the cost of Consumers' February 2009 debt issuance that was made part way into the calendar year and to a difference in the methods used by the parties. Subsequently, the Staff agreed with Consumers' calculation method. Use of

Consumers' method applied to the Staff's updated data produced the Staff's proposed long-term debt cost of 5.69%.

Consumers also proposed to include, as part of the interest, the fees it pays for the letter of credit it provides to Entergy for the pre-1983 DOE liability under the terms of the Palisades sale. Consumers argues that the \$1.898 million annual cost of the \$165 million letter of credit required by the Palisades sale transaction should be recovered from the ratepayers because it enables the company to continue to retain the pre-1983 DOE liability as a low cost source of funds in the capital structure for the benefit of customers. Including the fees would increase the cost of long-term debt from 5.69% to 5.74%.

The Staff and MEC/PIRGIM argued that the letter of credit fees should be rejected, relying on the Commission's decision in Case No. U-15245. MEC/PIRGIM added that the letter of credit fee should be considered an ancillary expense under the Palisades Power Purchase Agreement (PPA) rather than a debt-related cost in the company's rate case.

The ALJ reviewed the Commission's decision in Case No. U-15245 and noted that it was clear that the Commission had rejected the same arguments in that case that Consumers made here. Based on the Commission's determination in Case No. U-15245, the ALJ recommended that the letter of credit costs continue to be excluded from the cost of long-term debt calculation.

Consumers took exception to this recommendation, arguing that this issue should be decided on the basis of the record in this case and not with reference to Case No. U-15245. According to Consumers, the letter of credit allows the company to retain use of the pre-1983 DOE liability funds, a source of funding that costs less than alternative sources for a corresponding amount of long-term debt.

The Commission disagrees with Consumers and finds that the utility’s justifications for requiring ratepayers to cover the letter of credit are the same as they were in Case No. U-15245, and circumstances have not rendered these justifications any more valid now than they were then. The Commission therefore adopts a long-term debt balance of \$4,151,385,000 at a cost rate of 5.69% as proposed by the Staff and recommended by the ALJ.

3. Preferred Stock

Consumers, the Staff, the Attorney General, and ABATE recommended a preferred stock balance of \$44 million for the 2009 projected test year at a cost rate of 4.46%. This was an uncontested issue; therefore the Commission adopts a preferred stock balance of \$44 million at a cost of 4.46%.

4. Common Equity

The utility’s cost of common equity is the return investors expect, or require, in order to provide the utility with capital. The cost of capital is an opportunity cost; in order to induce investors to purchase common stock or bonds, there must be the prospect of receiving earnings that are sufficient to make the investment attractive compared with other investment opportunities.

The positions of the parties and the different models used to estimate return on equity (ROE) are discussed extensively on pages 65-86 of the PFD and will not be repeated here. A summary of the results of the various analyses by the parties is set forth in the following table:

	DCF	CAPM	Risk Premium	Other Authorized ROE’s
Consumers	11.87% average 11.03% median 11.81% CMS	10.36% average 10.19% median 11.24% CMS	10.52%-11.40%	
Staff	12.61% average 12.87% median	7.46%-8.65% median 8.55%-10.06% CMS	10.03%-11.38%	10.46% average 10.45% median
Attorney General /ABATE	<u>Classic DCF</u> 11.12% average 11.21 % median	8.36%		

i. DOE Liability Interest Expense

Due to the resolution of the issues concerning the DOE liability in the rate base portion of this order, the Commission finds that, based upon the record evidence, an adjustment needs to be made to subtract \$519,510 from net operating income for pre-1983 DOE liability interest expense.

VI.

OTHER RATEMAKING ISSUES

A. Decoupling Proposals

As a means of decoupling, Consumers first proposed a sales tracker mechanism that compared actual annual sales, adjusted for normal weather, to the base levels established in this case.

Stephen P. Stubleski, Consumers' Lead Principal Rate Analyst, explained his company's initial position as follows:

If weather adjusted sales exceed or are below the base level amount for any customer class, the Company would calculate the associated incremental sales and calculate the net change in revenue associated with the incremental sales. If the aggregate net incremental revenue for all customer classes exceeds \$5 million on an annual basis, a credit will be determined to refund 100 percent of the non-PSCR revenue in excess of the \$5 million revenue deadband. On the other hand, if the aggregate net incremental revenue amount is less than the deadband on an annual basis, then the Company would, following notice and hearing, prospectively adjust rates upward through surcharges so that it is collecting 100 percent of the non-PSCR revenue related to the incremental amount outside of the deadband revenue deficiency on an annual basis. The surcharge adjustment would be allocated to each rate class based on an equal percent of revenue for each class as established in this case.

7 Tr 710-711.

The Staff did not oppose Consumers' deadband-based sales adjustment mechanism because it shifts less risk to Consumers' customers than a full decoupling mechanism. However, the Staff recommended an alternative to Consumers' sales tracker: an energy optimization (EO) lost revenue tracker. The EO lost revenue tracker removes any disincentive that Consumers may have

customers. If two months proves to be insufficient for the company to perform these tasks, then Consumers should file an application for an extension of time.

THEREFORE, IT IS ORDERED that:

A. Based on this order's findings adopting a 2009 test year, a jurisdictional rate base of \$6,146,847,000, an authorized rate of return on common equity of 10.7%, an authorized overall rate of return of 6.98%, and a jurisdictional revenue deficiency of \$139,411,000, Consumers Energy Company is authorized to implement rates that increase its annual electric revenues by \$139,411,000 as directed by this order.

B. Due to the utility's self-implementation of a rate increase on May 14, 2009, Consumers Energy Company's current rates for the sale and distribution of electric power are too high and shall be reduced by \$39,589,000 on an annual basis as directed by this order.

C. Consumers Energy Company's power supply cost recovery base is reset to 48.66 mills per kilowatt-hour at generation.

D. Consumers Energy Company shall present a proposal to establish a trust for pre-1983 DOE liability in the company's next rate case if filed on or before January 3, 2011. Otherwise, the company shall file the proposal to establish a trust for its pre-1983 DOE liability in a new docket on January 4, 2011.

E. Consumers Energy Company is authorized to adopt a pilot decoupling mechanism as described in this order.

F. Consumers Energy Company is authorized to adopt an uncollectibles expense tracker mechanism in which Consumers shall collect from, or refund to, its customers eighty percent of the difference between its actual uncollectibles expense for the calendar year and the base level of

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS**)
ENERGY COMPANY for authority to increase)
its rates for the generation and distribution of)
electricity and for other relief.)
_____)

Case No. U-15645

At the January 25, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On November 14, 2008, Consumers Energy Company (Consumers) filed an application requesting a \$215 million rate increase above the retail electric base rates established in the June 10 and 19, 2008 orders in Case No. U-15245.

On December 18, 2008, a prehearing conference was conducted by Administrative Law Judge Sharon L. Feldman (ALJ) at which she granted, *inter alia*, the petitions to intervene submitted by Attorney General Michael A. Cox (Attorney General); the Association of Businesses Advocating Tariff Equity (ABATE); the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM); Energy Michigan; and Phillip Forner. The Commission Staff (Staff) also participated in the proceedings.

On November 2, 2009, the Commission issued an order (November 2 order) finding that Consumers is experiencing an annual jurisdictional revenue deficiency in the amount of

program (ASP). Mr. Forner asserts that the Commission failed to consider the amendments to 2008 PA 286 in making its determination regarding the allocation of costs of Consumers' ASP and that the Commission failed to provide him a full hearing on the issues.

In response, the Staff and Consumers assert that Mr. Forner's petition for rehearing does not meet the standard for rehearing set forth in Rule 403. Further, the Staff argues that Mr. Forner simply reiterates arguments that he made in this proceeding and in previous cases. Consumers adds that Mr. Forner provided no authority or argument regarding why the Commission's decision on this issue in this case, or in previous cases, was in error.

The Commission agrees with Consumers and the Staff that Mr. Forner's petition for rehearing does not meet the standard for rehearing under Rule 403. As the Commission has repeatedly observed, a petition for rehearing is not an opportunity to express disagreement with the Commission's decision on matters that were fully litigated. Mr. Forner's petition for rehearing is therefore denied.

MEC/PIRGIM's Petition for Rehearing

In its petition for rehearing, MEC/PIRGIM asserts that the Commission reached the correct result in finding that liability to the U.S. Department of Energy (DOE) for pre-1983 disposal of spent nuclear fuel should be removed from rate base. MEC/PIRGIM contends, however, that the Commission failed to deduct \$44,138,000 in DOE liability principal from net plant.

MEC/PIRGIM points out that the parties agreed that the principal and accumulated interest portions of pre-1983 DOE liability sum to approximately \$162 million and that the Commission agreed with the ALJ that both the principal and interest portions of DOE liability should be deducted from the company's rate base. The Commission adopted the company's rate base

projection, minus DOE liability interest, but failed to remove the \$44 million principal from the company's net plant amount.

MEC/PIRGIM also points out that the Commission found an amount of \$519,510 should be recognized as the interest cost assigned to the DOE liability but that the Commission did not make a corresponding correction to its cost of capital calculation. According to MEC/PIRGIM, because the DOE liability interest expense is accounted for as an expense, DOE liability should be assigned a cost rate of 0% in the company's capital structure. MEC/PIRGIM adds that if this correction entails too much complexity, the company should be instructed to correct the calculation in its next rate case.

In response, Consumers argues that the ratemaking adopted by the Commission in the November 2 order was intended to be temporary and that the company disagrees with some aspects of the Commission's decision on this issue. Consumers contends that given the complexity of the process of removing DOE liability from rate base and establishing an external trust, the Commission's intent was to begin the procedure in this case and complete it in the company's next rate proceeding.

The Commission finds that MEC/PIRGIM's petition for rehearing should be granted. In the November 2 order, the Commission adopted the company's revised projection for net plant but, in an oversight, failed to deduct the \$44 million DOE liability from Consumers' rate base. As a result, Consumers is collecting approximately \$4 million in additional revenue to which it is not entitled. The Commission therefore finds that Consumers shall correct its rate base calculation as follows:

Jurisdictional Rate Base Summary

Net Plant	\$5,907,041,000
Working Capital	\$239,806,000
Less DOE Principal	(\$44,138,000)
Total Rate Base	\$6,102,709,000

The Commission also agrees with MEC/PIRGIM that the company should correct the cost rate for pre-1983 DOE liability in its capital structure at this time.

As a result of the revisions discussed above, Consumers' jurisdictional base revenue deficiency for the test year is computed as follows:

Rate Base	\$6,102,709,000
Rate of Return	6.97%
Income Required	\$425,969,000
Adjusted Net Operating Income	\$343,643,000
Income Deficiency ¹	\$82,326,000
Revenue Multiplier	1.6323
Revenue Deficiency	\$134,381,000

Accordingly, Consumers shall rerun the cost of service study provided by the Staff and file revised rates and tariff sheets, along with calculations and workpapers, conforming to the Commission's findings in this order, by 12:00 p.m. on or before February 22, 2010, and shall serve copies on all parties to this proceeding on the date of its filing. Parties to this case may file comments on the revised rates and tariff sheets by 12:00 p.m. on March 8, 2010. Consumers shall

¹The income deficiency is measured from the level of rates authorized in the utility's most recently completed rate case, Case No. U-15245.

also update its January 6, 2010 filing for authority to issue refunds of self-implementation surcharges by February 22, 2010 to reflect the revised revenue deficiency calculated in this order.

THEREFORE, IT IS ORDERED that:

A. The petitions for rehearing filed by Phillip Forner, and Energy Michigan are denied.

B. The petitions for rehearing filed by Consumers Energy Company, and Attorney General Michael A. Cox are granted in part and denied in part.

C. The petition for rehearing, clarification, and stay filed by the Association of Businesses Advocating Tariff Equity is granted in part and denied in part.

D. The petition for rehearing filed by the Michigan Environmental Council and Public Interest Research Group in Michigan is granted.

E. Consumers Energy Company shall file revised rates and tariff sheets, along with calculations and workpapers, conforming to the Commission's findings in this order, by 12:00 p.m. on February 22, 2010, and shall serve copies on all parties to this proceeding on that date. Parties to this case may file comments on the filed rates and tariff sheets by 12:00 p.m. on March 8, 2010.

F. Consumers Energy Company shall update its January 6, 2010 filing for authority to issue refunds of self-implementation surcharges by February 22, 2010, to reflect the revised revenue deficiency calculated 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, under MCL 462.26.

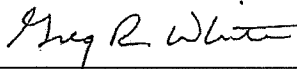
MICHIGAN PUBLIC SERVICE COMMISSION



Orjiakor N. Isiogu, Chairman

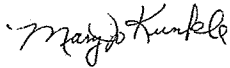


Monica Martinez, Commissioner



Greg R. White, Commissioner

By its action of January 25, 2010.



Mary Jo Kunkle, Executive Secretary