

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for authority to increase its rates for the )  
distribution of natural gas and for other relief. )  
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Case No. U-15986

At the October 13, 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**

On October 6, 2008, Governor Jennifer M. Granholm signed Public Act 286 of 2008 (Act 286), amending Public Act 3 of 1939; MCL 460.6 *et seq.* Section 6a(1) of the Act sets out certain requirements and procedures for electric utility rate cases. Section 6a(1) provides that:

If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. . . . For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges.

Section 6a(1) further provides that such implementation may not take place prior to the commencement of the projected test year (if a projected test year has been used in developing the requested rates and charges), and that, if the implemented rate exceeds the rate authorized in the final order, the excess shall be refunded to customers with interest. MCL 460.6a(1).

On May 22, 2009, Consumers Energy Company (Consumers) filed a gas rate case seeking a \$114.4 million rate increase and other forms of regulatory relief. The application relies on a October 1, 2009 to September 30, 2010 projected test year. A prehearing conference was held before Administrative Law Judge Mark D. Eyster (ALJ) on June 24, 2009.

At the initial prehearing conference, the petitions to intervene filed by the Association of Businesses Advocating Tariff Equity (ABATE), Attorney General Michael A. Cox (Attorney General), the National Energy Marketers Association and Interstate Gas Supply, Inc., (NEMA *et al*), Michigan State Utility Workers Council of the Utility Workers Union of America, AFL-CIO (AFL-CIO), Michigan Community Action Agency Association (MCAAA), and the Midland Cogeneration Venture Limited Partnership (MCV) were granted.<sup>1</sup> The Commission Staff (Staff) also participated in the proceedings. Subsequently, a delayed petition for permissive intervention filed by Constellation NewEnergy, Inc. (CNE), was granted by the ALJ.

The schedule for the proceedings provides for the filing of testimony by the Staff and intervenors by October 22, 2009, rebuttal testimony by November 16, 2009, cross-examination commencing mid-December 2009, briefing in late January and early February 2010, and issuance of a Proposal for Decision on March 24, 2010. The Commission must issue a final order by May 22, 2010. MCL 460.6a(2).

By law, on November 18, 2009, absent an order from the Commission that either prevents or delays self-implementation, Consumers may self-implement up to the full amount of its proposed rate increase. Because Act 286 established extremely short timeframes for concluding rate cases, and despite the aggressive schedule set in this proceeding, as it currently stands, there will be no record evidence available to the Commission on which to base a decision on a temporary order by

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<sup>1</sup>The ALJ indicated that the petition for leave to intervene filed by NEMA *et al* would be granted on a permissive basis to stave off an objection from the Staff to intervention as of right.

November 18, 2009. In particular, the Commission finds that a decision on whether there is good cause to prevent or delay the implementation of new rates should not be made in the absence of additional information regarding what the new rates will be.

Prior to the enactment of Act 286, existing rates were conclusively deemed to be just and reasonable, and any unapproved rate increase implemented *ex parte* was conclusively unreasonable and unlawful. *Northern Michigan Water Co v Public Service Comm*, 381 Mich 340, 352-353; 161 NW2d 584 (1968). Act 286 has radically revised the regulatory paradigm. Although the Commission still has an obligation to “hear and pass upon” all matters relating to electric utility regulation under MCL 460.6a, Act 286 appears to have grafted a modified “file and use” approach for proposed rates absent “good cause” for the Commission to either prevent or delay the use of filed rates by the utility.

In order to address these concerns, the Commission directs Consumers to file, by October 16, 2009, a tariff showing the rates that Consumers proposes to self-implement between November 18, 2009 and May 22, 2010. All parties will be able to respond to the tariff filing, if they so choose, in responses to be filed no later than October 23, 2009.

In addition, the Commission finds that the ALJ should conduct a hearing at 9:00 a.m. on October 27, 2009. The hearing must, of necessity, be extremely abbreviated. At the hearing, Consumers is directed to provide one witness to support the reasonableness of the proposed rates and shall provide evidence regarding the effect of the statutory rate design option and reasonable alternatives thereto. Other parties may be prepared to present one witness each, if they so choose. The time allotted to each party will be set by the ALJ at the hearing.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company shall file on October 16, 2009, a tariff showing the rates that it proposes to self-implement between November 18, 2009 and May 22, 2010.

B. Parties shall have an opportunity to respond to Consumers Energy Company's tariff filing by October 23, 2009.

C. A hearing shall be held at 9:00 a.m. on October 27, 2009. At the hearing, Consumers Energy Company shall provide one witness to support the reasonableness of the proposed tariffs and shall provide evidence regarding the effect of the statutory rate design option and reasonable alternatives thereto.

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

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

By its action of October 13, 2009.

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Monica Martinez, Commissioner

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Mary Jo Kunkle, Executive Secretary

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Steven A. Transeth, Commissioner