

S T A T E O F M I C H I G A N  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** for approval )  
of a power supply cost recovery plan and for Case No. U-11527  
authorization of monthly power supply cost recovery  
factors for calendar year 1998. )  
\_\_\_\_\_ )

At the June 26, 1998 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT Hon. John G. Strand, Chairman  
Hon. John C. Shea, Commissioner  
Hon. David A. Svanda, Commissioner

**OPINION AND ORDER**

On September 30, 1997, Consumers Energy Company (Consumers) filed an application requesting approval of its power supply cost recovery (PSCR) plan and factors for 1998. In the February 11, 1998 order in Case No. U-11290 et al., the Commission approved Consumers' proposal to suspend its PSCR clause immediately, to replace the current PSCR factor of \$0.00285 per kilowatt-hour (kWh) with an interim base rate adjustment of \$0.00270 per kWh, and to terminate the 1998 plan case. Therefore, on February 17, 1998, Consumers filed a motion to terminate this plan case. On March 4, 1998, Administrative Law Judge Daniel E. Nickerson, Jr., issued a Proposal for Decision recommending that the Commission terminate the case. On

March 18, 1998, the Residential Ratepayer Consortium (RRC) and Attorney General Frank J. Kelly (Attorney General) filed exceptions. On April 1, 1998, Consumers filed a reply.<sup>1</sup>

The RRC and the Attorney General argue, in reliance on subsections (5) and (6) of MCL 460.6j; MSA 22.13(6j), that because Consumer filed a PSCR plan and self-implemented its proposed PSCR factor as of January 1, 1998, the Commission must conduct a contested case to review the PSCR plan and to establish the appropriate PSCR factor at least for January and February. If the Commission does not conduct the required contested case, they argue, subsection (9) requires Consumers to refund all of the money it collected under the self-implemented factor.<sup>2</sup> The RRC and the Attorney General argue that because Consumers collected funds under its PSCR clause in January and February 1998, subsection (12) requires a reconciliation and subsections (14) and (15) require that a plan case order precede the reconciliation. The RRC and the Attorney General acknowledge that the Commission's February 11, 1998 order cited a recent decision of the Court of Appeals, Attorney General v Public Service Comm, unpublished opinion per curiam of the Court of Appeals, decided January 20, 1998 (Docket Nos. 191946, 192000, 192001, and 192515), as holding that the suspension of a PSCR clause rendered the PSCR plan case moot. They argue that the appellate decision does not support the dismissal of this plan case because, unlike the case reviewed by the Court of Appeals, Consumers' clause was

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<sup>1</sup>The RRC filed a letter supporting the Attorney General's exceptions.

<sup>2</sup>The Attorney General also argues that if the Commission seeks to argue that it suspended the PSCR clause retroactive to January 1, 1998, Consumers must refund the money because there would be no lawful basis for the company to have self-implemented any PSCR factor.

suspended after the plan year commenced and after Consumers had self-implemented its PSCR factor.

Consumers responds that, because of the February 11, 1998 order, issues related to the use of a PSCR factor or interim or permanent base rate adjustment to recover fuel and purchased power costs in 1998 will be heard and resolved in the ongoing 1997 PSCR reconciliation, Case No. U-11180-R. The company says that it has agreed to refund the amount by which the revenues collected through the PSCR factor in January and February 1998 exceed the revenues that would have been collected through the interim base rate adjustment authorized by the February 11, 1998 order. The company further says that it has agreed to refund the amount by which the revenues collected through the interim base rate adjustment exceed the revenues that would have been collected through the permanent base rate adjustment to be established in Case No. U-11180-R. Consumers says that the claim of the RRC and the Attorney General that such a procedure is erroneous can be raised in cases other than this plan case.

In the February 11, 1998 order in Case No. U-11290 et al., the Commission concluded that there was no need to conduct the 1998 PSCR plan case because, in light of the restructuring of the electric utility industry, the relevant issues could be addressed in the 1997 PSCR reconciliation. The Commission is not persuaded that it should change that decision. The 1997 reconciliation is the forum in which the Commission will determine the fuel and purchased power costs that Consumers should be authorized to recover in base rates during the period that its PSCR clause is suspended. For 1998, Consumers will be permitted to recover those costs from some combination of the PSCR factor that it implemented in January and February, the interim base rate adjustment that the Commission authorized on

February 11, 1998, and the permanent base rate adjustment that the Commission will authorize in the final order in Case No. U-11180-R. To the extent that the RRC and the Attorney General believe they have raised issues that cannot be addressed in the 1997 reconciliation, they should raise those issues in other cases.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; MSA 22.13(6h) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACSR, R 460.17101 et seq.

b. This case should be closed.

THEREFORE, IT IS ORDERED that this 1998 power supply cost recovery plan case for Consumers Energy Company is closed.

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, pursuant to MCL 462.26; MSA 22.45.

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MICHIGAN PUBLIC SERVICE COMMI

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/s/ John G. Strand

Chairman

( S E A L )

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/s/ John C. Shea

Com mission er, dissenting in a

separate opinion.

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/s/ David A. Svanda

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By its action of June 26, 1998.

/s/ Dorothy Wideman  
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated June 26, 1998 closing the  
1998 power supply cost recovery plan case for Consum-  
ers Energy Company, as set forth in the order.

STATE OF MICHIGAN  
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**DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA**

(Submitted on June 26, 1998 concerning order issued on same date.)

While I could support the suspension of an electric utility's PSCR clause as an element of a reasoned experiment intended to ascertain the appropriate level of deregulation for Michigan's electric utilities, I am not persuaded that this Commission may suspend Consumers' PSCR clause in this particular proceeding without a hearing and still comply with the mandate of 1982 PA 304, especially subsection 9, MCL 460.6j(9); MSA 22.13(6j)(9). Therefore, I respectfully dissent.

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John C. Shea, Commissioner