

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, of the rates and tariffs of **CONSUMERS POWER COMPANY** regarding gas transportation service and related matters.

Case No. U-8678

In the matter of the application of **CONSUMERS POWER COMPANY** for authority to increase its rates for the sale of gas

Case No. U-8924 ✓

In the matter of the application of **CONSUMERS POWER COMPANY** for accounting and ratemaking approval of depreciation practices for gas utility plant.

Case No. U-9197

In the matter of the application of **CONSUMERS POWER COMPANY** for a reconciliation of gas cost recovery costs and revenues for calendar year 1991, and for authority to allocate and surcharge for take-or-pay costs.

Case No. U-9733-R
(GCR reconciliation)

At the March 17, 1993 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Steven M. Fetter, Chairman
Hon. Ronald E. Russell, Commissioner
Hon. John L. O'Donnell, Commissioner

ORDER DENYING PETITION FOR REHEARING

On January 21, 1993, Attorney General Frank J. Kelley (Attorney General) filed a petition for rehearing of the Commission's December 22, 1992 order in these cases concerning Consumers Power Company (Consumers). The Attorney General seeks rehearing and

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reversal of the Commission's treatment of take-or-pay costs.¹ In that order, the Commission held that the Attorney General failed to present any new evidence or arguments to persuade the Commission to change its determination that netting Federal Energy Regulatory Commission (FERC) Order No. 500² credits and FERC Order No. 528³ charges is reasonable and appropriate.

The Commission Staff (Staff) and Consumers filed answers to the petition on February 10 and 11, 1993, respectively.

Rule 403 of the Commission's Rules of Practice and Procedure, 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. 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. In reaching its decision, the Commission will have fully considered the record and all arguments. 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.

In his petition, the Attorney General maintains that, contrary to the Commission's finding, there is, in fact, a basis in Order No. 528 and in Associated Gas Distributors v FERC (AGD), 893 F2d 349 (CA DC, 1989), cert den sub nom Berkshire Gas Co v Associated Gas

¹Take-or-pay as used in this order refers to costs that pipelines incurred with producers during the restructuring of the gas industry and that they have sought to pass on to their customers.

²40 FERC ¶ 61,172; 89 PUR 4th 312 (1987)

³53 FERC ¶ 61,163 (1990)

Distributors, 112 L Ed 2d (1990) for distinguishing Order No. 528 take-or-pay costs from order No. 500 take-or-pay costs, and that Order No. 528 costs were newly calculated and incurred in 1991. In support of his position that Order No. 528 constitutes a new obligation and, consequently, the Commission should have required Consumers to refund and rebill the take-or-pay costs, the Attorney General maintains that the FERC treated Order No. 528 as a new mechanism requiring refunds or credits. The Attorney General also maintains that the court in the AGD decision found that costs must be lawfully attached to purchase decisions and that denial of credits for prior payments must be justified. Furthermore, the Attorney General asserts, although Consumers booked separate Order No. 500 credits and Order No. 528 charges in December 1990 and included those amounts in its 1990 gas cost recovery reconciliation (GCR), Case No. U-9433-R, the Commission ruled that those amounts should be deferred to this case, Consumers' 1991 GCR reconciliation. Thus, the Attorney General argues, the Commission has ruled that the resulting costs belong in 1991. Therefore, the Attorney General argues, the Commission committed error in concluding that there is no basis in Order No. 528 and the AGD decision to distinguish Order No. 528 take-or-pay costs from Order No. 500 take-or-pay costs. The Attorney General therefore requests that the Commission direct Consumers to separately credit and charge its customers for \$79 million plus interest on the refund and overrecovery.

In response, the Staff and Consumers assert that the Attorney General's allegations are merely extensions of the arguments that the Commission has already rejected. Moreover, the Staff maintains, the Attorney General's allegations fail to establish any fundamental difference between the take-or-pay costs that were to have been recovered under Order No. 500 and those allocated in accordance with Order No. 528. Consumers agrees, adding that the

Attorney General's use of "new" and "old" costs is sophistic and is not determinative of the issues in this case.

The Commission finds that the Attorney General's argument regarding the refunding and rebilling of take-or-pay costs was properly rejected in the Commission's December 22, 1992 order. Once again, there is no meaningful distinction between the Attorney General's proposals in this case and in Cases Nos. U-9433-R, Consumers' 1990 GCR reconciliation; U-9734-R, Michigan Gas Utilities' 1991 GCR reconciliation; and U-9650-R, Michigan Consolidated Gas Company's 1991 GCR reconciliation. As the Commission has repeatedly stated, the Attorney General's proposal continues to be based on an unstated, false assumption that Order No. 528 costs are new costs. Contrary to the Attorney General's contention, the Commission fully considered the Attorney General's evidence on this issue and specifically quoted and rejected Mr. Miller's testimony at page 15 of the order prior to making its determination. Although the Attorney General persists in attempting to distinguish the costs recovered under Order No. 500 from the costs that were the subject of settlements pursuant to Order No. 528, his arguments do not persuade the Commission to change its view that the FERC never intended that Order No. 528 should be considered anything but a continuation of its ongoing efforts to resolve problems with take-or-pay liability.

The Attorney General has failed to demonstrate that the Commission's decision is incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision. Therefore, the Attorney General's petition for rehearing should be denied.

The Commission FINDS:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, R 460.17101 et seq.

b. The petition for rehearing filed by the Attorney General should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Attorney General Frank J. Kelley is denied.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ Steven M. Fetter
Chairman

By its action of March 17, 1993.

/s/ Ronald E. Russell
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ John L. O'Donnell
Commissioner