

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the approval of a code of conduct	)	
for CONSUMERS ENERGY COMPANY and	)	Case No. U-12134
THE DETROIT EDISON COMPANY.	)	
_____	)	

At the December 9, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER IMPLEMENTING LEGISLATION

Section 10a(4) of the Customer Choice and Electricity Reliability Act, 2000 PA 141
(Act 141), as amended, MCL 460.10 to MCL 460.10cc, provides:

Within 180 days after June 5, 2000, the commission shall establish a code of conduct that shall apply to all electric utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, information sharing, and preferential treatment, between a utility's regulated and unregulated services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10cc.

MCL 460.10a(4).

On December 4, 2000, the Commission issued an order adopting a code of conduct, as required by Section 10a(4). Among other things, the order required the filing of compliance plans and permitted the filing of requests for waivers.

On January 23, 2001, the Commission issued an order amending the code of conduct to require the filing of compliance plans within 60 days after the issuance of an order on rehearing of the December 4, 2000 order. On October 29, 2001, the Commission issued the rehearing order and adopted a revised code of conduct.

On December 28, 2001, Consumers Energy Company (Consumers) filed a compliance plan and requested waivers of numerous sections of the code of conduct. Among other things, Consumers sought a waiver for its appliance service plan (ASP) program.¹

On October 3, 2002, the Commission issued an order in this proceeding granting in part and denying in part Consumers' request for waivers. With regard to Consumers' ASP program, the Commission recognized that Consumers' utility customers could suffer if they were to be deprived of exercising a choice of service providers with regard to routine requests for minor repairs or adjustments ordinarily associated as part of the provision of utility-related services. Accordingly, the Commission permitted Consumers to continue to respond to such requests for minor repairs or adjustments as part of its utility-related services. The Commission also granted a temporary waiver of the structural separation requirement of the code for the ASP program for six months from the date of the October 3, 2002 order, or until April 3, 2003.

On December 19, 2002, Consumers filed a request for a one-year extension of the code of conduct waiver applicable to its ASP program, which would have extended the waiver until April 3, 2004. In ruling on this request, the Commission stated:

¹Consumers' ASP program provides repair service for residential heating and cooling equipment as well as major kitchen and laundry appliances. Customers enter into 12-month contracts for such services and have the option of paying in advance or having a fixed monthly fee added to their monthly utility bills. Covered repairs are provided at no additional cost for service calls, parts, or labor. Approximately 176,000 of Consumers' customers have contracts for the ASP program. The term remaining on these contracts varies from one to twelve months.

The Commission finds that Consumers' request for an extension of the temporary waiver granted in the October 3, 2002 order for its ASP program should be granted, in part. In reaching this determination, the Commission relies on Consumers' assertion that it needs additional time to implement the full functional separation of its regulated activities from the ASP program and on the MAFC's assertion that it does not desire termination of the ASP program, but only a level playing field on which to compete against it. Finally, the Commission notes the hundreds of messages of support for continuation of the ASP program that have been received from satisfied customers. Accordingly, the Commission is persuaded that an extension of the waiver until December 31, 2003 is appropriate. Therefore, no later than December 31, 2003, Consumers either shall have terminated its appliance service plan program or shall have completed the full functional separation of its regulated activities from the appliance service plan program.

February 20 order, pp. 7-8.

In addition, the Commission found that certain conditions should accompany the extension of the temporary waiver. Specifically, the Commission directed that until December 31, 2003, Consumers shall operate its ASP program without using messages printed on its bills, bill inserts, advertising, and other such promotional materials included with customers' bills. In addition, the Commission ordered that Consumers' promotional messages about the ASP program on the utility's website shall fully comply with the letter and the spirit of the code of conduct. Further, the Commission found that until December 31, 2003, Consumers must operate its ASP program by requiring the ASP program to bear the full cost of advertising and promotional activities through use of separate mailings. In so doing, the Commission indicated that, if there were to be any question regarding Consumers' compliance with this provision, the burden of going forward with evidence would fall on Consumers to establish its compliance with this requirement due to the utility's superior access to the information necessary to establish such compliance. Finally, the Commission found that until December 31, 2003, Consumers could continue to bill customers for the costs associated with the ASP program on its utility bills, but that the utility could do so only if

the ASP program were charged for such billing services on a fully allocated (not incremental) cost basis.

On December 1, 2003, Governor Jennifer M. Granholm signed Enrolled House Bill 5188 into law as 2003 PA 214 (Act 214). This legislation, which was given immediate effect on December 2, 2003, amends Section 10a of Act 141 by adding the following provision:

Before December 31, 2003, the commission shall extend the temporary waiver for appliance service plans granted in case no. U-12134 issued February 20, 2003, to July 1, 2004, subject to the conditions imposed by that order. The enactment of this subsection shall not be deemed to prejudice, delay, or affect any legal case or legal proceeding.

MCL 460.10a(5).

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. By virtue of passage of Act 214, Consumers should be given an extension of the temporary waiver for its ASP program granted in the February 20, 2003 order in this proceeding, subject to the same conditions imposed by that order.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company is granted an extension of the temporary waiver for its appliance service plan program as required by 2003 PA 214, subject to the conditions imposed by the Commission's February 20, 2003 order in Case No. U-12134.

B. By July 1, 2004, Consumers Energy Company either shall have terminated its appliance service plan program or shall have completed the full functional separation of its regulated activities from the appliance service plan program.

C. Until July 1, 2004, Consumers Energy Company shall operate its appliance service plan program without using messages printed on its bills, bill inserts, advertising, and other such promotional materials included with customers' bills, and all promotional messages about the appliance service plan on the utility's website shall fully comply with the letter and the spirit of the code of conduct.

D. Until July 1, 2004, Consumers Energy Company shall operate its appliance service plan program by requiring the appliance service plan program to bear the full cost of advertising and promotional activities through use of separate mailings.

E. Until July 1, 2004, Consumers Energy Company may continue to bill customers for the costs associated with the appliance service plan program on its utility bills, but shall do so only if the appliance service plan is charged for such billing services on a fully allocated (not incremental) cost basis.

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/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

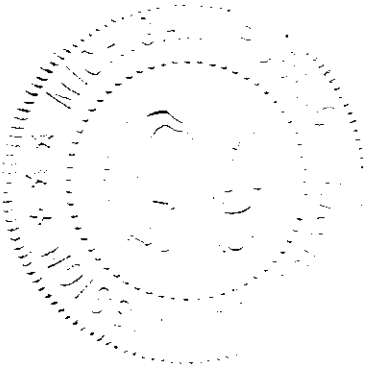
/s/ Laura Chappelle
Commissioner

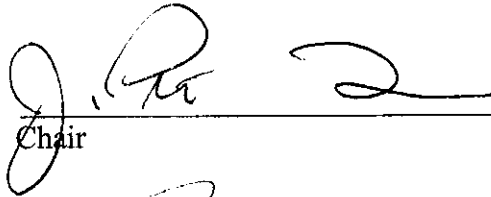
By its action of December 9, 2003.

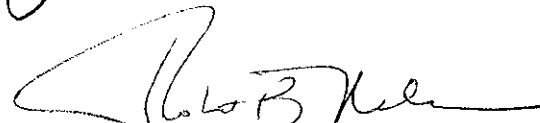
/s/ Mary Jo Kunkle
Its Executive Secretary

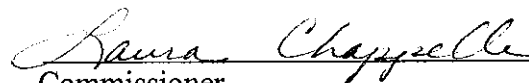
Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

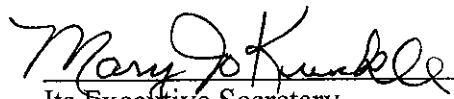



Chair


Commissioner


Commissioner

By its action of December 9, 2003.


Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-12134

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on December 9th, 2003, A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Patricia Fronta

Subscribed and sworn to before me
this 9th day of December 2003

Notary Public, Eaton County, Michigan
Acting in Ingham County
My Commission expires November 22, 2004

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**Municipal Electric Utilities –
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PAGE 1 OF 2**

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**Municipal Electric Utilities –
Unregulated by the MPSC
PAGE 2 OF 2**

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