

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to consider changes in the rates of all the Michigan)
rate-regulated electric, steam and natural gas utilities)
to reflect the effects of the federal Tax Cuts and Jobs)
Act of 2017: **CONSUMERS ENERGY COMPANY**)
files an application for determination of electric)
Credit B as described in orders U-20102 and U-18494.)

Case No. U-20286

In the matter, on the Commission's own motion,)
to consider changes in the rates of all of the)
following Michigan rate-regulated electric,)
steam, and natural gas utilities to reflect the effects)
of the federal Tax Cuts and Jobs Act of 2017:)
ALPENA POWER COMPANY, CONSUMERS)
ENERGY COMPANY, DETROIT THERMAL, LLC,)
DTE ELECTRIC COMPANY, DTE GAS COMPANY,)
INDIANA MICHIGAN POWER COMPANY,)
NORTHERN STATES POWER COMPANY-)
WISCONSIN, UPPER PENINSULA POWER)
COMPANY, UPPER MICHIGAN ENERGY)
RESOURCES CORPORATION,)
WISCONSIN ELECTRIC POWER COMPANY,)
PRESQUE ISLE ELECTRIC & GAS CO-OP,)
MICHIGAN GAS UTILITIES CORPORATION, and)
SEMCO ENERGY GAS COMPANY.)

Case No. U-18494

In the matter, on the Commission's own motion,)
to consider changes in the rates of all the Michigan)
rate-regulated electric, steam, and natural gas utilities)
to reflect the effects of the federal Tax Cuts and Jobs)
Act of 2017: **CONSUMERS ENERGY COMPANY**)
files an application for determination of Credit A)
as described in order U-18494.)

Case No. U-20102

At the December 20, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

History of Proceedings

On February 22, 2018, the Commission issued an order in Case No. U-18494 (February 22 order) adopting a three-step approach to address the impacts of the federal income tax (FIT) reduction arising from the Tax Cuts and Jobs Act of 2017 (TCJA). The first step, the Credit A proceeding, determined the rate credit based on the new tax rate going-forward. The second step, the Credit B proceeding, determines the rate credit from January 1, 2018, to the date of the order in the utility's Credit A case. The third step, the Calculation C proceeding, will capture the remaining impacts of the TCJA. In the February 22 order, the Commission determined that the Credit A and B proceedings would be expedited and the Commission would read the record in these cases.

Consumers Energy Company's (Consumers) Credit A refund for electric service was approved in the July 24, 2018 order approving a settlement agreement in Case No. U-20102 (July 24 order).

On September 24, 2018, Consumers filed its Credit B application for electric service in this docket, with supporting testimony and exhibits.¹

A prehearing conference was held on September 18, 2018, before Administrative Law Judge (ALJ) Sally L. Wallace, who was temporarily filling in for ALJ Sharon L. Feldman. Consumers

¹ Consumers' Calculation C application was filed on October 1, 2018, in Case No. U-20309.

and the Commission Staff (Staff) participated in the proceeding and ALJ Wallace granted petitions to intervene filed by the Association of Businesses Advocating Tariff Equity (ABATE), the Michigan Department of the Attorney General (Attorney General), Energy Michigan Inc., the Michigan Cable Telecommunications Association, and the Residential Customer Group (RCG).

On November 1, 2018, the Staff, the Attorney General, ABATE, and RCG filed testimony and exhibits. On November 8, 2018, Consumers and the Staff filed rebuttal testimony. On November 13, 2018, ALJ Feldman conducted an evidentiary hearing. The filed testimony was bound into the record and the parties waived cross-examination. Consumers, the Staff, the Attorney General, and RCG filed initial briefs on November 29, 2018, and Consumers, the Staff, and RCG filed reply briefs on December 6, 2018. The record consists of 91 pages of transcript and 24 exhibits admitted into evidence.

Positions of the Parties

A. Consumers Energy Company

Consumers states that the revenue requirement reduction arising from the change to the FIT rate for electric service is \$112.710 million. Exhibit A-6; 2 Tr 40-41. The company explains that its Credit B refund amount was calculated by applying the Credit A rates approved in the July 24 order to the actual usage that occurred January 1, 2018, through the end of July 2018. Consumers initially proposed a Credit B refund of \$68,603,274. Exhibit A-3, p. 1; Consumers' initial brief, p. 3. However, in rebuttal, the company corrected two errors in the calculation, which increased the refund to \$68,620,745. 2 Tr 30; Exhibit A-12, p. 1. No party opposed Consumers' calculation method.

On rebuttal, Consumers noted that, "as originally calculated, Credit B created a disparity in the refund credit that would be associated with differences in forecasted sales versus actual sales for

rate class GPTU.” 2 Tr 33-34. Therefore, the company combined rate classes GPTU and GPD and established credits that apply to customers in both classes. Consumers asserts that this adjustment eliminates the incongruence in the original calculation. Exhibit A-12. No party challenged this rate design modification.

Consumers initially proposed to apply interest only until the refund commenced but, on rebuttal, agreed with the other parties that interest should accumulate through the end of the refund period. Exhibit A-13; 2 Tr 30, 51-52, 59-60, 68, 84. Using its short-term borrowing rate (which is in the range of 2%) to calculate interest, Consumers asserts that the total Credit B refund is \$69,678,486, to be refunded over the six months of January 2019 through June 2019. Exhibits A-4, A-13; 2 Tr 26. Consumers’ proposed tariff sheet is Exhibit A-5.

In response to RCG’s proposal to escalate the company’s short-term interest rate by 25 basis points per quarter or to apply the company’s 5.89% overall rate of return as the interest rate, Consumers contends that this would be speculative and contrary to the Commission’s traditional application of the known short-term borrowing rate to short-term liabilities. 2 Tr 32; Consumers’ initial brief, p. 5. Consumers also argues that the rate of return reflects the cost of financing long-term assets, and the Credit B refund will be returned in the short term. Finally, the company notes that in DTE Gas Company’s (DTE Gas) recent Credit B application case, the Commission rejected a similar argument posed by RCG and adopted DTE Gas’ short-term borrowing rate as the interest rate applicable to the Credit B refund. *See*, October 24, 2018 order in Case No. U-20189 (October 24 order), p. 13.

Consumers proposes a six-month refund period of January 1, 2019, through June 30, 2019. In support of the six-month period, Consumers notes that, in the February 22 order, p. 10, the Commission adopted the Staff’s Credit B proposal, which recommended that “this credit be spread

over no longer than six months, and interest be applied to the un-refunded balance of Credit B at the short-term interest rate.” Case No. U-18494, Staff’s Reply Comments, docket item no. 31, p. 4. Consumers contends that spreading the refund over six months will help to smooth the impact of monthly variations in usage due to weather. 2 Tr 31, Consumers’ initial brief, p. 9. Consumers further points out that the Commission indicated its preference for avoiding large rate fluctuations for ratepayers and cash flow volatility for investors. *Id.*, pp. 9-10, quoting the October 24 order, pp. 13-14; February 22 order, p. 12. Finally, Consumers adds that its proposed six-month period aligns with the six-month period in which the obligation accrued. Responding to RCG’s historical billing suggestion, Consumers states that additional time, expense, and delay would be required in order to reconfigure the billing system to accommodate a historically-based refund process. 2 Tr 31-32; Consumers’ initial brief, pp. 10-11.

Consumers proposes to determine any residual balance at the conclusion of the refund period by applying the method approved in Case No. U-18040. Consumers states that, if a positive residual balance is less than \$50,000, the amount should be given to a charity chosen by the utility. 2 Tr 27. Consumers asserts that its proposed residual balance method was approved by the Commission in Case Nos. U-18040, U-18077, and U-18381. In response to RCG’s request that the company use any residual overcollection below \$50,000 as a credit to customers in a future electric case, Consumers notes that RCG recently made the same request in DTE Gas’ Credit B case and the Commission rejected it on page 15 of the October 24 order.

B. The Commission Staff

The Staff argued that interest should accrue to the unrefunded balance until the entire balance is returned to customers. Consumers agreed on rebuttal and agreed to the Staff’s refund amounts. 2 Tr 30. The Staff supports the remainder of Consumers’ application.

The Staff argues that the Attorney General's, ABATE's, and RCG's short three-month refund period would cause significant swings in customers' bills, thus providing inconsistent pricing signals. Staff's initial brief, p. 5. The Staff notes that Consumers' proposed six-month period coincides with the season and the number of months over which the initial overcollection of FIT occurred and is consistent with the six-month refund period approved by the Commission in the October 24 order and the November 21, 2018 order in Case No. U-20287. The Staff also opposes RCG's historically-based refund proposal, pointing out that the Commission has repeatedly found this type of refund method to be too administratively burdensome to implement. 2 Tr 73-74; Staff's initial brief, pp. 6-7.

The Staff objects to RCG's request that the Commission increase the short-term interest rate or adopt Consumers' overall rate of return as the interest rate for Credit B. Staff's initial brief, p. 8. The Staff argues that RCG's requests are speculative, unsupported, and inconsistent with the Commission's orders in other Credit B cases.

C. The Michigan Department of the Attorney General

In order to return the refund more expeditiously, the Attorney General recommends a three-month refund period and supports accrual of interest until the refund balance reaches zero. 2 Tr 51-52; Attorney General's initial brief, p. 6.

D. Association of Businesses Advocating Tariff Equity

ABATE also supports the accrual of interest until the refund balance reaches zero. However, ABATE argues that "Consumers did not reflect the reduction in tax liability carrying balance during the period that Consumers proposes to actually refund to customers the Credit B amount, which is January through June 2019. The interest accrual balance should decline each month during this period, which has the effect of reducing the total interest amount that would be

refunded to customers in the Credit B negative surcharges.” 2 Tr 60. ABATE proposes a three-month refund period and notes that the Commission has approved shorter Credit B refund periods for smaller utilities. *Id.*, p. 61.

E. Residential Customer Group

RCG recommends a three-month refund period and supports accrual of interest until the refund balance is zero. To reflect the Federal Reserve’s federal fund rate, RCG proposes to increase Consumers’ August 2018 short-term interest rate by 25 basis points per quarter in order to calculate the interest expense for the Credit B refund. In the alternative, RCG suggests using Consumers’ overall rate of return of 5.89%, which was approved in Case No. U-18322 (Consumers’ most recent electric rate case). 2 Tr 85-86. RCG proposes a refund that is “based on each customer’s actual electric energy usage as shown on January through June 2018 bills,” and if “a customer has exited the system, so be it. For residential customers who have exited the system, the combined amount of such unrefunded credits for the residential class should be totaled with a prompt second refund.” *Id.*, pp. 87-88. RCG posits that actual electric usage should be available from billing records. RCG further argues that no money should be given to charity, but that any overrecovery should be used as a credit in future electric cost recovery cases. *Id.*, p. 88.

Discussion

No party disputed the refund amounts calculated by the Staff and Consumers. On the basis of the record in this proceeding, the Commission finds Consumers’ Credit B refund of \$69,678,486, inclusive of interest, to be reasonable and prudent.

The parties disagree on the appropriate billing period for returning the refund. As stated in the February 22 order, the Commission seeks to return the TCJA benefits to ratepayers as quickly as possible, “consistent with reasonable and prudent ratemaking practices.” February 22 order, p. 10.

Although ABATE, the Attorney General, and the RCG request shorter refund periods, the Commission finds that Consumers' proposed six-month period complies with the Commission's goal of providing a timely and accurate refund that avoids significant swings in customers' bills, and reflects the period of time over which the obligation was accrued. *See*, October 24, 2018 order in Case No. U-20189, p. 13. The smaller utilities referenced by ABATE had considerably smaller refunds. The six-month period also spreads the refund over a period of time long enough to help correct for large variations in usage caused by weather. The Commission approves the company's proposed six-month refund period of January 1, 2019, through June 30, 2019.

Regarding RCG's recommendation to increase Consumers' August 2018 short-term interest rate by 25 basis points per quarter or apply the 5.89% overall rate of return approved in Case No. U-18322, the Commission finds it would not be appropriate. Because the Credit B obligation will be refunded within a year after it was incurred, the Commission finds that the amounts reflect a short-term debt and, therefore, use of the short-term interest rate is approved.

Turning to RCG's suggestion that the refund be based on actual historical use, the Commission refers RCG to the long line of Commission and court precedent rejecting historical rebilling in various types of proceedings on grounds that, when weighed against the benefits, it is too administratively burdensome and costly. *In re Application of Consumers Energy Co*, 313 Mich App 175, 194; 881 NW2d 502 (2015); *In re Detroit Edison Co*, 297 Mich App 377, 386; 823 NW2d 433 (2012); *Attorney General v Public Service Comm*, 215 Mich App 356, 361-369; 546 NW2d 266 (1996); May 10, 2011 order in Case No. U-16302, p. 8; December 21, 2010 order in Case No. U-16441, pp. 7-8; May 17, 2005 order in Case No. U-13990, pp. 21-22; and October 29, 2003 order in Case No. U-13622, pp. 11-14.

Finally, the Commission is not persuaded that the residual balance mechanism requires a change, and authorizes Consumers to implement the charitable donation option (if the prerequisites are met) that was approved in the June 9, 2016 order in Case No. U-18040, Exhibit A, p. 2.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's Credit B refund of \$69,678,486, inclusive of interest, for electric customers shall be implemented from January 1, 2019, through June 30, 2019, on a bills-rendered basis.

B. Within 30 days of the date of this order, Consumers Energy Company shall file with the Commission a tariff sheet substantially similar to that set forth in Exhibit A-5.

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. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of December 20, 2018.

Kavita Kale, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

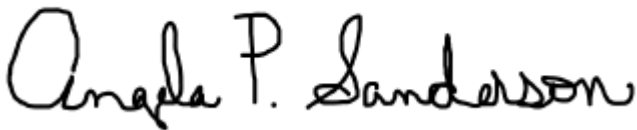
Case No. U-20286 et al

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on December 20, 2018 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 20th day of December 2018.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

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