

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for accounting authority to (i) normalize book/tax)
differences related to electric and gas utility plant)
placed in service before January 1, 1993, and)
(ii) amortize existing regulatory tax liabilities related)
to pre-1993 electric and gas utility plant.)
_____)

Case No. U-17449

At the September 10, 2013 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER

On August 2, 2013, Consumers Energy Company (Consumers) filed an application seeking *ex parte* authority to:

- (i) Prospectively use comprehensive normalization for book/tax temporary differences relating to electric utility plant and gas utility plant placed in service before January 1, 1993, using the same accounting that is used for electric utility plant and gas utility plant placed in service on and after January 1, 1993;
- (ii) Amortize existing regulatory tax liabilities in general ledger account 254 (Other regulatory liabilities) associated with book/tax temporary differences relating to electric utility plant placed in service before January 1, 1993, using equal monthly amounts over a period of 60 months; and
- (iii) Amortize existing regulatory tax liabilities in general ledger account 254 (Other regulatory liabilities) associated with book/tax temporary differences relating to gas utility plant placed in service before January 1, 1993, using equal monthly amounts over a period of 120 months.

Application, p. 1.

On August 27, 2013, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition to intervene in this proceeding. ABATE states that it is a voluntary association of large industrial businesses whose members are directly affected by the issues raised in this proceeding because they purchase large amounts of electricity and other services from Consumers. ABATE asserts that it satisfies the requirements for intervention used by the Commission. Citing the “two-prong test” for standing set forth in *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 250 L Ed 184 (1970), ABATE maintains that it meets the standing test because “it has a direct interest in the rates, terms and conditions of electric service for customers of Consumers, which these proceedings will directly impact, and this interest is within the zone of interests to be protected by the Commission’s consideration of the issues.” ABATE’s petition, p. 3. ABATE further states that it can provide useful and unique information, and thus qualifies for permissive intervention. ABATE states that “Consumers’ proposal appears to be reasonable, and ABATE is in the process of validating this conclusion.” *Id.*

Consumers’ application concerns deferred tax accounting, which, the utility states, “results when taxable income differs from book income due to the fact that items of revenue or expense are reported in different periods for tax purposes than for book purposes.” Application, p. 2.

Consumers states that in the February 8, 1993 order in Case No. U-10083 the Commission authorized Consumers to use comprehensive income tax normalization accounting for plant placed in service on and after January 1, 1993. Accordingly, since that order, Consumers has used normalization accounting for electric and gas plant placed in service on and after January 1, 1993,

and has continued to use flow-through accounting for electric and gas plant placed in service before January 1, 1993.¹

Consumers states that as a result of using flow-through accounting for the pre-1993 assets for more than 20 years, the utility has collected \$475 million (\$211 million for electric plant and \$264 million for gas plant) from customers through depreciation expense that represents future tax benefits. Consumers states that this book/tax timing difference is primarily related to removal costs for pre-1993 assets, but also results from differences between tax depreciation and book depreciation, and between tax basis adjustments and book basis adjustments for these assets. Consumers points out that, under the required flow-through accounting method, customers are charged for removal costs over the regulatory life of the affected asset but do not receive the associated tax benefit until the cost to remove the asset is actually incurred. Consumers estimates that it will take at least 50 years to flow back these existing tax benefits under the current accounting method.

Consumers requests authority to stop using the flow-through method for pre-1993 assets and to begin using comprehensive normalization for all pre-1993 affected assets, using end-of-month account balances as of the end of the month immediately preceding the issuance of this order. Consumers proposes to accelerate the flow-through of the tax benefits associated with pre-1993 assets to customers through amortization of the electric regulatory tax liability over a period of five years, and of the gas regulatory tax liability over a period of ten years. Consumers asserts that the amortization of this tax liability is worth \$35-40 million per year for the electric utility over five years, and \$20-25 million per year for the gas utility over ten years, and that approval of the

¹ Normalization accounting passes the tax benefit of cost of removal, collected through depreciation expense, to customers as the cost of removal dollars are collected. Flow-through accounting passes the tax benefit of cost of removal to customers when the cost of removal dollars are actually spent.

accounting request “should allow Consumers Energy to avoid increasing electric base rates and gas base rates through 2014.” Application, p. 6. Consumers requests authority to amortize regulatory liability account 254 (*Other regulatory liabilities*) to account 411.1 (*Provision for deferred income taxes – Credit*). Since the requested change will not result in an increase to the cost of service for any customer, Consumers seeks *ex parte* approval of the application. MCL 460.6a(1).

The Commission agrees with Consumers that switching to comprehensive income tax normalization for electric and gas plant placed in service before January 1, 1993, will benefit ratepayers by returning the tax benefit associated with collection of the removal costs in a more timely fashion. The proposed accounting change will put an end to the ongoing growth in this liability, and will increase the potential that the benefit is returned to ratepayers who participated in funding the removal costs, rather than over a 50-year-plus period. The Commission finds that Consumers’ proposal to amortize the return of the tax benefit to ratepayers is reasonable and should be approved. However, with respect to gas utility plant, the Commission is persuaded that a greater benefit will accrue to ratepayers by extending the duration of that amortization slightly, to 12 years. Additionally, in light of the fact that Consumers indicates that approval of the application will allow the utility to avoid filing a gas or electric rate case in 2014, and because electric rates have been set for 2013 based on a 2013 calendar test year, the Commission finds that the requested amortization should begin effective January 2014. Thus, Consumers is directed to prospectively use comprehensive normalization for all pre-1993 book/tax timing differences associated with electric utility plant and gas utility plant placed in service before January 1, 1993, and begin amortization of the associated regulatory liabilities effective January 2014.

The Commission finds that the application is appropriate for *ex parte* treatment, and denies ABATE's petition to intervene. By this order, the Commission grants authority for a change to accounting procedures which has no immediate effect on the cost of service for any customer. The Commission's authority to issue *ex parte* orders derives from MCL 460.6a(1), which provides "A gas or electric utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval. . . . An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing." As Consumers' petition and the Commission's decision indicates, the requested accounting change will have the effect of commencing the return to ratepayers of the tax benefit associated with collection of the costs of removal for the pre-1993 assets, and will thus result in either a decrease in rates or no change to rates. ABATE asserts an interest in the matter on the broad grounds that it is concerned with the rates, terms, and conditions of electric service, while also stating its general support for the application. The application demonstrates that there will be no increase in the cost of service for any customer as a result of the Commission's decision, thus *ex parte* treatment is appropriate.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company is authorized to prospectively use comprehensive normalization for all pre-1993 book/tax timing differences associated with electric utility plant and gas utility plant placed in service before January 1, 1993, and begin amortization of the associated regulatory liabilities effective January 2014.

B. Consumers Energy Company is authorized, effective January 2014, to implement accounting that amortizes the regulatory tax liability in account 254 (Other regulatory liabilities)

associated with electric utility plant placed in service before January 1, 1993, calculated as of the end of December 2013 using equal monthly amounts over a period of 60 months.

C. Consumers Energy Company is authorized, effective January 2014, to implement accounting that amortizes the regulatory tax liability in account 254 (Other regulatory liabilities) associated with gas utility plant placed in service before January 1, 1993, calculated as of the end of December 2013 using equal monthly amounts over a period of 144 months.

D. Within seven days of the date of this order, Consumers Energy Company shall provide written notice to the Commission's Executive Secretary of whether it intends to commence the accounting change and amortization in January 2014, as set forth in this order.

E. The petition to intervene filed by the Association of Businesses Advocating Tariff Equity 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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Greg R. White, Commissioner, concurring in a separate opinion.

Sally A. Talberg, Commissioner

By its action of September 10, 2013.

Mary Jo Kunkle, Executive Secretary

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CONCURRING OPINION OF COMMISSIONER GREG R. WHITE

(Submitted September 10, 2013, concerning order issued on same date.)

I support the majority’s decision to approve, with modification, Consumers’ request to implement comprehensive income tax normalization for gas and electric plant placed in service before January 1, 1993. Nevertheless, I submit this concurrence to express my concerns about Consumers’ failure to file sufficient information for the Commission to make a reasoned decision on a complex accounting matter that will have a profound impact on future rates. I note that accounting requests of this nature are more typically made in a rate case where revenue assumptions can be more thoroughly scrutinized and tested through the contested case process. Here, the company made significant representations in its application that were not supported by any testimony, exhibits, or analysis. It is only due to the substantial efforts of the Commission Staff in requesting, and finally obtaining, from Consumers, the necessary background and analysis, (including net present value information) on this proposal that I have some confidence that the rates resulting from this \$475 million accounting change will ultimately be just and reasonable.

Simply because the Commission may approve a request *ex parte* if it does not increase current rates, it does not follow that the Commission is required to do so. In future filings where Consumers requests *ex parte* treatment, especially when it involves a complex issue where effects on rates will not be seen for many years, I believe the company would be well advised to provide much more comprehensive information and analysis, and far better justification for its request.

MICHIGAN PUBLIC SERVICE COMMISSION

Commissioner, Greg R. White