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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Federal Communications Commission
Office of the Secretary

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In the matter of the application of)
CONSUMERS POWER COMPANY for authority)
to amend its Electric Rate Schedule,)
M.P.S.C. No. 7 - Electric, as it)
pertains to streetlighting service.)

Case No. U-5545

At a session of the Michigan Public Service Commission held at its offices in the City of Lansing, Michigan, on the 31st day of July, 1978.

PRESENT: Hon. Daniel J. Demlow, Chairperson
Hon. Lenton G. Sculthorp, Commissioner
Hon. Willa Mae King, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On September 1, 1977, Consumers Power Company (Applicant) filed an application to make certain non-rate, policy modifications to its tariffs governing streetlighting contract rates SL-1, SL-2, and SL-4 through SL-10. Also participating were the Commission Staff (Staff) and the City of Grand Rapids (Intervenor). A representative of the Charter Township of Hampton, in Bay County, made an appearance under Rule 16 of the Commission's Rules of Practice and Procedure and made a statement regarding this matter.

Hearings in this matter were conducted November 4, 1977 and December 1, 1977. Applicant's case consisted of the testimony of one witness and two exhibits. The Staff presented the testimony of one witness and one exhibit. The Intervenor presented no testimony or evidence. Briefs and Reply Briefs were timely filed by all parties,

with the exception of a Reply Brief of the Intervenor, which was not considered by the Administrative Law Judge due to its late filing. Administrative Law Judge George Schankler (ALJ) issued a Proposal for Decision (PFD) on March 31, 1978, to which Exceptions were filed by Applicant and the Staff on April 20, 1978. The Intervenor filed a Reply to Exceptions on April 26, 1978.

II.

PROPOSED TARIFF MODIFICATIONS

Applicant would modify its Electric Rate Schedule, M.P.S.C. No. 7 - Electric, as it pertains to streetlighting service, in six categories: Conversion Policy; Facilities Policy; Outages; Control Device Installation; Metered Service; and Pole Attachments. The proposed changes are as follows:

1. Conversion Policy

The proposed policy would encourage streetlighting customers to convert from inefficient incandescent and fluorescent streetlighting fixtures to mercury vapor or high-pressure sodium streetlighting fixtures which are very efficient in terms of energy consumption. Such conversions would be encouraged by offering, in response to the customer's request, to convert the customer's existing incandescent or fluorescent fixtures to comparable mercury vapor or sodium luminaires at no charge to the customer. If the customer, in addition to the conversion, wishes to upgrade the streetlighting fixtures to a higher luminescence, a formula is set forth in the tariff which will determine the extent to which Applicant will absorb the additional cost of the upgrading. Applicant accepted the Staff's proposed Conversion Policy language for the incandescent (SL-1) and fluorescent (SL-4) tariff sheets, as follows:

"At the customer's request, the Company will convert its existing incandescent/fluorescent luminaires to the nearest sized mercury vapor or high-pressure sodium luminaire at no cost to the customer. If light upgrading is also involved, the Company expenditure will be the sum of three times the additional annual revenue to be derived from the installation plus the average conversion cost of the incandescent luminaire presently being served to the nearest sized mercury vapor or high-pressure sodium luminaire. Any costs in excess of this amount will be borne by the customer."

The above proposal does not clearly state the basis for calculating three times the additional annual revenue. Applicant originally proposed that the calculation be based upon the difference in revenue between that from the comparable mercury vapor or high-pressure sodium luminaire which the customer would receive at no cost and the revenue from the upgraded facility. Applicant later proposed that the calculation be based upon the revenue difference between the existing luminaire and the upgraded luminaire. Applicant's witness stated that this change in position was made to give the maximum benefit to the customer upgrading his system at the time of conversion. The ALJ in his PFD did not state which method he recommended.

Applicant's witness stated that when a customer converted to high-pressure sodium lighting, the 5,000 lumen fixture would not be considered as the closest sized luminaire as this type of light is not usually suitable for streetlighting purposes because it is a post top light.

2. Facilities Policy

This policy would permit, in response to a customer's request, the addition of poles, luminaires, or lines to streetlighting system at no charge to the customer as long as the total cost of the expenditures made by Applicant does not exceed three times the initial additional annual revenue to be derived from the installation. Applicant contends that under this policy, the customer will be entitled to more construction at no cost than is presently the case. The policy would apply to both company-owned (SL-6 and SL-9) and customer-owned (SL-7 and SL-10) streetlighting systems employing the mercury vapor or sodium luminaires.

3. Outages

The proposed change reads as follows:

"The Company will replace or repair, at its own cost, streetlighting equipment that is out of service. If for some reason the Company is not able to make such restoration within five working days from the date the outage is first reported to the Company, the Company will make pro rata deductions in the customer's billing for streetlighting service.

Outages caused by factors beyond the Company's reasonable control as provided for in Rules 1 and 15 of the Company's Standard Rules and Regulations are not covered by this policy. Such outages would be handled consistent with the particular circumstances and no proration would be made for such outages."

4. Control Device Installation

For customer-owned systems the customer would have the option of installing control devices or having Applicant install control devices, at no cost to the customer. This change would permit the customer to make the installation of the control device in those cases where it would be more convenient for the customer to do so, while allowing the customer to opt to have Applicant make the installation, as is the current practice, at no charge.

5. Metered Service

The following language would be added to Applicant's energy-only SL-8 streetlighting rate: "At the company's option, such service may be metered and the metered Kwh used as the basis for billing." This provision is meant to cover situations where Applicant is asked to take over a circuit of metered customer-owned streetlights receiving secondary voltage service. This provision will enable Applicant to continue using metered billings rather than switching to an estimated procedure.

6. Pole Attachments

This change would include in its availability clause in rates SL-7, SL-8 and SL-10, which apply to customer-owned systems, a requirement that Applicant and a

customer seeking to attach streetlighting equipment to company-owned poles execute a pole attachment agreement between the parties. The tariff provision would not require any specific conditions of service to be included in the agreement but would simply require that such an agreement be executed between the parties. Applicant's witness, Roger LaMothe, testified that, while this provision would have no substantive implications, Applicant seeks this provision in order to give notice to the streetlighting customers within its territory that pole attachments will not be permitted without the negotiation of a pole attachment agreement.

III.

DISCUSSION

1. Conversion Policy

The Staff, in its Reply Brief, attempted to propose certain changes in the language of the proposed Conversion Policy governing cost allocation where the customer seeks upgrading of its luminaires. The ALJ rejected the proposal because it had not been placed in the record and subjected to cross-examination. The Intervenor took no position on the proposal.

The ALJ recommended approval of the Conversion Policy as originally set forth by the Staff, finding that the public interest would be promoted through energy conservation. However, the Staff excepted to the ALJ's refusal to consider its recommendation in its Reply Brief. The Staff maintains that the ALJ has failed to make any finding as to how the additional revenue to be received for upgrading light service beyond the free conversion will be calculated; and that the method proposed by the Staff in its Reply Brief was in fact presented during Applicant's rebuttal case.

The Commission concludes that the Staff's Exception is well taken, for at this time Applicant's streetlighting rates are in a state of flux due to the pending rate case. The proper method for calculating the additional revenue Applicant will receive

via customer contributions when a requested conversion involves upgrading the streetlights is to determine the revenue difference between the streetlighting normally installed under the Conversion Policy and the customer's requested upgraded streetlight and to also determine the revenue difference between the existing and upgraded streetlight.

After the calculation has been made both ways, the method which gives the maximum benefit to the ratepayer will be used. This method is justified as both manners of calculation are on the record and Applicant will receive benefits when customers convert as it was stated on the record that a customer who converts from incandescent to mercury or sodium vapor is converting from a rate which is not earning a full rate of return to one which is.

2. Facilities Policy

Applicant and the Staff are in agreement, with no opposition from the Intervenor, and the ALJ found that the proposed policy is in the public interest. It is therefore adopted.

3. Outages

The Staff proposed a pro rata adjustment to the customers' billings after a three-day outage as opposed to Applicant's five-day proposal. The ALJ favored the Staff proposal as more reasonable and the Commission concurs.

4. Control Device Installation

The Staff supported the proposal to give customers the option of installing control devices or having Applicant install them at no cost to the customer. However, the Staff recommended a \$5.00 credit for installations made by the customers in order to recognize the savings of expense to Applicant. The Intervenor took no position on the matter. The ALJ found the Staff's recommendation without support in the record, there being no evidence as to what the amount of credit should be plus testimony that any savings to Applicant would be nominal since the control device

would be installed simultaneously with the installation of the streetlighting luminaires and fixtures. The Commission agrees with the ALJ that Applicant's proposal regarding Control Device Installation should be approved.

5. Metered Service

This proposal was unopposed and the ALJ recommended approval. The Commission therefore adopts the proposal.

6. Pole Attachments

The Staff opposed this proposal as being unnecessary; the Intervenor also opposed the proposal, maintaining that the Commission lacks jurisdiction since such an agreement affects the use of its streets and public right-of-way, a matter for negotiation between the municipality and Applicant.

The ALJ was not specific in his findings but recommended denial of this proposal.

As to the question of jurisdiction, the Commission asserts jurisdiction under MCLA 460.551 and 460.552, "Transmission of Electricity in or Between Counties; Control." Under that statute, the Commission has authority to regulate the conditions of service under which electricity shall be distributed. It is the position of this Commission that pole attachments are inexorably related to the public safety. Under MCLA 460.555, the Commission has power to inspect and examine poles and order such improvements in the method of transmission and supply of electricity to secure reliable service and the safety of the public. That is not to say, however, that the Commission may interfere with or usurp the prerogatives of either the utility company or its customer in negotiations over the use of the poles. The use of poles in a right-of-way is indeed subject to the right of the local authority to contract with the company. Applicant is correct in its assertion that absent a contract, the Commission does have jurisdiction over attachments. The Commission therefore concludes that the proposal, to require Applicant and a customer seeking to attach streetlighting equipment to company-owned poles to execute a pole attachment agreement between the parties, should be denied. The Commission intends to take any necessary steps to assert

jurisdiction over pole attachment rates, pursuant to H.R. 7442, which was enacted into law earlier this year.

Since the changes in Applicant's Electric Rate Schedule to be effected by this order are directly related to issues under Commission consideration in Applicant's pending rate case, U-5331, the effective date of this order should be delayed so as to coincide with the effective date of the order to be issued in Case No. U-5331.

IV.

FINDINGS

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCLA 460.551 et seq.; 1919 PA 419, as amended, MCLA 460.51 et seq.; 1939 PA 3, as amended, MCLA 460.1 et seq.; 1969 PA 306, as amended, MCLA 24.201 et seq.; and the Commission's Rules of Practice and Procedure, 1954 Administrative Code, 1968 Annual Supplement, R 460.11 et seq.

b. The Conversion Policy proposed by the Staff, using both methods proposed by Applicant for determining Applicant's investment when the ratepayer seeks upgrading as well as conversion, i.e., the difference between the existing and upgraded luminaire as well as the difference between the luminaire normally installed under the conversion policy and the upgraded luminaire and calculating on the basis most beneficial to the ratepayer, is reasonable and in the public interest.

c. The proposed Facilities Policy is reasonable and in the public interest.

d. The Outage proposal permitting Applicant five working days from the date the outage is reported before requiring pro rata deductions in the customer's billing is excessive and should be limited to three working days.

e. Applicant's Control Device Installation proposal is reasonable and in the public interest.

f. The Metered Service proposal is reasonable and in the public interest.

g. The Commission does have jurisdiction over pole attachments under MCLA

460.551 and 460.552, but has no authority to interfere with a local authority's right to contract with a utility company.

h. The effective date of this order should be delayed so as to coincide with the effective date of the Commission's order in Case No. U-5331.

V.

ORDER

THEREFORE, IT IS ORDERED that:

A. The Electric Rate Schedule, M.P.S.C. No. 7 - Electric, of Consumers Power Company be amended to read as quoted and to reflect the other tariff amendments as indicated:

(1) Conversion Policy

"At the customer's request, the Company will convert its existing incandescent/fluorescent luminaires to the nearest sized mercury vapor or high-pressure sodium luminaires at no cost to the customer. If light upgrading is also involved, the Company expenditure will be the sum of three times the additional annual revenue to be derived from the installation plus the average conversion cost of the incandescent luminaire presently being served to the nearest sized mercury vapor or high-pressure sodium luminaire. Any costs in excess of this amount will be borne by the customer."

Additional annual revenue is the greater of (1) the difference between the nearest sized mercury vapor or high-pressure sodium luminaire and the upgraded light which would be installed or (2) the difference between the existing light and the light which would be installed.

(2) Facilities Policy

"At the customer's request, the Company will install, at its own cost, new luminaires and associated facilities under this rate, or replace existing luminaires and associated facilities served under this rate with other luminaires and associated facilities for which it has rates available, to the extent that the cost of such installation or replacement does not exceed three times the initial additional annual revenue to be derived from the luminaires. Costs of installations or replacements in excess of the free allowance will require an advance, nonrefundable, contribution in the amount by which the estimated costs exceed the free allowance."

The tariff language for customer-owned streetlighting systems would read as follows:

"At the customer's request, the Company will install, at its own cost, its distribution facilities under this rate to the extent that the cost of such installation does not exceed three times the initial additional annual revenue to be derived from the installation. Costs of facilities in excess of the free allowance will require an advance, nonrefundable, contribution in the amount by which the estimated costs exceed the free allowance."

(3) Outages

"The Company will replace or repair, at its own cost, street-light equipment that is out of service. If for some reason the Company is not able to make such restoration within three working days from the date the outage is first reported to the Company, the Company will make pro rata deductions in the customer's billing for streetlighting service which will begin three working days after such outages are reported.

Outages caused by factors beyond the Company's reasonable control as provided for in Rules 1 and 15 of the Company's Standard Rules and Regulations are not covered by this policy. Such outages would be handled consistent with the particular circumstances and no proration would be made for such outages."

(4) Control Device Installation

Delete any mention of a control equipment installation obligation on Applicant's part, leaving the customer the option of making the installation itself or having Applicant install them at no charge to the customer.

(5) Metered Service

"At the Company's option, such service may be metered and the metered Kwh used as the basis for billing."

B. The proposal requiring a separate pole attachment agreement prior to installation of customer equipment to company-owned poles is denied.

C. Consumers Power Company shall file, within 30 days from the issuance of the Commission's order in Case No. U-5331, revised tariff sheets reflecting the authority granted herein.

The Commission specifically reserves jurisdiction of the matters herein contained

and the authority to issue such further order or orders as the facts and circumstances may require.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Daniel J. Demlow
Chairperson

(S E A L)

/s/ Lenton G. Sculthorp
Commissioner

/s/ Willa Mae King
Commissioner

By the Commission and pursuant to its action of July 31, 1978.

/s/ Thomas R. Lonergan
Its Secretary