

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS** )  
**ENERGY COMPANY** for authority to increase its )  
rates for the generation and distribution of )  
electricity and for other relief. )  
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Case No. U-20134

At the January 9, 2019 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

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

**ORDER**

On May 14, 2018, Consumers Energy Company (Consumers) filed an application seeking authority to increase rates for the generation and distribution of electricity and requesting other regulatory approvals. Consumers indicated in its filing that it projected a \$58 million jurisdictional revenue deficiency based on a calendar 2019 test year, which the utility later revised to a \$44 million jurisdictional revenue deficiency.

Administrative Law Judge Sharon L. Feldman held a prehearing conference on June 1, 2018, where she granted petitions to intervene filed by, among others, the Michigan Department of the Attorney General (Attorney General); the Association of Businesses Advocating Tariff Equity (ABATE); the Michigan Environmental Council, the Natural Resource Defense Council, Sierra Club, and the Ecology Center (collectively MEC/NRDC/SC/EC); the Michigan Energy Innovation

Business Council (MEIBC); ChargePoint, Inc.; and the Environmental Law & Policy Center (ELPC). The Commission Staff (Staff) also participated.

Evidentiary hearings were held on October 11-12 and 15-18, 2018. Initial briefs were filed on November 9, 2018, and reply briefs were filed on November 21, 2018. The record in this case consists of 3,630 pages of transcript and 417 exhibits admitted into evidence.

On December 18, 2018, the majority of the parties filed an executed settlement agreement, and by December 19, 2018, all parties had either executed the settlement agreement or filed their non-objection to the settlement agreement. The settlement agreement is approved by the Commission in a separate order issued today. In the settlement agreement, the parties left one unresolved issue.

The parties agree to implementation of Consumers' proposed PowerMIDrive program as described in Attachment 3 to the settlement agreement, but indicate that they do not agree on the issue of Consumers' request to recover the costs of this program through a deferred accounting mechanism, stating as follows:

This Settlement Agreement does not resolve the issue of Consumers Energy's request to recover its costs related to the electric vehicle program through a deferred accounting mechanism that allows the Company to earn a return on the costs until they are recovered in a subsequent rate case. The parties request the Commission to address this issue based upon the Initial and Reply Briefs filed pursuant to the schedule established by the Administrative Law Judge in this case. . . . [T]he parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement, except with respect to the issue regarding regulatory asset treatment of PowerMIDrive pilot program costs, which are to be determined by the Commission based on the parties' briefing in this case as set forth above in Paragraph 10.

January 9, 2019 order in Case No. U-20134, Exhibit A, ¶¶ 10, 28. In initial and reply briefs, 10 parties weighed in on this issue.

## Positions of the Parties

Consumers proposed a three-year pilot foundational infrastructure program intended to support the growing electric vehicle (EV) market in the utility's service territory, known as the PowerMIDrive program (EV program). According to the testimony of Michael J. Delaney, Consumers' Executive Director for Corporate Strategy, EV adoption saves money for drivers, supports local industries, and reduces dependency on foreign oil, but also "puts downward pressure on electric rates by spreading fixed costs over increased electric load which would ultimately reduce electric rates for all customers" if the program is well-designed, that is, if it adopts incentives that move charging to off-peak times through the use of, among other things, time-of-use (TOU) rates. 4 Tr 1031-1032. This can result in utilizing excess distribution and generation capacity in a way that benefits all customers. Mr. Delaney stated that barriers to EV adoption in Michigan currently exist in the form of a gap in charging infrastructure, range anxiety, and a lack of public awareness. He stated that studies would suggest, for example, that Michigan should currently have about 1,095 Level 2 public chargers and 60 DC Fast Chargers (DCFCs) (assuming 15,000 EVs currently on the road in Michigan), but that the state actually has 467 public chargers and 16 DCFCs. Consumers' proposed program will not involve utility ownership of charging infrastructure, but will incentivize the reduction of these barriers through rebates and customer education. Mr. Delaney asserted that this is prudent action on the utility's part, because Consumers proposes to test out these incentives while statewide EV adoption is still low in order to be able to improve the program over time. Consumers argued that it seeks to avoid expensive, reactive adjustments to a growing EV market that would involve capital intensive solutions.

Consumers proposed a residential TOU rate for EV use called the Nighttime Savers Rate, that will encourage charging during 7:00 p.m. to 6:00 a.m. The EV program is intended to enable

residential charging, Level 2 public charging, and DCFCs across the service territory for three years through a suite of rebates: \$500 per vehicle for residential EV drivers who enroll in the Nighttime Savers Rate, \$5,000 per charger for Level 2 public chargers (which includes public, workplace, and multi-dwelling unit chargers), and up to \$70,000 per DCFC charger. The EV program also includes education and outreach components.

Consumers estimated the cost of the three-year program at \$7.5 million, with about half of that amount being incurred in the first year. Exhibit A-75. In its service territory, Consumers calculates “a net benefit to the grid of approximately \$1,900 - \$2,300 per electric vehicle.” 4 Tr 1051; Exhibit A-74. Thus, doubling the number of EVs in its service territory during the three-year pilot could bring a gross system benefit of \$15 to \$18 million. 4 Tr 1052. In light of the benefits, Consumers requested to treat the program costs as a regulatory asset and to record deferred amounts associated with the rebate and related operations and maintenance (O&M) costs until the costs are confirmed. Mr. Delaney testified:

The regulatory asset approach allows the Company to invest in EV charging infrastructure now to benefit Consumers Energy customers and recover those costs at a later date. A regulatory asset approach allows for prudence review prior to collection through rates. This is well-suited for a pilot where Program participation may vary significantly from initial expectations. Further, this approach spreads the recovery of Program costs and the cost of capital over the life of the EV charger assets which smooths out the impact on customers and aligns well with the expected lifetime benefits of the EV program.

4 Tr 1054. Mr. Delaney noted that the Staff, ChargePoint, MEC/NRDC/SC/EC, and MEIBC support Consumers’ accounting proposal, and argued that non-traditional ratemaking is necessary in this arena in order to “balance the disparity between capital and non-capital solutions.” 4 Tr 1075. Mr. Delaney stated that the overall focus of Consumers’ proposal is to shift EV load to off-peak times and to minimize the utility’s capital investment in distribution and general infrastructure necessary to support expected growth in EV use.

Daniel L. Harry, Consumers' Director of General Accounting, testified that under Consumers' proposal the utility would amortize each annual deferred amount over 10 years beginning the year after the cost is incurred, the resulting expense would be included in rates, and the deferred cost would be subject to review in rate cases. 5 Tr 2126; Exhibit A-75. The deferred unamortized balance would be included in rate base and would earn a return. Consumers later agreed to the Staff's proposal to reduce the amortization period to five years. 5 Tr 2130. If the EV program is approved, Consumers requests that the Commission: (1) authorize the recognition of a regulatory asset to recognize deferred EV program costs; (2) authorize the amortization of deferred EV program costs over five years beginning the year after the cost are incurred; (3) include recovery of the resulting amortization expense in rates; and (4) include the deferred net unamortized balance of EV program costs in rate base. 5 Tr 2127, 2130. According to Mr. Harry, the alternative to this recovery approach is to include projected test year program costs in rates.

Karl R. Rábago, Principle of Rábago Energy LLC, testified on behalf of ELPC in opposition to Consumers' regulatory asset treatment proposal. He indicated that costs not directly related to the production, transmission, distribution, or sale of electricity would traditionally be considered operating expenses, which are recoverable on a dollar-for-dollar basis in rates; and that, if expected to vary, operating expenses can be subject to a tracker. Mr. Rábago stated that, in response to discovery, Consumers indicated that (applying certain assumptions) the \$7.5 million estimated EV program budget would result in a total revenue requirement of about \$10.7 million. Exhibit ELP-5; 4 Tr 776. Mr. Rábago notes that regulatory asset treatment will allow Consumers to earn a return on the cost of the rebates. He asserts that this is unnecessary:

The Company proposal would result in the Company not bearing any capital risk in order to earn the load-building revenues associated with transportation electrification, and also earning a profit on rebates it pays to customers to encourage them to make the actual capital investments that the Company is not

undertaking. The Company is proposing to earn profits on its rebate payments as if it were investing, risk-taking, and managing charging assets, but it is not.

4 Tr 777-778. He pointed out that ordinary expense treatment would also allow for current spending and subsequent recovery, would allow for tracking of the rebates, and would be subject to the same later prudency review. Mr. Rábago testified that capitalization results in unnecessary increased costs to customers, and that the utility should not require the incentive because the utility is not actually making any capital investments. He stated that the regulatory asset approach will not incentivize charging site owners, alleviate range anxiety, increase off-peak charging, or provide customer education. Mr. Rábago opined that Consumers has not adequately supported its accounting proposal, and that the very uncertainty associated with a pilot program should weigh against allowing a return on rebate expense. 4 Tr 784.

In rebuttal, Mr. Delaney asserts that ELPC's proposal would punish the utility, and that "shareholders would have been better off if [sic] the Company had simply made reactive system upgrades as increased EV demand created the need for increased utility capital investment." 4 Tr 1077. He contends that increased capital investment also costs ratepayers money and this is what the pilot is intended to avoid. Mr. Delaney contends that Mr. Rábago ignores the time-value of money, and that Consumers demonstrated that the net present value impact of the proposed regulatory asset treatment is less than \$100,000 when compared to the revenue requirement associated with conventional ratemaking. Exhibit A-146; 4 Tr 1078. Mr. Delaney states that the uncertainty of customer participation in the pilot program aligns well with regulatory asset treatment because cost recovery will be determined on the basis of actual costs and not projected costs.

## Initial and Reply Briefs

The briefs largely repeat the testimony. Consumers reiterates Mr. Delaney's testimony and notes the support of the Staff, ChargePoint, MEC/NRDC/SC/EC, and MEIBC, as well as its agreement to the changes proposed by the Staff, MEC/NRDC/SC/EC, and MEIBC. 4 Tr 1060-1063, 1080. Consumers contends that its accounting proposal is reasonable in that it partially offsets the disincentive for a utility to develop a proactive and innovative program that will reduce future capital investments. Consumers asserts that the EV program is not designed to build utility load, but rather to focus on incentivizing off-peak usage and reducing the type of capital investment that would be reactive to EV growth. Consumers indicates that if the regulatory asset proposal is rejected, the EV program will be re-evaluated.

The Staff indicates its support for the proposal as revised, and argues that it is time to implement an EV charging pilot.

MEC/NRDC/SC/EC indicate their support, stating that this "is a reasonable method to account for a new, market-driven program offering where rebate and [O&M] costs cannot be confirmed on the front-end." MEC/NRDC/SC/EC's initial brief, p. 89.

MEIBC's indicates its support for regulatory asset treatment.

ChargePoint argues that regulatory asset treatment for rebates is the best way to encourage customer investment in charging technologies and expansion of charging throughout Michigan, and that the potential for widespread grid benefits resulting from EV adoption supports approval of the proposed accounting treatment.

ABATE indicates that it is comfortable with whatever the Commission decides, because the proposed accounting approach will allow for a future prudency review in any case.

ELPC opposes the proposal, arguing that rebates are expenses and not capital investments because they are not involved in providing service, and thus should be subject to traditional ratemaking. ELPC argues that ordinary expense treatment will still allow Consumers to recover the costs subject to a prudency review, and that customers will pay less in the long run. ELPC contends that Consumers' proposal is simply another way to earn a profit and urges the Commission not to set this precedent. ELPC asserts that if the Commission finds that an incentive is required, it should be a performance-based incentive.

### Discussion

The Commission agrees with Consumers, the Staff, MEC/NRDC/SC/EC, MEIBC, and ChargePoint, and finds that Consumers' regulatory asset accounting proposal, as revised to reflect a five-year amortization period, should be approved. ELPC objects to allowing Consumers to earn a return on the cost of the three-year pilot EV program rebates, but fails to provide a persuasive argument. The Commission finds that it is appropriate to incentivize the utility, at this stage of EV adoption, to think proactively and innovatively on this issue. Consumers' proposal is grounded in its desire to avoid reactive and expensive capital infrastructure investments in the future when EV adoption reaches the point where the utility must provide incremental generation, distribution, and transmission support. EV adoption is in its infancy in Michigan, but all indicators point to continued expansion. This expansion may result in increased load, but it may also result in more efficient use of excess generation and distribution capacity during off-peak hours to the benefit of all customers, as well as provide new modes of storage.<sup>1</sup> None of this will materialize until EV chargers become more prevalent and accessible.

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<sup>1</sup> The Commission has previously approved deferred accounting treatment for utility funding for residential EV customers similar to a rebate. *See*, August 10, 2010 order in Case No. U-16406.

Consumers' modest three-year pilot rebate proposal marks a beginning, and will likely provide data that should be useful in designing future programs intended to incentivize EV adoption. The conditions placed on the EV program rebates will ensure that customers can easily see the benefit to off-peak charging, and should encourage charging during those hours. The Commission notes that the program costs will not actually be recovered until they have undergone a future reasonableness-and-prudence review in a rate case. The Commission directs Consumers, at the conclusion of the pilot program, to examine whether there would be cost savings associated with the use of a tracker for future rebate programs (with O&M treatment) in comparison to regulatory asset accounting.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's application for regulatory asset treatment of costs associated with the PowerMIDrive pilot program, as described in this order, is approved.

B. Consumers Energy Company is authorized to amortize the PowerMIDrive pilot program deferred costs over five years beginning the year after the costs are incurred, and to include recovery of the resulting amortization expense in rates.

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. 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](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto: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

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

By its action of January 9, 2019.

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Kavita Kale, Executive Secretary

# PROOF OF SERVICE

STATE OF MICHIGAN )

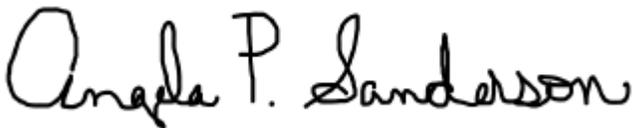
Case No. U-20134

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on January 9, 2019 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 9<sup>th</sup> day of January 2019.



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

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