S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS ENERGY COMPANY** for approval of a one-time voluntary refund of revenue.	)	Case No. U-21332

At the April 13, 2023 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER

On November 10, 2022, Consumers Energy Company (Consumers) filed an application in this case (November 10 application) requesting approval of a one-time voluntary refund to the company's customers and authorization to implement accounting procedures consistent with the refund. In the application, Consumers explained that it "may experience 2022 financial results that exceed those anticipated due to unforeseen circumstances." November 10 application, p. 2. Although Consumers stated that it is not obligated to refund the revenue, the company posited in its application that its customers' interests would be best served by a one-time voluntary refund. Consumers stated that the exact amount of the revenue available for its voluntary refund would not be known until December 2022 due to factors such as weather impacting sales, storm activity, and outcomes in other regulatory proceedings occurring during the remainder of this year. Consumers requested that the manner of the refund be determined in a separate filing.

Consumers proposed the following procedure to determine the final amount of the proposed voluntary refund in accordance with the procedure proffered by the company for previous one-time voluntary refunds approved by the Commission. *See*, Case Nos. U-20668, U-20932, and U-21171. First, Consumers proposed that the Commission approve the company's application in a meeting before the end of December 2022. Second, Consumers stated that it would submit a filing in this docket on or before December 31, 2022, identifying the final amount of the refund. Third, the company proposed that no later than the close of business on January 6, 2023, the Commission Staff (Staff) would submit a letter to the electronic docket in this case indicating that it had reviewed Consumers' submission and confirming whether the company's final proposed refund amount complies with the requirements of this order. *See*, November 10 application, pp. 2-3.

Consumers stated that:

> given the voluntary nature of this application, and because the actual final amount of the voluntary refund will not be known until the final business days of 2022, Consumers Energy proposes to make a separate *ex parte* filing no later than March 15, 2023, which will propose an appropriate method of refund.

November 10 application, p. 3. According to Consumers, the timeframe of this refund would also be proposed as part of the March 15, 2023 *ex parte* filing as the use of funds needs to be known to determine the appropriate timeframe. The company noted its expectation that the refund will be made in the form of Consumers incurring costs for the benefit of customers incremental to those in the company's current rates, and, if such costs are not incurred, the proposed amount will be refunded through a bill credit. In addition, Consumers asserted that:

> [t]he authorization requested in this Application relates only to financial results for [the company]'s utility operations during 2022. The facts and circumstances giving rise to this Application have no impact on the Company's forecast of sales, revenues, investments, or expense for 2023 or future years as set forth in any of the Company's filings currently pending at the [Commission].

Id., pp. 3-4.

Further, the company asserted that it would be helpful and proper for the Commission to accept comments on Consumers' refund proposal from any interested party. However, Consumers requested that the Commission require expeditious receipt of the comments to facilitate timely approval of the refund methodology.

Finally, following the Commission's approval of the proposed refund and the Staff's review and confirmation of the final refund amount, Consumers proposed in its application to execute the following accounting entries: Debit Account 449.1 Provision for Rate Refund and Credit Account 229 Accumulated Provision for Rate Refund. November 10 application, p. 4.

The Commission reviewed Consumers' request and issued an order in this case on December 9, 2022 (December 9 order) approving the company's proposed procedure for determining the final refund amount and refund methodology and the proposed accounting entries. December 9 order, p. 3. The Commission directed Consumers to file, on or before December 31, 2022, a statement identifying the final refund amount. The Commission then directed the Staff to file in the instant docket, no later than January 6, 2023, a letter indicating its review of Consumers' submission and confirming whether Consumers' final refund amount complies with the requirements of the December 9 order. Lastly, the Commission directed Consumers to file, no later than March 15, 2023, a proposed method for the refund, specification as to whether the refund would be allocated to the company's electric or gas customers, or both, and a timeframe for making the refund. *Id*.

On December 31, 2022, Consumers filed a memorandum with a supporting affidavit identifying the final voluntary refund amount as $22 million. On January 3, 2023, the Staff filed a letter in the instant docket stating that the Staff had reviewed Consumers' memorandum and affidavit and confirming that Consumers' memorandum complied with the December 9 order.

On January 20, 2023, Consumers filed its proposed methodology for the voluntary refund (January 20 filing) requesting approval for the refund to take the form of revenue requirement funding for certain electric distribution capital spending above amounts currently approved in rates and in the form of contributions to programs that assist low-income and payment-challenged gas customers with utility bills. As part of its proposal, Consumers indicates it would commit to spending $150 million in electric reliability capital in 2023. Specifically, the company proposes to use $17 million of the refund for the revenue requirement of 2022 capital spending above rate levels for electric asset relocations, new business, and demand failures. Consumers explains that, in 2023, current electric rates will not provide the revenue requirement for the actual 2022 capital spending for electric asset relocation, new business, and demand failure and that there is not an approved deferral in place to provide for the 2023 revenue requirement of the 2022 capital spending. The company contends that:

> [r]esponding to emergent capital work driven by external factors resulting in costs that exceed the amounts built into rates and other available resources can come at the expense of other utility programs, since funding for other programs may have to be diverted to support actual spending not supported in rates. Customers benefit from using a portion of the voluntary refund toward unfunded capital programs by ensuring that the Company's other customer-focused programs, such as reliability capital spending, can be maintained during calendar year 2023. This use of the voluntary refund allows Consumers Energy to commit to $150 million in reliability capital spending needed to improve the safety and reliability of the electric distribution system.

January 20 filing, p. 3. Consumers then proposes to use $5 million of the refund for payment assistance for its gas customers.

On February 17, 2023, the Commission issued a notice of opportunity to comment on Consumers' proposed method of voluntary refund, requiring comments to be submitted no later than 5:00 p.m. (Eastern time) on March 3, 2023. The Commission received comments from the

Michigan Department of Attorney General (Attorney General), the Staff, and the Residential Customer Group (RCG), and reply comments from Consumers.

In her comments, the Attorney General expresses support for Consumers' issuance of the refund but disagrees, in part, with the proposed methodology. The Attorney General contends that the refund should provide a direct benefit or relief to ratepayers. The Attorney General recounts Consumers' previous refunds in which the company refunded $500,000 in Case No. U-20668 and $28 million in Case No. U-20932 by applying the refunds to incremental spending in various programs. Attorney General's comments, p. 2.[1] The Attorney General asserts that these refunds and the instant refund request demonstrate that the company has sufficient revenue and that any shortfalls can be recovered in a future rate case. The Attorney General then recommends that the instant refund be issued to ratepayers as a bill credit or be applied to a program that provides direct bill payment assistance. The Attorney General reasons that the $17 million would be more beneficial to ratepayers "in their pockets" because of the current inflationary pressures and higher energy costs than it would be if the company were permitted to spend the funds in ways that have not been fully vetted for reasonableness and prudence. *Id*., p. 3.

In its comments, the Staff states its support for Consumers' proposal regarding the $5 million for customer payment assistance but recommends that the $17 million be refunded as a bill credit. Staff's comments, p. 2. The Staff notes that Consumers was recently granted a rate increase of $155 million for a 2023 projected test year in the January 19, 2023 order in Case No. U-21224, the company's last electric rate case. Within the approved settlement agreement that resolved all issues in Case No. U-21224, the Staff points out that Consumers ultimately projected $129 million

[1] The Attorney General's comments were not paginated. Therefore, the Commission applies pagination in natural order beginning with the first page of comments.

in electric reliability capital spending and therefore, the Staff contends that Consumers' commitment in the instant request to spend $150 million in electric reliability in 2023 "does not seem to provide much, if any, value to ratepayers." Staff's comments, p. 2. The Staff compares the instant request to Consumers' previous voluntary refunds in Case Nos. U-20668 and U-20932, which the Staff contends produced direct ratepayer benefits by providing funding for various programs, which the Commission had found would enhance customer safety and education and system reliability. *Id*., p. 3 (citing May 13, 2021 order in Case No. U-20932, p. 21). The Staff contrasts these refunds with Consumers' instant proposal in which:

> the Company proposes to recoup a revenue requirement on spending that has already occurred previously in 2022, with the commitment that it will spend $150 million on electric reliability capital spend in 2023, which can hardly be characterized as a "refund." Unlike the previous incremental O&M [operations and maintenance] expense commitments, this commitment is for capital expenditures that will subsequently increase rate base in its next general rate case. Therefore, only the foregone revenue requirement in 2023 on the $150 million commitment results in any actual incremental benefit to ratepayers. It is unclear how much benefit, if any, ratepayers receive from the $150 million electric reliability capital spending commitment in this case.

Staff's comments, pp. 3-4. The Staff recommends that the proposed refund take the form of a bill credit that will directly benefit ratepayers through reduced rates, that the refund should be allocated to the classes proportionally to the approved revenue requirement by class, and that the credits should be calculated to complete the refund by the end of 2023. *Id*., pp. 4-5.

In its comments, RCG argues that the Commission should reject Consumers' proposed refund and that this matter should be conducted as a contested proceeding. RCG contends that: (1) Consumers mischaracterizes its proposal as a refund; (2) Consumers' application and the Commission's *ex parte* December 9 order in this matter fail to address the Commission's duty to establish just and reasonable rates and fail to reduce rates to recognize the excessive returns evidenced by Consumers' repeated requests for approvals of one-time refunds in recent years; and

(3) the *ex parte* treatment of Consumers' application ignores the Commission's duty to establish rates pursuant to a contested case. RCG's comments, pp. 1-5. RCG requests that the Commission direct Consumers to issue the $17 million refund directly to the utility's customers and to require more specific information regarding the $5 million refund the company proposes to utilize for low-income customer payment assistance. *Id.*, p. 5.

In its reply comments, the company disagrees with the Staff's analysis of the benefit ratepayers will receive with Consumers' proposed $17 million refund and contends that the benefits are more substantial than the Staff recognizes. Consumers states that the Staff ignored the value of the known, actual funding deficit for 2022 capital spending and that the value of the funding deficit is at least $17 million. Consumers avers that its proposed use of these funds would ensure customer-focused capital spending is maintained in 2023. Although the company maintains that using the refund for incremental customer-beneficial work has greater lasting positive impact than a direct bill credit, the company states that it agrees that an alternative use of the funds is acceptable given the recent catastrophic storms that occurred after rates were established in Case No. U-21224.[2] Consumers then asks that the Commission authorize the company to use the $17 million for additional storm restoration work above the level currently approved in rates. Consumers reasons as follows:

> As a result of the significant storm activity that has already occurred in 2023, Consumers Energy has spent $52.5 million on storm restoration year-to-date through February and it is known that a very significant amount of service restoration activity carried over into early March. In fact, the total amount of service restoration expense stemming specifically from the late February to early

[2] Consumers is referring to the severe winter storm that occurred on February 22-23, 2023, that resulted in ice accumulation that caused approximately 237,000 power outages in Consumers' service territory. *See*, News Release, *Consumers Energy Crews Restores* [sic] *Power to 47,000 Customers After Major Ice Storm* (February 23, 2023), available at https://www.consumersenergy.com/news-releases/news-release-details/2023/02/24/14/24/CE-crews-restores-power-to-47k-customers-after-major-ice-storm (accessed April 12, 2023).

> March storms is expected to exceed $66 million. With more than nine months of potential additional storm activity remaining in the year, Consumers Energy's actual storm restoration costs for 2023 are on pace to dramatically outstrip the amount available in rates to cover those costs by year end. Without additional relief for its storm restoration Consumers Energy will be forced to curtail discretionary spending on other customer-beneficial programs in order to make up the shortfall. Even with the $17 million incremental storm restoration funding proposed here, Consumers Energy submits that it will likely experience significant unfunded storm restoration costs in 2023. Use of the $17 million for this purpose could be an important piece of the puzzle for solving that problem and to ensure customers receive the full benefit of dollars allocated for other important work too.

Consumers' reply comments, p. 4. The company argues that this use of funds would achieve a greater benefit to customers than the "rather small and short-term benefit" associated with a $17 million refund divided between Consumers' 1.9 million electric customers. Consumers argues that its proposal for the $17 million for incremental storm restoration is consistent with the Staff's previous descriptions of the proper method for refunds and, in support of its position, relies on the Commission's approval of similar refunds that were applied to incremental storm restoration work in Case Nos. U-20932, U-20949, and U-20699.

Discussion

The Commission has reviewed Consumer's application and proposed methodology and allocation, as well as the comments filed in this case, and finds that Consumers' initially proposed methodology and alternative methodology for issuing the voluntary refund should be approved in part and denied in part at this time. The Commission finds that Consumers' proposal to issue $5 million of the total revenue towards low-income bill assistance for Consumers' gas customers will result in a direct customer benefit, is reasonable, and should be approved.

Turning to the remainder of the refund, Consumers initially requested to use $17 million of the refund for the revenue requirement of 2022 capital spending above rate levels for electric asset relocations, new business, and demand failures, or alternatively, as stated in the company's March

15, 2023 reply comments, to use the $17 million towards storm restoration. As pointed out by the Staff in its comments, the company's last electric rate case that was resolved by a black box settlement agreement, "meaning [that] specific capital spend approvals were not identified in the settlement." Staff's comments, p. 2. Consumers has not sufficiently demonstrated the direct benefit to customers that can be achieved through using the refund to enable the company to commit to electric reliability capital spending of $150 million, and the Staff estimates "the upper limit of the ratepayer benefit" of this commitment at just $1 million. Staff's comments, p. 4. Notably, Consumers never actually proposes to use the $17 million for reliability purposes; rather, the company suggests that if it is unable to fund emergent capital work such as electric asset relocations, new business, and demand failures above the level approved in rates, then "funding for other programs may have to be diverted to support actual spending not supported in rates." January 20 filing, p. 3. Making the threat more explicit, Consumers continues that if this funding above that included in rates is not approved, then it may not be able to ensure "that the Company's other customer-focused programs, such as reliability capital spending, can be maintained during calendar year 2023." *Id.*

Following multiple waves of ice and wind storms in February 2023 that left hundreds of thousands of Consumers' customers without power—some remaining without power for more than a week—the company subsequently offered an alternative proposal to use the $17 million towards storm restoration efforts. *See*, Consumers' reply comments, p. 4. Again, however, this funding is not directed towards addressing the underlying reliability challenges facing Consumers' distribution grid, but rather to cover a portion of its own costs associated with storm restoration above the amount approved in the company's most recent electric rate case settlement agreement.

The Commission is not convinced that either Consumers' initial or alternative proposals provide sufficient benefit to customers.

Therefore, the Commission finds that Consumers' proposed methodology for the $17 million voluntary refund towards incremental electric reliability capital spending or the alternative storm restoration efforts should not be approved at this time. The Commission would, however, be open to other methodology options for a voluntary refund that achieve more tangible and direct benefits to ratepayers. Specifically, given the challenges facing the electric distribution system, applying the voluntary refund amount towards incremental tree trimming efforts above the $100,030,000 in 2023 spending included in the recent electric rate case settlement agreement in Case No. U-21224 would be a reasonable option. Alternatively, Consumers should provide a customer refund in the form of a direct bill credit, as suggested by the Staff and the Attorney General, or a refund to be applied to a program that provides direct bill payment assistance, as suggested by the Attorney General, that is similar in framework to that being utilized for assistance for low-income and payment-challenged gas customers. Thus, Consumers may refile in this docket a proposed methodology, allocation, and timeframe for the $17 million portion of the voluntary refund.

The Commission reiterates that voluntary refunds by investor-owned utilities are a useful means of rectifying unanticipated revenues that have occurred, particularly during the COVID-19 pandemic years when changes in customer usage patterns resulted in unanticipated revenues, and the Commission appreciates the efforts of utilities to issue refunds with direct customer benefits. However, the Commission notes that approximately three years have passed since the start of the pandemic, the effects of COVID-19 are not as pronounced as they were in previous years, and utilities have had the time and experience to incorporate COVID-19 related factors into their revenue forecasts. Notably, the instant filing is the fourth request for approval of a voluntary refund from the company in recent years. *See*, Case Nos. U-20668, U-20932, and U-21171. As such, the Commission cautions Consumers that, while the Commission welcomes voluntary refunds for unanticipated revenues, the aim in general electric rate cases should be to achieve revenue forecasting that projects revenues as close to actuals as possible and without overshooting projections with the safety net of issuing a refund. The Commission notes that increased rigor will be applied towards revenue projections in future electric rate cases to ensure that rates reflect required rather than surplus revenue.

As to RCG's comments, the Commission reiterates that refunds of this type by a utility are voluntary and do not impact approved rates or rate schedules, and therefore, *ex parte* review is appropriate. *See*, MCL 460.6a(3).

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's proposed methodology in its January 20, 2023 filing and its alternative methodology in its March 15, 2023 reply comments for issuing a voluntary refund pertaining to the $17 million towards incremental electric capital spending, or in the alternative, storm restoration efforts, and the associated accounting requests are denied. Consumers Energy Company's proposed methodology to issue a voluntary refund in the form of $5 million towards assistance for low-income and payment-challenged gas customers with utility bills and the associated accounting requests are approved.

B. Consumers Energy Company may refile in this docket a proposed methodology for the $17 million voluntary refund as described in this order.

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 Attorney General - Public Service Division at pungp1@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

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of April 13, 2023.

Lisa Felice

Lisa Felice, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-21332

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on April 13, 2023 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 on
this 13th day of April 2023.

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

Service List for Case: **U-21332**

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