

94 FERC ¶ 61,287

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Consumers Energy Company

Docket No. PR99-4-003

ORDER ON REMAND

(Issued March 15, 2001)

This case is before the Commission on remand from the United States Court of Appeals for the Sixth Circuit¹ for clarification of an April 15, 1999 letter order involving Consumers Energy Company (Consumers). That order approved Consumers' proposed reductions in its maximum rate for its § 284.224 blanket certificate interruptible transportation and its fuel recovery charge, as well as Consumers' revised operating statement. The order required Consumers to file a petition for rate approval on or before December 1, 2001. Consumers filed a request for rehearing seeking elimination of the filing requirement, which the Commission denied on July 16, 1999.² On September 10, 1999, Consumers filed with the Sixth Circuit Court its petition for review arguing that the Commission's order erred in imposing on it the additional filing requirement. As discussed below, the Commission clarifies its April 15, 1999 letter order to require Consumers to make an additional informational filing only.

Consumers is a Hinshaw pipeline, exempted from the Commission's Natural Gas Act (NGA) jurisdiction by NGA Section 1(c). That section provides that, if all the gas the pipeline receives from out-of-state is consumed within the state and the pipeline is regulated by a state commission, it is not subject to NGA jurisdiction. § 284.224 of the Commission's regulations allows a Hinshaw pipeline to retain its Hinshaw status despite performing certain jurisdictional services that do not satisfy the Hinshaw criteria. However, in order to retain Hinshaw status, the pipeline must perform the services pursuant to a blanket certificate provided by § 284.224. Such a certificate is similar to that under which intrastate pipelines perform interstate transportation under section 311

¹Consumers Energy Co. v. FERC, 226 F.3d 777 (6th Cir. 2000).

²Consumers Energy Co., 87 FERC ¶ 61,067 (1999), reh'g, 88 FERC ¶ 61,084 (1999).

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of the Natural Gas Policy Act (NGPA). However, the Commission's regulation of the rates Hinshaw pipelines charge for services performed under the § 284.224 certificate is pursuant to NGA sections 4 and 5, not NGPA section 311. Consumers has accepted such a § 284.224 certificate.

In November 1998, Consumers filed with the Commission a request to decrease its maximum rate for interruptible services performed under its § 284.224 certificate and its fuel recovery charge. In the April 15, 1999 letter order, the Commission determined that Consumers' proposed rates were fair and equitable.³ The United States Court of Appeals for the Sixth Circuit agreed that no disputes exist over the approved rate reductions.⁴ The only source of contention concerned the Commission's requirement that Consumers file, by December 1, 2001, "a petition for rate approval under Section 284.123(b)(2) of the Commission's regulation to justify its current rate or to establish a new maximum rate."⁵ On rehearing, in our July 16, 1999 order, we attempted to clarify that we were not requiring an actual rate petition to be filed pursuant to NGA section 4, but instead were requiring only information to be filed to support a triennial review of Consumers' rates under section 5 of the NGA, 15 U.S.C. § 717d.⁶

The Court found that NGA section 4 applies when the pipeline voluntarily files for a rate change. Section 5 applies when the Commission takes the initiative to require a rate change. The pipeline has the burden to support changes it proposes under section 4. The Commission has the burden to support changes it requires under section 5. The Court found that the orders did not provide the requisite "clarity and precision" on whether the Commission was seeking to order a rate filing pursuant to section 4 or merely an informational filing under section 5.⁷ Thus, the orders were also unclear on whether the Commission or Consumers would carry the burden of justifying any change in

³87 FERC ¶ 61,067 at 61,279 (1999).

⁴Consumers Energy, 226 F.3d at 780.

⁵87 FERC at 61,279.

⁶88 FERC ¶ 61,084 at 61,200. In its July 16, 1999 order, the Commission stated that Hinshaw pipelines such as Consumers' pipeline are regulated primarily by the States and, because they are not subject to the extensive reporting requirements of interstate pipelines, "periodic rate filings with the Commission is the means by which the Commission obtains information to determine whether the rates authorized by the State remain reasonable for interstate transportation or should be changed under Section 5." *Id.*

⁷Consumers Energy, 226 F.3d at 780.

Consumers' rate. In light of this confusion, the Court set aside the challenged orders and remanded to permit the Commission to clarify them.

We now clarify that, under our NGA section 10(a), 15 U.S.C. § 717i(a), authority, we are requiring Consumers to submit, on or before December 1, 2001, data and information we need to monitor Consumers' rates in accordance with NGA section 5.⁸ Accordingly, the rates approved for Consumers in the April 15, 1999 letter order are accepted, to be effective as proposed, subject to the condition that Consumers must file cost and throughput data and other information on or before December 1, 2001, sufficient to allow the Commission to determine whether any change in Consumers' rate pursuant to NGA section 5, which would apply prospectively, should be ordered. This cost and throughput data should be in the form specified in § 154.313 of the regulations. The Commission would have the burden set forth in NGA section 5 to justify any change in Consumers' rate.

The Commission orders:

(A) The April 15, 1999 letter Order is clarified, as discussed in the body of this order.

(B) The rates approved for Consumers in the April 15, 1999 letter order are accepted, to be effective as proposed, subject to the condition that Consumers must file cost and throughput data in the form specified in § 154.313 and other information on or before December 1, 2001, sufficient to allow the Commission to determine whether any

⁸Sections 5 and 16 of the NGA, taken together, further support the requirement that Consumers make this informational filing.

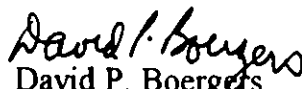
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change in Consumers' rate pursuant to NGA section 5, which would apply prospectively, should be ordered.

By the Commission.

(S E A L)


David P. Boergers,
Secretary.