

BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

COMMONWEALTH UTILITIES
CORPORATION – ELECTRIC DIVISION

DOCKET 09-1

DECISION AND ORDER

Background

By this decision and order, the Commonwealth Public Utilities Commission [*Commission*] reviews and acts on regulatory matters concerning the electric division of the Commonwealth Utilities Corporation [*CUC*], which have been prepared for its consideration at the August 2009 regulatory session, including the establishment of a LEAC rate for the period October 1, 2009 through March 31, 2010; the reconciliation of the LEAC rate for the period January 1, 2009 through March 31, 2009; the establishment of a CUC quarterly financial reporting requirement; the establishment of a loss mitigation task force; the review and approval of a preferred stock transaction between CUC and the Commonwealth Development Authority [*CDA*]; and the review of its regulatory consultant's [Georgetown Consulting Group – (*Georgetown*)] August 14, 2009 report on the Commission's regulatory responsibilities under the American Recovery and Reinvestment Act of 2009.

On August 31, 2009, pursuant to due and lawful notice in accordance with 4 CMC § 8418¹, the Commission conducted a public hearing and workshop at the Senate Chamber in the Jesus P. Mafnas Memorial Building on Capitol Hill to consider the evidentiary record on each of the above regulatory matters² and to receive a briefing from Georgetown and CUC regarding them.

Findings and Determinations

After careful review of the evidentiary record and deliberation, in consultation with its hearing examiner, for good cause shown and in the exercise of its statutory authority and discretion, the Commission makes the findings and determinations set forth below.

¹ Statutory citations in this Decision refer to sections contained in Public Law 15-35.

² The evidentiary record includes: a) regarding the LEAC and related matters, Georgetown's August 10, 2009 LEAC report and the parties' [CUC and Georgetown] *Stipulation on LEAC Rates and Procedures* dated August 29, 2009; b) regarding the CDA preferred stock agreement, CUC's May 22, 2009 amended petition and Georgetown's July 27, 2009 report on the agreement; and c) Georgetown's August 14, 2009 ARRA report.

1. CUC was given timely notice of the Commission's August 31, 2009 public hearing in this docket in accordance with 4 CMC § 8417. The Commission duly noticed the public hearing pursuant to the requirements of 4 CMC § 8418.
2. No person applied for the privilege to participate in the hearing under 4 CMC § 8409[j]. The public was given the opportunity to present their views at the hearing.
3. In accordance with its authority under 4 CMC § 8431, the Commission finds that the procedural requirements of that section should not apply to uncontested rate proceedings in which no person petitions to participate under 4 CMC § 8409[j]. In lieu thereof, the process established in the Commission's Rules of Procedure and the notice requirements of 4 CMC § 8417 and 8418 shall apply to such proceedings.
4. The findings and determinations made herein are supported by a preponderance of evidence in the record.
5. In the parties' August 29, 2009 Stipulation on LEAC Rates and Procedure [*Stipulation*], CUC expresses remorse for its chronic disregard and violation of the Commission's orders³, which required that CUC report on its receipt and use of funds generated by LEAC reserve elements, which were dedicated to fuel inventory and generation enhancement expenses and that CUC deposit all generation element revenues into a "locked box" bank account. CUC's misconduct, which is both inexcusable and in substantial violation of Commission orders, exposes CUC to an administrative fine of up to \$25,000 per violation and to other sanctions. The misconduct strikes at the heart of the regulatory process and is particularly aggravating given the Commission's effort to establish a collaborative regulatory environment. The Commission should reserve the right and authority to decide, within the context of CUC's future compliance with PUC orders, whether this misconduct deserves sanction.
6. In the event CUC finds that it is unable to comply with a Commission order, the appropriate course of conduct should be to petition the Commission for relief from the order. Notwithstanding the fact that CUC was represented by capable, experienced counsel, it never pursued this appropriate remedy with regard to the misconduct discussed in paragraph 5 above.

³ The misconduct is recounted in section 4[c] of the Commission's June 20, 2009 minutes and is aggravated by CUC's disregard for several warnings by the Commission that the misconduct should be corrected. *See for example*, hearing examiner's June 26, 2009 email memorandum to CUC, which is hereby incorporated into the record of this proceeding.

7. The current LEAC rate of \$0.20147 per kWh should remain in place for the period October 1, 2009 through March 31, 2010. The rate should be composed of the following elements:

8. The Commission adopts: a) the parties' estimate that the cost of fuel and lube oil during the upcoming LEAC cycle will be \$0.21278; b) the parties' recommendation that a portion of the \$5.2 million dollars [*approximately \$2.9 million dollars*], which accrued from the generation element during the period January 1, 2009 through September 30, 2009, should be used to bridge the shortfall between the \$0.21278 estimate and the recommended fuel element of \$0.18807; c) the parties' recommendation that no further funding should be authorized for the inventory and generation elements until further Commission order; and d) the parties' recommendation that pursuant to the LEAC tariff, as approved by Commission's December 19, 2008 order, the generation and inventory element revenues should be reconciled as part of the process of establishing the next LEAC factor in March 2010, with any credit balances for these elements being reimbursed to the ratepayers.

9. The record supports a finding that the proposed LEAC rate is just and reasonable.

10. Georgetown's reconciliation of the January 1 through March 31, 2009 LEAC cycle is approved. As a result of this reconciliation, ratepayers are being credited with \$1.9 million dollars, which together with the \$2.9 million dollar credit discussed in paragraph 8 above, has reduced the new LEAC rate by over four cents per kWh. [\$4.8 million dollars] from what the rate would otherwise have been [\$0.24121 per kWh]. These adjustments in favor of the ratepayers demonstrate the substantial benefit of a transparent, independent review of CUC's fuel expenses under the LEAC tariff.

11. Georgetown has established in its August 10, 2009 LEAC report that CUC incurs a 13% unaccounted energy loss, which constitutes an unreasonable expense for ratepayers. A loss mitigation task force should be established by the Commission, under hearing examiner's oversight, to develop and implement a strategy, including timeline, to minimize this energy loss. The Commission should be provided with a status report on the task force's progress during the November 2009 regulatory session.

12. Consistent with the requirements of the Federal Stipulated Order⁴, CUC is required to separately account for the revenues and expenses of each of its operational divisions [electric, water and wastewater]. Commencing with the first quarter of FY10, CUC should be required to file with the Commission quarterly reports, including balance sheets and profit and loss statements, for each of its operating divisions on or before the first day of the second month after the end of each quarter. The first such report should be due on February 1, 2010.
13. The Commission has established a collaborative regulatory process, under which Georgetown has been authorized to assist CUC in the preparation of regulatory filings, which would normally be the utility's responsibility to undertake. CUC has requested this assistance because it lacks the necessary personnel and expertise to do this work. In the Stipulation, CUC recognizes that this extraordinary regulatory assistance creates additional regulatory expense. Nevertheless, CUC concludes that through this assistance, it has been able to identify and implement managerial and operational reforms, which have resulted in a net savings and improved service to its ratepayers.
14. Pursuant to CUC's specific request, Georgetown should be authorized to prepare for Commission consideration during the March 2010 regulatory session, a report regarding the next LEAC rate, including a reconciliation of the March 2009 through September 2009 LEAC cycle, and in collaboration with CUC transparent minimum filing requirements, which can be used in future LEAC proceedings.
15. The Preferred Stock Agreement between CUC and CDA dated May 7, 2009 requires Commission approval pursuant to 4 CMC § 8409[d] and the contract review protocol established by Commission order dated December 19, 2008. Under the Agreement, over \$177 million dollars of CUC debt would be transformed into \$45 million dollars of preferred stock, with provision made for CUC to repurchase up to \$16.2 million dollars of this stock through internal capital investments. Other terms of the agreement are thoroughly discussed in Georgetown's July 27, 2009 report. The Commission finds that the Agreement is reasonable, prudent and in the best interests of the ratepayers. Accordingly, the Commission should: a) approve the agreement; b) authorize the issuance of \$45 million dollars of preferred stock to CDA under the terms of the Agreement⁵; c) require CUC to track all internally funded capital improvement investments in its three division and to propose, in consultation with Georgetown not

⁴ *Stipulated Order Number One For Preliminary Injunctive Relief* in Civil Case No. CV08-0051 [United States of America v. Commonwealth Utilities Corporation and the Commonwealth of the Northern Mariana Islands.]

⁵ CUC should carefully consider Georgetown's recommendation that certificates be issued in amounts, which will facilitate their repurchase with the CIP investment credit provided in the agreement.

later than the November 2009 regulatory session, a process by which it will report these investments to the Commission and use them as a basis for repurchasing up to \$16.2 million dollars of its preferred stock; and d] establish as a condition for regulatory approval of the agreement that CDA file a satisfaction of judgment in Superior Court Civil Action 01-0149.

16. By letter dated June 23, 2009, the Governor requested the Commission to examine whether additional actions are necessary to promote energy efficiency consistent with the requirements of the American Recovery and Reinvestment Act of 2009 [ARRA]. The Act makes the Commonwealth eligible for over \$29 million dollars of energy related grants. By order dated June 26, 2009, the Commission commenced a regulatory proceeding to examine the Governor's request. By public notice dated July 14, 2009, the Commission invited public comments on the question of whether current incentives and rate structures are adequate to promote energy efficiency in the Commonwealth. There was no public response to this notice. By report dated August 14, 2009, Georgetown concludes that no regulatory action is currently necessary with regard to ARRA. This recommendation is adopted by the Commission.

Order

After careful review and consideration of the above determinations, the recommendations of its hearing examiner and the record herein, for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Commonwealth Public Utilities Commission **HEREBY ORDERS THAT:**

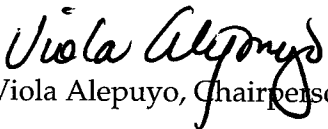
1. An aggregate LEAC rate of \$0.20147 per kWh is hereby established effective October 1, 2009 for the period continuing until March 31, 2010, which shall be comprised of the following elements. Rate element revenues shall be used solely for the specific purposes authorized therein.
 - A \$0.18807 per kWh element for fuel oil costs, generation lubricant costs, transportation and handling costs, taxes and other associated costs as billed by the fuel supplier.
 - A \$0.01064 per kWh element to fund variations from projected fuel prices that result in unrecovered costs.
 - A \$0.00276 per kWh element to fund Commission invoices for regulatory fees and expenses and for the procurement or employment of financial and technical expertise.

2. CUC is authorized and directed to utilize approximately \$2.9 million dollars from its generation element reserves to cover the difference between the estimated cost of fuel during the LEAC cycle [\$0.21278 per kWh] and the \$0.18807 per kWh funded in ordering provision 1 above.
3. A loss mitigation task force is hereby established under hearing examiner's oversight, to develop and implement a strategy, including timeline, to minimize the unaccounted for energy reported in Georgetown's LEAC report. CUC and Georgetown shall participate in the task force, which shall provide the Commission with a progress status report during the November 2009 regulatory session.
4. Commencing with the first quarter of FY10, CUC shall prepare and file with the Commission quarterly reports, including balance sheets and profit and loss statements, for each of its operating divisions on or before the first day of the second month after the end of each quarter. The first such report should be due on February 1, 2010.
5. Georgetown is authorized, under hearing examiner's oversight, to prepare for Commission consideration during the March 2010 regulatory session, a report regarding the next LEAC rate, including a reconciliation of the March 2009 through September 2009 LEAC cycle, and in collaboration with CUC transparent minimum filing requirements, which can be used in future LEAC proceedings.
6. The Preferred Stock Agreement between CUC and CDA dated May 7, 2009 is hereby approved, subject to the condition that CDA file a satisfaction of judgment in Superior Court Civil Case 01-0149. CUC is authorized to issue \$45 million dollars of preferred stock to CDA in accordance with the terms of the Agreement. CUC is ordered and directed to track all internally funded capital improvement investments in its three division and to propose to the Commission, in consultation with Georgetown not later than the November 2009 regulatory session, a process by which it will report these investments to the Commission and use them as a basis for repurchasing up to \$16.2 million dollars of its preferred stock.
7. The Commission reserves its continuing jurisdiction in this docket, including, without limitation, jurisdiction over the question of whether CUC should be sanctioned for its substantial violations of Commission orders, as discussed in determination paragraph 5 above.
8. All rulings and orders of the hearing examiner during the course of this proceeding are ratified and confirmed. All motions not heretofore granted or denied are denied. No other matters require consideration in order to adopt this decision and order.

9. CUC shall pay for the Commission's expenses, including without limitation, consulting and hearing examiner expenses and fees and the expenses of conducting the hearing process and all further regulatory expenses, which are incurred pursuant to this order.

10. The hearing examiner is authorized to interpret the meaning of this decision and order in furtherance of its reasonable and effective implementation.

September 3, 2009


Viola Alepuyo, Chairperson


Kyle Calabrese, Commissioner