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February 12, 2002

Ms. Dorothy Wideman
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-12639

Dear Ms. Wideman:

Enclosed for filing in the above captioned matter please find the original and four copies of **Energy Michigan's Reply to the Detroit Edison, Consumers Energy and CPR Petitions for Rehearing/Clarification**. Also enclosed is the original Proof of Service indicating service on counsel.

Please date stamp one copy of the above entitled document for my records and return it in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETTLLP

Eric J. Schneidewind

Eric J. Schneidewind

EJS/mrr

cc: ALJ
parties

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to implement the provisions of Section 10a(10) of 2000 PA 141.	))))	Case U-12639

ENERGY MICHIGAN, INC. REPLY TO THE DETROIT EDISON, CONSUMERS ENERGY AND CPR PETITIONS FOR REHEARING / CLARIFICATION

February 12, 2002

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I. INTRODUCTION AND SUMMARY OF POSITION

A. Introduction

Energy Michigan, Inc. (Energy Michigan) by and through its attorneys, Varnum, Riddering, Schmidt & Howlett, LLP respectfully replies to the Petitions for Rehearing / Clarification filed by the Detroit Edison Company (Detroit Edison or Edison), the Consumers Energy Company (Consumers or Consumers Energy) and the Citizens for Power and Reliability (CPR) in this matter pursuant to R460.17403(1) of the Michigan Public Service Commission (Commission) Rules of Practice and Procedure (the Rules) as more fully explained below. Failure to reply to any position, assertion or request of a party to this matter should not be construed as agreement with that position, assertion or request.

B. Summary of Position

1. Response to the Detroit Edison "Heads I Win, Tails You Lose" Position

Detroit Edison has asked the Commission to take official notice of the fact that wholesale electric prices have been dropping for a few months and from that data to conclude that Detroit Edison is in such mortal financial peril that the entire record and

findings in this case should be ignored and a new proceeding commenced to rescue Edison from impending destruction.

Edison's request is a version of "Heads I win, tails you lose." for several reasons:

1) Despite the fact that Edison was scheduled to lose 450 MW of load to open access programs as of 1999 and a total of about 1,200 MW by January 1, 2001 under the 90 MW experiment and the phase in of competition, Edison actually lost only 180 MW as of January 2001 and 236 MW as of January 2002.[1] One can imagine Edison's reaction if Energy Michigan had come back to the Commission and demanded to reduce open access charges through 2001 because Edison's Choice load was less than projected and less than it had agreed to accept.

2) Edison conveniently ignores the fact that it has deliberately been short of more than 2,000 MW of generation capacity since the late 1990s and had to purchase over $500 million of power to serve existing load in the Year 2000. As existing load is lost to competition, Edison's total costs and average costs will decrease because its power purchases have been significantly more expensive than Edison's average cost of generation. These facts were obtained from the Energy Michigan Reply Brief filed in this matter, not from unknown sources off the record.

Edison's request to reopen should be rejected because it is unreasonable, inequitable and is not based on record evidence.

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[1] Edison's total ROA load by January 2002 was 497 MW but this total includes 260 MW served by the Dearborn Industrial Generation Project which was formally served by Ford Motor Company on-site power facilities and thus was not load served by Edison. MPSC Report of Competition, February 1, 2002

3) If Edison's request for higher transition charges is granted now, those higher transition charges would effectively kill competition during future periods when wholesale prices are likely to increase.

2. The Four Consumers Energy "Clarifications" are really a request to re-litigate this case.

Consumers has requested that the Commission agree that:

1) there is no limitation to the changes in Staff methodology which it may propose in future proceedings;

2) that the Commission's finding of $97 million of Consumers stranded benefits in 2000 can be re-litigated;

3) that all PPA capacity costs no matter how imprudent or short term should be treated as a long term unavoidable fixed generation expense; and finally,

4) that the Commission should enter into a brand new role of evaluating Power Purchase Agreements in light of a 15% Consumers reserve requirements despite the fact that PSCR proceedings have long since been abandoned.

Consumers is basically requesting that the Commission totally disregard the U-12639 proceeding evidence and record and allow re-litigation of the same issues at another time and in another forum which may yield better results for the Company. The de novo proceeding requested by Consumers would inject high levels of uncertainty into projected Electric Choice economics and would clearly chill the marketplace as well as vastly increasing the cost and time required to complete what was intended to be a fairly routine update of the Staff case. The Commission should affirm its basic findings in this matter which adopted the Staff proposal with minor and highly specific adjustments to be made in

the next proceeding.

3. The CPR requests for clarification of the securitization offset mechanism and accelerated calculation of the 2003 charge.

The schedule to determine 2003 charges should allow time for Staff and intervenors to prepare their case.

The Commission should clarify that securitization offsets were continued for Year 2002 because the Year 2000 data used to calculate 2002 charges did not include securitization and because failure to continue the offset would have resulted in a prohibited Act 141 rate increase to fund investments which were not stranded.

II. DETAILED REPLY TO DETROIT EDISON

Following is a detailed reply to the three broad requests contained in the Detroit Edison Petition.

A. Edison's Request That There Will Be "No Specific Limitation to the Refinements of the Staff Methodology That May Be Proposed in the Next Stranded Cost Proceeding"

1. Edison request

Detroit Edison has stated that "...the Company needs clarification of the Order to determine that there are no specific limitations of the refinements to the Staff methodology that may be proposed that will fall within the scope of the changes that would be considered for adoption within the 'evolving process' contemplated by the Commission." *Edison Petition, p. 3.* Edison also asserts its belief that "...the Commission has not made a definitive determination regarding either the amount of Edison's net stranded costs or benefits or the disposition of any such amount." *Id, p. 2.*

2. Energy Michigan reply

Edison has, in effect, requested that the Commission ignore its own Order regarding the general framework to be used for calculating stranded costs and transition charges as well as the specific findings of the Commission relating to stranded costs for the Year 2000 and the resulting charges to be assessed during the Year 2002. If granted, the Edison request would render the record and findings of Case U-12639 meaningless and, much worse, deprive Electric Choice customers of any predictability regarding the charges to be paid during calendar 2002 and thereafter. Such an outcome would chill the competitive market in 2002 because the cost of participation for even the current year would be unknown.

Edison's request to revisit the Commission's findings regarding both methodology and specific 2002 charges should be rejected for the following reasons:

a. The Commission's findings regarding Year 2000 charges were highly specific and were declared to be final except as to two issues:

1) The Commission ordered that the Staff calculation of Year 2000 stranded benefits for Detroit Edison be revised to exclude the impact of securitization on the Company cost of capital. If this is done, Energy Michigan notes that the calculation should also increase residential revenue from levels used by Staff. In its presentation, Staff attempted to balance its assumption that interest costs would be reduced for an entire year through securitization with an adjustment to assume that the resulting 5% residential rate increase occurred throughout the entire year as well. *Edison Witness LaVere describes the Staff adjustment in 2 Tr 284-85.* In fact, while securitization did not occur in 2000 as noted by the Commission, the residential reduction started in June and thus did not last the entire year. For this reason, the Staff's revenue reduction was excessive if the impact of

securitization is to be deleted. *Commission Finding, Case U-12639, December 20, 2001 (Order), p. 17-18*.

2) The Commission left the door open to using more recent cost of service data from the U-10102 and U-10685 rate cases to calculate net stranded costs for the Year 2000. *Commission Order, p. 14*.

Equally important however, the Commission did find that there were specific stranded benefits for both Consumers and Edison during the Year 2000 (Order, p. 20) and that the net stranded benefits calculated by the Staff for 2000 should be rolled over to offset stranded costs found in the 2001 calculation. *Order, p. 22 and Ordering, ¶ C, p. 33*.

The Commission affirmed and adopted the Staff methodology for the Year 2000 factor in all other respects. *Commission Finding, b., p. 33 and Commission Ordering, ¶ A, p. 33.*

Neither Detroit Edison nor Consumers Energy should be allowed to re-litigate the entire procedural framework for calculating stranded costs which was adopted in this case simply because they do not like the outcome. The Consumers and Detroit Edison "refinements" or modifications to the Staff methodology should be limited to the use of updated cost of service data and, for Detroit Edison, exclusion of the impact of securitization on Year 2000 rate of return as ordered by the Commission.

b. The Commission strictly limited revisions of the staff methodology for Year 2001 stranded costs and beyond.

Items 1 and 2 represent the extent of the adjustments or recalculations contemplated by the Commission in its December 20, 2001 Order in this matter for

changes to the Staff methodology for Year 2001 transition charges to be applied in 2003 and beyond.

1) The Commission indicated a desire to obtain proposals regarding how credits would be granted to customers and how to accomplish the roll over of stranded benefits to later years but insisted that for the Year 2000 calculation, the found net stranded benefits must be rolled over to the 2001 calculation. *Order, p. 22.*

2) The Commission allowed utilities to develop the mechanisms to make adjustment to the Staff methodology as described above for Year 2000 stranded costs and Year 2001 and beyond stranded costs. *Order, p. 20.* However, the Commission clearly states that such adjustments must be

a. "consistent with the methodology adopted in this Order" and

b. that such adjustments only apply to the 2001 test year. *Order, p. 20.*

Thus, the Commission narrowly limited the type of adjustments that may be considered. *Id.*

B. Edison's Request that the Commission Initiate a Proceeding to Revising the Staff Methodology on the Basis of its "New Evidence"

1. Edison position

Detroit Edison asks the Commission to take note of the fact that wholesale electric prices have been declining for about six months and to conclude from this data that Edison

will lose an unspecified amount of load. This assumed loss of load is presumed to justify initiation of an expedited proceeding to revise the 2002 factor in such a way that would reflect these unspecified sales losses. Edison did not make specific projections of load loss or financial impact to support its position. *Edison Petition, p. 3-6*.

2. Energy Michigan reply

Edison's request should be rejected because it is based on bad law, bad facts and a distorted view of the stranded cost recovery process.

a. Edison's facts are bad.

The Edison request ignores record evidence which shows that it will not be harmed by load loss.

Detroit Edison has based its entire request to modify the stranded cost methodology adopted by the Commission on the assertion that wholesale power supply prices have dropped. <u>This "evidence" was not introduced on the record</u>. More important, Edison has not produced evidence from the record <u>or from any other source</u> which would support its projection of the dire consequences arising from the alleged wholesale price reductions. Thus, there is no tangible evidence, on the record or otherwise, supporting the conclusion that wholesale price reductions of the magnitude claimed by Edison would produce any particular loss of load or, any adverse financial consequence for Edison. In fact, the record in this case proves quite the opposite.

There is no reason to expect that Detroit Edison will be hurt financially by significant losses of load to Electric Choice. The Edison 90 MW experiment and phase in of competition adopted in U-11290 anticipated the loss of at least 1,200 MW of Edison load to Choice by the end of 2000. *U-11290, March 8, 1999.* In

anticipation of those load losses, Detroit Edison planned to meet peak demand requirements with over 2,000 MW of power purchases which could be discontinued as soon as load migrated to Choice. *Source: Edison 1999 and 2000 PSCR Filings.* Edison projected the cost of power purchases at $344 million and $382 respectively in 1999 and 2000 PSCR cases and included those costs in the 1999 PSCR factor and the Year 2000 self-implemented PSCR factor which remains in effect today for its retail customers.

In the Year 2000, however, Edison lost very little load to Electric Choice (approximately 180 MW, see footnote 1 above) and thus its power purchases were over $500 million instead of the anticipated $382 million level, but higher than expected system sales due to the lack of migration to Electric Choice allowed Edison to maintain profitability even while purchasing more than $500 million of power to serve its load.

As a result of this careful positioning,, if Edison loses up to 2,000 MW of load to Electric Choice its power purchases will be reduced by over $500 million in 2002 compared with Year 2000 levels. Since purchases were more expensive on average than native generation, Edison's average cost of power actually declines as sales are lost[2]. Thus, Edison purchase power costs will be significantly lower as it loses load and its power supply costs will be less expensive in total and per Mwh than assumed in the currently effective frozen PSCR factor.

These facts were placed on the record in the Energy Michigan Testimony and Reply Brief in this case and as such constitute evidence, supported by the sworn testimony of Richard Polich which may be relied upon in a Commission Order. Edison can cite no facts on the record which support a contrary conclusion.

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[2] Edison average cost of purchases in 2000 was $62.57/Mwh whereas its average cost of generation was less than $45/Mwh. *Energy Michigan Brief, p. 9-10.*

b. Edison's request is bad law.

Edison's contentions that reduced wholesale prices will lead to loss of load and the loss of load will lead to adverse financial consequences are not supported by testimony or evidence on the record. In fact, other than non-record evidence of declines in wholesale cost, the Edison Petition contains no objective support whatsoever for conclusions regarding the impact of the alleged wholesale price declines.

As noted above, there is evidence on this record in the form of public documents and sworn testimony that Edison's losses of load to Electric Choice were far less than expected through 2001 and that if Edison does lose load it will experience a huge reduction in overall costs and a reduction in average costs of power. Thus load losses, up to a point, produce a financial benefit to Detroit Edison rather than a loss. This conclusion is supported by data on the public record (MPSC Form 521 and Exhibits of Edison witness Falletich as well as the testimony and analysis of Energy Michigan witness Richard Polich, 2 Tr 692) and the conclusions were summarized in the Reply Brief of Energy Michigan filed September 4, 2001 in this matter. *Energy Michigan Reply Brief, p. 8-10.*

As a matter of law, an MPSC Order is unreasonable if it is not supported by evidence of record. Associated Truck Lines, Inc. v MPSC; 377 Mich 259, 10 NW2d 515, 1966. The Commission cannot adopt the Edison position since to do so would be unreasonable based upon the lack of record evidence and support.

c. The Edison request would produce an inconsistent methodology to calculate stranded costs.

In the years 1999 through 2001 Detroit Edison accepted MPSC Orders which provided for the phase in of 1,125 MW of Electric Choice capacity by the end of the

Year 2000. *Edison, RAST, approved March 1999, Original Sheet 4, Section 4.3*. Edison had also agreed to an experimental program of up to 90 MW for a total of over 1,200 MW of Choice capacity by 2001. Thus, Edison assumed that it would lose 1,200 MW of load to Choice by the end of 2000. However, the MPSC Staff concluded that only 180 MW of Choice capacity were served on the Edison system as of January 2001 and only 236 MW were being served as of January 2002.[3] Despite serving far less Electric Choice load than anticipated by the Commission or even Edison itself, Edison did not request that its Electric Choice tariff charges or stranded cost charges be reduced to facilitate competition. Thus, when Edison's load loss was less than the expected 1,200 MW, it retained the status quo level of transition charges and profited handsomely.

Edison is essentially asking the Commission to ignore a historic period from 1999 through 2001 when it experienced levels of Choice participation which were much lower than the anticipated 1,200 MW and jump immediately into a projection of huge load losses which have not yet occurred. This switch from historic to projected data is directly contrary the methodology adopted by the Commission of using Year 2000 data to calculate Year 2000 stranded costs and recover those costs in 2000 and continue this pattern through 2007. *Order, p. 20.* Thus, adoption of the Edison proposal would deprive customers of several years of favorable adjustments by ignoring data from the years 2000 and presumably 2001. The result would be an abandonment by the Commission of the consistent methodology which it adopted in the Order. *Id.* This outcome would be unreasonable on its face.

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[3] 497 MW were being served by Edison as of January 2, 2002 but 261 MW were at the Dearborn Industrial Generation Project and had previously been served by on-site power. Therefore, the Edison load loss as of January 2002 was 236 MW. Source: Status of Electric Competition in Michigan, MPSC, February 1, 2001 and February 2, 2002.

C. Response to Edison's Continuing Concerns

1. Edison position

Edison states that it has continuing concerns which must be resolved regarding two issues:

1) Edison wishes confirmation of its assumption that the securitization offset and rate equalization will be funded with excess securitization savings. *Edison Petition, p. 7-8.*

2) Edison claims that the recovery of all Edison implementation costs must not be contingent on the success of open access implementation. *Edison Petition, p. 8-9.*

2. Energy Michigan reply

a. There is no basis for the Edison assumption that securitization offsets will be funded with excess securitization savings.

PA 141 § 10d(5) provides that securitization savings greater than those used to achieve the 5% rate reduction "...shall be allocated by the Commission to further rate reductions or to reduce the level of any charges authorized by the Commission to recover an electric utility stranded cost."

The Commission determined that the transition charge, and hence the stranded cost, for both Consumers and Detroit Edison was zero for the Year 2000. It also concluded that the transition charge adjustment for 2000 is predicated on the use of Year 2000 actual experience <u>which did not include the effects of securitization</u>. *Order, p. 25*. Based upon these findings, the Commission elected to

carry forward its offset of securitization and tax charges and the rate reduction equalization. *Order, p. 25-33*.

The questions of Edison, Consumers and the CPR regarding any alleged inconsistency of these findings are easily reconciled. The Commission itself stated that the Sec. 10d(5) adjustment, "...at least insofar as it incorporates the securitization and tax charge offset, does not require a funding source. Because neither utility had stranded cost at this time, the Commission has found that each is recovering all of its fixed generation cost which includes the cost that were securitized. Thus, there is no basis for requiring ROA customers to pay the securitization and tax charges without a full offset. [Only] the portion of the Section 10d(5) adjustment that encompasses the previous rate equalization adjustment should be funded to the extent possible by proceeds [of] securitization not specifically allocated for other purposes as provided by Section 10d(5)". *Order, p. 26.*

The Commission further stated its direction that only the rate equalization credit costs were to be funded with excess securitization savings. *U-12505, October 24, 2000, p. 43-44; U-12487, November 2, 2000, p. 32-33.* These Commission prior Orders directed that 50% of Consumers' excess savings and all of Edison's excess savings were to be used to reduce transition charges and in the Orders referenced above, the utilities were allowed to use these funds to fund the rate equalization adjustment. *Order, p 28.*

The logic of the Commission is clear and irrefutable. While Section 10d(5) authorizes use of excess securitization savings to reduce any charges authorized by the Commission, there were no transition charges to be recovered for Year 2000 because neither Edison or Consumers had stranded costs. Since the level of Electric Choice participation was minimal in the Year 2000 (and Year 2001) securitization bond and tax charges collected from retail customers are virtually certain to cover all required securitization fees. If not, the under recovery can be addressed in the

true up authorized by PA 142, § 10k(3) in the succeeding year. The alternative of charging Electric Choice customers for securitization bond and tax fees without an offset would in effect charge them for the cost of Fermi 2 at a time that the Commission specifically found that no Fermi costs were stranded. That result would be both an illegal rate increase per Act 141 § 10d(5) and an illogical conclusion.

The Commission has given clear direction. For the Year 2000 factor based on Year 2000 costs, any securitization offsets for Electric Choice customers have no cost because all Fermi costs were recovered from bundled sales customers by charges contained within their bundled rates. Thus securitization bond and tax charges could be offset for bundled sales and Electric Choice customers alike with no adverse financial impact to Detroit Edison. As to rate equalization, the cost of the credits is to be funded through excess securitization savings as authorized by Section 10d(5) and Orders U-12639, U-12487 and U-12505 as cited above.

b. Edison must not be allowed to recover implementation costs for systems which do not work.

2000 PA 141 provides that the orders issued by the Commission prior to the effective date of PA 141 "...including orders that determine and authorize recovery of implementation costs..." are in compliance with PA 141. *PA 141, § 10a(5).* Edison argues that a clear meaning of the statutory language is that the Commission must simply determine the amount of expenditures and authorize collection rather than considering reasonableness or prudence. Edison in effect proposes that it be allowed to recover Electric Choice implementation costs whether or not the systems and procedures funded by those expenditures are reasonable, prudent or effective. *Edison Petition, p. 8-9.*

In Order U-11290, the Commission stated, with regard to implementation costs that, "...If the costs are prudently incurred it would also be inappropriate to

disallow recovery by the utility". *U-11290, June 5, 1997, p. 13 (emphasis supplied).*

The prudency standard has been upheld by the U.S. Supreme Court. Dusquesne Light Co v Barasch, 488 US 299; 109 S Ct 609; 102 L Ed 2d 646(1989).

If Edison's interpretation of PA 141 is accepted, it would mean that Edison's expenditures for implementation may be recovered no matter the amount, nor the effectiveness of those expenditures. This reading would clearly frustrate an explicit purpose of PA 141 to foster competition 10a(1)(b) and to ensure that all retail customers have a choice of electric supplier (a). Moreover, Edison's reading of Sec. 10da(5) would frustrate the mandate of the legislature at 10a(1) that the Commission issue Orders by January 1, 2002 that would establish rates, terms and conditions of service that allow all retail customers of an electric utility to choose an Alternate Electric Supplier. If Edison's implementation costs were not subject to a prudency review or, just as important, to a review for effectiveness Edison could frustrate the legislative purposes set forth above by implementing unworkable systems and procedures and the Commission would be powerless to withhold rate recovery for such expenditures. Such a result would be unreasonable, inconsistent with case and statutory law and as such it should be rejected.

PA 141, § 10a(5) should be read and interpreted to allow the Commission to exercise its historical role to review all expenditures including implementation costs and allow recovery of only such expenditures as are found by the Commission to be reasonable, prudent and result in workable systems to implement open access.

III. REPLY TO CONSUMERS ENERGY

A. Consumers Position / Requests for Clarification

Consumers requests four "clarifications" of the Commission's December 20, 2001 Order:

1) The Commission should "confirm" that it left open the correct manner of implementing Staff's stranded cost methodology. *Consumers' Petition, p. 1*.

2) The Commission should "confirm" it has authorized recalculation of the stranded costs for 2000 and that it deferred a final determination of the stranded costs/benefits for 2000 to a future proceeding. *Id, p. 2.*

3) The Commission should confirm that the capacity cost of options or other power purchase arrangements are included in the calculation of revenue requirements for fixed generation resources (Consumers Petition, p. 4) and that it was not the Commission's intent to deny recovery of costs associated with capacity necessary to achieve a 15% reserve margin (Consumers Petition, p. 5).

4) The Commission should confirm that only third party wholesale revenues in excess of the amount already reflected in current rates should be applied as a credit in the stranded cost calculation. *Consumers Petition, p. 4-5*.

B. Energy Michigan Reply

1. The Commission provided for only limited and specific adjustments of the Staff methodology to calculate stranded cost.

The Commission decision of December 20, 2001 provided for only limited and highly specific adjustments of the Staff methodology in future cases establishing stranded cost.

a. The Commission allowed consideration of updated cost of service data to recalculate Year 2000 and future net stranded cost. *Order, p. 14.* As to the Year 2000 recalculation, such consideration should be limited to alleged cost of service data used in rate Cases U-10102 and U-10685. *Order, p. 13-14.*

b. The Commission decided that Detroit Edison Year 2000 costs should not be calculated using a cost of capital that reflects securitization reductions. *Order, p. 17*.

c. The Commission indicated a desire to obtain proposals regarding how credits would be granted to customers and how to accomplish the roll over of stranded benefits to later years but insisted that for the Year 2000 calculation the found net stranded benefits must be rolled over to the 2001 calculation. *Order, p. 22*.

d. The Commission allowed utilities to develop the mechanisms described in a-c to make adjustment to the Staff methodology. *Order, p. 20*. However, the Commission clearly stated that such adjustments must be

1) "consistent with the methodology adopted in this Order" and

2) that such adjustments only apply to the 2001 test year. *Order, p. 20.*

Thus, the Commission narrowly limited the type of adjustments that may be considered. *Id.*

Energy Michigan believes that items a-d represent the extent of the adjustments or recalculations contemplated by the Commission in its December 20, 2001 Order in this matter.

No other modifications were directed by the Commission and thus it must be concluded that no other modifications were intended. As explained in II. B. above, Consumers and Edison must not be allowed to litigate this case de novo just to get another bite at the apple.

2. The Commission allowed only minor adjustments to the $97 million stranded benefit found for Consumers.

The Commission found a $97 million stranded benefit for Consumers and ordered that this amount be carried forward to the 2001 calculation. *Order, p. 22.* The Commission did allow recalculation of the stranded benefit finding consistent with the appropriate cost of service study data. *Order, p. 14*. Use of an accurate rate of return that correctly reflects the impact of securitization (Order, p. 17-18) does not apply to Consumers since the Staff made no such adjustment to Consumers costs and no other adjustments are mentioned. The Commission did not order the wide open proceeding requested by Consumers Energy. Rather, the Commission narrowly defined the issues to be revisited regarding Year 2000 stranded benefits.

3. The Commission should not preapprove Consumers' request to recover capacity costs linked to a 15% reserve margin.

While Consumers objects to implications that the Commission has disapproved all purchases of capacity, its own request could be construed as proposing preapproval of all capacity purchases necessary to achieve a 15% reserve margin. *Consumers Petition, p. 3-5.*

This Consumers request must not be approved since the prudence of a 15% reserve margin is not supported on the record and does not necessarily represent good policy.

Energy Michigan demonstrated in this case that Consumers purchased over $200 million of short term power in the Year 2000 because it was short of generation. These short term purchases typically expire at the end of the one to two year term or can be terminated with short notice.

Since Consumers' average cost of power purchased in 2000 was $50.91/Mwh but some of the purchases were as much as $280/Mwh, and Consumers' average cost of generation was $46.68/Mwh, it is clear that <u>some</u> of Consumers' short term purchases were at prices greatly exceeding Consumers' average cost of purchasing power. *Energy Michigan Reply Brief, p. 9.* When Consumers load drops because customers migrate to Electric

Choice, Consumers should terminate proportional amounts of purchases and in fact should refrain from committing to new purchases. This reasonable response to declining load could be frustrated if the Commission with no record whatsoever gives prior approval to a 15% reserve margin target as a benchmark for reserve and power purchase requirements.

The Commission must not allow Consumers to pass along the costs of avoidable generation capacity purchases as a stranded cost when those costs can and should have been terminated. Since there is no legal basis for providing the ruling requested by Consumers: that costs of power purchase capacity needed to maintain a 15% reserve margin will be approved, the Commission should decline to respond on procedural grounds leaving Consumers to their proofs in future cases. In those future proceedings, interested parties will be able to explore whether Consumers' purchases were or are appropriate in view of their existing and projected system sales. Other questions raised might concern Consumers' use or proposed use of special contracts to maintain system load that otherwise might have migrated to Choice and permitted Consumers to reduce expensive purchases of power.

4. The Commission should not grant Consumers' request to confirm that only wholesale revenues in excess of the amount already reflected in current PSCR rates should be applied as a credit in the stranded cost calculation. *Consumers Petition, p. 5*.

In calculating revenue available to cover stranded costs, the Commission declined to discount revenue from third party sales even though it was aware that frozen PSCR factor might have incorporated some of those sales to offset PSCR costs. *Order, p. 18*. Consumers' request that only sales revenues in excess of the amount reflected in the PSCR credit be considered as an offset to stranded costs was framed to sound reasonable but asks the Commission to make judgments which are not supported by the record.

When Edison made much the same request in its Exceptions to the PFD in this case, Energy Michigan opposed the claim. *Energy Michigan Replies to Exceptions, p. 7-8*. Energy Michigan pointed out that Edison was really asking the Commission to reduce

revenue from third party sales to recognize that part of the third party sales revenue had been used to reduce PSCR costs but that Edison had failed to mention that those reduced PSCR costs in turn caused customer billings and revenue which pays for generation costs to be reduced as well. The Staff methodology deals with this problem correctly because on the one hand it assumes all third party sales are revenue but on the other hand it uses actual customer revenue receipts which were reduced to reflect lower PSCR costs caused by third party sales.

If the Commission wishes to give Consumers credit for all third party sales offsets contained in the current PSCR it should offset this credit with an assumed increase in customer revenues otherwise it is the Consumers position that will double count third party sales, not the Staff position. *See Energy Michigan Replies to Exceptions, p. 7-8.*

IV. REPLY TO CPR

A. The CPR Request For Interpretation of Effect of Securitization Credits and Offsets Should Not Be Granted As Stated

1. CPR request

The CPR asked the Commission to clarify that through 2002 all securitization tax charges, transition charges and offsets for all customers will net to zero during 2002 just as they netted to zero in 2001. *CPR Petition, p. 3*.

2. Energy Michigan reply

Energy Michigan agrees with this conclusion. However, it should be understood that inclusion of the credit for rate equalization produces a level which is less than zero but is equivalent to the reduction provided to bundled sales customers.

B. The CPR Request for Accelerated Schedule Should Be Rejected

1. CPR request

CPR requests that the Commission set a schedule to calculate transition charges no later than June 30 of the year preceding the effective date of the transition charges. *Petition, p. 4*.

2. Energy Michigan reply

While Energy Michigan shares the concern of the CPR that transition charges for 2003 be accomplished on a timely basis, a deadline of June 30, 2002 would place impossible burdens on non-utility parties and the Commission.

Both Detroit Edison and Consumers Energy have requested rulings in this proceeding which indicate that they prefer to retry the entire subject of transition charge calculation as well as recalculation of the 2002 factor on a de novo basis. *See Detroit Edison Petition, p. 3; Consumers Energy Petition, p. 1*. If Consumers and Edison are permitted anything like the scope of inquiry which they desire, their filings will be massive and highly complex. Parties to the proceedings will require significant amounts of time to evaluate utility testimony and supporting documentation as well as to develop testimony critiquing the utility position. A ruling in this proceeding is not anticipated until March 2002 at the earliest. To reach a final decision by June 6, 2002 on a case filed in March or April, non-utility parties would be given somewhere between one and two months to complete discovery, file a case and complete cross-examination as well as file Briefs and Reply Briefs. The Commission would have one month or less to reach a final decision. This is a schedule which is highly favorable to the filing party particularly if that party possess the vast resources and manpower of Consumers Energy and Detroit Edison.

Energy Michigan strongly urges the Commission adopt a schedule for establishment of a 2003 factor which will afford due process to all parties.

V. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectively requests that the Commission reject the requests of Consumers Energy, Detroit Edison and the CPR as more fully described above.

Respectfully submitted,

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February 12, 2002

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

****

In the matter, on the Commission's own motion, to implement the provisions of Section 10a(10) of 2000 PA 141.	))))	Case U-12639

PROOF OF SERVICE

Eric J. Schneidewind, duly sworn, deposes and says that on this 12th day of February, 2002 he served a copy of Energy Michigan, Inc.'s Reply to The Detroit Edison, Consumers Energy and CPR Petitions for Reheraing/Clarification on those named on the attached service list by regular and e-mail.

Eric J. Schneidewind

Eric J. Schneidewind, Deponent

Subscribed to and sworn before me
this 12th day of February, 2002.

Monica Robinson

Monica Robinson, Notary Public
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Acting in Ingham County, Michigan
My Commission Expires: September 21, 2005

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