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July 13, 2001

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

**Re: Case Nos. U-12780/U-12781**

Dear Ms. Wideman:

Enclosed for filing in the above-referenced matter are an original and four copies of the "**Reply Brief of Consumers Energy Company**". I have also enclosed a Proof of Service. This document was filed electronically as part of the Commission's Electronic Filings Program.

Sincerely,

Jon R. Robinson

CC: Hon. James N. Rigas, ALJ
Parties of Record

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the Application of Indiana Michigan Power Company, d/b/a American Electric Power, for certain approvals in Connection with 2000 PA 141, Section 10v. | ) | Case No. U-12780 |
| In the matter of the Application of International Transmission Company, Consumers Energy Company, and Great Lakes Energy Cooperative. | ) | Case No. U-12781 |

**REPLY BRIEF OF CONSUMERS ENERGY COMPANY**

1. Introduction

Initial briefs were filed in this case on June 29, 2001 by Consumers Energy Company ("Consumers Energy"), International Transmission Company ("ITC"), The Detroit Edison Company ("Detroit Edison"), Indiana Michigan Power Company, d/b/a American Electric Power ("AEP"), Michigan Public Service Commission Staff ("Staff"), Association of Businesses Advocating Tariff Equity ("ABATE"), Energy Michigan, and PG&E National Energy Group. Consumers Energy files this reply to various aspects of these initial briefs. Failure to respond to all arguments presented in these briefs should not be interpreted as acquiescence to those arguments; in such instances, Consumers Energy relies upon its initial brief.

In its initial brief, Consumers Energy asked the Commission to make the following findings:

1. Find that the Joint Report (Exhibit A-5) is in compliance with the provisions of Section 10v;

2. Find that, once an individual utility (or its affiliate or successor) has completed the projects identified in the Joint Report (Exhibit A-5) for its system, that utility will be deemed to be in compliance with the provisions of Section 10v of PA 141;

3. Find that the projects identified in the Joint Report and the associated costs are reasonable and prudent,

4. Order that the cost recovery approach described by Mr. Ruhl is appropriate for Consumers Energy, and is adopted.

This Reply Brief is organized around these requested findings.

2. <u>The Joint Report complies with Section 10v</u>.

The Commission should first rule that the Joint Report included in the record as Exhibit A-5 is in compliance with the requirements of MCL 460.10v; MSA 22.13(10v) ("Section 10v"). As discussed in Consumers Energy's initial brief, all evidence presented in this case supports the conclusion that the transmission projects identified in the Joint Report fully satisfy Section 10v's requirement that available transmission capability be increased by 2000 megawatts ("MW") over that in place as of January 1, 2000. There is no evidence that indicates otherwise.

In its initial brief, Energy Michigan states that whether the 2000 MW increase test is satisfied by the Joint Report should be treated as an "open issue" by the Commission, and that no such finding should be made until some undefined point in the future when the Commission makes a determination of whether Michigan customers have "benefited" from the identified transmission projects. The standard advocated by Energy Michigan is not consistent with Section 10v, and should not be adopted by the Commission. Section 10v requires the expansion of available transmission capability by 2000 MW. The clear legislative intent was that the physical expansion of the transmission system itself was the "benefit" that was sought. Imposing an additional test as proposed by Energy Michigan would add a vague and ambiguous standard that is not required by or consistent with the statute.

Energy Michigan never explains how this benefit test would be applied. It apparently contends that something more than simply the physical expansion of the transmission system is required, but it fails to identify exactly what. Is it when Retail Open Access ("ROA") alternative electric suppliers have actually reserved additional transmission service? If so, this is clearly not consistent with the statute. The additional transmission capability that results from the projects identified in the Joint Report will be available to all prospective customers according to the same rules that apply to all transmission capacity. Postponing a finding that the statute has been satisfied until ROA suppliers actually use the increased capacity would be completely inconsistent with the statute. Indeed, as Consumers Energy witness Tim Sparks testified, available transmission capacity on both the Consumers Energy and AEP systems has gone unused by ROA suppliers:

> "Consumers Energy has been posting positive ATC values for importing power into Michigan on transmission paths within its transmission system since April 2000. At this time, only one alternative electric supplier licensed in Michigan has purchased transmission capacity on the Michigan Electric Transmission Company system on a long term basis. It should also be noted that in April 2001, Consumers Energy offered to assign up to 100 MW of AEP firm point-to-point transmission service on the Cinergy to Michigan Electric Coordinated System (MECS) path to several Retail Open Access suppliers at cost for the period of June 1, 2001

> through April 30, 2002. See Exhibit A-10 (TJS-1), which are copies of the letters Consumers Energy sent to Alternative Electric Suppliers operating in Michigan. Not one Retail Open Access supplier accepted this offer. My point is that transmission capacity within Michigan is already available, but is unused, and even transmission capacity on the AEP system that has been offered at cost by Consumers Energy has not been purchased by potential ROA suppliers. * * * Alternative electric suppliers licensed in Michigan must take the initiative and purchase transmission capacity when it is made available to them." 3 TR 144-145. Emphasis added.

Especially given this record of failing to use the transmission capacity that is already available, the Commission should not adopt a test that requires ROA suppliers to actually use the additional transmission capacity before making the finding that Section 10v has been complied with.

Energy Michigan also raises an issue concerning the physical improvements provided for in the Joint Report at the Detroit Edison-Ontario Hydro interface. Energy Michigan appears to be concerned over the accessibility to transmission capacity of Ontario Hydro, and contends that the transmission improvements at this interface should not count toward Section 10v's 2000 MW requirement. This position must be rejected by the Commission. The statute offers no support for excluding transmission expansion projects located at the Canadian border, and it would make no sense to penalize Michigan utilities for something Canadian companies do or do not do. Undoubtedly the rules applicable to transmission capacity in Canada will, over time, tend to follow those applicable to US transmission companies. In any event, Energy Michigan is overstating the problem; the fact is that the identified projects will increase import capability at the Detroit Edison-Ontario Hydro interface, and ROA participants therefore will have access to more generation supplies from more places. Ontario Hydro will have no reason to withhold transmission capability that is available.

Energy Michigan also argued that Michigan utilities have too much "discretion" in the amount of ATC posted on their OASIS systems, and that this is another reason that the Commission should defer making the finding that the Joint Report satisfies Section 10v. As Mr. Sparks testified, however, transmission providers must follow established guidelines in making the necessary calculations of transmission capacity:

> "Currently, each Transmission Provider posts, on a monthly basis, on the Open Access Same Time Information System (OASIS) nodes, Total Transfer Capability (TTC), Transmission Reliability Margin (TRM), Capacity Benefit Margin (CBM) and Available Transfer Capability (ATC) values for each transmission path between control areas for the next 13 months. Consumers Energy has already posted higher import capability values on the AEP path since some of the Consumers Energy import improvement projects listed in the Joint plan are already in-service. Thus, Mr. Dauphinais' suggestion to post anticipated ATC values that will become available to the market as import improvement projects are placed in-service is already being implemented. These anticipated ATC values will be monthly values that will be updated monthly as in-service dates for the import improvement projects are adjusted." 3 TR 143.

Mr. Sparks further explained that transmission owners in the ECAR region are obligated to calculate these values according to North American Electric Reliability Council (NERC) and ECAR standards, and that Consumers Energy was audited as recently as April 2001 on its calculation of these values. Consumers Energy passed the ECAR audit with no deficiencies. 3 TR 145. Thus, contrary to Energy Michigan's argument, the manner in which Michigan transmission companies calculate and post transmission capacity values is actively monitored by an independent source. Energy Michigan cited no evidence that suggested these calculations were being made in a manner disadvantageous to retail customers. Indeed, as noted previously, it makes little sense to complain about the discretion involved in making these calculations <u>when posted ATC is going unused by ROA participants</u>.

In summary, the Commission should rule that the transmission projects identified in the Joint Report fully satisfy Section 10v's requirement that available transmission capability be increased by 2000 megawatts ("MW") over that in place as of January 1, 2000. There is no evidence or justification which supports doing otherwise.

3. Once an individual transmission company has completed the projects identified in the Joint Report, it should be considered in compliance with Section 10v.

The Commission should also find that, once an individual utility (or its affiliate or successor) has completed the projects identified in the Joint Report (Exhibit A-5) for its system, that utility will be deemed to be in compliance with the provisions of Section 10v of PA 141. For essentially the same reasons as are addressed immediately above, Energy Michigan appears to be urging the Commission to defer making this finding. As discussed above, there is no reason for the Commission to postpone this finding. Indeed, the Commission should make it clear to each applicant that completion of the projects must occur before it can be considered in compliance with the act. Once the projects identified in the Joint Report for an individual company's system are completed, however, it should be deemed in full compliance with the act. It should not be held hostage to the completion of projects on different systems over which it has no control.

4. The identified projects and associated costs are reasonable and prudent, and a cost recovery procedure should be adopted.

The final issue concerns cost recovery for the costs of the projects identified in the Joint Report. As explained by Consumers Energy in its initial brief, the Commission should find that the projects identified in the Joint Report and the estimated costs of those projects are reasonable and prudent. The Commission should further authorize Consumers Energy to establish a regulatory asset for the investment costs, and that these costs, together with carrying charges, be recovered at the end of the rate freeze period imposed by 2000 PA 141.

Numerous parties proposed alternative cost recovery approaches. For example, ABATE argued that the Commission should defer finding that the expenditures for the identified transmission projects are reasonable and prudent until some future time. Such deferral would be grossly unfair and unreasonable. The projects and the associated costs were identified in the Joint Report as required by statute. All parties to this case had the opportunity to challenge both the projects and the estimated costs for those projects. They did not do so. No evidence was presented to suggest that any of the projects identified in the Joint Report were unnecessary or were in any way unreasonable or imprudent. No evidence was presented to suggest that the costs estimated for any of the projects were unreasonable or imprudent. There simply is no reason to defer making the finding that the identified projects and the associated costs are reasonable and prudent. Consumers Energy would agree that, if the projects ultimately cost more than the estimates set forth in the Joint Report, then the Commission should have another opportunity to review the reasons for the excess costs, and determine whether those additional costs were reasonable and prudent. The projects and associated costs as set forth in the Joint Report, however, should be found to be reasonable and prudent by the Commission in this case.

Several parties also argued that the Commission should defer further action with respect to approval of specific rates for cost recovery until it is clearer what portion of the costs are recoverable via FERC rates. For example, while Detroit Edison indicated its belief that the primary cost recovery vehicle for these costs is through FERC-approved transmission tariffs, it also proposed that the Commission establish a contingency recovery approach to address costs not recovered via FERC rates. Specifically, Detroit Edison proposed that each of the applicants in this case file separate reports with the Commission no later than December 31, 2003 detailing the actual costs of the identified projects, and the revenues collected via FERC rates. To the extent the FERC rates are insufficient to recover the full costs of these projects, the Commission would initiate a proceeding within 60 days to determine and establish the appropriate procedure and charges for recovery of all such costs. The scope of such a proceeding would be limited to a review of whether the identified projects were completed, the actual costs of those projects, the amount recoverable via FERC-approved rates, and the appropriate procedure to recover the remaining costs. The scope would not include issues determined in this U-12780/U-12781 proceeding. In the event the Commission does not grant Consumers Energy the cost recovery relief it described in its initial brief, the alternative approach described by Detroit Edison would be workable.

AEP requests special cost recovery treatment for the costs of the second Dumont transformer. While it indicates it believes it will collect revenues sufficient to pay for the remaining project costs through FERC-approved rates, it states that such will not be the case for the costs of the second Dumont transformer. AEP believes that it may not be able to recover the full costs of the transformer because of the manner in which the Alliance Regional Transmission Organization ("Alliance") rate structure will operate. AEP therefore requests that the Commission authorize recovery of such costs currently. More specifically, AEP requests that the Commission find that the customers benefiting from the second Dumont transformer are the retail customers of Consumers Energy and Detroit Edison, and that those customers therefore pay for the costs of that transformer. In response to the AEP request, Consumers Energy notes that the record is clear in this case that there are already approximately 916 MW of <u>confirmed</u> reservations made in reliance upon the installation of the Dumont transformer. Thus, there is clearly sufficient demand for the increased transmission capability that will be provided by that transformer to allow for appropriate recovery of the associated costs. See 3 TR 228-229; Exhibits A-15, A-16. If AEP has agreed to an Alliance pricing structure that directs the associated revenues to some other party, that is not reason enough to require Michigan customers to pay a second time for that transmission capacity. In addition, Consumers Energy does not believe that AEP has presented sufficient justification to assign cost responsibility for the Dumont transformer to the customers of Consumers Energy and Detroit Edison. Under the AEP approach, cost recovery could be bogged down interminably in a battle over what specific customers "benefited" from a particular project. In any event, Consumers Energy believes that, if the Commission elects to adopt a cost recovery procedure such as that proposed by Detroit Edison, the issues concerning allocation of cost responsibility for the Dumont transformer can properly be deferred until the future proceeding.

5. Conclusion

For the reasons expressed above, and in its initial brief, Consumers Energy requests that the Commission find as follows:

1. Find that the Joint Report (Exhibit A-5) is in compliance with the provisions of Section 10v;

2. Find that, once an individual utility (or its affiliate or successor) has completed the projects identified in the Joint Report (Exhibit A-5) for its system, that utility will be deemed to be in compliance with the provisions of Section 10v of PA 141;

3. Find that the projects identified in the Joint Report and the associated costs are reasonable and prudent,

4. Order that the cost recovery approach described by Mr. Ruhl is appropriate for Consumers Energy, and is adopted, or in the alternative, rule that the cost recovery procedure described above is adopted.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: July 13, 2001

By: ______________________

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STATE OF MICHIGAN

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| In the matter of the Application of Indiana Michigan Power Company, d/b/a American Electric Power, for certain approvals in Connection with 2000 PA 141, Section 10v. ) | Case No. U-12780 |
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PROOF OF SERVICE

STATE OF MICHIGAN )
) SS
COUNTY OF JACKSON )

Sammie B. Dalton, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that she served an electronic copy of the "**Reply Brief of Consumers Energy Company**" upon the persons listed in the attached Service List at the e-mail addresses listed therein. She further states that a copy was also served on the same parties, at the mailing addresses listed therein, by depositing the same on July 13, 2001, in the United States mail in the City of Jackson, Michigan with first-class postage thereon fully paid.

Sammie B Dalton

Subscribed and sworn to before me this 13th day of July, 2001.

Kelly Fisher

Kelly Fisher
Notary Public, Jackson County, Michigan
My Commission Expires: 01/18/02

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# MPSC Case Nos: U-12780/U-12781

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