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December 20, 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 **"Petition for Rehearing and Reconsideration of Consumer 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

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

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of INDIANA MICHIGAN POWER COMPANY, d/b/a AMERICAN ELECTRIC POWER, for Certain approvals in connection with Section 10v of 2000 PA 141.	))))))	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

PETITION FOR REHEARING AND RECONSIDERATION OF CONSUMERS ENERGY COMPANY

Consumers Energy Company ("Consumers Energy") petitions the Commission for rehearing and reconsideration of the November 20, 2001 Opinion and Order issued in this case. The failure of the Commission to rule upon the fundamental issue of whether the Joint Plan satisfies the requirements of MCL 460.10v; MSA 22.13(10v) ("Section 10v") is clearly erroneous, a violation of law, and will potentially have the unintended consequence of harming the retail open access program in the State of Michigan.

In this proceeding, Consumers Energy requested the Commission to make four rulings:

(1) Find that the Joint Report (Exhibit A-5) is in compliance with the provisions of Section 10v of 2000 PA 141;

(2) Find that, once an individual utility (or its affiliate or successor) has completed the projects identified in the Joint Report 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; and

(4) Order that the cost recovery approach described in Consumers Energy's testimony in this case is appropriate.

The Commission rejected the fourth requested ruling. The Commission effectively declined to rule at all on the first three of these requested findings, stating as follows:

> "The Commission agrees with the Staff that I&M's stipulation to the Joint Report removes the basis for conducting a hearing on the transmission capacity expansion plan. As to the concerns raised by ABATE and Energy Michigan, the Commission concludes that the issues would be better resolved when there is less uncertainty about when the projects comprising the Joint Report will be completed and whether the additional transmission capacity will be used to facilitate retail open access in Michigan. The issues could be raised in the context of a complaint alleging noncompliance with Section 10v or an application by Consumers or Detroit Edison to increase rates. Pursuant to MCL 460.10(d)(2), completion of the increase in transmission capacity required by Section 10v is a condition to any rate increase for those two companies from December 31, 2003 through December 31, 2013 (as is compliance with the market test in MCL 460.10f)." November 20, 2001 Order, pp. 5-6.

Consumers Energy contends that it was legally erroneous for the Commission to fail to directly address and rule upon the first three requested rulings.

Section 10v provides as follows:

> "Sec. 10v. (1) Electric utilities serving more than 100,000 retail customers in this state shall file, by January 1, 2001, a joint plan with the commission detailing measures to permanently expand, within 2 years of the effective date of this section, the available

transmission capability by at least 2000 megawatts over the available transmission capability in place as of January 1, 2000.

"(2) The joint plan shall detail all actions including additional facilities required, the proposed schedule for accomplishing the actions, the cost of the actions, and the proposed ratemaking treatment for the costs. The joint plan shall also identify all actions and facilities that are required of other transmission owners, including out-of-state entities, to accommodate the actions described in the joint plan.

"(3) The commission may order modifications to the joint plan to make it consistent with this act. If the electric utilities are unable to agree upon a joint plan to meet the requirements of this act, the commission shall conduct a hearing to establish a joint plan. The commission shall authorize recovery from benefiting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet the requirements of this section that are not recovered through FERC transmission rates.

"(4) If an electric utility or an affiliate that is the owner of the transmission assets is denied cost recovery of the reasonable and prudent costs expended to implement the joint plan, then the electric utility or affiliate shall have no further obligation to implement the joint plan. If an electric utility or its affiliate is subsequently granted cost recovery, then the obligation to implement the original joint plan is required. If cost recovery of the reasonable and prudent costs of implementing the joint plan is denied, an electric utility or its affiliate shall develop a new joint plan as provided under this section."

The obvious intent of this section of PA 141 is to determine what actions must be taken to expand, <u>by June 5, 2002</u>, "the available transmission capability by at least 2000 megawatts over the available transmission capability in place as of January 1, 2000." Obviously, for such a determination to be meaningful, it must be made sufficiently in advance of June 5, 2002 so that the actions necessary to accomplish the expansion can be taken. Subsection (3) of Section 10v states that the Commission may order modifications to the plan "to make it consistent with this act," i.e., to ensure that the plan includes all of the projects necessary to actually accomplish the 2000 MW expansion. The act does not allow the Commission to simply place the Joint Report in a filing cabinet, and make no determination of whether it satisfies Section 10v's requirements.

Even if the act did allow such inaction, it would be a disservice to the State and an abuse of discretion for the Commission to act in such a manner. The purpose of Section 10v is to increase transmission import capability into Michigan by 2000 MW by June 5, 2002. Most transmission projects of any consequence are expensive and take a considerable period of time to complete. If the Commission believes that additional projects are necessary to meet the statutory requirements, it has a legal duty to say so now so that the necessary actions can be taken. To delay a finding until 2004 in the context of a complaint case or rate proceeding that the utilities failed to comply with the act is not only unfair to the utilities, but it obviously makes it impossible to correct any alleged deficiencies by the statutory deadline of June 5, 2002, and thereby achieve the stated purpose of Section 10v—the expansion of transmission import capability to support the Michigan ROA program.[1]

Moreover, the record could not be more clear that the Joint Plan does meet the 2000 MW expansion requirement. All of the testimony that addressed the adequacy of the Joint Plan agreed that the requirements of Section 10v were met. See 3 TR 131-140; 3 TR 105-128; 3 TR 178-195. There is no evidence that would support a contrary conclusion.

The independent consultant that the Commission directed be hired to evaluate the plans submitted in this case also agreed that the Joint Report satisfied Section 10v. Mr. Ricardo Austria is the Director of Consulting Services for Power Technologies, Inc, the independent consultant selected by the Staff in this case. See 3 TR 178-195. He stated that the methodology used to determine the projects necessary to accomplish the 2000 MW expansion "is consistent with that used for regional reliability assessments performed by the East Central Area Reliability (ECAR) council of the North American Reliability Council (NERC)", that this methodology "has been developed over many operating years starting from the late 1960's", and that "the methodology and its implementation are based on sound industry practice." 3 TR 184.

The Commission's independent consultant further indicated that all of the information that he requested and reviewed supported the conclusion that the Joint Report would produce the 2000 MW increase required by Section 10v. 3 TR 189. Indeed, he concluded that even the original AEP plan, which excluded the Dumont transformer project, would also be likely to comply with Section 10v, especially if certain other actions were taken. 3 TR 194. The addition of the Dumont project provides an even greater margin of assurance that the requirements of Section 10v are met.

Consumers Energy accepted the requirements imposed upon it by Section 10v. As indicated in testimony filed in this case, Consumers Energy committed approximately $37 million to the projects necessary to accomplish the necessary expansion on its system. See Exhibit A-5. As indicated on the attached Affidavit of Timothy J. Sparks, Consumers Energy has already completed 8 of the 10 projects identified in the Joint Plan, and will have spent about $27.5 million on these projects by the end of 2001. The remainder of the projects will be completed and the additional $9.5 million will be spent in the first half of 2002. Consumers Energy has, in good faith, done everything it reasonably could to ensure compliance with the statutory requirements. The Commission should also meet its responsibilities under the act, and make a determination now as to whether the Joint Plan satisfies Section 10v.

As the Commission is aware, Consumers Energy has, in an effort to comply with Section 10w of PA 141, MCL 460.10w; MSA 22.13(10w), negotiated the sale of its transmission

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[1] Such action removes the focus from where it belongs--ensuring that the 2000 MW expansion actually occurs.

system to an independent third party. The parties are currently seeking various regulatory approvals needed to finalize the transaction. See, e.g., FERC Docket No. EC02-23-000. To the extent the projects identified in the Joint Report are not completed at the time the transaction is closed, Consumers Energy has transferred to the purchaser the obligation to complete the projects. Indeed, the Commission approved this and other aspects of the transmission sale in an order issued June 5, 2001 in Case No. U-12726. After the transaction is finalized, however, Consumers Energy's ability to take further specific transmission system expansion actions will be extremely limited, if not non-existent. For this reason as well, it is extremely important for the Commission to make a determination regarding the adequacy of the Joint Report immediately, well in advance of June 5, 2002.

The Commission suggests at page 5 and page 7 of the November 20, 2001 Order that it need not make a final determination of the adequacy of the Joint Plan at this time because it cannot predict whether the expanded transmission capability "will be used to facilitate retail open access in Michigan." This is clearly not the standard imposed by PA 141. Section 10v requires the physical expansion of transmission capability by 2000 MW, but does not require that any particular amount of transmission capability be committed to the Michigan ROA program. Indeed, since the availability and allocation of transmission capacity is a matter subject to FERC jurisdiction, it would have been unlawful for PA 141 to attempt to dictate such matters.

In any event, the evidence of record in this case reveals that available transmission capacity on the Consumers Energy system 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.

In addition, the attached Affidavit of Timothy J. Sparks indicates that the situation has not changed since the close of the record in this case. He states that there is still transmission capacity available on Consumers Energy's system that is fully available for the use of ROA suppliers. In light of the continued availability of transmission capacity, there is no justification for the Commission to decline to rule on the adequacy of the Joint Plan on the grounds that the capacity may not be used to facilitate retail open access. <u>Transmission capacity has been and is available now for that purpose.</u>

In addition to finding that the Joint Plan complies with Section 10v and that individual utilities that accomplish the projects in the Joint Plan have satisfied their obligations under Section 10v, the Commission should correspondingly find that the projects and the associated costs are reasonable and prudent. Even if cost recovery via a state-approved charge is deferred pending a determination of the costs recoverable through FERC-approved rates, there is no reason to defer a finding regarding the reasonableness and prudence of the projects and associated costs. All parties had an opportunity to review and challenge the projects and their estimated costs. There is no evidence that casts any doubt upon the reasonableness and prudence of these projects and their costs.

In summary, the Commission erred by declining to rule on the adequacy of the *Joint Report*. *The Commission should make such a ruling, and should conclude that the Joint* Report does comply with Section 10v, and should further conclude that, once an individual utility (or its affiliate or successor) has completed the projects identified in the Joint Report for its system, that utility will be deemed to be in compliance with the provisions of Section 10v of PA 141.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: December 20, 2001

By: ______________________

Jon R. Robinson, Esq.
Attorney for Consumers Energy Company
212 W. Michigan Avenue
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of INDIANA MICHIGAN POWER COMPANY, d/b/a AMERICAN ELECTRIC POWER, for Certain approvals in connection with Section 10v of 2000 PA 141.	))))))	Case No. U-12780
In the matter of the application of INTERNTIONAL TRANSMISSION COMPANY, CONSUMERS ENERGY COMPANY, and GREAT LAKES ENERGY COOPERATIVE.	))))))	Case No. U-12781

AFFIDAVIT OF TIMOTHY J. SPARKS

Timothy J. Sparks, being first duly sworn, deposes and says as follows:

1. I am employed by Consumers Energy Company ("Consumers Energy") as Director of System Planning in the Electric System Operations Department. My current responsibilities include planning for transmission system facilities and transmission system expansion, assuring that adequate system voltage is maintained and that electrical facility thermal ratings are not exceeded, and the planning of interconnection facilities with other utilities and generators. I was a witness in this proceeding, and presented both direct and rebuttal testimony. See 3 TR 131-150.

2. I am familiar with the Joint Report marked as Exhibit A-5 in this proceeding, and am familiar with the status of the projects identified in that report as being required for Consumers Energy's system to be in compliance with the requirements of Section 10v of 2000 PA 141. I am also familiar with the status of transmission service requests and reservations as well as Available Transfer Capability ("ATC") calculations on Consumers Energy's system.

3. As of the date of this Affidavit, Consumers Energy has completed 8 of the 10 Consumers Energy system projects identified in the Joint Report, and will have spent approximately $27.5 million on these projects by the end of December 2001. The remainder of the projects are scheduled for completion in the first half of 2002. An additional $9.5 million is expected to be spent on these projects in 2002.

4. In my testimony previously offered in this case, I stated that Consumers Energy has been posting positive ATC values for importing power into Michigan on transmission paths within the Consumers Energy system since April 2000, and that, as of June 2001, only one alternative electric supplier licensed in Michigan had purchased transmission capacity on the Michigan Electric Transmission System on a long term basis. See 3 TR 144. Since June 2001, Consumers Energy has continued to post positive ATC values for importing power into Michigan on Michigan Electric Transmission Company external Michigan transmission paths. See attached table showing the available ATC that has been posted by Consumers Energy over this period. No alternative electric suppliers have purchased any of this posted transmission capacity during the June 2001-December 2001 period for more than one month in advance.

5. If called to testify in this matter, I would testify as set forth above.

Timothy J. Sparks

Timothy J. Sparks

Sworn to before me and subscribed in my presence this 19th day of December, 2001.

Betty J. Groulx

Notary public, Jackson County, Michigan
My commission expires: January 8, 2002

BETTY J. GROULX
Notary Public, Jackson County, MI
My Commission Expires Jan. 8, 2002

POSTED MONTHLY ATC CALCULATIONS
April 2000 to December 2001

PATH	Apr-00	May-00	Jun-00	Jul-00	Aug-00	Sep-00	Oct-00	Nov-00	Dec-00	Jan-01	Feb-01	Mar-01	Apr-01	May-01	Jun-01	Jul-01	Aug-01	Sep-01	Oct-01	Nov-01	Dec-01
AEP-MECS																					
Firm ATC	4390	2790	1520	1585	1754	1702	3970	3770	3770	3365	3725	2845	3805	2729	3279	3955	4033	3133	4430	4580	5220
NIP-MECS																					
Firm ATC	60	30	30	30	30	30	70	70	40	70	119	119	214	172	213	213	213	213	244	244	244
WEC-MECS																					
Firm ATC	X	X	43	43	43	50	50	50	50	180	180	180	180	180	180	180	180	180	180	180	180

Prepared by Denis Leitch 12/20/01
at the supervision of Timothy Sparks

Consumers Energy
t1217011.xls

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of INDIANA MICHIGAN POWER COMPANY, d/b/a AMERICAN ELECTRIC POWER, for Certain approvals in connection with Section 10v of 2000 PA 141.	)	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

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Kelly A. Fisher, 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 **"Petition for Rehearing and Reconsideration 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 December 20, 2001, in the United States mail in the City of Jackson, Michigan with first-class postage thereon fully paid.

Kelly A. Fisher

Subscribed and sworn to before me this 20th day of December, 2001.

Holly J. Allen

Holly J. Allen
Notary Public, Jackson County, Michigan
My Commission Expires: 05/01/06

ps1201-1-83b

MPSC Case Nos: U-12780/U-12781

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