STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

WILLIAM J. RICHARDS
Deputy Attorney General

P.O. BOX 30218
LANSING, MICHIGAN 48909

JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

February 20, 2002

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Wideman:

Re: MPSC Case No. U-12891

I am enclosing for filing an original and 4 copies of the Attorney General's Replies to Exceptions. I am also enclosing a proof of service. In addition, I am submitting a copy of this notice in PDF electronic format.

Sincerely,

Donald E. Erickson

Donald E. Erickson
Assistant Attorney General

c All Parties
sld/cases/U-12891

PROOF OF SERVICE - U-12891

The undersigned certifies that a copy of the Attorney General's Replies to Exceptions was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, or by State Interdepartmental mail as indicated, on the 20th day of February 2002

Janet A. Schafer

Janet A. Schafer

Administrative Law Judge:
Mr. James N. Rigas (P23155)
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
P. O. Box 30221
Lansing, MI 48909 **[ID Mail]**

MPSC Staff:
Ms. Patricia S. Barone P29560
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911 **[I.D. Mail]**

Consumers Energy Company:
Mr. Jon R. Robinson (P27953)
Mr. H. Richard Chambers (P34139)
Consumers Energy Company
212 West Michigan Avenue
Jackson, MI 49201

ABATE:
Mr. Robert A. W. Strong (P27724)
Clark Hill, P.L.C.
255 S. Old Woodward Ave., Third Floor
Birmingham, MI 48009

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of CONSUMERS ENERGY COMPANY to recover implementation costs for the period ended December 31, 2000 /

MPSC No. U-12891

Attorney General's Replies to Exceptions

JENNIFER M. GRANHOLM
Attorney General

Donald E. Erickson
Assistant Attorney General

Special Litigation Division
6520 Mercantile Way, Suite 2
P. O. Box 30736
Lansing, MI 48909

February 20, 2002

Table of Contents

Page

Introduction

On January 22, 2002, Administrative Law Judge (ALJ) James N. Rigas issued and served a Proposal for Decision (PFD) in this case. The PFD summarizes the proceedings and evidence (pp 1-2), discusses the positions of the parties (pp 2-9), and presents the ALJ's discussion and findings (pp 9-10). Page 9 of the PFD notes that Consumers Energy Company (CECo or the Company) is seeking approval for recovery of $25.149 million of implementation costs in this case and that the Staff's witness has proposed disallowances totaling $5.562 million. Pages 9-10 of the PFD find that the Staff's proposed disallowances are appropriate (1) because the Michigan Public Service Commission (MPSC or Commission) has previously ruled that costs must be incremental as well as reasonably and prudently incurred to be recoverable and (2) because the Staff has shown that the $5.562 million of implementation costs were not in addition to O & M costs being recovered through current base rates.

The ALJ finds on page 10 of the PFD that CECo has not demonstrated why the Company's expenditures were necessary to facilitate a transition to competitive market or how its expenditures will facilitate such a transition. Therefore, since the Commission has previously made recovery of implementation costs conditional upon such showings in the future, the ALJ finds that conditional deferral and recovery of 2000 implementation costs in this case is appropriate.

The Notice of Proposal for Decision set February 5, 2002, as the deadline for filing exceptions to the PFD and set February 15, 2002, as the deadline for filing replies to exceptions. On February 5, 2002, CECo filed written exceptions to the PFD. Subsequently, at the request of Attorney General Jennifer M. Granholm (Attorney General) and with consent of the other parties, the ALJ extended the deadline for filing replies to exceptions to February 20, 2002.

In its written exceptions, CECo presents three general issues: (1) whether or not the ALJ erred in finding that the disallowances proposed by the Staff are appropriate, (2) whether or not the ALJ erred in finding that conditional deferral and recovery of 2000 implementation costs in this case is appropriate, and (3) whether or not the ALJ erred in failing to recommend adoption of the recovery mechanism proposed by CECo.

History and Background

On March 30, 2001, CECo filed an application in this case. The application requests the MPSC to authorize recovery of $25.149 million in electric restructuring implementation costs incurred and booked during 2000. These replies will respond to the arguments presented in CECo's written exceptions, but the Attorney General believes that she should first provide a detailed discussion of the history from which this case arises.

The captioned case has its origins in electric industry restructuring cases previously decided by the Commission; therefore, portions of those decisions relating to implementation cost recovery and true-up mechanisms should be discussed and considered as a foundation for deciding the issues in the captioned case.

Development of principles regarding CECo's recovery of implementation costs has evolved through MPSC decisions and legislation. Several principles relevant to the issues in this case can be identified:

> First, implementation costs are costs necessary to facilitate the transition to competitive markets that a utility would not incur absent a direct access program. With regard to such costs, pages 12-13 of the Commission's June 5, 1997, Opinion and Order decided that it would be inappropriate to disallow recovery of prudently incurred costs and that it would be inappropriate to require customers who do not wish to participate in direct access to bear these costs.

Second, page 11 of the Commission's October 29, 1997, Opinion and Order in Case No. U-11454 decided that implementation costs should be reviewed in annual true-up proceedings. [The present case is CECo's third true-up proceeding.]

Third, page 18 of the Commission's January 14, 1998, "Rehearing on Restructuring" in U-11290 *et al.* decided that implementation costs should be reviewed for prudence in annual true-up proceedings.

Fourth, page 6 of the Commission's February 11, 1998, Order in U-11290 *et al.* decided that the previous discussion of the true-up process was not intended to restrict or eliminate any issues, such as mitigation, that the Commission previously found to be relevant.

Fifth, page 28 of the March 8, 1999, Opinion and Order in U-11290 *et al.* decided: (1) that there are significant policy decisions that need to be addressed in the first true-up proceedings, (2) that CECo and DECo should file true-up applications by March 31, 1999, and (3) that the Commission should grant CECo and DECo authorization for deferred accounting of implementation costs and associated tax-timing differences.

Sixth, MCL 460.10a(5) ratifies the orders described above.

Seventh, MCL 460.10a(1) provides:

> No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. <u>The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission</u>. (emphasis added)

Eighth, Case Nos. U-11955 and U-11956 were the first true-up proceedings filed by CECo and DECo. On October 24, 2000, the MPSC issued its Opinion and Order in Case Nos. U-11955 and U-11956. On pages 4-5 of that order, the Commission stated:

> Prior to discussing the implementation costs actually incurred during and before 1998, <u>the Commission would emphasize that simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery</u>**.** Expenditures associated with the implementation of the retail open access programs must produce results. Procedures, policies, methods, or electronic data interfaces that prove to be ineffective, inefficient, or unworkable may not entitle the company to recover the costs of those systems.

> Because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Consumers' and Detroit Edison's implementation programs at this time. The Commission notes, however, that it expects Consumers and Detroit Edison to file information in their 2000 and 2001 true-up cases from which the Commission can determine the effectiveness of the implementation costs that the companies seek to recover.
>
> <u>For purposes of the present case, the Commission has reviewed the expenditures on the record and has granted deferred recovery as appropriate. However, it would caution the parties that these findings are conditional. If subsequent events reveal that costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the progress to retail open access, the Commission reserves the right to undertake another review of those costs and may foreclose their recovery.</u> (emphasis added)

Subject to these conditions, the MPSC approved CECo's deferred recovery of $15.4 million in U-11955.

In MPSC Case No. U-12358, CECo filed an application requesting the MPSC to approve recovery of $30.2 million in 1999 implementation costs. Subject to conditions set forth in previous orders in U-11955/U-11956 and in U-12478, the MPSC issued an order in U-12358, which authorized recovery of $25.2 million for 1999 implementation costs. Pages 5-8 of that order disallowed reported expenses found to be in addition to O & M costs CECo was already recovering in base rates. Pages 9-10 of that order authorized conditional recovery of the remaining sum.

Replies to CECo

A. Staff Disallowances

Pages 20-38 of CECo's written exceptions argue that CECo reasonably and prudently incurred the following implementation costs:

Customer Education Programs	$ 336,000
Customer and Retailer Billing Systems	13,218,000
Metering Information	435,000
Energy Scheduling	216,000
Employee Impact Costs	349,000
Independent Transmission System	832,000
Merchant and Transmission Systems	8,979,000
Carrying Costs	784,000
Total	$25,149,000

CECo's exceptions argue that the disallowances totaling $5.562 million proposed by Staff witness William Kusiak are not justified for a variety of reasons.

1. Rate Freeze and Retroactivity

First, pages 20-21 of CECo's exceptions argue that the disallowances adopted by the PFD result in an unlawful, retroactive reduction in base rates during the statutory freeze mandated by 2000 PA 141. CECo's argument is preposterous. MCL 46010d(1) says that current rates shall remain in effect until December 31, 2003. The disallowances adopted by the PFD will not result in any reduction or increase in CECo's base rates, so those disallowances do not violate the statutory rate freeze.

CECo argues that the Staff's disallowances have the effect of diverting base rate dollars to pay for implementation costs and, in turn, this retroactively reduces base rates. Again, the disallowance does not reduce rates. Implementation costs are simply a type of O & M expense. Base rates were designed and approved to allow CECo to recover a certain level of O & M expense. Implementation costs should have been booked and classified as O & M expenses and then deferred under prior MPSC orders to the extent CECo concluded that the costs would not have been incurred absent the MPSC-approved direct access program. But, simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. As the MPSC previously ruled in U-11955/U-11956, U-12358, and U-12359, implementation costs are non-recurring costs that the utilities incur in addition to the operational costs that they already recover in their base rates. Disallowing recovery of implementation costs in this case does not retroactively change CECo's rates. The converse is true. CECo's recovery request in this case seeks retroactive recovery of deferred 2000 implementation costs via future rates. Granting CECo's request may not constitute unlawful retroactive ratemaking because the MPSC previously authorized CECo to defer those costs and because amortization and recovery of the costs does not constitute retroactive ratemaking when costs are capitalized (deferred). *See, ABATE v PSC*, 208 Mich App 248, 261; 527 NW2d 533 (1994). On the other hand, a disallowance of such costs is also not unlawful retroactive ratemaking.

2. Does the $5.562 million in cost disallowance proposed by the Staff represent incremental costs that are in addition to O & M costs CECo is already recovering in its base rates?

Pages 9-10 of the PFD conclude that the Staff has shown that $5.562 million of CECo's implementation costs were not in addition to O & M costs being recovered through current base rates, and therefore, that Staff's disallowances are appropriate Page 21 of CECo's exceptions acknowledges that the Commission has already ruled in U-12358 that non-incremental labor costs should be disallowed, but pages 21-22 seem to argue that the Company's expenses are fully recoverable because the Company trusted and relied upon Commission orders. CECo's exceptions cite no legal authorities in support of this argument. Furthermore, the orders in

U-11290 *et al.* and in U-11955/U-11956 and U-12358 create no basis for CECo's claim.

The June 5, 1997 Opinion and Order in U-11290, which is discussed above, concluded that it would be inappropriate to disallow recovery of prudently incurred costs, but the order did not conclude that CECo and DECo should be allowed to recover such costs via base rates and via a separate charge. The Commission's January 14, 1998, "Rehearing on Restructuring" in U-11290 *et al.* decided that implementation costs should be reviewed for prudence in annual true-up cases like this one, but that order did not conclude that prudent costs can be recovered twice. The February 11, 1998, Order in U-11290 *et al.* indicated that mitigation should be considered in the true-up process. The March 8, 1999, Opinion and Order in U-11290 *et al.* concluded that there would be significant policy decisions that need to be addressed in the first true-up proceedings. MCL 460.10a(5) ratified those orders. The decisions in U-11955/U-11956, page 3, and in U-12358, page 6, to the effect that a utility can recover implementation costs only when they are in addition to O & M costs already being recovered in base rate are consistent with the prior rulings as well as with just and reasonable ratemaking principles. Even MCL 460.10a(1) says that there shall be full recovery of net stranded costs and implementation costs <u>as determined by the commission</u>. In other words, the prior MPSC decisions are within the scope of the Commission's discretion and legally justify the PFD's recommendation to disallow $5.562 million of CECo's implementation costs.

Pages 21-25 of CECo's exceptions present negative arguments about what the Staff's testimony did not conclude as reasons for rejecting the PFD's conclusion. It may be true that Mr. Kusiak did not conclude that the $5.562 million was imprudently expended. It may be true that those labor costs were directly related to electric restructuring, and it may be true that those expenditures were prudently incurred. But those arguments on pages 21 through 25 of CECo's exceptions are irrelevant and beside the point. As page 25 of CECo's exceptions finally admits, the sole issue with regard to recovery of labor costs is whether those costs were incremental. There is an important difference between incremental costs as CECo uses the term and costs in addition to those already being recovered.

The burden of proof rests upon the party averring the affirmative of an issue. *White v Campbell* 25 Mich 462 (1872), and *Rasch v City of East Jordan*, 141 Mich App 336 (1985). Thus, CECo has the burden of proving that its reported costs are in addition to those already being recovered as well as that those costs are related to electric restructuring and were reasonably and prudently incurred. *See, BCBSM v Governor,* 422 Mich 1, 88-89; 367 NW2d 1 (1985), and *In re Detroit Edison Co,* MPSC Case No. U-8020-R, Opinion & Order dated July 9, 1987, pp 16-17.

Pages 25-37 of CECo's exceptions argue that the fact that the year 2000 O & M expense was lower than the amount included in the last rate case does not prove that the reported expenses were not incremental. CECo seems to acknowledge that the reported costs would be properly classified as O & M costs, but CECo's argument ignores the underlying principle. If current base rates rest upon an O & M allowance that exceeds actual O & M expense, then the current rates are designed to recover more than the actual expense and the reported expenses are not in addition to what is currently being recovered in base rates as the prior orders require.

Page 26-28 of CECo's exceptions argue that its labor costs were incremental because number of employees rose from 1998 to 2000. This misses the point again. As the Commission noted on page 2 of the U-12358 order, CECo current base rates were established in U-10685, and that case was filed in 1994 and decided in 1996. Thus, CECo's analysis of 1998 through 2000 does not satisfy the Company's burden of proof.

Pages 28-37 in CECo's exceptions argue that it has presented evidence in this case that is different and better than that presented in U-11955/U-11956 and U-12358. It might be true that but for electric industry restructuring CECo's actual expenses may have been lower, but the relevant question concerns whether or not those costs were in addition to the amounts of O & M costs CECo was already being allowed to recover, not whether or not those costs were in addition to other O & M costs actually booked in 2000. Mr. Gilzow's testimony is very careful. He claims that the disallowed costs were above those that would have typically been incurred without restructuring. He did not demonstrate the extent to which those costs were in addition to the allowance for O & M costs in current base rates. The way Mr. Gilzow used the term "incremental" differs from the way prior MPSC orders have defined that term. Again, this may qualify those costs as implementation costs, but the evidence does not prove that the disallowed costs were in addition to costs already being recovered. The proper comparison is to what current rates have allowed CECo to recover, not what costs CECo might have avoided.

Pages 37-38 of CECo's exceptions argue that the $341,000 disallowance in retraining costs proposed by Mr. Kusiak are recoverable under MCL 460.10p(2), which says:

> (2) Stranded costs shall include audited and verified employee-related restructuring costs that are incurred as a result of the amendatory act that added this section or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have been approved and found to be prudently incurred by the commission.

That statute does not describe recovery; it defines what types of costs are included in the term "stranded costs." The MPSC's prior orders provide the basis for determining what is recoverable as an implementation costs. Page 7 in the U-12358 Opinion and Order makes another important point. Section 10p(2) does not guarantee the recovery of all of a utility's employee retraining and relocation costs. Nothing in Section 10p(2) requires the MPSC to ignore its prior orders requiring evidence that recoverable costs must be in addition to costs already being recovered. Thus, CECo's argument and evidence does not provide a sufficient legal basis for rejecting disallowance of the $341,000.

B. Conditional Recovery

On Page 10 of the PFD, the ALJ concludes that CECo has not demonstrated why its expenditures were necessary to facilitate a transition to competitive markets. Therefore, the ALJ concludes that conditional deferral and recovery of 2000 implementation costs is appropriate under the MPSC's prior orders. Pages 9-10 of the PFD implicitly apply this ruling to the $19.587 million difference between CECo's $25.149 million and the Staff's $5.562 million disallowance. Pages 2-19 in CECo's exceptions argue that conditional recovery of these implementation costs is unlawful.

1. Prior Orders

Page 3 in CECo's exceptions argues that the Commission's June 5, 1997, Opinion and Order provide for full recovery of prudently incurred implementation costs. This argument is partially misleading. The June 5 order did define implementation costs as costs necessary to facilitate the transition to competitive markets that a utility would not incur absent a direct access program. With regard to such costs, pages 12-13 of the Commission's June 5, 1997, Opinion and Order decided that it would be inappropriate to disallow recovery of prudently incurred costs and that it would be inappropriate to require customers who do not wish to participate in direct access to bear these costs. That order does not suggest that if costs are simply incurred for the purpose of implementing Michigan's retail open access program is a sufficient justification for their recovery. That order concludes such costs should not be disallowed without reason. Moving forward from June 5, 1997, the Commission made it clear that implementation costs would be reviewed in true-up proceedings, that prudently incurred costs would not be disallowed, that significant policy decisions remained to be addressed in the first true-up proceedings, and then, in U-11955/U-11956, as well as in U-12358, the Commission ruled that stating a purpose alone is not sufficient. In other words, the Staff's disallowance is not a matter of hindsight. It reflects prior decisions and recognizes that it would not be just and reasonable to allow CECo to move implementation costs into a separate recovery mechanism unless need and a relationship is shown.

In this case as well as in previous implementation cost cases (U-11955 and U-12358), CECo has not described why its expenditures were necessary to facilitate a transition to competitive markets or how its expenditures will facilitate such a transition. These are not hindsight questions. They relate to the time when money was spent. CECo has failed to show why, at the time money was spent, the Company expected the transition to competition to require the expense and to show how the expense was expected to facilitate competition. These questions are inherent in the original definition of implementation costs as costs that would not have been incurred absent direct or open access. The Commission has previously approved conditional, deferral and recovery of these costs because these aspects of reasonableness and prudence remain open. The conditions are not based upon hindsight; they are related to the incompleteness of the evidence submitted thus far. CECo could have explained why it believed spending the money was necessary and how the expenses were expected to facilitate a transition.

2. <u>2000 PA 141</u>

Pages 3-4 of CECo's exceptions argue that MCL 460.10a(1) provides for full recovery of implementation costs. The statute actually leaves the final determination to the Commission, saying, "The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission." .Previously the Commission and in this case the PFD have concluded that recovery must be conditional, not that costs must be disallowed. The MPSC's prior decisions fall within the MPSC's discretionary power to determine what full recovery means.

3. Prudent Investment Test

In pages 4-5 of its exceptions, CECo claims that under the prudent investment test a utility's decisions must be evaluated based on what was known at the time decisions were made and that the results of a utility's decisions are irrelevant. This prudent investment test has been used, but is not binding upon the MPSC. The Commission must balance the interests of investors and customers and may make pragmatic adjustments. *ABATE v PSC*, 208 Mich App 248, 266-267; 527 NW2d 533 (1994). In this case, the issue does not concern whether CECo will recover a prudent investment. The issue concerns the incompleteness of CECo's showing concerning how reported costs were necessary to implement electric industry restructuring and how they were expected to facilitate restructuring. The mere fact the Mr. Gilzow presented conclusory testimony claiming that was so does not end the question, as the MPSC has already ruled. Mr. Gilzow did not explain why the costs were necessary, and the MPSC is not required to accept his testimony--even if it is not directly contradicted. *S C Gray, Inc v Ford Motor Co,* 92 Mich App 489, 804; 286 NW2d 134 (1979), and *In re The Detroit Edison Co,* MPSC Case No. U-8020-R, Opinion & Order dated July 9, 1987, pp 16-17. Conditional approval is within this discretionary power to weigh the evidence.

4. Prudence

Page 6 in CECo's exceptions argues that conditional approval is not appropriate because no witness challenged the prudence of CECo's expenditures. This argument fails to respond to the conclusion in the PFD and in the prior MPSC orders. As page 10 of the PFD has concluded, CECo has not demonstrated why its expenditures were necessary or how the expenditure will facilitate such a transition. Simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. Opinion and Order dated October 24, 2000, pp 4-5, MPSC Case Nos. U-11955/U-11956. Again, the MPSC is not required to accept conclusory testimony even if it is not contradicted. *S C Gray, Inc, supra.*

5. Justification for Unconditional Recovery

Pages 7-17 of CECo's exceptions argue that the Company's evidence justifies unconditional recovery because all costs have been effective and have produced results. This argument and the supporting testimony are very carefully worded. CECo contends that virtually every system, process, and procedure was utilized. This is not what the MPSC's prior orders require. CECo had the burden of proving that its expenditures were necessary and how they facilitated the transition. Saying that something was used is not the same as proving it was needed, and saying that something was used fails to describe how it facilitated the transition. Pages 7-17 of CECo's exceptions present a lengthy description of the expenditures, but that descriptions miss the points. Use does not equal proof that an expenditure facilitated the transition. The question becomes why the expenditures were necessary and how they facilitated the transition to competition.

6. **CECo's Reliance**

Pages 17-18 of CECo's exceptions argue that conditional recovery is not appropriate because the Company relied upon the Commission's prior orders. CECo does not cite any legal authorities in support of this argument; furthermore, the MPSC has not previously reviewed either projected or actual 2000 expenditure and approved them. Mr. Gilzow emotionally pleads that CECo should be able to trust MPSC orders, but he fails to identify statements that led CECo to conclude that the specific expenditure presented would be treated as recoverable without proof that they were necessary and how they were expected to facilitate the transition to competition.

7. **CECo's Constitutional Rights**

Pages 18-19 of CECo's exceptions argue that conditional recovery would violate CECo's constitutionally protected rights and that a regulator cannot arbitrarily switch ratemaking methodologies. The premise of this argument rests upon CECo's argument that the MPSC's prior orders and 2000 PA 141 give CECo a right to recover costs that cannot be denied. There are two responses to CECo's analysis.

First, as demonstrated on pages 2-4 of these replies, the MPSC and the PFD have not switched methodologies. In U-11290 *et al.*, the Commission ruled that implementation costs would be reviewed in annual true-up proceedings, and in Case Nos. U-11955/U-11956, the MPSC completed its development of the policies under which recovery would be approved. Second, conditional recovery does not constitute a denial of recovery; therefore, CECo has failed to demonstrate any confiscation of property as claimed by CECo.

C. Failure to Adopt CECo's Recovery Mechanism

Mr. Torrey proposed a 5-year surcharge taking effect at the expiration of the rate freeze/rate cap period established by 2000 PA 141. Pages 38-39 of CECo's exceptions argue that the ALJ erred by failing to recommend adoption of that proposal. CECo's exceptions admit that the Commission deferred consideration of any recovery mechanism in U-11955/U-11956 and U-12358. Nevertheless, CECo argues now is the time for approving the Company's proposal. CECo cites no legal authority requiring such action, and the rate freeze extends in some form through December 31, 2005. The rate caps could extend to 2013. In this light, there is insufficient legal ground requiring adoption of CECo's proposed surcharge. Also, the result could be affected by actions resulting from the decision in U-12639 and in securitization true-up cases under 2000 PA 142. Therefore, the Attorney General requests the Commission to reject CECo's exception.

Relief Requested

For the reasons stated above, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to issue a final order granting conditional approval for recovery of $19,587,000 of the $25,149,000 reported by Consumers Energy Company in this case.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

Donald E. Erickson

Donald E. Erickson
Assistant Attorney General

Special Litigation Division
6520 Mercantile Way, Suite 2
P. O. 30736
Lansing, MI 48909

(517) 373-1123

February 20, 2002