STATE OF MICHIGAN

DEPARTMENT OF COMMERCE

MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of Consumers Energy Company for approval of the unbundling of its commercial and industrial rate schedules. /

Case No. U-12970

Proceedings held and testimony taken in the above-entitled matter before Administrative Law Judge George Schankler, at the Michigan Public Service Commission, Lansing, Michigan, commencing on Friday, August 24, 2001.

SESSION OF THURSDAY, OCTOBER 4, 2001

VOLUME 2

APPEARANCES:

Consumers Energy Company
BY: JON R. ROBINSON, ESQ. (P27953)
212 West Michigan Avenue
Jackson, Michigan 49201-2277

Appearing on Behalf of Consumers Energy.

Department of Attorney General
BY: DONALD E. ERICKSON, ESQ. (P13212)
6545 Mercantile Way, Suite 15
Lansing, Michigan 48911

Appearing on Behalf of Attorney General Jennifer Granholm

Clark Hill, PLC
BY: MICHAEL P. CALABRESE, ESQ. (P60199)
2455 Woodlake Circle
Okemos, Michigan 48864-5941

Appearing on behalf of ABATE.

Assistant Attorney General
BY: LARRY G. WATTERWORTH, ESQ. (P28440)
6545 Mercantile Way, Suite 15
Lansing, Michigan 48911

Appearing on Behalf of the MPSC Staff.

I N D E X

Lansing, Michigan

Thursday, October 4, 2001

10:15 A.M.

(The hearing was resumed pursuant to the adjournment.)

JUDGE SCHANKLER: All right. Let's go on the record.

This is a motion hearing in the matter of the Application of Consumers Energy Company for approval of the unbundling of its commercial and industrial rate schedules, Case No. U-12970.

I am George Schankler. I am the presiding Administrative Law Judge.

Would counsel enter their appearances on today's record, please.

MR. ROBINSON: Jon Robinson appearing on behalf of Consumers Energy Company.

MR. CALABRESE: Michael P. Calabrese of the law firm of Clark Hill appearing on behalf of the Association of Businesses Advocating Tariff Equity.

MR. ERICKSON: Donald E. Erickson appearing on behalf of Attorney General Jennifer M. Granholm.

MR. WATTERWORTH: Good morning, your Honor. My name is Larry Watterworth, Assistant Attorney

General, appearing on behalf of the Michigan Public Service Commission Staff. Also present with me today is Jane Kelly, the case coordinator on this case. Thank you.

JUDGE SCHANKLER: I have read the written motion to compel discovery filed by ABATE, as well as the response filed by Consumers. So I don't need a lot of additional argument.

Mr. Calabrese, you may be brief.

MR. CALABRESE: Your Honor, with us today, Mr. Robinson's been kind enough to bring at my request the affiant who filed an affidavit supporting Consumers' response to our motion to compel, and we would like to cross-examine -- Ms. Coste is her name, C-o-s-t-e, briefly, I hope, if you could call her to the stand.

JUDGE SHANKLER: All right.

MR. ROBINSON: Your Honor, before we do that, I guess I can tell from your answer -- I mean, we'll put her up on the stand, we will spend some time asking her questions about why this stuff isn't available, but, you know, we gave alternative reasons for where this -- my motion was directed --

JUDGE SCHANKLER: I recognize that, but on the chance it might be appealed to the Commission, it probably would be a good idea to have all the rationales fully argued and have the witness examined.

MR. ROBINSON: All right.

JUDGE SCHANKLER: Because the Commission may not agree with me.

S U S A N E. C O S T E

was called as a witness herein and, having been duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

\- - -

CROSS-EXAMINATION

BY MR. CALABRESE:

Q Good morning, Ms. Coste. My name is Gus Calabrese. I represent ABATE, which filed a motion in response to which you have contributed an affidavit. Are you the same Susan E. Coste who filed an affidavit in support of Consumers Energy's response to ABATE's motion to compel?

A Yes, I am.

Q I would like, if I could, to ask you a few questions about your affidavit and the conclusion you reached therein. You stated in your affidavit, The most recent cost-of-service study performed by Consumers Energy was the 1996 retail electric cost-of-service study which was prepared in Case U-10685?

A That's correct.

Q Did you supervise or were you responsible for the production of that study?

A I was not.
Q Did you contribute to the production of that study at all?
A I did not.
Q Are you familiar with that study at all?
A Somewhat.
Q I would like to ask you a few questions if you know the answers, please.
A Sure.
Q The 1996 cost-of-service study that was submitted in that case, was that based on a, are you aware that that study was based on a projected 1996 cost year?
A Yes, I am.
Q And that's different from a historical booked cost year, correct?
A That's right.
Q To your knowledge, did that study contain assumptions regarding the handling of capacity of the Midland Cogeneration Venture, which had to be changed during the course of that proceeding?

MR. ROBINSON: I am going to object. I guess I thought we were here today arguing about whether the company should be required to prepare a brand-new cost-of-service study using updated year 2000 data. And the argument here is over whether we should be somehow required to prepare that study or alternatively, and it's not clear to me frankly from the motion, whether we should be required to produce the data that would be necessary in order to prepare that updated cost-of-service study.

That's what's at issue in this motion. Frankly, all these questions about the 1996 study that form the basis for our existing rates and that form the basis of the unbundling study that the company prepared and filed in this case, that's all pertinent and relevant to the merits of this case, ultimately, but it's not relevant at all, it seems to me, to the purpose of this motion hearing.

MR. CALABRESE: Your Honor, the relevance of the questions about the '96 study are to ascertain how reliable that study may be. I don't need to go much into this at all.

JUDGE SCHANKLER: It's outside the scope of the subject matter of her affidavit. So I will sustain the objection.

Q (By Mr. Calabrese, continuing) Ms. Coste, to do a booked cost-of-service study for year 2000, your starting point would be the books and records of the company; is that correct?

A Yes.

Q For example, you are familiar, are you not, with Consumers' FERC Form 1 and also with its annual report

filed with this Commission?
A Yes.
Q In those reports you would have provided to FERC and to this Commission a complete breakdown of the detailed financial data of the company for the year ending December 31, 2000, correct?
A Right.
Q If you were to go to those reports to get complete documentation of all Consumers' investments in plant associated with providing electric service broken down by function as to production, transmission, distribution, you could get that information there, correct?
A Yes, that's right.
Q You can get those functions broken down further, is that correct, by account, for example, plant in service, depreciation reserve, construction work in progress? All these would be accounts that would be reflected there, correct?
A Yes.
Q For expense items, is it correct also that the FERC Form 1 and the report to the MPSC provides considerable detail for 2000 expense items by account?
A Yes.
Q For example, you would have depreciation expense for this year broken down by function, correct?

A Yes.
Q You would also have taxes identified for that period in those reports, correct?
A Yes.
Q So in a sense you would have a complete balance sheet, complete income statement for the year 2000 in those reports, correct?
A Yes.
Q Is there also a schedule in the reports we have been discussing that shows electricity by, shows sales of electricity by rate schedules?
A Yes. I believe there is.
Q They would also show operating revenues, operating expenses for all the required categories, and the reason for that would be to provide a net utility income for whichever year, correct?
A That's the way I understand it.
Q There is a schedule there titled sales of electricity by rate schedules to show every rate schedule with the amount of energy sold, amount of revenue, the number of customers, the kilowatt-hour sales per customer, and revenue per kilowatt-hour sold; is that correct?
A Yes.
Q Ms. Coste, is a cost-of-service study sometimes called a cost allocation study by some people in your experience?

A Perhaps some people call it that, but we look at that as one component of it.

Q In this instance, when we talk about cost allocation in this case in the context of unbundling, is it correct that to do that you need to take total revenue of the company, expenses, investments of the company for a particular year, you would need to take those total quantities and then assign or allocate them to the major rate classes or a group of classes, but essentially what you are doing is an allocation of those totals; is that correct?

A Yes.

Q In this instance, what we are discussing at least hypothetically is a historical test year 2000. The total quantities that you would have to allocate for that year are already known, correct?

A The totals are.

Q The totals are known. And you also know and have reported the revenue for each class in the reporting, correct?

A You mean in the FERC Form 1?

Q In the FERC Form 1 or the MPSC.

A Yes.

Q Thank you. So it's then correct that what we are really discussing in terms of this unbundling case is ways to allocate revenues and expenses to those classes; is that correct?

A Yes.
Q To do that you would have to use certain allocators, correct?
A That's right.
Q And is it correct that the major allocators that you would use would be the number of customers by class, the energy consumed by those classes, which is in essence the megawatt-hours to each class, and the third would be the demands exerted on the system during certain hours of the year 2000 which we are discussing?
A There are many others, but those are main categories, yes.
Q Those would be the major allocators, correct?
A They are the main allocators.
Q Now, you know the number of customers by rate class, because you have reported it in the reports we have discussed, correct?
A We know that.
Q That's the first allocator, correct. And the second allocator, the energy consumed by class, you know that as well, correct?
A I am not sure how to answer this. Yes, for in total.
Q That's what I am asking.
A Yes.
Q Now, in the FERC Form 1, is it correct that you report electric energy output for the whole year as a total, and

also that you report monthly peaks in the output for each month?
A Right.
Q Is it also correct that show the company's energy losses and its disposition of energy?
A Yes.
Q For those periods? Thank you. And you show each of the 12 monthly peaks for the historic year we are discussing, year 2000, and the hour and the megawatts of that highest monthly coincident peak; is that correct?
A I'm not sure. I think so. I mean, it sounds right. I didn't review those before I came, so I don't know all the little pieces, but yes, I believe that's right.
Q Now, to derive the last major allocator we were talking about, which was the demands exerted on the system during certain hours, you would need to determine those 12 monthly peaks, for each of those 12 monthly peaks how much each rate class contributed to those peaks; is that correct?
A That's right.
Q That's the piece in a sense that we are missing?
A That's one piece.
Q Is the problem that in terms of the determination -- let me back up.
You have the problem determining the

contribution of classes to those peaks; is that correct?
A Yes.
Q And is the problem that some classes have demand meters and some don't?
A That's one situation. There are others.
Q Is it correct that you or some other department or person at Consumers uses load data to determine each monthly peak for those classes that are not demand metered?
A Yes.
Q And for demand metered classes, you either go to the billing information or to load data to determine what demand those classes were exerting on the system at the time of those 12 monthly peaks; is that correct?
A Yes.
Q Now, you still have the same kilowatt-hour usage data and the same billing data that you would have had in any prior year; is that correct?
A Yes.
Q But you are trying to tell us that it's impossible even though you have that data, that Consumers is incapable of stating what each class's load was at the time of those 12 monthly peaks?
A Well, we have information out there, but the programs that we used to have to access it in the form that we need it are no longer available to us. Yes, the information is

sitting there and the totals have been compiled, but to do a cost of service, you have to go in more detail with your allocations, and by that I mean, coincident peak is one piece, but you have to do it literally by circuit.

You are going to go back and get all the demand data and you are going to order those things by circuit and by account so that you can get the coincident value and then also the non-coincident value, and then also group them by class so that when you are done, everything lines up and matches sales and revenue information.

Q The way that you used to get those things, you have described is by way of the computer program called the WR4; is that correct?

A Yes.

Q In your affidavit, you say that that program has been eliminated, correct?

A That's right.

Q What do you mean when you say the programs been eliminated?

A They used to have that interface so that they could compile the data I just mentioned specifically for cost-of-service cost determinants, that you don't necessarily need when you do the bill for billing.

So, they eliminated that piece, and went

ahead and still implemented the billing system, and that was done in October of '99, so we no longer had a mechanism to help us get those determinants for costing purposes.
Q Well, I guess I am not clear on this then. I am not quite sure you have answered the question. Does the computer program simply no longer exist anywhere in the world?
A It does not exist. On the 24th of October of '99, it went away.
Q What does went away mean?
A That it was no longer functional. The retail access customers, when they hit, they had to be billed. The reason it went away, they had to be billed. Because part of the bill might have been on an old tariff and the other part on the new tariff, our billing system was not set up to allow for that.
So, WR4 went away, and we developed new mechanism to put in the special ledger so that we could do that. What we did was they got rid of the WR4, which also meant we got rid of our costing determinants.
Q Are you telling me that you know for a fact that the program WR4 is not stored anywhere on disks or on computer anywhere within the company?
A I am saying that I don't know for a fact if it's sitting somewhere. I just know that it's not functional after

October of '99.

Perhaps somebody could resurrect that for old information when you have a whole year's worth, like '98 maybe. But to do anything beyond that, it's not functional anymore.

JUDGE SCHANKLER: Are you saying it's not compatible with the current billing system?

A Yes. After October of '99.

Q (By Mr. Calabrese, continuing) Now, I think you said a few minutes ago that the piece, the missing piece of data that is not booked and readily available to use in cost allocation is each class' load at the time of the 12 monthly peaks. Correct?

MR. ROBINSON: I will object to that. It's mischaracterizing what the witness said. She said that's one of the things that wasn't available.

Q (By Mr. Calabrese, continuing) I would like to ask you about that thing.

Other than by using some sort of mathematical technique, you have never known the nonmetered classes on at the time of these peaks should be?

A I have never known the nonmetered classes what?

Q I think we said a moment ago that certain classes of customer don't have demand meters, correct?

A Yes.

Q And so, for those nonmetered classes, you have always needed to use some sort of mathematical technique to estimate their demand at the time of the peaks; is that correct?

A Yes.

Q So industrial customers, the billing demand that you used to send them a bill is not necessarily a demand that is coincident with your peak; is that correct?

A I don't know that for a fact, but it's possible.

Q So, in other words, you have always had an issue with estimating the contribution of various classes of customers to demand even before unbundling was an issue, correct?

A Right.

Q Has Consumers conducted load research studies and obtained what are called coincident factors by class to be able to utilize sampling and other mathematical techniques to determine loads for class for each monthly peak?

A They do load research studies, and it supports the non-demand interval data that's metered -- or that's nonmetered. So it supports it in some ways that they can do some allocation for information they don't have metered, but for the demand metered customers we use actual demand meter interval data.

Q So Consumers does load forecast the loads that it's required to serve five, 10, or 15 years in the future?
A I don't know how far they go out now, but yes, they do load forecast.
Q And load forecasts are derived by major class of service, correct?
A Yes.
Q You don't start with an energy forecast and use coincident forecast to determine a demand forecast, correct?
A I don't do the forecasting anymore, so I don't know if I am comfortable answering forecasting methodology, but maybe if you rephrase it, it will hit me different.
Q We can move on.
In essence then, load forecasts we talked about, the use that they are put to is that they determine a reserve margin and requirement to build or purchase capacity to serve load in future years, correct?
A Yes.
Q So, in essence what you are telling us in this case is that you can forecast by customer class and by type of service the loads that you are going to need to serve several years in the future, but you can't estimate for the year 2000 what it was by month even though you know the totals?
A That's not what I was saying.

Q Let me see what the difference is between what I have asked and what you are saying.
A Okay. Go ahead.
Q Are you saying in this proceeding that you cannot unbundle rates for the year 2000 even though you have the total data in terms of revenues and expenses for that year?
A Yes. That's what I am saying.
Q You can forecast what your needs are going to be in terms of serving these loads again total by customer class several years in the future; is that correct?
A No. Not until we do a new cost-of-service study.

MR. CALABRESE: Thank you. That's all I have, your Honor.

JUDGE SCHANKLER: Mr. Robinson, did you want to ask any follow-up?

MR. ROBINSON: Yes, I think I do, your Honor. Thank you.

\- - -

CROSS-EXAMINATION

BY MR. ROBINSON:
Q Ms. Coste, just to kind of focus on things here, can you give us a couple examples of the data that aren't available that you need in order to do an updated year 2000 cost-of-service study?
A Yes. Basically, the demand data that is more specific to

what we call costing determinants, which would include coincident demands, non-coincident demands, maximum demands, those things are really, you know, outside the realm of on and off peak that are used in billing. They are more detailed to help us specifically isolate how we allocate the costs for our allocators.

And they affect everything that's in the demand interval world because you have to tally those up, you know, like I said, by circuit, by account, by customer, then by customer class, and all that. You have to, if you want to really get the way the costs, cost causation if you will is happening, you really need to do on an hourly basis, so you have the actual, go back and get an hourly demand, and do that, line them up till you find the ones coincident with the system peak that you mentioned and so forth, and the non-coincident.

Those are critical because they affect many allocators and they're really like the biggest piece of a cost-of-service study that takes the most time, but it's a big driver. You want to get that right because you want to allocate those properly, and without a correct interpretation of that, it's -- you know, it's garbage. So we spend a lot of time doing that right.

That's -- I don't know if that's one thing you were asking me.

Q Can you realistically do a retail cost-of-service study for Consumers Energy if you don't have that data?

A No. I mean, you could use old allocations, but then they wouldn't match the new sales and revenue for that year, so you would end up with garbage, because you would have disjointed perspectives. I mean, you can always, you know, do something in an uncredible way, I guess.

MR. ROBINSON: Your Honor, that's all I have. Thank you.

MR. CALABRESE: Can I ask just one more follow-up?

JUDGE SCHANKLER: Yes.

- - -

RECROSS-EXAMINATION

BY MR. CALABRESE:

Q Ms. Coste, you said you could use old allocations and plug them in where the new data is not available; is that correct?

A Sure.

Q I think you said when I was asking you that the previous software that you used has been off line since late '99. Is that correct?

A Uh-huh.

Q So the old allocations that you would use would be from perhaps as late as 1999; would that be correct?

A Well, the last allocation process was really done for the '96 projected study. You would have to go back to the '96 study to get those allocations.

Q If you had the WR4 software available, and given that you have full year 1999 booked cost available, could you then do those allocations for 1999?

A You couldn't do it for '99 because of the fact that the system went away in October, but you could do it for '98.

MR. CALABRESE: Thank you.

JUDGE SCHANKLER: Anything else?

MR. ROBINSON: Just one more question, so that the record's clear.

- - -

RECROSS-EXAMINATION

BY MR. ROBINSON:

Q Do you know whether the WR4 program exists currently in the form to allow you to go back and use 1998 data?

A I'm not for sure on that. I am just saying my feeling and opinion would be that yes, you could go back to '98, because I know that it was '99 when they got rid of it. So it seems logical to me that you could use it against '98.

Q But you are only saying that assuming that the program is in fact in a usable form today?

A Yes, and I wouldn't assume that, because there's probably reasons why it went away, you know, due to whatever. I mean, there could be other reasons.

Q As of right now, you just don't know whether that thing is in some kind of usable form?

A No. I was told it was gone. So my opinion is it's gone.

MR. ROBINSON: All right.

MR. CALABRESE: Your Honor, the last statement, I move to have it struck. It is obviously not from the witness -- it's hearsay, not from the witness' personal knowledge.

JUDGE SCHANKLER: I will sustain the objection.

All right. Thank you, Ms. Coste.

(The witness was excused.)

All right. Mr. Calabrese, again, I won't need an extensive argument. I am familiar with the arguments by you and Mr. Robinson.

MR. CALABRESE: I can be very brief, and I will try and confine my arguments to what's happened here this morning and in response to Mr. Robinson's filing.

Your Honor, the company has essentially said in their response to ABATE's motion that they have asserted two arguments, first a legal argument that the statute does not require them to provide an updated study, and in fact that the statute would forbid that, that's the legal argument. And then there's the practical argument we have been discussing with Ms. Coste beyond the legal argument. Essentially the company's argument is that because Section 10 (B) 2 requires the unbundling of existing rates and because Consumers' existing rates were set based on a 1996 cost-of-service study, that we have to go back to that study to do the unbundling.

The problem with that argument, your Honor, is that what we are doing in this case is we are not setting rates. So we are not asking them to change rates. They even mentioned in their response that they could not be required to provide this data to the extent that we would use it to suggest they change rates.

What we are suggesting instead is that we determine their actual cost of service for the purpose of breaking that cost of service down into its various components, which can then be assigned percentages. And those percentages then can be applied to the company's rates, which will not change. They will still be the rates that were set in 1996, based on the '96 order.

So, when Mr. Robinson argues in his response that rates by statute are now divorced from costs, that is correct, but that's only relevant if we were talking about changing rates, and we are not. What we are talking about doing is determining the correct cost components of rates in order to send a correct price signal to the market with regard to those components, not overall rates. Those can't be changed.

Mr. Robinson also suggests that the Commission's order ordering unbundling or at least creating the possibility of unbundling on the gas side in U-12550 is inapplicable here because in that case the unbundling would only have been performed in conjunction with a rate case. That is a difference, but there is also another difference between that case and this case, and that difference is that in this case the legislature has mandated that we unbundle. So, and not only has it mandated that, but in Section 10 (B) 2 the legislature has provided that Consumers may recover the costs it incurs in performing this unbundling.

So, the legislature in making that provision clearly contemplated that they would be incurring some significant cost. There would be a job to be done, and that job is a new cost-of-service study so that we get the percentages right, we don't rely on the percentages from what was in '96 a projected cost year, which had to have been based on data that predated 1996. So it's at least six-year-old data at this point.

With regard to the practical argument, essentially what we have been told is that the software that they would previously have used to perform this kind of work isn't available. Well, your Honor, the company has known since June 5th of 2000 that this case was coming up and they were going to be required to do this work. They could have made every effort at that time to get the new software up and running.

We have not heard that the old software is not available. We have heard that there are certain limitations now with the old software, but we certainly haven't heard testimony that would suggest that using old data from 1994 or '95 would be more accurate than using 2000 numbers, or we can probably go back to 1998 if that were possible.

I can accept that this witness does not know that the old computer program is available, but she certainly has not testified that it's absolutely unavailable. What she has testified to is that the raw data, the underlying numbers that are necessary to derive these allocations, are generally available. The problem is having a computer manipulate that data.

Your Honor, if that is a problem, it is a problem of the company's own making, and they have known since more than a year ago that they were going to have to face this problem. They should be made to face the problem.

That's all I have.

JUDGE SCHANKLER: All right. Mr. Robinson.

MR. ROBINSON: Your Honor, I also will not just repeat our answer. This question, though, on the legal argument, that somehow you can unbundle existing rates that are based on 1996 costs and a 1996 cost-of-service study by using a year 2000 cost-of-service study I think is just blatantly wrong and would lead to a really weird and inaccurate result here. I mean, for example, if I understand what counsel is suggesting, he's suggesting that, when we unbundle rates in '97 and '98 in order to develop the retail open access tariffs, that was also done using this '96 cost-of-service study.

And just for purposes of illustration, let's assume that that study identified total costs, or that let's say 60 percent of the total costs were generation-related so everything else was transmission and distribution and that's what formed the basis for the ROA rates. Counsel is now suggesting, well, if we looked at year 2000 data, maybe we'd found out that instead of 60 percent generation-related, maybe it's, you know, 55 percent or maybe it's 65 percent generation-related, and that would, in his view of the world, allow a change then in those ROA transmission and distribution rates.

That's what he is saying. But that's exactly what 10 (D) 1 of PA 141 says you can't do, that is, those rates are frozen.

The retail open access rates are frozen just like our bundled rates are frozen. There's no distinction made. So what counsel is giving you as the justification for why we should be required to give a study that doesn't exist and give data that doesn't exist, is to get to an end result that would be very clearly prohibited by Act 141.

So that's, I guess that's the part of the legal stuff. Now, the other argument related to just what data is available. Apparently even counsel for ABATE now concedes that there is no 2000 cost-of-service study, if I read his motion right, and if I read or understand his comments today right, he agrees that no such study exists, and yet that's what his motion asks you to order us to provide.

And I would just submit to you that there isn't any obligation anywhere that we be required to produce studies or documents or things that don't exist. We are just not obligated to do that.

More pertinent to the discussion we had earlier today, we just can't do it right now. We don't have access to the data that would allow us to do a study like that.

Now counsel tries to twist that into, you know, some sort of fault on our part that we should -- that we knew a long time ago we were going to do this updated study. Well, for the first reason, that is, the one I already talked about, that we always believed it was going to be appropriate to unbundle existing rates, using the cost-of-service study that formed the basis for those existing rates, with that belief, there was no reason for us to ever assume that we were going to have to produce an updated year 2000 cost-of-service study in order to get through this particular proceeding.

And, secondarily, counsel's now I think, frankly, sort of scrambling here, and based on the questions and answers of Ms. Coste, he sort of sees an opportunity here, well, I know I asked for an updated year 2000 cost-of-service study, but it sounds like maybe, maybe, they might be able to put together some mixture of a study that has some 2000 data in it, that has some 1998 data in it, and maybe that has some 1996 data in it, so I want you to order Consumers to do that.

No. 1, that's not the question that they ask, and it's only the question that they ask that we are up here arguing about today. No. 2, I would submit to you that requiring us to produce come kind of weird combination of a mixture of years' data just isn't going to produce anything of any value at all, it's not going to produce anything that's admissible in this record.

So, I guess I'll quit. If you have any questions about anything, I would be glad to answer them, but I'm done.

MR. CALABRESE: Can I have just 20 seconds to clear up what it is we are asking for?

JUDGE SCHANKLER: All right.

MR. CALABRESE: First of all, we stand on the motion. What ABATE has requested that you order the company to produce is year 2000 data. We do not believe that they have shown they can't do that. We believe the company has shown that they don't have the computer program up and working that they would like to make it easy for them to do it, but we think that is a far cry from having shown they can't do it.

And, second, ABATE has not suggested and does not intend to suggest in this proceeding that rates be changed in violation of Section 10 (D). Rates -- first of all, that's not relevant to this motion hearing. What we are asking for is relevant data. How that data should be used to unbundle rates is something that will be decided as this proceeding progresses.

But in general, it's certainly the mandate of the legislature that we unbundle existing rates, and we can certainly do that unbundling based on current data. That doesn't mean the overall rates themselves have to be changed, but what has to be done under the statute is those rates have to be broken down into their components, and there's no reason we can't do that based on current data.

That's all I have.

JUDGE SCHANKLER: All right. First of all, what is involved in answering the interrogatories is a request to in essence, if not in fact, perform a cost-of-service study, and indeed ABATE's request for relief in their motion requests a comprehensive unbundled electric cost-of-service allocation study.

I am not going to get into the merits of the methodology inherent that request, that is, whether it's appropriate to apply percentages for a 2000 cost study to 1996 rates in the process of unbundling those rates. That's a question that would go to the merits of the position they apparently would be taking in this proceeding.

Addressing next the cited gas case wherein the Commission required the provision of a cost, a new cost study for gas rates, that has no applicability whatsoever to this case. I am not persuaded by any argument by ABATE that that even puts Consumers on notice that they should have been ready to produce such a study.

The fact that they specifically ordered it in that case and they have not done so in this case really I think cuts the other way. If the Commission wished to have such a study they certainly could have ordered it a part of this process, but they have not done so.

On the question of whether or not Consumers is in a position to produce such a study at this point in time, I am persuaded by the affidavit and questioning that they are not in a position to do so at this time due to the lack of data and software to produce such a study.

Also, I think given the time frames we are looking at here and listening to what's involved in producing this kind of a study, I don't see that it can be done in this short of a period of time even if they had the data and the software available.

Finally, as to whether or not they can be required under the rules of discovery to produce the cost-of-service study, I think to me that's the most clear and salient point here, that the discovery rules do not require a party to produce a study, which requires calculations and judgments and a good deal of work product, in order to serve another party's construction of their own case. They are only required to provide existing information they may have to retrieve from their database, but if it requires substantial manipulation, the use of programs and making judgments, they are clearly not required to do that in response to an interrogatory.

Now, if they were testifying regarding 2000 costs, then obviously if there was an underlying cost-of-service study, they would have to produce it, but they don't have to create one for the purposes of this case, in my view.

So, for the reasons I have stated, that I don't believe that that's required under the rules of discovery, and that I don't believe that Consumers is in a position to produce such a study at this point in time, under these time parameters in particular, I am going to deny the motion.

MR. CALABRESE: Your Honor, if I might, I would just like to offer notice of ABATE's intent to appeal this ruling to the Commission.

JUDGE SCHANKLER: Very well.

MR. CALABRESE: Thanks.

JUDGE SCHANKLER: We are adjourned.

(At 10:59 A.M., and adjournment was taken until Tuesday, November 27, 2001.)

\- - -

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I hereby certify that on the date and at the place hereinbefore set forth, I reported stenographically the proceedings held in the matter hereinbefore set forth, and that the testimony so recorded was subsequently transcribed by me, and that the foregoing is a full, true, and accurate transcript of my original stenotype notes.

Date: Oct 9, 2001

Allan J. Strong
CSR-2197
Court Reporter

Notary Public:
County of Oakland
My Commission expires:
June 27, 2005.