Consumers Energy

A CMS Energy Company

General Offices:
212 West Michigan Avenue Tel: (517) 788-0550
Jackson, MI 49201 Fax: (517) 788-0768

*Washington Office:
1016 – 16th Street, NW Tel: (202) 293-5795
Washington, DC 20036 Fax: (202) 293-5367

Writer's Direct Dial Number: (517) 788-0698
Writer's E-mail Address: jrrobinson@cmsenergy.com

February 5, 2002

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

Re: Case No. U-12970

Dear Ms. Wideman:

Enclosed for filing in the above-referenced matter are an original and four copies of the "**Reply Of Consumers Energy Company To Exceptions**". I have also enclosed a Proof of Service. In addition, this document is being filed electronically with the Commission in the portable document format (PDF).

Sincerely,

Jon R. Robinson

CC: Honorable George Schankler, ALJ
Parties Per Attachment 1
To Proof of Service

fl0202-1-83e

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	
For approval of the unbundling of its	)	Case No. U-12970
Commercial and industrial rate schedules	)	
______________________________________	)	

REPLY OF CONSUMERS ENERGY COMPANY
TO EXCEPTIONS

ABATE is the only party that filed exceptions to the Proposal for Decision issued in this case. In those exceptions, ABATE (1) argued that the Administrative Law Judge erred in failing to consider ABATE's Reply Brief, (2) contended that the Commission should not approve Consumers Energy's proposed unbundling, notwithstanding the fact that no party proposed any alternative, and (3) argued that customer bills should contain extensive detail, notwithstanding its failure to present any evidence addressing this point.

ABATE's principal issue in this case concerns the Company's use of the cost of service study that forms the basis for the existing retail electric rates of Consumers Energy. ABATE continues to argue that this cost of service study should be updated. This issue was presented to the ALJ in connection with a Motion to Compel Discovery who ruled against ABATE's position. See 2 TR 38-40. This matter is on appeal to the Commission, and Consumers Energy relies upon its prior answer filed in response to that ABATE appeal. See Response of Consumers Energy Company to ABATE Application for Leave to Appeal, filed November 1, 2001 in this proceeding.

ABATE's contention that the ALJ improperly failed to consider ABATE's Reply Brief is without merit. The ALJ correctly saw ABATE's tactics for what they were—an attempt to foreclose Consumers Energy and the Staff from having an opportunity to respond to positions never before set forth by ABATE in testimony or otherwise. In its Exceptions, ABATE now simply re-offers the same positions up for the Commission's consideration, but they still lack evidentiary support, they still lack statutory support, and they still should be rejected.

ABATE argues that, notwithstanding the lack of any alternatives presented by ABATE or any other party to this case, the Commission should still reject Consumers Energy's proposed unbundling of its commercial and industrial rate schedules. The arguments ABATE presents in support of this position are essentially the same ones that it made in connection with the Motion to Compel Discovery that was denied by the ALJ, and that are pending before the Commission in connection with ABATE's appeal of that ruling. Consumers Energy relies primarily upon its response to that appeal. In summary, the cost of service study used by Consumers Energy to accomplish the unbundling in this case is the appropriate study for such a purpose. Section 10b(2) of PA 141, MCL 460.10b(2); MSA 22.13(10b)(2), provides in relevant part as follows:

> "(2) No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its <u>existing</u> commercial and industrial rate schedules and separately identify and charge for their discrete services." Emphasis added.

As explained in the testimony presented by Consumers Energy in this proceeding, its <u>existing</u> retail electric rates are those that were established in a November 1996 order issued in Case No. U-10685. 3 TR 57. Pursuant to Section 10d of PA 141, MCL 460.10d; MSA 22.13(10d), <u>these rates are frozen until December 31, 2003</u>, and are subject to rate caps of various indefinite lengths thereafter. Therefore, consistent with PA 141, Consumers Energy has, in this case, unbundled its <u>existing</u> electric rates using the 1996 cost of service study that formed the basis for the rates that were approved in the U-10685 order, and that remain frozen currently.

ABATE argues that using 2000 costs is essential to an accurate result in this proceeding. Such is clearly not the case. Since PA 141 requires the unbundling of the utility's "existing" rates, and those existing rates are based upon a 1996 cost of service study, the greatest level of accuracy can be obtained through use of the 1996 study. Indeed, using a different years set of costs, sales and revenues to unbundle these existing rates would be far more likely to introduce inaccuracy into the process since the individual costs of the various components as well as the total cost of the combined components might well be different from those costs and cost relationships that form the basis for the <u>existing</u> rates. If PA 141 had been written to require that a utility's rates and rate structure first be updated to reflect current costs, and then unbundled, ABATE's argument concerning accuracy might make sense. That is not, however, the manner in which PA 141 was drafted. For Consumers Energy, PA 141 froze rates at 1996 levels, and then required the unbundling of those "existing" rates.

Because Consumers Energy's evidentiary presentation in this case is clearly consistent with the requirements of Act 141, and since there are no other alternative unbundling proposals made in this case, the ALJ properly ruled that, "[G]iven the uncontroverted evidence presented by Consumers and Staff's support for the application, the Administrative Law Judge finds that Consumers' unbundling of commercial and industrial rates as proposed in the application is reasonable, appropriate and in compliance with Section 10b(2) of 2000 PA 141." PFD, p. 4. ABATE's contention that such a finding is unlawful has no support in Act 141 or elsewhere.

Finally, ABATE claims that there is an ambiguity in Consumers Energy's presentation with respect to the level of detail to be identified on customer bills, and argues that a significant amount of detail should be reflected on those bills. There is no ambiguity in Consumers Energy's proposal. That was set forth by Thomas Yehl, one of its witnesses in this case. Mr. Yehl sponsored rate schedules in this case that showed, in great detail, how existing "maximum demand charges, billing demand charges, energy charges and customer charges on all of these [commercial and industrial] rate sheets could be broken down into generation, transmission, distribution, customer, and/or regulatory adjustment components." 3 TR 66. See Exhibits A-2, A-3. Mr. Yehl then testified as follows:

> "Q Are you proposing that the level of detail contained on the unbundled rate sheets be incorporated into the bill format now utilized by the Company?
>
> "A No, I am not. In my opinion, the commercial and industrial customers of the Company could be confused by energy bills that unbundle the billing demand charge, maximum demand charge, and kilowatt-hour charge. The most valuable information that the Company could provide to its commercial and industrial customers would be each customer's average rate for generation." 3 TR 66. Emphasis added.

The Commission Staff suggested a further modification to this proposal, and indicated that, during the rate freeze period imposed by Act 141, none of the unbundled rates should be billed or included on customers bills because of the confusion doing so would cause. Consumers Energy agreed with this modification, and the ALJ recommended its adoption in the PFD. See PFD, pp. 4-5.

Thus, the ALJ recommended adoption of the following: (1) Consumers Energy will not show any of the unbundled rates on full service commercial and industrial customer bills during the rate freeze period,[1] (2) Following the rate freeze period, Consumers Energy will show the average rate for generation on each customer's bill, and (3) After issuance of a final order in this case, Consumers Energy will make the detailed unbundled rates available for review at its offices, and will file those rates with the Commission, who could elect to make them available for review at its offices, and/or on the Commission's web site. These recommendations are reasonable, in compliance with Act 141, and should be adopted by the Commission. To the extent ABATE seeks alternative relief, it should have presented evidence supporting some alternative. Its failure to do so leaves Consumers Energy without any opportunity to review such a proposal, and to offer evidence addressing the practicalities of whatever that alternative approach might be.

In summary, the PFD was well reasoned and should be adopted in its entirety by the Commission.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: February 5, 2002

By: ____________________________

Jon R. Robinson
212 West Michigan Avenue
Jackson, Michigan 49201
Attorney for Consumers Energy Company
(517) 788-0698

[1] It should be noted that the Company's currently available Retail Open Access ("ROA") rate schedules for residential (ROA-R), secondary (ROA-S), and primary (ROA-P) customers already reflect the unbundling of generation from other costs, and are, of course, currently being used in billing ROA customers.

STATE OF MICHIGAN

BEFORE THE 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

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 on February 5, 2002 she served an electronic copy, in the PDF format, of the "**Reply Of Consumers Energy Company To Exceptions**" upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein. She further states that a hard copy of the same document was served to the addresses listed therein by depositing the same on February 5, 2002, in the United States mail in the City of Jackson, Michigan with first-class postage thereon fully paid.

Sammie B. Dalton

Sammie B. Dalton

Subscribed and sworn to before me this 5th day of February, 2002.

Holly J. Allen

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

ps0202-1-83e

ATTACHMENT 1 -- TO CASE NO. U-12970

Administrative Law Judge

Honorable George Schankler
Administrative Law Judge
6545 Mercantile Way, Suite 14
P.O. Box 30221
Lansing, MI 48909
E-Mail: george.schankler@cis.state.mi.us

Counsel for Michigan Public Service Commission Staff

Larry G. Watterworth, Esq.
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
E-Mail: watterworthl@ag.state.mi.us

Michigan Public Service Commission – Electric Staff

Jane E. Kelly
MPSC Electric Staff
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909
E:Mail: jane.e.kelly@cis.state.mi.us

Counsel for Energy Michigan

Eric J. Schneidewind, Esq.
The Victor Center, Suite 810
201 N. Washington Square
Lansing, MI 48933
E-Mail: ejschneidewind@vrsh.com

Counsel for Exelon Energy, Inc. and National Energy Marketers Association

John M. Dempsey, Esq.
Daniel Oginsky, Esq.
Dickinson Wright PLLC
215 S. Washington Square, Suite 200
Lansing, MI 48933-1816
E-Mail: jdempsey@dickinson-wright.com
doginsky@dickinson-wright.com

Counsel for the Association of Businesses Advocating Tariff Equity ("ABATE")

Robert A. W. Strong, Esq.
Clark Hill P.L.C.
255 S. Old Woodward Avenue, Third Floor
Birmingham, MI 48009
E-Mail: rstrong@clarkhill.com

Michael P. Calabrese, Esq.
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
E-Mail: mcalabrese@clarkhill.com

Counsel for the Attorney General Jennifer M. Granholm

Donald E. Erickson, Esq.
Assistant Attorney General
6520 Mercantile Way, Suite 2
P. O. Box 30218
Lansing, MI 48909
E-Mail: ericksond@ag.state.mi.us