

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
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June 20, 2006

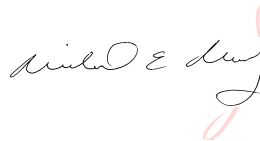
Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

Re: MPSC Case No. U-14526

Enclosed for filing in the above-captioned case please find the **Attorney General's Exceptions to Proposal for Decision**, together with a proof of service. This filing is being submitted electronically pursuant to the Commission's Paperless Electronic Filings Program.

Sincerely,

 Michael E. Moody
2006.06.20
16:03:37 -04'00'

Michael E. Moody (P51985)
Assistant Attorney General
Tobacco and Special Litigation Division
(517) 373-1123

MEM/wjc
Enclosures
c: All Parties

PROOF OF SERVICE - U-14526

The undersigned certifies that a copy of the **Attorney General's Exceptions to Proposal for Decision** was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 20th day of June, 2006.

Wendy J. Cadwell
2006.06.20 16:05:45 -04'00'

Wendy J. Cadwell

Administrative Law Judge:

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Michigan Public Service Commission
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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
CONSUMERS ENERGY COMPANY
for determination of net stranded costs
for the year 2004.

Case No. U-14526

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ATTORNEY GENERAL'S EXCEPTIONS TO PROPOSAL FOR DECISION

I. Introduction

On June 6, Michigan Public Service Commission (MPSC or Commission) Administrative Law Judge (ALJ) Sharon L. Feldman issued her proposal for decision (PFD) in MPSC Case No. U-14526. As provided in the PFD, exceptions are due on June 20, 2006. The Attorney General submits the following exceptions pursuant to that schedule.

II. Argument

The ALJ's Alternative Recommendation Regarding Third Party Sales Should Follow the Attorney General's Method.

In his Initial Brief in this case, the Attorney General made the following argument regarding third party sales:

The next problem with Consumers Energy's testimony in this case is its proposed treatment of third party sales. Assuming Consumers Energy properly calculated stranded costs (which the Attorney General contends it has not done so in this case), Consumers Energy then improperly offsets all the stranded costs against third party sales. Again, the test for determining whether stranded costs can be mitigated against third party sales is set forth in Case No. U-12639. In Case No. U-12639, the MPSC stated that mitigation occurs when it is shown that the third party sales are the result of "market sales of capacity and energy that are freed up when

customers choose alternative suppliers." In Case No. U-13917-R (Consumers Energy's reconciliation case that deals with these third party sales), Attorney General witness Charles King described mitigation of stranded costs by sales revenues as follows:

When applied to third party sales revenues, the standard should therefore be "revenues that were realized under competition that could not have been realized under regulation." In other words, any revenue credited to Choice customers should result from capacity freed up by the migration of Choice customers out of Consumers' power supply system.

(Case No. U-13917-R, Tr 358).

In its exceptions in U-13917-R, the Attorney General argued that "No witness has described any evidence that shows any of CEC's third-party sales revenues in 2004 resulted from sales that CEC could not have realized except under deregulation via third-party sales that were freed up by the migration of Choice customers." (Attorney General's Exceptions to PFD in Case No. U-13917-R, p 12). Similarly, in this case, Consumers Energy did not present any testimony satisfying the standard for determining mitigation of stranded costs. Instead, Consumers Energy simply offsets its claimed finding of stranded costs by the \$24 million in third party sales, as shown in Line 18 of Exhibit A-1 (CFB-1).

As explained by the Attorney General in its exceptions in U-13917-R "CEC's stranded cost adder to its reported PSCR expense would violate MCL 460.6j(1) and MCL 460.6j(12)." (Attorney General's Exceptions in U-13917-R, p 10). Moreover, any attempt in this case by Consumers Energy to recover these production fixed costs through some new mechanism of calculating third party sales because the cost is not properly recoverable in the PSCR reconciliation should be rejected. Finally, Consumers Energy's attempt to add stranded costs to its PSCR expense conflicts with the MPSC's prior order in U-11290 where it concluded that it would not be equitable to increase rates for remaining customers to pay for stranded costs associated with customers who choose direct access. (MPSC's June 5, 1997 Opinion and Order, Case No U-11290, p 12). MCL 460.10a(5) [now MCL 460.10a(6)] ratified the June 5, 1997 order, so the MPSC should follow this ruling.

Again, Consumers Energy has failed to sustain its burden of showing that the shortfall in production fixed costs fall is stranded costs as defined by the MPSC in U-12639. In addition, Consumers Energy has presented no evidence on the record to demonstrate that these alleged

stranded costs meet the requirement set forth in Case No. U-12639 for mitigation against third party sales.

(Attorney General's Initial Brief, pp 6-8).

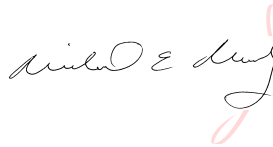
Accordingly, the Attorney General requests that the Commission adopt the Attorney General's alternative argument if the proposal for decision is rejected.

III. Relief Requested

The Attorney General requests the Commission to adopt the ALJ's proposal for decision. If the ALJ's proposal for decision is rejected, the Attorney General requests that the Attorney General's argument regarding third party sales be adopted in this case.

Respectfully submitted,

Michael A. Cox
Attorney General

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