

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of	)	
CONSUMERS ENERGY COMPANY for	)	
Approval of a Gas Cost Recovery Plan and	)	Case No. U-14716
Authorization of Gas Cost Recovery	)	
Factors for the 12-Month Period	)	
April 2006 – March 2007	)	
_____	)	

MOTION OF CONSUMERS ENERGY COMPANY TO STRIKE
TESTIMONY AND EXHIBITS OF
MARTIN G. KUSHLER, WITNESS FOR
MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION

NOW COMES Consumers Energy Company (“Consumers Energy”) and hereby moves to strike the prefiled testimony and exhibits of Martin Kushler witness for Michigan Community Action Agency Association (“MCAAA”). In support of its motion to strike, Consumers Energy states as follows:

1. Michigan Rule of Evidence (“MRE”) 401 defines “relevant evidence” as follows:

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

MRE 402 states, in part, that “Evidence which is not relevant is not admissible.”

2. Section 6h(4) of 1982 PA 304 (“Act 304”), MCL 460.6h(4), requires gas utilities to file “a 5-year forecast” along with its Gas Cost Recovery (“GCR”) plan. That statute requires the 5-year forecast to include a gas utility’s “anticipated sources of supply” and “projections of gas costs.” In addition, the statute requires a description of “all relevant major contracts and gas

supply arrangements entered into or contemplated between the gas utility and its suppliers.” The MCAAA witness Martin Kushler has used this portion of Act 304 to attempt to bootstrap testimony that is not relevant to this proceeding. Therefore, as more fully explained below, Consumers Energy requests the presiding Administrative Law Judge (“ALJ”) to strike this witness’s testimony and exhibits MCA-1, MCA-2, and MCA-3 because they are irrelevant.

3. Witness Kushler states that his purpose in this proceeding “is to provide the Commission with information about the demonstrated effectiveness of energy efficiency as a low-cost natural gas resource that is being widely used in other state to help lower the total costs of meeting their natural gas system needs and provide significant dollar savings to utility customers.” April 11, 2006 Direct Testimony and Exhibits of Martin G. Kushler, at 2. The Commission has held that these energy efficiency programs are irrelevant to GCR Plan cases.

A. Energy efficiency and conservation programs.

The MCAAA attempted to introduce testimony in support of its position that the Commission should require Mich Con to ameliorate high gas costs to residential and low-income customers by adopting effective energy efficiency and conservation programs. The ALJ ordered the bulk of such proposed testimony stricken from the record.

In its exceptions, the MCAAA objects to the ALJ’s evidentiary ruling and urges the Commission to require Mich Con to lower its gas costs through implementation of effective energy efficiency and conservation measures.

In response, Mich Con states that the Commission has no authority under Act 304 to order Mich Con to conduct energy efficiency and conservation programs.

The Commission finds that the MCAAA’s exception lacks merit. It is well established that the Commission has no authority to force a utility to engage in energy efficiency and conservation programs against its wishes. Ford Motor Co v Public Service Comm, 221 Mich App 370; 562 NW2d 224 (1997).” March 12, 2003 Order, Case No. U-13060, pp. 31-32.

4. Witness Kushler states that he has filed his testimony in this proceeding because “the GCR process is an appropriate mechanism for achieving ‘gains in energy efficiency in Michigan within the Commission’s existing regulatory authority.’” Id. This statement, does not confer any relevance on Mr. Kushler’s testimony in a GCR Plan case. Therefore, Mr. Kushler’s testimony concerning energy efficiency programs is (a) not required by the Commission, (b) not permissible under judicial precedent, and (c) irrelevant to the Company’s 2006 GCR plan.

5. Testimony that is irrelevant should be stricken. MRE 402 states, in part, that “Evidence which is not relevant is not admissible.” Because Mr. Kushler’s testimony does not present any substantive evidence addressing issues relevant to this GCR plan case, his testimony should not be allowed. In Power Supply Cost Recovery Plan (similar to GCR Plan cases MCL 460.6j) Case Nos. U-14701 and U-14702, very similar testimony of Mr. Kushler was also stricken in its entirety due to its irrelevance to the plan cases.

WHEREFORE, Consumers Energy respectfully requests that the prefiled testimony and exhibits of Mr. Kushler be stricken in their entirety.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: May 24, 2006

By:



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