

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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June 27, 2006

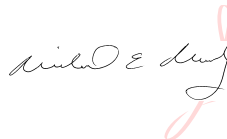
Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

Re: MPSC Case No. U-14526

Enclosed for filing in the above-captioned case please find the **Attorney General's Replies to Exceptions**, 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
2006.06.27
16:21:56 -04'00'

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MEM/wjc
Enclosures
c: All Parties

PROOF OF SERVICE - U-14526

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, on the 27th day of June, 2006.

Wendy J. Cadwell
2006.06.27 16:24:35 -04'00'

Wendy J. Cadwell

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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

_____/

ATTORNEY GENERAL'S REPLIES TO EXCEPTIONS

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, replies to exceptions are due on June 27, 2006. The Attorney General submits the following exceptions pursuant to that schedule.

II. Replies to Consumers Energy's Exceptions

The majority of Consumers Energy's exceptions focus on the ALJ's "threshold test" and the Commission's definition of stranded costs. To begin with, the ALJ never used the term "threshold test". No where in the ALJ's PFD is there a reference to this made up term "threshold test". Consumers Energy creates an argument that does not even exist and attempts to attack the ALJ's PFD for the creation of this term. The ALJ never creates a new test; never creates a new interpretation, and never changes the Commission existing definition of stranded costs.

In her PFD, the ALJ specifically cites to the Commission's Orders in Case Nos. 12639, 13720, and 14098 when she quotes the Commission's definition of stranded costs as follows:

The formula is "costs" that would have been recovered under regulation that cannot be recovered under competition, offset by migration (such as market sales of capacity and energy that are freed up when customers chose alternative suppliers) and stranded benefits (such as generation assets with below-market costs). December 20, 2001 order in Case No. U-12639, p. 10. [November 23, 2004 order, Case Nos. U-13720 and U-14098, p. 4 n2.]

(PFD, pp 8-9).

The only use of the word "threshold" in the PFD is when the ALJ states that "Consumers has failed to establish that any of the costs it claims are stranded meet the threshold requirement for stranded costs, that they are costs that would have been recovered under regulation but cannot be recovered under competition." (PFD, p 8). Thus, the ALJ's use of the word "threshold" is not to create a new standard but to reiterate the Commission's own definition of stranded costs that has been in existence since the Commission's December 20, 2001 Order in U-12639 – hardly a new test that blind sided Consumers Energy in 2006. In fact, Consumers Energy's argument in its exceptions is essentially the same argument it made in its briefs to the ALJ. The ALJ specifically addressed Consumers Energy's argument as follows:

Consumers disputes that there is any threshold determination required, arguing that the Commission's orders establish a "formula" (the revenue requirements calculation) that is simply to be applied without further analysis. I conclude this is an incorrect reading of the Commission's prior orders. The Commission stated the "formula" for determining stranded costs in its order in Case No. U-12639, and in its November 23, 2004 order in Case Nos. U-13720 and U-14098 as quoted above. Consumers does not address or even acknowledge this language in either of its briefs.

(PFD, p 9).

Again, Consumers argument in its exceptions focuses on confusing the Commission into thinking that the ALJ created a "threshold test" that was new and never seen before and that if the Commission applies this new "threshold test" that it must reopen the record to allow Consumers Energy to respond. There is no new "threshold test" and Consumers Energy should have been already aware of the Commission's December 2001 order in U-12639 as well as aware of the Commission's orders in November 2004.

After claiming that the ALJ created a new "threshold test" for determining stranded costs, Consumers Energy next argues that the record is "clear that the approximate \$24 million of stranded costs produced by the application of the U-12639 method represents costs that would have been recovered under regulation that were not recovered under competition." (Consumers Energy's Exceptions, p 7). Not only is the record not clear, (since Consumers Energy failed to present any testimony or argument in its brief supporting its new argument in exceptions), but also Consumers Energy again misstates the Commission's definition of stranded costs. The definition is not "costs that would have been recovered under regulation **that were not recovered** under competition" (emphasis added). Rather, the definition is "costs that would have been recovered under regulation **that cannot be recovered under competition, . . .**" (PFD, p 8). Under Consumers Energy's new test, if the costs could have been recovered under competition but Consumers Energy failed to recover them due to their own action or inaction, then Consumers Energy could still recover the costs as stranded costs. That is not the definition of stranded costs.

Consumers Energy reiterates that "the evidence is very clear that Consumers Energy's full service sales were much less than would otherwise have been because of

retail open access" but Consumers Energy fails to even point to any testimony or argument in its brief supporting its arguments in its exceptions. (Consumers Energy's Exceptions, p 9 n 3). The only "clear" evidence that Consumers Energy now (not in its testimony or briefs) presents is two exhibits and a couple pages from the 2004 MPSC Annual Report that is not in evidence in this case. (Consumers Energy's Exceptions, p 7). Consumers Energy admits that the two exhibits do not even support the \$24 million in stranded costs but rather support a large number that "is obviously vastly in excess of the \$24,126,000" that Consumers Energy is claiming in the instant case. (Consumers Energy Exceptions, p 7). This is hardly clear evidence. The fact of the matter is that Consumers Energy failed to show through its testimony or even its briefs that the \$24 million in costs are stranded costs as defined by the Commission. The Attorney General's expert witness made this argument in his filed direct testimony, thus Consumers Energy had ample time to respond in rebuttal or its briefs but never did so. As stated by the ALJ, "Consumers had ample opportunity to rebut Mr. King's factual conclusions with concrete objective analysis of its own and it failed to do so. If Mr. King's analysis were "subjective", then presumably Consumers could have explained how differing conclusions could be reached from the same underlying data. Again it did not." (PFD, p 12).

Consumer Energy's next claim is that the

ALJ further renders her new standard infeasible when she states that "underrecoveries due strictly to the legislatively imposed rate freeze are not 'stranded' within the meaning of the Commission's formula." Under this interpretation, even generation-related costs that are reasonable and prudent but not recoverable from full service customers due to a statutory rate freeze imposed in a competition statute, and not recoverable from ROA customers who switch generation service suppliers, cannot be considered 'stranded.' The ALJ's interpretation of the Commission's prior orders effectively renders meaningless the statutory promise of recovery

of stranded costs, and cannot be adopted to excuse applying the U-12639 standard cost method in a fair and consistent manner.

(Consumers Energy's Exceptions, p 9).

There are a number of problems with the above argument made by Consumers Energy in its exceptions.

First, Consumers Energy fails to cite to any page reference within the PFD. The reason that there is a lack of page reference is because the ALJ did not base her decision on this point. The ALJ stated the basis for her decision as follows:

I conclude that . . . Consumers failed to establish that any of the costs it claims are stranded meet the threshold requirement for stranded costs, that they are costs that would have been recovered under regulation but cannot be recovered under competition."

(PFD, p 8)

Thus, the ALJ found that Consumers Energy failed to sustain its burden on meeting the definition of stranded costs and did not base her decision on issue regarding the rate freeze.

Second, Consumers Energy again refers to the ALJ's "new standard" which is actually the Commission's own definition of stranded costs as set forth in prior cases, and thus is not a "new standard" that violates prior Commission orders.

Third, even assuming the discussion of the rate freeze was the basis of the ALJ's decision, the statement is correct and statutorily required. Consumers Energy claims that the ALJ's statement regarding MCL 460.10d(1) (regarding the rate freeze) "effectively renders meaningless the statutory promise of recovery of standard costs [MCL 460.10a],". (Consumers Exceptions, p 9). In fact, MCL 460.10d(1) provides that "Notwithstanding any other provision of law or commission order, rates for each electric

utility. . ." there shall be a rate freeze for the period of time provided in the statute. Thus, the legislature intended that 10(d) would take precedence over 10(a) in regards to the rate freeze period outlined in 10(d).

Again, in response to Consumers Energy claim for a reopening of the proceeding, it would be a violation of the other parties' due process rights to allow Consumers Energy to reopen the proceeding and insert new additional testimony and evidence to satisfy a definition of stranded costs that has been in existence since December of 2001.

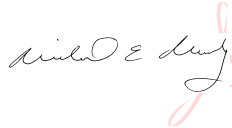
Moreover, Consumers Energy had the opportunity to rebut the Attorney General's arguments and had the opportunity to present testimony supporting its claim of stranded costs but failed to do so in this proceeding.

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,

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Attorney General

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June 27, 2006