

A CMS Energy Company

June 27, 2006

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Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-14526

Dear Ms. Kunkle:

Included in this electronic file are **Consumers Energy Company's Replies To Exceptions** and a Proof of Service. This is a paperless case and is therefore being filed only in PDF format.

Sincerely,



Digitally signed by Jon R.
Robinson

Date: 2006.06.27 14:06:30 -04'00'

Jon R. Robinson

CC: Hon. Sharon L. Feldman
Parties per Attachment 1 to Proof of Service

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

CONSUMERS ENERGY COMPANY'S
REPLIES TO EXCEPTIONS

Exceptions in this matter were filed by Consumers Energy Company ("Consumers Energy"), the MPSC Staff, the Attorney General, and Energy Michigan. Consumers Energy files these replies to the exceptions of the other parties.

Reply to MPSC Staff

The Staff correctly notes that the ALJ's recommendation reflects a "new interpretation of stranded costs that has never been previously adopted nor implemented by the Commission." The Staff further correctly notes that "the Staff, and the other parties to the stranded cost cases, has relied on the Case No. U-12639 Order to present their calculations of stranded costs." Unfortunately, the Staff then simply leaves it to the Commission to decide whether it should make this substantive change in the stranded cost calculation method that has heretofore been utilized in these stranded cost cases. Consumers Energy believes that the Staff did not fully recognize the inappropriateness of adopting the ALJ's position.

First, it would be unlawful, unreasonable and a denial of due process to adopt such a major modification in the stranded cost method that has been relied upon by Consumers Energy. It is grossly unfair to continually modify a stranded cost ratemaking approach that PA 141 directed the Commission to adopt "no later than January 1, 2002." [MCL 460.10a(1).]

In 2004, Consumers Energy kept its books of account in a manner consistent with the Commission's prior applications of the U-12639 stranded cost method. Its balance sheet therefore reflects a regulatory asset for 2004 stranded costs. The Commission should avoid actions that retroactively, on an after-the-fact basis result in changes to previously recorded items. It would be especially unlawful, unreasonable and a denial of due process to adopt such a change without first reopening the record and allowing parties an opportunity to address the new standard.

Second, the ALJ's interpretation of the U-12639 method as requiring a "threshold step" (PFD) or a "second, and separate step" (Staff Exceptions) completely ignores a fundamental and critical element of that method. From the beginning, third party revenues were supposed to be utilized to mitigate revenue losses experienced due to the loss of customers to retail open access. In the U-12639 Order the Commission explicitly stated that, to the extent the Staff generation fixed cost revenue requirement approach indicated a revenue deficiency, it must be "offset by mitigation (such as market sales of capacity and energy that are freed up when customers choose alternative suppliers)." [December 20, 2001 Opinion and Order, Case No. U-12639, p. 10.] It makes no sense to now claim that it is appropriate to apply this method by (1) ignoring the generation fixed-cost revenue deficiency revealed by application of the U-12639 method, and, at the same time, (2) confiscate the third party revenues by allocating them to PSCR customers, instead of allowing Consumers Energy to use them as intended; i.e., to mitigate the impact of the loss of load to retail open access. Neither of those actions is consistent with the Commission's prior orders, with the MPSC Staff's prior testimony and prior positions in these stranded cost cases, or with due process.

Third, the \$24 million generation fixed-cost revenue deficiency indicated by the U-12639 method is itself understated. That calculation excludes \$21,131,000 of Clean Air Act annual revenue requirement, and \$5,057,616 of seasonal capacity costs. [See Exhibit A-3; 2 TR 49-50, 61.] Thus, the total actual 2004 generation fixed cost revenue requirement was \$50,314,616. Consistent with the U-12639 method and the Commission's prior orders, the Company sought to mitigate that impact through sales to third parties. To now, after the fact, adopt a new rule that prevents those third party sales from being utilized for that purpose, and that says that the Company actually should have done something else to mitigate that impact, is grossly unreasonable, unfair and unlawful.

As noted in the Company's Exceptions, there was a substantial loss of load to retail open access during 2004. Total ROA load in 2004 was 4,151,167 MWh. Exhibit EM-6. This corresponds to an enormous revenue loss. See Consumers Energy Exceptions. If that load had remained full service, the revenue deficiency indicated by the U-12639 method would obviously have been much less. Consumers Energy did what the Commission expected it to do, and what the Commission's prior orders encouraged it to do; namely, to mitigate the impact of that load loss by making third party sales. Having done so, it would be grossly unlawful and unreasonable to now decline to use a portion of those third party revenues to offset the stranded costs/revenue deficiency indicated by the U-12639 method. The Staff failed to acknowledge this in their Exceptions.

In summary, Consumers Energy wishes to make clear its position on the use of third party revenues. If the Commission's prior stranded cost orders are to retain any meaning, then the generation fixed cost revenue deficiency indicated by the application of that method must be offset (mitigated) through the use of the available third party revenues. This results in

approximately a 50-50 split of those revenues between ROA customers and full service customers. Exhibit A-7. The only other lawful means of recovering these costs is through a surcharge applied to ROA load. It is not consistent with past Commission orders, or with due process to simply ignore the deficiency by both re-allocating the third party revenues to another use, and failing to surcharge ROA customers.

Reply to Attorney General

The Attorney General quotes from his previously-filed Brief in this matter, and repeats his contention that all third party revenues should be allocated to the benefit of PSCR customers, with none of those revenues used to offset stranded costs. For the reasons expressed in the prior section replying to the MPSC Staff, the Attorney General's analysis seeks unlawful and unreasonable action. The Attorney General cannot assert that the U-12639 method requires some additional threshold/second and separate step, and at the same time ignore that the U-12639 method also encouraged the Company to make third party sales to mitigate the impact of ROA load loss. Unless those third party sales are available for that purpose, adoption of the ALJ's recommendation regarding the "threshold/second step" would clearly be unlawful and unreasonable.

Reply to Energy Michigan

Energy Michigan takes exception to the ALJ's recommended rejection of Energy Michigan's proposal concerning the application of decommissioning and securitization charges to ROA customers. Energy Michigan argues that, because ROA customers pay these charges, they should be allocated "an amount of power based on the amount of securitization bond and nuclear decommissioning charges paid by" ROA customers." Energy Michigan Exceptions, p. 8. Energy Michigan later attempts to clarify this by saying that "the same result could be achieved by selling an amount of Palisades power equivalent to the value of the securitization and nuclear

decommissioning charges paid by ROA customers and remitting the balance minus variable costs to those customers.” *Id.*

These proposals are merely the latest effort to have the Commission retract its earlier rulings that apply decommissioning and securitization charges to ROA customers. In its orders in Case No. U-12505, the Commission authorized the securitization of the Palisades Plant and certain other costs, and approved a securitization charge and a securitization tax charge to be paid by all customers. In that order, the Commission addressed the question of how those charges should be designed, and ruled that “the utility’s proposal to recover its securitization-related costs through the use of uniform per-kWh securitization and tax charges should be approved.” [October 24, 2000 Order, Case No. U-12505, p. 41.] It should further be noted that the securitization charges are, pursuant to Commission order and statute, “nonbypassable” and “irrevocable.” [See U-12505 Order, pp. 57, 61.] Similarly, in Case No. U-14150, the Commission approved a Settlement Agreement that continued the application of nuclear decommissioning charges to all customers, including ROA customers. [See September 20, 2005 Order, Case No. U-14150.]

This issue was addressed in a definitive manner by the Commission in the December 22, 2005 Opinion and Order in Case No. U-14347, Consumers Energy’s recent electric rate case. In that order, the Commission addressed the contention that application of securitization and decommissioning charges to ROA customers was somehow unfair:

“This argument has been previously addressed, and the Commission sees no reason to deviate from its previous rulings. Act 142 provides that securitization charges are nonbypassable, and, thus, must be imposed on all customers. MCL 460.10(f), 460.10h(i), and 460.10i(4). See, also, October 24, 2000 order in Case No. U-12505; and November 2, 2000 order in Case No. U-12478. The Commission has likewise had a long-standing policy that nuclear decommissioning charges should be paid by all customers. See, January 14, 1998 order in Case No. U-11290; and

December 16, 1999 order in Case No. U-11662.” [Opinion and Order, December 22, 2005, Case No. No. U-14347, p. 75.]

Energy Michigan’s proposal that ROA customers be assigned some amount of Palisades power or of proceeds from the sale of Palisades power that would equal the amount of securitization and decommissioning charges paid by those customers is merely another attempt to get the Commission to change its prior rulings on this subject, and thus should be rejected.

Energy Michigan cites the September 13, 2005 Court of Appeals decision in Docket No. 253316 (appeal of Commission order in Case No. U-13380) as supporting its proposals. Energy Michigan argues that the Court of Appeals decision stands for the proposition that providing ROA customers with credits that offset securitization charges is lawful. The Commission’s December 22, 2005 decision in Case No. U-14347, cited above, was issued after the Court of Appeals September 13, 2005 decision, so it is not apparent why Energy Michigan believes this should now alter the Commission’s conclusion. In any event, however, the Court of Appeals decision clearly does not support what Energy Michigan is proposing in this case. In the U-13380 appeal, the issue was the lawfulness of the use of excess securitization savings to offset securitization charges otherwise payable by ROA customers. In that decision, the Court of Appeals ruled as follows:

“Thus, we hold that the PSC erred in allowing the securitization offset for ROA customers at issue to the extent that it was based on qualified costs that did not constitute stranded costs. Consistent with the due deference given to the PSC’s administrative expertise, *In re Michigan Cable, supra* at 690, we conclude that we must remand this case to the PSC for it to decide as an initial matter how to modify its treatment of this matter in light of this legal error. Specifically, on remand, the PSC must first decide to either (1) determine the part of the securitization offset for ROA customers attributable to stranded costs and only provide an offset for the portion of the securitization charge based on stranded costs or (2) abolish the securitization offset for ROA customers altogether. We also consider it appropriate for the PSC to initially determine what redress, if any, should be taken with regard to

amounts already improperly paid out to Consumers' ROA customers from excess securitization savings." [Slip opinion, at pp. 7-8.]

Thus, the Court of Appeals concluded that the matter must be remanded to the Commission, where the case is still pending. In no sense can this decision be said to support the type of reallocation of revenues/benefits to ROA customers that is now proposed by Energy Michigan in this case.

Energy Michigan argues that "the Palisades Plant is not stranded" and ROA customers should therefore not be required to pay securitization or decommissioning charges. This contention forms the basis for Energy Michigan's repeated arguments on this point, and as noted above, the Commission has uniformly rejected it. Labeling Palisades "stranded" is not necessary to justify the application of these charges to ROA customers, as has been consistently recognized by the Commission.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Digitally signed by Jon R.
Robinson
Date: 2006.06.27 14:07:21 -04'00'

Dated: June 27, 2006

By:

Jon R. Robinson (P27953)
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Jackson, Michigan 49201
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Attorney for Consumers Energy Company

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
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the year 2004)
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Case No. U-14526

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

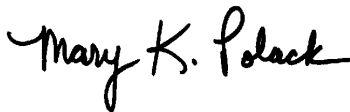
Sammie B. Dalton, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on June 27, 2006 she served an electronic copy of **Consumers Energy Company's Replies To Exceptions** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.



Digitally signed by Sammie B.
Dalton
Date: 2006.06.27 14:08:22 -04'00'

Sammie B. Dalton

Subscribed and sworn to before me this 27th day of June, 2006.



Digitally signed by Mary K. Polack
Date: 2006.06.27 14:09:26 -04'00'

Mary K. Polack, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 09/09/06
Acting in the County of Jackson

ATTACHMENT 1 TO CASE NO. U-14526 – E-Mail Service List

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