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June 2, 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-14716
(GCR Plan Case 2006-2007)**

Dear Ms. Kunkle:

Included in this electronic file are **Consumers Energy Company's Response To MCAA's Motion For Declaratory Ruling** and a Proof of Service. This is a paperless case and is therefore being filed only in PDF format.

Sincerely,


Signature Not Verified



Digitally signed by
Rhonda M. Morris
Date: 2006.06.02
15:37:45 -04'00'

Rhonda M. Morris

CC: Hon. Barbara A. Stump, ALJ
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)
Approval of a Gas Cost Recovery Plan and)
Authorization of Gas Cost Recovery)
Factors for the 12-Month Period)
April 2006–March 2007)
_____)

Case No. U-14716

**CONSUMERS ENERGY COMPANY’S RESPONSE TO
MCAAA’S MOTION FOR DECLARATORY RULING**

Pursuant to Rule 335 of the Michigan Public Service Commission’s Rules of Practice and Procedure before the Commission (1992 AACRS, R460.17335), Consumers Energy Company (‘Consumers Energy’ or ‘Company’) responds to the ‘Motion for Declaratory Ruling of the Michigan Community Action Agency Association’ (‘MCAAA’). In response to MCAAA’s motion Consumers Energy states as follows:

**I. THE ALJ DOES NOT HAVE AUTHORITY TO ISSUE A
DECLARATORY RULING IN THIS MATTER**

1. R 460.17701 Declaratory rulings.

‘Rule 701. (1) Any person may request a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the commission or of a rule or order of the commission, pursuant to the provisions of sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.233 and 24.263 of the Michigan Compiled Laws. A request for a declaratory ruling shall contain, or by attached exhibits show, all of the following:

(a) A complete, accurate, and concise statement of the facts or situation upon which the request is based.

(b) A concise statement of the issues presented.

(c) Specific reference to all statutes, rules, and orders to which the request relates.

(d) An analysis by the person's legal counsel of the issues presented and a proposed conclusion, or the person's analysis of the issues presented and a proposed conclusion.

(2) The commission may require that notice of the request for declaratory ruling be provided and may require a contested case proceeding instead of issuing a declaratory ruling.

(3) The decision to issue a declaratory ruling is within the discretion of the commission." 1992 AACS, R460.17701.

Therefore, the discretion to issue a declaratory ruling rests with the Commission, not the ALJ.

2. In Consumers Energy's 2005-2006 GCR plan case, Administrative Law Judge Barbara Stump ruled on a declaratory motion very similar to the one presented by MCAAA in this matter. Her finding supports the above conclusion that the discretion rests with the Commission and not the ALJ.

"First of all, I have no authority to issue declaratory rulings. And I really wish that attorneys would stop filing motions for declaratory rulings in contested cases under both the APA and the Commission's Rules of Practice and Procedure. Declaratory -- requests for declaratory rulings must be directed to the agency, here the commission." Case No. U-14403, 2 TR 38. Attached as Exhibit 1.

3. Similar holdings were also made in PSCR Case Nos. U-14701 5 TR 167 and U-14702, 5 TR 566-567. Attached as Exhibit 2.

4. Rule 701, R 460.17701 also states "[th]e commission may require ... a contested case proceeding instead of issuing a declaratory ruling." Therefore, since this is a contested case, a declaratory ruling is not contemplated by the rule.

II. ENERGY EFFICIENCY AND CONSERVATION SHOULD NOT BE ADDRESSED IN THIS GCR PROCEEDING

5. MCAAA's motion implicitly admits Consumers Energy has no duty to create energy efficiency programs in a GCR proceeding.

6. The energy efficiency, conservation, and demand supply management issues have historically been addressed in proceedings other than GCR cases. In addition, there is a current MPSC case reviewing these programs, Case No. U-14667.

7. The Company's Gas Cost Recovery clause

“permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.” MCL 460.6h(1)(b).

The issues MCAAA seeks to have addressed are outside the scope of this Act 304 proceeding.

8. Furthermore, the Commission has previously concluded such programs should not be addressed in the realm of Act 304 proceedings. At pages 31-32 of its March 12, 2003 Order the Commission stated:

“6. Stricken testimony

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.

9. All of the orders and rulings cited by MCAAA in its motion predate the Commission's Order in U-13060. The MCAAA motion discusses the Ford Motor Co v Public Service Comm case but all other orders and rulings cited predate that case also. The MCAAA motion states that DSM costs can be included in rates (Motion at 22), but fails to point out that in Ford Motor, the Michigan Court of Appeals was reviewing a general rate case, not an Act 304 proceeding.

10. Considering all of the above, there is simply no merit in the MCAAA's position that this GCR proceeding is a correct forum to discuss these issues.

WHEREFORE, Consumers Energy respectfully requests the ALJ to deny the MCAAA's Motion for Declaratory Ruling.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: June 2, 2006

By:



Rhonda M. Morris

Digitally signed by
Rhonda M. Morris
Date: 2006.06.02
15:38:28 -04'00'

Rhonda M. Morris (P64631)
One Energy Plaza
Jackson, Michigan 49201
Attorney for Consumers Energy Company
(517) 788-2969

EXHIBIT 1

1

STATE OF MICHIGAN

2

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

3

In the matter of the application
OF CONSUMERS ENERGY COMPANY for
approval of a GCR Plan and
authorization of GCR factors for
the 12-month period April 2005
through March 2006.

Case No. U-14403

Volume 2

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MOTION HEARING
CROSS OF PARTIES

8

Proceedings held in the above-entitled matter
before Barbara A. Stump, J.D., Administrative
Law Judge, at the Michigan Public Service Commission,
6545 Mercantile Way, Room C, Lansing, Michigan, on
Wednesday, November 2, 2005, at 9:00 a.m.

11

APPEARANCES:

12

13

H. RICHARD CHAMBERS, ESQ.
Consumers Energy Company
One Energy Plaza, Room 11-223
Jackson, Michigan 49201

14

15

Appearing on behalf of Consumers Energy Company

16

17

SHALTZ & ROYAL, P.C.
By DAVID L. SHALTZ, ESQ.
2379 Woodlake Drive
Okemos, Michigan 48842

18

19

Appearing on behalf of the Residential Ratepayer
Consortium

20

21

CLARK HILL, P.L.C.
By DON L. KESKEY, ESQ.
212 East Grand River Avenue
Lansing, Michigan 48906

22

23

Appearing on behalf of the Michigan Community Action
Agency Association

24

25

(Continued)

1 reconvene.

2 JUDGE STUMP: Thank you. I'm going to
3 deny the motion because I have to agree that this motion
4 has to be directed to the commission. First of all, I
5 have no authority to issue declaratory rulings. And I
6 really wish that attorneys would stop filing motions for
7 declaratory rulings in contested cases under both the APA
8 and the Commission's Rules of Practice and Procedure.
9 Declaratory -- requests for declaratory rulings must be
10 directed to the agency, here the commission.

11 Second, in order to grant a motion to
12 dismiss and recommend dismissal to the commission, I
13 would effectively have to find that the commission's
14 order reopening this procedure and setting the expedited
15 procedure is defective. And I simply have no authority
16 to find that the commission order is defective.

17 Presumably the commission considered the
18 notice issue before it issued its order and apparently
19 determined that it was appropriate to proceed without
20 requiring the company to re-notice its request. These
21 arguments can be made to the commission in your brief.

22 I'm also not going to make any rulings
23 regarding use of the NYMEX as a contingency mechanism.
24 The commission has indicated in its order reopening this
25 case that there would be no PFD, and so therefore I think

EXHIBIT 2

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application	)	
of Consumers Energy Company for	)	Case Number U-14701
approval of a power supply cost	)	VOLUME V
recovery plan and authorization	)	
of a power supply cost recovery	)	
factor for the calendar year 2006.	)	

Proceedings were held in the
above-entitled matter before Administrative Law Judge Mark E.
A. Cummins, at the Michigan Public Service Commission,
6545 Mercantile Way, Hearing Room B, Lansing, Michigan, on
Tuesday, March 21, 2006, commencing at or about 9:10 a.m.

APPEARANCES:

CONSUMERS ENERGY COMPANY
BY: JOHN C. SHEA, ESQUIRE (P36854)
One Energy Plaza, Room EP11-225
Jackson, Michigan 49201-2277

Appearing on Behalf of Consumers Energy Company.

1 apparatus already established and the facts and the law
2 already articulated in the framework of this and other
3 cases, the motion of declaratory ruling fits well within
4 that process. And so, therefore, I do not believe there
5 was a valid reason to deny the motion on the basis that it
6 should have been filed separately with the Commission when
7 it would be duplicative and repetitive of the process we
8 have here and the same facts and the same law.

9 JUDGE CUMMINS: Very well.

10 Again, Mr. Keskey, with regard to the
11 motion for declaratory ruling, we do part company rather
12 quickly.

13 My reading of Rule 701 of the Commission's
14 rules of practice and procedure leads me to agree with
15 both Ms. Barone and Mr. Shea's statements with regard to
16 the fact that, as an ALJ, I do not have the power nor the
17 discretion to rule on a motion for declaratory ruling.
18 Even if you're correct that it would be nice to have this
19 as part of a contested case, it's already open at the end
20 of the contested case. I still would not have, in any
21 way, gained the power to rule on that in the context of my
22 Proposal for Decision.

23 And I base this on the language, primarily
24 of Subsection 2 and Subsection 3 of Rule 701. Subsection
25 2 refers to the fact that the Commission may require

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STATE OF MICHIGAN

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

3

In the matter of the application of

The Detroit Edison Company for

Case No. U-14702

4

authority to implement a power supply

Volume 5

cost recovery plan in its rate schedules

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for 2006 metered jurisdictional sales of
electricity.

PAPERLESS E-FILE

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CROSS-EXAMINATION

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Proceedings held in the above-entitled matter

before Daniel E. Nickerson, Jr., J.D., Administrative

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Law Judge, at the Michigan Public Service Commission,

6545 Mercantile Way, Room D, Lansing, Michigan, on

10

Wednesday, April 5, 2006, at 9:04 a.m.

11

APPEARANCES:

12

JON P. CHRISTINIDIS, J.D.

DTE Energy

13

2000 Second Avenue, WCB 688

Detroit, Michigan 48226

14

On behalf of The Detroit Edison Company

15

DON L. KESKEY, J.D.

Clark Hill, PLC

16

212 East Grand River Avenue

17

Lansing, Michigan 48906

18

On behalf of Michigan Environmental Council and

Public Interest Research Group in Michigan

19

DONALD E. ERICKSON, J.D.

Assistant Attorney General

20

Sixth Floor G. Mennen Williams Building

21

P.O. Box 30755

Lansing, Michigan 48909

22

On behalf of Attorney General Michael A. Cox

23

24

(Continuing):

25

1 addition, the Court of Appeals upon review has stated
2 that the commission has no authority to order a utility
3 to engage in energy efficiency and conservation programs
4 against their wishes; and that's the Court of Appeals
5 opinion cited by staff, Ford Motor Company versus the
6 PSC. So these issues have been resolved on numerous
7 occasions, and the due process argument that this due
8 process requires we take this up as arbitrary and
9 capricious, well, the commission has established an
10 alternative, and there's a forum that they've established
11 for the exploration of these issues in Docket No.
12 U-14667. So they're going to specifically explore energy
13 efficiency options in that docket. You talk about
14 efficiency, I think that's very efficient to do it under
15 one docket rather than addressing it in numerous GCR and
16 PSCR proceedings.

17 Now, what Mr. Keskey, MEC and PIRGIM are
18 attempting to do here today I liken to someone attempting
19 to push a cart up a hill loaded with bricks. Well, the
20 wind is blowing against you and now it's starting to
21 rain, so you're even losing your footing. Are you ever
22 going to get to the top of the hill, Mr. Keskey? I'm not
23 going to bet against you. But not here and not today.

24 Sections 63 and 64 of the APA I think
25 specifically address the issues involved in the

1 declaratory ruling. I think those are properly before
2 the commission and not properly before an ALJ in a
3 contested case proceeding. So for those reasons, I'm
4 going to grant the motions filed by staff and Detroit
5 Edison to strike the testimony of Dr. Kushler and
6 Mr. Crandall in their entirety and deny to rule on the
7 motion for a declaratory ruling.

8 All right. With regard to the procedure,
9 I'm not opposed to proceeding in the manner in which the
10 parties have indicated was done in U-14701, if they so
11 desire.

12 All right. I want to take a 15-minute
13 recess, and we'll come back and take up testimony at that
14 time. All right.

15 (At 10:12 a.m., a 15-minute recess was taken.)

16 JUDGE NICKERSON: All right. On the
17 record. Well, in terms of order, why don't we go with
18 the staff, because he's going to do rebuttal.

19 MS. BARONE: Your Honor, staff has the
20 testimony of two witnesses to present today.

21 The first witness's testimony is Ronald
22 J. Ancona, and his testimony consists of a cover page and
23 eight pages. And I'd ask that his testimony be bound
24 into the record.

25 JUDGE NICKERSON: There were no exhibits
Metro Court Reporters, Inc. 248.426.9530

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)
Authorization of Gas Cost Recovery)
Factors for the 12-Month Period)
April 2006–March 2007)
_____)

Case No. U-14716

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Debra S. Weirich, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on June 2, 2006 she served an electronic copy of the **Consumers Energy Company's Response To MCAA's Motion For Declaratory Ruling** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

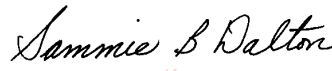
 Debra S. Weirich

Digitally signed by
Debra S. Weirich
Date: 2006.06.02
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Debra S. Weirich

Subscribed and sworn to before me this 2nd day of June, 2006.

 Signature Not
Verified



Digitally signed by
Sammie B. Dalton
Date: 2006.06.02
15:40:40 -04'00'

Sammie B. Dalton, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 01/04/08
Acting in the County of Jackson

ATTACHMENT 1 -- TO CASE NO. U-14716

Administrative Law Judge

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Administrative Law Judge
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**Michigan Public Service Commission
-- Gas Division**

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