

FILED

STATE OF MICHIGAN

IN THE COURT OF APPEALS

JUN 13 2006

Phillip D. Forner,
Appellant,

Vs.

Michigan Public Service Commission and
Consumers Energy Company
Appellee.

Court of Appeals No. _____

MPSC Case No. U-14329

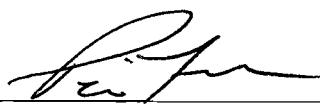
MICHIGAN PUBLIC
SERVICE COMMISSION

CLAIM OF APPEAL

NOW COMES Phillip D. Forner, Appellant pro per claims an appeal of right pursuant to 1909 PA 300, Section 26, as amended, MCL 426.26, and 1923 PA 94, MCL 460.351 et seq., and MCR 7.204, from the attached May 10, 2006 Order entered by the Michigan Public Service Commission, Chair J. Peter Lark and Commissioners Laura Chappelle and Monica Martinez and the February 9, 2006 Opinion and Order entered by the Michigan Public Service Commission, Chair J. Peter Lark and Commissioners Laura Chappelle and Monica Martinez.

Dated: June 9, 2006

By: _____


Phillip D. Forner, Appellant
11672 60th Ave. – P.O. Box 296
Allendale, MI 49401
Telephone (616) 299-0275

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the approval of the allocation	)	
costs of CONSUMERS ENERGY COMPANY'S	)	Case No. U-14329
billing system.	)	
_____	)	

At the May 10, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

On March 10, 2006, Philip D. Forner, a provider of heating and air conditioning services in Ottawa County, filed a petition for rehearing of the Commission's February 9, 2006 order in this proceeding (February 9 order), pursuant to 1999 AC, R 460.17403 (Rule 403). On March 30, 2006, Consumers Energy Company (Consumers) and the Commission Staff (Staff) filed responses to the petition for rehearing.

History of Proceedings

On February 20, 2003, the Commission issued an order in Case No. U-13089 requiring Consumers to "determine the amount of the subsidy that is created by use of its billing machinery and envelopes by unregulated services and to file a proceeding seeking approval of the accounting and ratemaking authority necessary to ensure that its unregulated services are charged for the full amount of the subsidy." February 20, 2003 order in Case No. U-13089, p. 28.

On September 21, 2004, the Commission set a deadline for the above requirement, mandating that “within 30 days of the issuance of this order, Consumers must compute the amount of the subsidy . . . and the company must file an application seeking approval of the ratemaking authority necessary to ensure that its unregulated services are charged for the full amount of the subsidy.” September 21, 2004 order in Case No. U-13948, p. 9.

On October 26, 2004, in response to the Commission’s September 21 order, Consumers filed its application in the instant case, along with a billing cost summary. Pursuant to due notice, a prehearing conference was held before Administrative Law Judge Mark E. Cummins (ALJ) on February 2, 2005. Consumers and the Staff participated in those proceedings. On April 19, 2005, Mr. Forner was granted intervenor status. On November 17, 2005, the ALJ issued his Proposal for Decision (PFD).

In its February 9 order, the Commission found that the use of Consumers’ billing machinery and envelopes by its unregulated services creates a subsidy in the amount of \$0.1040 per unit, which finding was consistent with Mr. Forner’s estimate of the market price of access to the utility’s billing system. However, the Commission rejected Mr. Forner’s arguments that postage costs should be included when estimating the value of services provided by the utility to the unregulated affiliate, and that ratepayers should be reimbursed immediately rather than awaiting Consumers’ next general electric rate case.

Discussion

Petitions for rehearing are governed by Rule 403, which provides:

Rule 403. (1) A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A

petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

(2) Within 21 days after service of a petition for rehearing, any party may file an answer. Any party failing to do so shall be considered to have waived objection to the granting of the petition.

R 460.17403.

The Commission finds that Mr. Forner's petition for rehearing should be denied because the petition does not meet the standards set in Rule 403 for rehearing. Mr. Forner's petition simply reargues issues previously rejected by the Commission. Specifically, the February 9 order considered and rejected his positions with regard to the inclusion of postage in the value of the mailing subsidy and the method for reimbursing customers. Unless a party can show the original decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing. The Commission is persuaded that Mr. Forner's petition for rehearing fails to meet the standard for review set forth in Rule 403.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Philip D. Forner on March 10, 2006 is denied.

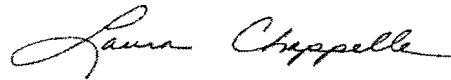
The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

By its action of May 10, 2006.



Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the approval of the allocation)
costs of **CONSUMERS ENERGY COMPANY'S**)
billing system.)
_____)

Case No. U-14329

At the February 9, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On February 20, 2003, the Commission issued an order in Case No. U-13089 requiring Consumers Energy Company (Consumers) to “determine the amount of the subsidy that is created by use of its billing machinery and envelopes by unregulated services and to file a proceeding seeking approval of the accounting and ratemaking authority necessary to ensure that its unregulated services are charged for the full amount of the subsidy.” February 20, 2003 order in Case No. U-13089, p. 28.

On September 21, 2004, the Commission set a deadline for the above requirement, mandating that “within 30 days of the issuance of this order, Consumers must compute the amount of the subsidy . . . and the company must file an application seeking approval of the ratemaking authority

necessary to ensure that its unregulated services are charged for the full amount of the subsidy.”
September 21, 2004 order in Case No. U-13948, p. 9.

On October 26, 2004, in response to the Commission’s September 21 order, Consumers filed its application in the instant case along with a billing cost summary. Pursuant to due notice, a prehearing conference was held before Administrative Law Judge Mark E. Cummins (ALJ) on February 2, 2005. Consumers and the Commission Staff (Staff) participated in those proceedings, at which a schedule was established for the remainder of the case. On April 19, 2005, Philip D. Forner, a provider of heating and air conditioning services in Ottawa County, was granted intervenor status. Evidentiary hearings were conducted on June 7 and July 25, 2005, during which testimony was bound into the record. The resulting record consists of 105 pages of transcript and 4 exhibits.

Briefs were filed by Consumers and the Staff on August 22, 2005 and by Mr. Forner on August 24, 2005. The same parties filed reply briefs on September 12 and 14, 2005. On November 17, 2005, the ALJ issued his Proposal for Decision (PFD). The parties filed exceptions on December 5 and December 7, 2005 and replies to exceptions on December 12 and December 14, 2005.

II.

POSITIONS OF THE PARTIES

Consumers

According to Consumers, the Commission’s order required the company to calculate existing, actual billing costs for the use of its billing system and envelopes and to allocate these costs to users of the billing system. Consumers claimed that the order did not include a requirement that it calculate the market price for the use of the billing system in this proceeding. Consistent with the

Commission's order, Consumers maintained that it presented an analysis of the actual, historical billing costs associated with the company's billing system. Consumers claims that the costs of access to the company's billing system that it calculated include all of the unavoidable costs that would be incurred in a mailing. However, directly assignable costs, such as postage, were not included because the weight of the company's mailings is controlled so that the addition of any material from an unregulated program would generally not be permitted if it would result in increased postage. Consumers claimed that in the rare case where that might occur, the unregulated program would be directly charged for the incremental postage increase.

Consumers calculated that the cost for access to the company's billing system is \$0.0610 per unit, excluding postage. According to Consumers, this is the allocated amount that any unregulated service using its billing system should pay to compensate the utility. *See*, Exhibit A-1.

Consumers further asserted that the notice of hearing did not include any reference to the code of conduct, to any calculation of "market price," or to any particular method that should be employed in calculating the per-unit cost of access to the billing system as claimed by Mr. Forner. Consumers stated that this proceeding was not intended to be a code of conduct proceeding, or a forum for alleging a violation of the code of conduct, but rather, it was simply intended to address the proper allocation of the company's billing costs on a per-unit basis.

The Staff

Upon review of Consumers' application, testimony, and exhibits, the Staff took the position that Consumers' proposed accounting allocations were in compliance with the Commission's Uniform System of Accounts and followed appropriate ratemaking. In sum, the Staff supported Consumers' proposal. Further, the Staff asserted that no further regulatory authority is needed under the Uniform System of Accounts for the gas or electric utilities for this accounting to be

implemented. The Staff therefore recommended that the Commission approve the allocations that Consumers proposed.

Mr. Forner

Mr. Forner argued that when determining the amount of subsidy that is created by an unregulated program's use of the utility's billing machinery and envelopes, an appropriate analysis of what is the proper amount to charge for the subsidy is to compare the fully allocated embedded cost to the market price for the service. *See*, Section III.C. of the code of conduct, attached as Exhibit A to the December 2, 2000 order in Case No. U-12134. Mr. Forner claimed that in accordance with the code of conduct, the higher of the two amounts is to be used in determining the amount of the subsidy.

Mr. Forner argued that the original application and testimony filed by Consumers lacked sufficient detail to determine the proper amount of subsidy that was created, to ensure that the unregulated activities are charged the higher of the fully allocated embedded cost or market price, for access to Consumers' electric utility billing systems.

According to Mr. Forner, Consumers only submitted one exhibit showing what purports to be its fully allocated embedded cost. Mr. Forner noted, however, that Consumers' witness testified that he was not sure of the Commission's definition of "fully embedded costs." Mr. Forner claimed that Consumers' exhibit shows the fully allocated embedded cost per unit to be \$0.3417. However, Consumers' testimony did not contain a market price for the billing service it provided to its unregulated activities, although Mr. Forner requested this information in discovery.

Likewise, Mr. Forner claimed that the Staff testimony did not include any "fully allocated embedded cost" or "market price" analysis nor does the record indicate that Staff objected to

including a market price analysis. Mr. Forner also observed that the Staff did not do an in-depth investigation; it simply reviewed what was submitted by Consumers.

Mr. Forner argued that he was the only party in the case to provide a market price valuation, which he estimated to be \$0.3847 per unit, including postage. *See*, Exhibit I-2. Because this price was higher than the embedded cost estimate provided by Consumers, Mr. Forner concluded that it was the proper cost to be used for valuing the subsidy under the Code of Conduct.

III.

PROPOSAL FOR DECISION

The ALJ noted that none of the parties claimed that Consumers lacked either the accounting or ratemaking authority necessary for the resolution of this controversy. Thus, the ALJ determined there were three issues in dispute: 1) whether the historical embedded cost analysis offered by Consumers and supported by the Staff was sufficient for determining the cost allocation or must market price also be considered; 2) whether the cost of postage should be included in the cost allocation; and 3) whether the cost allocation approved by the Commission requires immediate action or whether the purported subsidy should be recognized in Consumers' next general rate case.

Regarding the issue of whether market price should be considered in the cost allocation method, the ALJ found that although the notice did not specifically reference code of conduct considerations or market-based calculations, both Consumers and the Staff participated in Case No. U-12134 and were fully aware of the requirements of the code of conduct established in that case. Specifically, Section III.C. of the code of conduct provides:

If an electric utility . . . offering regulated service in Michigan provides services, products, or property to any affiliate or other entity within the corporate structure, compensation shall be based upon the higher of fully allocated embedded cost or market price.

The ALJ thus concluded that the proper method for determining cost allocation was to calculate both the embedded cost and the market price for the service, compare the two, and use the higher figure. The ALJ observed that none of the parties disputed Consumers' estimate of embedded costs presented in Exhibit A-1. However, only Mr. Forner presented evidence of a market price for the same services. Because the market price established by Mr. Forner exceeded the embedded cost of \$0.0601 presented by Consumers, the ALJ adopted the market price of \$0.1040 for the per unit value of the subsidy.

The ALJ observed that both the Staff and Consumers indicated that postage costs of \$0.281 per envelope should not be included in the calculation of the subsidy for the reasons stated in Consumers' brief.¹ Mr. Forner disagreed but failed to provide any argument or justification for the inclusion of this cost. The ALJ agreed with Consumers and the Staff that postage costs should not be included. The ALJ pointed out that the purpose of the proceeding was to compute the amount of subsidy created when an unregulated service is allowed to include promotional materials with the utility's monthly electric bills. The ALJ determined that because there was no additional cost to Consumers for including the inserts, there was no subsidy created by including the insert with the billing.

Finally, the ALJ determined that it was not the Commission's intent to address the subsidy through an immediate reduction in rates. Rather, the purpose of the proceeding was to develop a per unit expense figure to use in any future allocation of costs arising from the use of Consumers' billing system between its regulated and unregulated operations. Accordingly, the ALJ determined

¹See, page 3, *infra*.

that any subsidy arising from past violations of the code of conduct should be accounted for in Consumers' next general rate case.

Exceptions and Replies to Exceptions

In its exceptions, Consumers reasserts that the Commission's order did not reference the code of conduct nor did it require that market prices be generated and compared to actual costs. Consumers also claims that the ALJ erred in including the cost of a billing insert because it inappropriately inflated the per unit cost of the subsidy. Consumers observes that the PFD included the cost of "doing a 1,000,000 piece tri-fold newsletter, just like the Consumers Energy NewsLine," despite the fact that the inclusion of such promotional materials is forbidden by MCL 460.10a(6)(c). Consumers maintains that these extra costs are unrelated to access to the billing system and that "[o]ther Company programs using the billing system for customer communication are directly financially responsible for any bill inserts."² Finally, Consumers argues that the evidence relied upon in this case is not persuasive because Mr. Forner's estimate involved a number of mailings far different than the number of Consumers' actual mailings.

The Staff objected to the ALJ's findings regarding the scope of the proceeding. According to the Staff, this case is an accounting and ratemaking case only and is not the appropriate proceeding to determine if a subsidy exists, and if so, the amount thereof. The Staff asserts that any effect of the cost of providing services to affiliates and the revenues of affiliates should be included in the cost of service study in Consumers' next gas rate case.

Mr. Forner objects to the ALJ's determination that postage was not part of the subsidy to the unregulated activity on grounds that the cost of the envelopes used for the billing and insert include the cost of the postage. Mr. Forner also objects to the ALJ's finding that any adjustment to

²Consumers' exceptions, p. 5.

Consumers' rates resulting from this proceeding should be deferred until Consumers' next general rate case. Mr. Forner observes that it has been over four years since Consumers' violations of the code of conduct were first brought to the attention of the Commission and there has been no compensation paid or rate relief ordered since that time. Mr. Forner suggests that this problem could be resolved by adding a true-up requirement to the code of conduct annual report.

In its replies to Mr. Forner's exceptions, Consumers observes that Mr. Forner seems to rely on the Commission's statement that it would "vigilantly enforce the code" as sole authority for the inclusion of postage in the approved per unit billing costs. *See*, December 4, 2000 order in Case No. U-12134. Consumers reasserts that the Commission's order was clear: the costs to be examined were those associated with access to Consumers' billing machine and envelopes. Consumers maintains that postage costs arise after the activities related to the billing system are complete. Consumers further objects to Mr. Forner's attempt to expand the case into what it deems "a full-blown cost setting proceeding."

In his replies to the Staff's exceptions, Mr. Forner points out that the Staff's position is inconsistent with the Commission's orders in Case Nos. U-13089, U-13830, and U-13948 and that the fact that this is an electric proceeding is not relevant to the cross-subsidization issue here. Mr. Forner also objects to the Staff's position that reconciliation of these costs should be addressed in Consumers' next general rate case.

IV.

DISCUSSION

Section 10a(4) of 2000 PA 141, MCL 460.10a(4), required the Commission to establish, within 180 days, a code of conduct that would apply to every electric utility and alternative electric supplier (AES) operating in Michigan. The purpose of the code of conduct was to prevent electric

utilities and AESs from engaging in cross-subsidization, information sharing, and preferential treatment between their regulated and unregulated services. In its December 4, 2000 order in Case No. U-12134, the Commission satisfied the requirement by adopting a code of conduct.

Although Consumers' appliance service plan program (ASP)³ is part of its gas division, it is nevertheless subject to the code of conduct, as was made clear in Case Nos. U-12134, U-13830, and U-13948. Consequently, under Section III.C. of the code of conduct:

If an electric utility . . . offering regulated service in Michigan provides services, products, or property to any affiliate or other entity within the corporate structure, *compensation shall be based upon the higher of fully allocated embedded cost or market price.* [Emphasis supplied.]

The code of conduct thus provides the method for calculating the cost of service – in this case access to the company's billing system – to an unregulated affiliate within the corporate structure.

The record shows that the parties agreed on Consumers' estimate of \$0.0610 for the fully allocated embedded cost for the use of the utility's billing system by the ASP program.

Consumers, however, failed to provide any estimate of the fair market price for the same service if it were performed by a commercial vendor. Nevertheless, Mr. Forner provided a reasonable estimate of the market price for this service of \$0.1040 per unit. This estimate of market price was accepted by the ALJ and is adopted by the Commission.

The Commission also agrees with the ALJ, albeit for another reason, that postage costs should not be included in estimating the value of services provided by the utility to the unregulated affiliate. Mr. Forner proposes that the cost of postage should be included as part of the cost of using the billing envelope. However, if the unregulated affiliate were required to bear the cost of

³Consumers' ASP program was the affiliate program in issue in Case No. U-13089, Case No. U-13830, Case No. U-12134, and Case No. U-13948.

the postage for both the billing and the insert, the affiliate would effectively be providing a subsidy to the regulated utility. In this circumstance, Section III.C. of the code of conduct provides:

If an affiliate or other entity within the corporate structure provides services, products, or property to an electric utility . . . offering regulated service in Michigan, *compensation for services . . . shall be at the lower of market price or 10% over fully allocated embedded cost and transfers of assets shall be based upon the lower of fully allocated embedded cost or market price.* [Emphasis supplied.]

As Consumers explained, the weight of the company's mailings is controlled so that the addition of any material from an unregulated program would generally not be permitted if it would result in increased postage. Consumers noted that in the rare case where that might occur, the unregulated program would be charged directly for the incremental postage increase. Thus, in the circumstances here, the fully embedded costs of postage for the insert are generally zero. Ten percent over zero is zero and the code of conduct provides that in cases where the unregulated affiliate is providing products or services to the regulated utility, it is the lesser of embedded cost plus 10% compared to the market price. Thus, the Commission agrees with the ALJ and Consumers that postage should not be included in calculating the subsidy.

Finally, the Commission agrees that it was not the Commission's intent to immediately adjust Consumers' electric rates upon completion of this proceeding. As explained in the Commission's February 20, 2003 order in Case No. U-13089, p. 28, and repeated in its September 21, 2003 order in Case No. U-13948, p. 9, the purpose of this proceeding was to determine the amount of subsidy per unit for the use of Consumers' billing service by its unregulated affiliate and to determine whether Consumers has the requisite accounting and ratemaking authority to ensure that its unregulated services are charged the full amount of the subsidy.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The use of Consumers' billing machinery and envelopes by its unregulated service creates a subsidy in the amount of \$0.1040 per unit.

c. Consumers has the ratemaking and accounting authority necessary to ensure that its unregulated services are charged the full amount of the subsidy provided.

d. Any subsidy arising from Consumers' past violations of the code of conduct should be accounted for in Consumers' next general electric rate case.

THEREFORE, IT IS ORDERED that:

A. The use of Consumers Energy Company's billing system by an unregulated affiliate creates a subsidy in the amount of \$0.1040 per unit.

B. Consumers Energy Company has the ratemaking and accounting authority necessary to ensure that its unregulated services are charged the full amount of the subsidy provided.

C. Any subsidy for the use of its billing system arising from Consumers Energy Company's past violations of the code of conduct shall be accounted for in the utility's next general electric rate case.

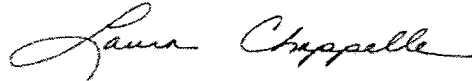
The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION



Chairman

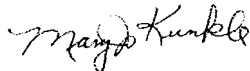


Commissioner



Commissioner

By its action of February 9, 2006.



Its Executive Secretary

S T A T E O F M I C H I G A N
I N T H E C O U R T O F A P P E A L S

FILED

JUN 13 2006

Phillip D. Forner,
Appellant,
Vs.

Michigan Public Service Commission and
Consumers Energy Company
Appellee.

Court of Appeals No. _____

MPSC Case No. U-14329

**MICHIGAN PUBLIC
SERVICE COMMISSION**

**STATEMENT REGARDING
TRANSCRIPT AND DOCKET ENTRIES**

Appellant, Phillip D. Forner has filed the accompanying Claim of Appeal from the May 10, 2006 Order and the February 9, 2006 Opinion and Order in MPSC Case No. U-14329. A copy of the electronic docket entries in MPSC Case U-14329 is attached.

Transcripts for all hearings are currently on file with the Executive Secretary of the Michigan Public Service Commission, and are a part of the record below.

Dated: June 9, 2006

By: _____


Phillip D. Forner, Appellant
11672 60th Ave. – P.O. Box 296
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Telephone (616) 299-0275



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Case U-14329: In the matter of the allocation of costs of Consumers Energy Company's billing system.
Industry: Electric
Company(s): Consumers Energy Company
Open Date: 10/26/2004
Order Dates: 2/09/2006 5/10/2006

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Document No.	File Date	Filed by	On Behalf of	Type	Description
0053	5/10/2006			Order	Denies petition for rehearing
0052	4/17/2006	Bowers	MPSC Staff	Memorandum	Transmittal to RAD for draft order
0051	3/30/2006	Shea	Consumers Energy Company	Answer	Petition for Rehearing and POS
0050	3/30/2006	Kristin	MPSC Staff	Response	Petition for Rehearing, with POS
0049	3/10/2006	Forner	self	Petition	Petition for Rehearing with Proof of Service
0048	2/09/2006			Order	Establishes the subsidy for use of Consumers' billing machinery and envelopes at \$0.1040 per unit
0047	12/16/2005	Bowers	MPSC Staff	Memorandum	Transmittal to RAD for draft order
0046	12/14/2005	Forner	self	Reply to Exceptions	Reply to Exceptions, with POS
0045	12/12/2005	Shea	Consumers Energy Company	Reply to Exceptions	Reply to Exceptions, with POS
0044	12/12/2005	Smith	MPSC Staff	Reply to Exceptions	Reply to Exceptions, with POS
0043	12/7/2005	Forner	self	Exceptions	Exceptions to PFD and POS
0042	12/5/2005	Smith	MPSC Staff	Exceptions	Exceptions to PFD, with POS
0041	12/5/2005	Shea	Consumers Energy Company	Exceptions	Exceptions to PFD, with POS
0040	11/17/2005	Cummins	Administrative Law Judges	PFD	Notice, PFD and Proof of Service
0039	9/14/2005	Forner	self	Reply Brief	
0038	9/12/2005	Shea	Consumers Energy Company	Reply Brief	With Proof of Service

<u>0037</u>	9/12/2005	Smith	MPSC Staff	Reply Brief	
<u>0036</u>	8/24/2005	Forner	self	Brief	Initial Brief and POS
<u>0035</u>	8/22/2005	Shea	Consumers Energy Company	Brief	Initial Brief, with proof of service
<u>0034</u>	8/22/2005	Smith	MPSC Staff	Brief	Initial Brief, with proof of service
<u>0033</u>	7/28/2005	Coleman	Ripka, Boroski & Associates	Transcript	Vol. 4, 7-25-05 Evidentiary
<u>0032</u>	7/25/2005	Shea	Consumers Energy Company	Exhibits	Official Exhibit A-2; Hearing Date July 25, 2005
<u>0031</u>	6/27/2005	Coleman	Ripka, Boroski & Associates	Transcript	Vol. 3, 6-7-05 Hearing
<u>0030</u>	6/20/2005	Forner	self	Proof of Service	Responses to Consumers Energy's 1st Discovery Request
<u>0029</u>	6/13/2005	Shea	Consumers Energy Company	Proof of Service	First Discovery Request to Phil Forner
<u>0028</u>	6/9/2005	Forner	self	Letter	Confirming Exhibits I-1 and I-2
<u>0027</u>	6/7/2005	Shea	Consumers Energy Company	Exhibits	Official Exhibit A-1, Hearing Date 06-05
<u>0026</u>	6/7/2005	Forner	self	Testimony & Exhibits	Supplemental of Phil Forner, and Proof Service
<u>0025</u>	6/7/2005	Cummins	Administrative Law Judges	Scheduling Memo	
<u>0024</u>	5/9/2005	Forner	Phil Forner	Testimony & Exhibits	Phil Forner
<u>0023</u>	5/9/2005	Coleman	Ripka, Boroski & Associates	Transcript	Vol. 2, 4-19-05 Prehearing
<u>0022</u>	5/6/2005	Castle	Regulated Energy	Testimony	William Kusiak
<u>0021</u>	5/5/2005	Shea	Consumers Energy Company	Proof of Service	Supplemental discovery responses 1432 PF-CE-3, 5, 6, 7, 9, 10, 12 and 14
<u>0020</u>	4/19/2005	Forner	self	Appearance	Entry of Apperance Form - Intervenor status granted by ALJ
<u>0019</u>	4/13/2005	Cummins	Administrative Law Judges	Scheduling Memo	
<u>0018</u>	4/7/2005	Forner	self	Motion	Compel Discovery, Notice of Hearing, with Proof of Service
<u>0017</u>	4/1/2005	Shea	Consumers Energy Company	Testimony & Exhibits	James F. Bearman, and POS
<u>0016</u>	3/9/2005	Shea	Consumers Energy Company	Proof of Service	Discovery responses 14329-PF-CE-3 through 17
<u>0015</u>	3/4/2005	Coleman	Ripka, Boroski & Associates	Transcript	Vol. 1, 2-2-05 Prehearing
<u>0014</u>	3/4/2005	Forner	self	Proof of Service	First Discovery Request to Consumers Energy
<u>0013</u>	3/1/2005	Shea	Consumers Energy Company	Proof of Service	Discovery responses 14329-ST-CE-1 at 2
<u>0012</u>	2/15/2005	Smith	MPSC Staff	Proof of Service	1st Discovery Request to CEC

<u>0011</u>	2/2/2005	Polack	Consumers Energy Company	Affidavit	Newspaper publication of Notice of Hearing
<u>0010</u>	2/2/2005	Cummins	Administrative Law Judges	Scheduling Memo	
<u>0009</u>	1/25/2005	Meeuwse		Comments	
<u>0008</u>	1/25/2005	Rushing		Comments	
<u>0007</u>	1/19/2005	Polack	Consumers Energy Company	Proof of Service	Mailing of Notice of Hearing
<u>0006</u>	1/6/2005	Smith	MPSC Staff	Appearance	
<u>0005</u>	01/03/2005	Kunkle	Staff	Notice of Hearing	Prehearing at 9:00 a.m. on February 2, 2005
<u>0004</u>	12/21/2004	Prawdzik	Administrative Law Judges	Scheduling Memo	
<u>0003</u>	11/18/2004	Forner		Proof of Service	Petition to Intervene
<u>0002</u>	11/18/2004	Forner		Petition	Leave to Intervene
<u>0001</u>	10/26/2004	Shea	Consumers Energy Company	Application	Allocation of costs of billing system

Michigan Public Service Commission
 Contact: mpsc.webmaster@michigan.gov

FILED

STATE OF MICHIGAN

IN THE COURT OF APPEALS

JUN 13 2006

Phillip D. Forner,
Appellant,

Vs.

Michigan Public Service Commission and
Consumers Energy Company
Appellee.

MICHIGAN PUBLIC
SERVICE COMMISSION

Court of Appeals No. _____

MPSC Case No. U-14329

PROOF OF SERVICE

Phillip D. Forner, being duly sworn, deposes and says that on June 9, 2006, a copy of Claim of Appeal in the above-captioned proceeding was served upon:

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

Kristin Smith
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
P.O. Box 30221
Lansing, MI 48911

John C. Shea
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201-2276

Mark E. Cummins
Administrative Law Judge
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
P.O. Box 30221
Lansing, MI 48909

Service was accomplished by depositing same in a regular United States Post Service mail depository, enclosed in envelopes bearing first-class postage, fully prepaid and properly addressed.

Dated: June 9, 2006

By: _____


Phillip D. Forner, Appellant
11672 60th Ave. - P.O. Box 296
Allendale, MI 49401
Telephone (616) 299-0275

Trial Court/Tribunal Name:
Michigan Public Service
Commission (MPSC)

Court of Appeals, State of Michigan
Jurisdictional Checklist

FILED

CASE NO.
Trial Court/Tribunal:
No. U-14329
Court of Appeals:

JUN 13 2006

Case Name: Phillip D. Forner v MPSC and Consumers Energy Company

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

- ☒ 1. A **signed** claim of appeal form showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- ☒ 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- ☒ 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- ☒ 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through e is required).
- ☐ a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
- ☒ b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
- ☒ c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
- ☐ d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
- ☐ e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
- ☐ f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
- ☐ g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- ☒ 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (Even if a party is not an appellee, they must be served.)
- ☒ 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- ☒ The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: MCR 7.202(6) and see below
- ☒ The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: Sec 26, MCL 462.26; Sec 1 & 2, MCL 460.351 et seq, MCR 7.204; and AG v PSC 429 Mich 248 (1987)

Track Designation [Administrative Order 2004-5]

☐ This appeal involves only summary disposition. The nature of the action is: _____

06/09/2006

Date


Preparer's Signature

9/05