

A CMS Energy Company

General Offices:
212 West Michigan Avenue
Jackson, MI 49201

Tel: (517) 788-0550
Fax: (517) 788-0768

*Washington Office:
1016 - 16th Street, NW
Washington, DC 20036

Tel: (202) 293-5795
Fax: (202) 293-5367

Writer's Direct Dial Number: (517) 788-1482
Writer's E-mail Address: hrchambers@cmsenergy.com

LEGAL DEPARTMENT

DAVID A MIKELONIS
Senior Vice President
And General Counsel

James E Brunner
William M Lange*
Jon R Robinson
Arunas T Udrys
Assistant General
Counsel

David E Barth
Francis X Berkemeier
H Richard Chambers
James W Dempsey
John P Dickey
Ann F Goodman
Deborah Ann Kile
Roger K Krakusin
Eric V Luoma
Wendy A McIntyre
Raymond E McQuillian
Deborah A Moss*
Mirte Michael Nestor
Robert M Neustifter
David A Pell
Vincent P Provenzano
Susan L Rasmussen
Catherine M Reynolds
John C Shea
P Leni Staley
Charlotte A Walls
Michael G Wilson
Attorney

August 10, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-12358

Dear Ms. Wideman:

Enclosed for filing in the above referenced matter are an original and 4 copies of the "**Petition of Consumers Energy Company for Rehearing**". In addition, an electronic copy is being filed with the Commission in the portable document format (PDF). I have also enclosed an original Proof of Service.

Sincerely,



H. Richard Chambers

CC: 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)
to recover implementation costs for)
the period ended December 31, 1999)
_____)

Case No. U-12358

PETITION OF CONSUMERS ENERGY COMPANY
FOR REHEARING

August 10, 2001

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE COMMISSION ERRED IN FINDING RECOVERY OF PRUDENTLY INCURRED 1999 IMPLEMENTATION COSTS SHOULD BE CONDITIONAL.....	2
A. Commission Orders Establishing Electric Restructuring Provide for Full Recovery of Prudently Incurred Implementation Costs.....	3
B. PA 141 Provides for Full Recovery of Implementation Costs	4
C. Making Recovery Conditional in the July 11 Order Is Inconsistent With the Prudent Investment Test That the Commission Stated Would Be Used in Reviewing Implementation Costs	5
D. Consumers Energy Voluntarily Incurred the 1999 Implementation Costs in Reliance Upon Commitments of this Commission that Such Costs Would Be Recovered	7
E. The Commission’s Case No. U-12358 Order Violates Consumers Energy’s Constitutionally Protected Rights.....	10
F. Conclusion	12
III. THE COMMISSION ERRED IN DENYING RECOVERY OF IMPLEMENTATION COSTS INCURRED IN 1999 THAT WERE LABOR COSTS, RETRAINING COSTS AND OTHER EMPLOYEE IMPACT COSTS	12
A. The Commission’s Finding that the Evidence Presented by Consumers Energy is “Remarkably Similar” to that Submitted in Case Nos. U-11955 and U-11956 is in Error	13
1. Overview of New and Different Evidence	14
2. Labor Hours in All Six of the Labor Categories Are Incremental	15
a. New Employees Were Added to Fill New Positions Created As a Result of Electric Restructuring.....	15
b. An Employee Formerly in the Gas Business Unit Was Transferred to Electric Restructuring to Fill a New Position.....	16
c. Some Employees Were Moved to Electric Restructuring and Their Prior Positions Filled With New Employees	16
d. Some Employees Incurred Paid Overtime Hours as a Result of Electric Restructuring Activities Which Were Performed in Addition to Their Normal Jobs	17
e. Chargeback Hours Are Essentially the Same as Outside Consulting Services.....	17

f. Additional Labor Hours Were Also Incremental	18
3. The Company's New and Different Evidence Establishes that Labor Costs Were Incremental	18
B. The Commission Applied an Inappropriate and Unlawful Standard in Disallowing the Labor Costs and Employee Impact Costs	18
C. The Commission Unreasonably and Unlawfully Failed to Apply the Criteria that the Commission Held Would Be Used in Evaluating Whether Labor Costs Were Incremental	22
D. The Commission Erroneously Relied Upon Speculative Evidence in Disallowing Labor Costs	24
E. The Disallowance of Recovery of Labor Costs Constitutes Unlawful Retroactive Ratemaking.....	25
F. The Commission's Disallowance of Employee Impact Costs is Erroneous.....	26
1. The Disallowed Costs Are Due to Electric Restructuring and are Recoverable Costs	26
a. Rejection of Recovery of Costs Related to Retention of Critical Energy Controllers is Error	28
b. Rejection of Recovery of Retraining Costs is Error.....	29
2. There Is No Valid Basis to Disallow Employee Impact Costs.....	29
G. Disallowance of Labor Costs, Retraining Costs and Other Employee Impact Costs Violates Consumers Energy's Constitutional Rights	30
IV. CONCLUSION.....	30

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
to recover implementation costs for)
the period ended December 31, 1999)
_____)

Case No. U-12358

PETITION OF CONSUMERS ENERGY COMPANY
FOR REHEARING

I. INTRODUCTION

Consumers Energy Company (“Consumers Energy” or the “Company”) petitions the Michigan Public Service Commission for rehearing of the Commission’s July 11, 2001 Opinion and Order in the above captioned case. It is the position of Consumers Energy that certain findings of fact and conclusions of law, as set forth below, are erroneous.

Consumers Energy voluntarily implemented electric choice. The Company acted in good faith and acted in reliance upon past Commission orders for guidance. The Commission previously indicated that prudent costs would be recovered. The Commission made no findings of imprudence for implementation costs incurred in 1999.

Consumers Energy requests that the Commission grant rehearing. On rehearing the Commission should amend its July 11 Order to:

- (i) find that recovery of the \$25,156,000 of implementation costs incurred in 1999 that were approved by the Commission for deferred recovery should not be made conditional upon future events or future reviews, and
- (ii) find that the additional \$4,996,000 of labor costs, employee retraining costs and other employee impact costs that were incurred in 1999 in the implementation of electric restructuring should be approved for deferred recovery.

Amendment of the Commission's July 11 order in the manner requested is necessary to preserve the integrity of the electric restructuring implementation process and meet statutory and constitutional requirements. The portions of the July 11 Order that Consumers Energy seeks to have amended are contrary to the letter and spirit of Public Act 141 of 2000 ("PA 141") and orders of this Commission establishing the framework for recovery of implementation costs.

II. THE COMMISSION ERRED IN FINDING RECOVERY OF PRUDENTLY INCURRED 1999 IMPLEMENTATION COSTS SHOULD BE CONDITIONAL

The Commission's July 11 Order includes the following findings and conclusions:

"In its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission explicitly indicated that the incurrence of implementation costs for activities that proved to be ineffective, inefficient, or unworkable may not entitle a utility to recover the costs of those activities. Accordingly, the Commission cautioned the parties that its findings were conditional. In so doing, the Commission stated:

"If subsequent events reveal that costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the progress to retail open access, the Commission reserves the right to undertake another review of those costs and may foreclose their recovery.

"October 24, 2000 order, Cases Nos. U-11955 and U-11956, pp 4-5.

* * *

"In reserving the right to undertake another review of implementation costs at issue in Cases Nos. U-11955, U-11956, and U-12359, the Commission observed:

"Because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Consumers' and Detroit Edison's implementation programs at this time. The Commission notes, however, that it expects Consumers and Detroit Edison to file information in their 2000 and 2001 true-up cases from which the Commission can determine the effectiveness of the implementation costs that the companies seek to recover.

“October 24, 2000 order, Cases Nos. U-11955 and U-11956, p. 5.

“The reasons for the Commission to reserve judgment in Case Nos. U-11955, U-11956, and U-12359 still remain. Therefore, the Commission agrees with ABATE that the Commission should indicate in its final order in this proceeding that it again reserves the right to undertake another review of Consumers’ 1999 implementation expenditures.” July 11 Order, pp 9-10.

In findings paragraph b and the ordering paragraph (July 11 Order, p 12) the Commission held that recovery of \$25,156,000 of implementation costs incurred in 1999 should be conditional and subject to retroactive disallowance at some unspecified future point in time using unspecified standards. This constitutes error. Making recovery of prudently incurred implementation costs conditional is erroneous.

A. Commission Orders Establishing Electric Restructuring Provide for Full Recovery of Prudently Incurred Implementation Costs

Consumers Energy is legally entitled to recovery of prudently incurred electric implementation costs. Yet Consumers Energy is being denied that recovery in this case for 1999 implementation costs as a result of recovery being made “conditional” on future events and future hindsight reviews.

In its June 5, 1997 Opinion and Order in Case No. U-11290, the Commission held with respect to implementation costs:

“These are costs that would not be incurred absent a direct access program...If the costs are prudently incurred, it would...be inappropriate to disallow recovery by the utility. Thus the only remaining option is to include these costs in the transition charge if they are prudently incurred.” June 5 Order, pp 12-13.

No conditions were set forth for second reviews.

Consumers Energy's efforts to implement electric restructuring are unprecedented. The \$25,156,000 incurred during 1999 that the Commission approved for deferred recovery meets the definition of implementation costs. It is erroneous for the Commission to suggest that recovery of these implementation costs, which were incurred in good faith consistent with the approved implementation plan, will be evaluated using a standard other than the prudence standard, as defined by the courts of the State of Michigan.

B. PA 141 Provides for Full Recovery of Implementation Costs

Section 10a(1) of PA 141 states:

“No later than January 1, 2002, the commission shall issue orders establishing the rates, terms and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.” (Emphasis added)

Section 10a(5) states:

“The orders issued by the commission before the effective date of the amendatory act that added this section that allow customers of an electric utility to choose an alternative electric supplier, including orders that determine and authorize recovery of net stranded costs and implementation costs and that confirm any voluntary commitments of electric utilities, are in compliance with this act and enforceable by the Commission.” (Emphasis added)

The implementation costs incurred in 1999 were voluntarily incurred in a good faith reliance on prior Commission orders providing for full recovery of implementation costs and, pursuant to prior Commission orders and PA 141, such costs are fully recoverable.

Both the letter and the spirit of PA 141 provide for recovery of costs incurred by an electric utility to implement electric restructuring. To require prudent expenditures to be evaluated based on events which occur after the expenditures are made would be confiscatory

and unlawful retroactive ratemaking, in violation of statutory and constitutional protections. This is not the standard that the Legislature approved in PA 141.

C. **Making Recovery Conditional in the July 11 Order Is Inconsistent With the Prudent Investment Test That the Commission Stated Would Be Used in Reviewing Implementation Costs**

As indicated above, the Commission held in its July 5, 1997 Order in Case No. U-11290 that it would be inappropriate to disallow recovery of prudently incurred implementation costs. The prudent investment test requires that decisions be evaluated based on what was known at the time decisions to make the expenditures were made. The evidence establishes that the \$25,156,000 was prudently incurred based on what was known at the time decisions were made. The Commission correctly found these costs are recoverable. However, the Commission incorrectly found, in violation of the prudent investment test, that such recovery could be made conditional on future events and a future hindsight review.

Implementation of electric deregulation in Michigan is unprecedented. Efforts throughout the United States demonstrate varied approaches being used.

The Michigan Court of Appeals in ABATE v Public Service Commission, 208 Mich App 248; 527 NW 2d 533 (1994) explicitly held that when the prudence test is used the end result is not determinative:

“The Attorney General’s argument is inconsistent with the prudent investment test under which the end result of a utility’s efforts do not determine how much is recoverable. Rather utilities are compensated for prudent investments at their actual costs when made regardless of whether the investments are deemed necessary or beneficial in hindsight.” 208 Mich App 260. (Emphasis added)

The Court explicitly recognized that prudent costs may include unsuccessful investments. 208 Mich at 262.

Later in its decision the Michigan Court of Appeals again emphasized this legal principle:

“The PSC merely permitted Consumers to recover its prudent investment, and that investment was not made imprudent by Consumers’ subsequent decisions. Under the prudent investment test, the end result does not dictate what can be recovered. The utility is compensated for prudent investments when made, irrespective of whether the investments are deemed necessary or beneficial in hindsight. [citation omitted].” 208 Mich App at 267. (Emphasis added)

A prudent investment is not made imprudent by subsequent events; the end result does not dictate what can be recovered.

In light of these principles, the Commission surprisingly took the position in its July 11 Order with regard to the 1999 implementation costs that had been found to be recoverable that recovery was conditional:

“If subsequent events reveal that costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the progress to retail open access, the Commission reserves the right to undertake another review of those costs and may foreclose their recovery.” July 11 Order, p 9. (Emphasis added)

Thus the Commission suggests that a second review, at some future point in time, may evaluate whether 1999 investments that have been found to be recoverable were beneficial using hindsight, rather than what was known at the time investments were made.

Recovery of implementation costs cannot lawfully be made conditional on the imprecise end result. The Commission must evaluate whether the decisions that were made were reasonable based on what was known at the time those decisions were made. That review was undertaken for 1999 implementation costs in Case No. U-12358. The Commission’s approval of

recovery of the \$25,156,000 of implementation costs cannot lawfully be made conditional on future end-result review

The prudence review has been done. Consumers Energy presented evidence supporting the prudence of the 1999 implementation costs. 3 Tr 46-71. Staff witness William Kusiak specifically testified that the purpose of his testimony was to present the Staff's audit results for electric restructuring implementation costs and the prudence of those costs and recommended recovery of the \$25,156,000. 3 Tr 136, Exhibit S-6.

Consumers Energy fears that some party will challenge, at some undefined future point in time and using some undefined end-result hindsight standard for evaluating success, the expenditures that were at issue in this proceeding and which have been held to be recoverable. The end-result review identified in the July 11 Order cannot lawfully be undertaken.

D. Consumers Energy Voluntarily Incurred the 1999 Implementation Costs in Reliance Upon Commitments of this Commission that Such Costs Would Be Recovered

Consumers Energy reasonably believed and relied upon the Commission's commitment that prudent implementation costs would be recovered. The record evidence in Case No. U-12358 sets forth that Consumers Energy incurred implementation costs in 1999 in reliance upon the Commission's prior orders and commitments. See 3 Tr 47, 59 and 61. The language in the July 11 Order that states that recovery of the \$25,156,000 of implementation costs is conditional and subject to a future end-result analysis violates the basic underlying premises fundamental to the electric restructuring program which the Commission adopted, in which the Company voluntarily agreed to participate, and which the Legislature found to be lawful and enforceable in PA 141.

At every stage of this unprecedented retail open access process, Consumers Energy has sought Commission guidance and concurrence for its proposed implementation plans. The Staff Report supported recovery of such implementation costs. The Commission found that the Staff Report presented a reasonable basis for determining stranded costs. June 5, 1997 Case No. U-11290 Order, p 11. This was also the order in which the Commission, as previously noted, found that it would be inappropriate to disallow recovery of prudently incurred implementation costs. June 5 Order, pp 12-13.

In its June 30, 1998 implementation plan filing, at page 6, Consumers Energy informed the Commission that it was proceeding with implementation expenditures in reliance upon commitments made by the Commission:

“The Company is incurring such substantial costs with the understanding that they will be reasonably promptly recovered from customers via an implementation cost surcharge. ...[T]he Company does so with the expectation that such recovery will not be unduly delayed and that it will not be faced with subsequent disputes concerning the appropriateness of the types of such expenditures.” (Emphasis added)

Similarly, in a September 1998 response to comments filed by other parties concerning the Company’s voluntary implementation plan, Consumers Energy once again informed the Commission that expenditures were being made and requested the Commission to communicate any reservations:

“The expenditures being made by Consumers Energy are needed in order to implement the retail open access program described in the implementation plan, and in order to maintain the schedules that are described in the plan. If ...the Commission has reservations about the wisdom of proceeding with these expenditures to meet this schedule, the company respectfully requests the Commission to so state. The Company should not be put in the position later of being accused of having made imprudent expenditures.” Response of

Consumers Energy to Comments, September 16, 1998, Case Nos. U-11290 et al, p 3. (Emphasis added)

In its March 8, 1999 Order in Case Nos. U-11290 et al the Commission approved the Company's proposed implementation plan.

The expenditures that the Commission found should be approved for recovery in this proceeding were incurred in support of the implementation plan approved by the Commission. 3 Tr 46. Mr. Gilzow testified with regard to the 1999 implementation costs:

"These expenses were incurred in response to, and in reliance on, the MPSC's orders on electric restructuring. The types of costs incurred are consistent with categories of costs the Commission has previously identified and were reasonably and prudently incurred." 3 Tr 56.

Consumers Energy incurred substantial costs in a good faith reliance on prior Commission determinations that such costs would be recovered if prudently incurred.

The Commission seeks to support making recovery conditional in its Case No. U-12358 Order by reference to its October 24, 2000 Order in Case Nos. U-11955 and U-11956 and its March 29, 2001 Order in Case No. U-12359, a Detroit Edison case. In addition to other defects of this reliance, both orders were issued after the 1999 implementation expenditures at issue in Case No. U-12358 were incurred.

Moreover, the conclusion that the reasons given in the referenced prior orders are equally valid in Case No. U-12358 is factually erroneous. Case No. U-12359, which did not even involve Consumers Energy, was a different case and involved different evidence. Further, the issue appears to not have been contested in that case. The Commission's decision in Case Nos. U-11955 and U-11956 was expressly made "For purposes of the present case". Case No. U-11955 Order, p 5. Regardless of whether the Commission should have made recovery conditional in the other cases, it should not and cannot lawfully do so in this case.

Consumers Energy presented evidence in Case No. U-12358 that the expenditures were in furtherance of the implementation plan that the Commission approved and allowed implementation of retail open access to proceed to the point at which retail open access customers are now being served. See 3 Tr 48-57, 78-83. There was no evidence presented to the contrary.

Making recovery of the \$25,156,000 of implementation costs already found to be recoverable conditional is a retroactive change from the standard which the Commission established and which the Company accepted in voluntarily undertaking implementation expenditures. The Commission's retroactive change of the test is unlawful and unreasonable.

E. The Commission's Case No. U-12358 Order Violates Consumers Energy's Constitutionally Protected Rights

Consumers Energy has constitutional rights to just and reasonable rates. U.S. Const, Am V, XIV; Const 1963, art 1, section 17, art 10, section 2; Missouri ex rel Southwestern Bell Telephone Co. v Public Service Comm of Missouri, 262 US 276; 43 S Ct 544; 67 L Ed 981 (1923), Federal Power Comm v Natural Gas Pipeline, 315 US 575; 62 S Ct 736; 86 L Ed 1037 (1942), Federal Power Comm v Hope Natural Gas Co, 320 US 591; 64 S Ct 281; 88 L Ed 333 (1944), Permian Basin Area Rate Cases, 390 US 747; 88 S Ct 1344; 20 L Ed 2d 312 (1968), Duquesne Light Co v Barasch, 488 US 299; 102 L Ed 2d 646; 109 S Ct 609 (1989).

Michigan Constitution 1963, article 1, section 17 provides procedural and substantive protection against confiscatory rates by its due process clause and also by stating:

“...the right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.”

The Fourteenth Amendment to the United States Constitution provides procedural and substantive protection against confiscatory rates by its due process clause and by the “takings clause” of the Fifth Amendment to the United States Constitution, which is applicable to states under the Fourteenth Amendment. Accord, Northern Michigan Water Co v Public Service Comm, 381 Mich 340, 351; 161 NW 2d 584 (1968), ABATE v Public Service Comm, 430 Mich 33, 39; 420 NW 2d 81 (1988). See also Consumers Power Co v Public Service Comm, 415 Mich 134, 145; 327 NW2d 875 (1982); Michigan Consolidates Gas Co v Public Service Comm, 389 Mich 624, 638; 209 NW2d 210 (1973).

A regulator cannot arbitrarily switch ratemaking methodologies in a way that imposes risks on investors that they did not assume and for which they were not compensated. Duquesne, *supra*, 488 US at 315. Yet, that is precisely what the Commission has done by agreeing with ABATE’s position in this proceeding and stating that recovery of prudently incurred costs is conditional upon an additional, end-result review.

Essentially the Commission is stating that the implementation cost hearing which was undertaken in Case No. U-12358 does not establish that any costs are recoverable, despite legislative pronouncements and prior Commission commitments that such costs would be recoverable. It is the position of Consumers Energy that the Commission cannot make the recovery of the \$25,156,000 of implementation costs incurred in 1999, which it has found to be recoverable, to be conditional. To the extent that the Commission has discretion, adopting the position advocated by ABATE on this issue is an abuse of discretion for the reasons set forth above.

F. Conclusion

The Commission's decision to make recovery of \$25,156,000 of implementation costs which were incurred in 1999, which it has found to be recoverable costs, conditional on future events and future reviews is an error of fact and law. On rehearing the Commission should amend its order and strike the portions of the July 11 Order that make recovery of these implementation costs conditional.

III. THE COMMISSION ERRED IN DENYING RECOVERY OF IMPLEMENTATION COSTS INCURRED IN 1999 THAT WERE LABOR COSTS, RETRAINING COSTS AND OTHER EMPLOYEE IMPACT COSTS

The Commission's July 11 Order includes the following findings and conclusions:

"The Commission finds that Consumers' request for recovery of the \$3,369,000 of labor expenses (excluding employee impact expenses) should be denied. After weighing the evidence, the Commission is not persuaded those labor expenses were incremental to Consumers' restructuring implementation efforts.

"In its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission disallowed the same types of expenses as are involved in this proceeding....

"The Commission finds that the evidence proffered by Consumers in this proceeding is remarkably similar to that submitted in Case Nos. U-11955 and U-11956...."

"...Mr. Kusiak's testimony confirms that Consumers' 1999 other O&M expenses were over \$7 million less than the amount collected in its current rates. Further, Mr. Kusiak established that the actual number of employees working for Consumers as of December 31, 1999 was 202 less than the number of employees reflected in current rates. Therefore, the Commission finds that the \$3,369,000 reduction proposed by Mr. Kusiak should be adopted.

"The Commission also finds that the \$1,481,000 reduction proposed by Mr. Kusiak that is associated with the labor and non-labor components of Consumers' 1999 employee impact expenses should be adopted." July 11 Order, pp 5-6

“Given that the Commission rejected Consumers’ attempt to recover the labor component of its proposed employee impact expenses, the Commission finds that recovery of the \$331,000 non-labor component should also be denied.” July 11 Order, p 8.

The Commission denied recovery of \$4,996,000 of costs, including the \$146,000 of associated carrying costs. Denying recovery of these labor costs, retraining costs and employee impact costs is an error of law and is based on error of fact.

A. The Commission’s Finding that the Evidence Presented by Consumers Energy is “Remarkably Similar” to that Submitted in Case Nos. U-11955 and U-11956 is in Error

The Commission’s statement at page 5 of its July 11 Order that the evidence regarding labor costs is “remarkably similar” to that presented in Case Nos. U-11955 and U-11956 reflects a fundamental error. The Commission is mistaken. The evidence in this proceeding on this issue is significantly different than evidence presented by Consumers Energy in the prior proceeding. As will be discussed further below, the evidence in Case No. U-12358 was directly responsive to the Commission’s directives in its Order in the prior proceeding as to what type of evidence would be adequate.

In Case Nos. U-11955 and U-11956 Consumers Energy presented no analysis whatsoever of labor hours. The Company’s initial filing in Case No. U-12358 was similar to the prior filing with regard to labor costs. After that initial filing was made, but prior to filing of rebuttal testimony, the Commission issued its Case Nos. U-11955 and U-11956 Order in which it provided guidance on this issue. Consumers Energy, in its rebuttal filing, presented the results of a detailed hourly labor analysis not in the prior case. The proofs submitted on rebuttal, which are substantially different than in the prior case, demonstrate that labor costs were incremental.

The fact-specific hourly labor analysis presented in Case No. U-12358 is new evidence of a different type than was presented by Consumers Energy in Case Nos. U-11955 and

U-11956. Consumers Energy respectfully requests that the Commission review this evidence and upon review find that the \$3,369,000 of labor costs incurred in 1999 for electric implementation were indeed incremental and recoverable.

1. Overview of New and Different Evidence

During 1999 there were 57 employees who charged all or part of their time to electric restructuring implementation. 3 Tr 62. The \$3,369,000 of labor costs are the result of 100,007 hours of labor spent on the project in 1999. 3 Tr 62. This total is comprised of 66,157 direct labor hours and 33,850 chargeback hours. 3 Tr 62. Through a detailed analysis of labor hours, Mr. Gilzow showed that 100% of these labor hours were incremental. 3 Tr 62-67, Exhibit A-2.

On Exhibit A-2 Mr. Gilzow classified labor hours among six categories. In his testimony he explained why each of these categories should be considered incremental. In 1999, labor hours were attributable to:

- (i) Adding new employees to fill new positions created by the restructuring project **(10% of the total hours);**
- (ii) Shifting existing employees from areas outside the electric strategic business unit into the electric strategic business unit **(2.1% of total hours);**
- (iii) Moving existing employees from their current job and backfilling that position through use of new employees **(26.4% of total hours);**
- (iv) Paying for overtime hours **(0.5% of total hours);**
- (v) Incurring chargeback labor from internal support organizations directly related to electric restructuring **(33.8% of total hours);** and

- (vi) Utilizing existing employees with other personnel picking up additional workload, work being deferred, or use of non-paid overtime for other work **(27.2% of total hours)**.

Exhibit A-2, 3 Tr 63. Exhibit A-2 shows the breakdown both by total for each of the six categories and by area of activity. The six categories are addressed further below. The number of employees involved in each of the specific implementation activities listed is shown in column (A) of Exhibit A-2.

Disallowing all labor costs incurred in 1999 in connection with implementation of electric restructuring is not appropriate. The evidence shows that each of the categories meets the criteria for recovery.

2. Labor Hours in All Six of the Labor Categories Are Incremental

a. New Employees Were Added to Fill New Positions Created As a Result of Electric Restructuring

In 1999 labor hours for eight employees were attributable to new employees that were added to fill new positions created by electric restructuring. 3 Tr 63. These employees were responsible for 10,000 of the labor hours charged to the electric restructuring in 1999, which represents approximately 10.0% of the total hours. 3 Tr 63, Exhibit A-2. These employees were assigned to positions in customer enrollment, retailer settlement, energy scheduling, and to activities related to the formation of a regional transmission organization. 3 Tr 63-64. These are employees who both filled new positions related to electric restructuring and were new to Consumers Energy. 3 Tr 64. The hours are all incremental and represent costs that would not have been incurred but for restructuring and activities that would not have been performed but for restructuring. The hours are shown in column (B) of Exhibit A-2.

b. An Employee Formerly in the Gas Business Unit Was Transferred to Electric Restructuring to Fill a New Position

In 1999 there were 2080 hours charged to the project, representing approximately 2.1% of the total hours, which were attributable to an employee that shifted from an area outside of the electric strategic business unit into the strategic business unit. 3 T 64. That employee had previously held a position in the gas strategic business unit. 3 Tr 64. The employee filled a new position related to electric restructuring. 3 Tr 64. Labor costs for this employee's prior position, if included in rates, would have been included in gas rates, not electric rates. These hours, and the associated costs, were incremental with regard to electric operations. The expenses would not have been included in electric rates. The hours are shown in column (C) of Exhibit A-2.

c. Some Employees Were Moved to Electric Restructuring and Their Prior Positions Filled With New Employees

In 1999, labor hours for 16 employees were attributable to employees who had been moved from their prior job and had their prior job backfilled through use of new employees. 3 Tr 64. These employees were responsible for 26,421 of the labor hours charged to electric restructuring in 1999, which represents approximately 26.4% of the total hours. 3 Tr 64, Exhibit A-2. These 16 employees either filled a new position within electric restructuring or worked on electric restructuring and had their prior responsibilities backfilled through the use of new employees. 3 Tr 64. These employees performed electric restructuring work in such areas as customer billing, customer enrollment, energy scheduling, project management, and activities related to RTO formation. 3 Tr 64. These employee assignments represent incremental costs, thus meeting the criteria for recovery. The hours are shown in column (D) of Exhibit A-2.

d. Some Employees Incurred Paid Overtime Hours as a Result of Electric Restructuring Activities Which Were Performed in Addition to Their Normal Jobs

In 1999, 16 employees received overtime pay for work on electric restructuring activities. 3 Tr 64. These employees were responsible for 452 of the labor hours charged to electric restructuring in 1999, which represents approximately 0.5% of the total hours. 3 Tr 64, Exhibit A-2. Overtime hours were in such areas as customer billing, customer enrollment, retailer settlement, energy scheduling, project management and bidding. 3 Tr 64. These hours represent overtime hours paid to employees who worked on electric restructuring in addition to working their normal jobs. 3 Tr 65. These expenses represent incremental costs which are directly the result of restructuring and meet the criteria for recovery. The hours are shown in column (E) on Exhibit A-2.

e. Chargeback Hours Are Essentially the Same as Outside Consulting Services

In 1999, the electric restructuring project was charged for 33,850 hours of work by personnel outside of the Electric Strategic Business Unit. 3 Tr 65. This represents approximately 33.8% of the total hours. Exhibit A-2. The work performed by these personnel was critical to the successful implementation of electric restructuring. 3 Tr 65-66. Mr. Gilzow testified that chargeback services are essentially the same as outside consulting services. 3 Tr 65. These costs are directly related to electric restructuring and are incremental to the costs which would otherwise have been incurred by electric operations. The chargeback hours are shown in column (F) of Exhibit A-2.

f. Additional Labor Hours Were Also Incremental

In 1999 there were 27,204 hours charged to electric restructuring that are attributable to utilizing existing employees with other personnel picking up additional work load, work being deferred, or use of non-paid overtime hours for other work. 3 Tr 66. This represents approximately 27.2% of total hours. Exhibit A-2. These hours were necessary to incrementally support implementation of retail open access. These hours represented work of 31 employees (the equivalent of approximately 14 full-time employees) and covered all aspects of electric restructuring work. 3 Tr 66. The hours are shown in column (G) of Exhibit A-2 by implementation activity and total.

3. The Company's New and Different Evidence Establishes that Labor Costs Were Incremental

The record at 3 Tr 59-71 and in Exhibits A-2 and A-3 contains new evidence, of a different type than was presented in Case Nos. U-11955 and U-11956. That evidence presents a detailed analysis of labor hours charged to electric restructuring implementation in 1999. Company witness Carl Gilzow analyzed 110,007 hours of labor charged to electric restructuring and determined the nature of each of those hours. He presented competent, material and substantial evidence on this issue. No witness presented any evidence challenging or refuting Mr. Gilzow's analysis or conclusions regarding labor hours.

B. The Commission Applied an Inappropriate and Unlawful Standard in Disallowing the Labor Costs and Employee Impact Costs

At no time did orders approving Consumers Energy's implementation plan or providing that prudent implementation costs would be recoverable ever indicate that labor costs would be reviewed using overall company headcount or overall electric operation and

maintenance expense as criteria. Consumers Energy was not told these criteria would be applied to labor costs incurred in the implementation of electric restructuring.

This concept was mentioned by the Commission for the first time in its October 24, 2000 Order in Case Nos. U11955 and U-11956, well after the expenditures at issue in this case had occurred. Even in that case, the Commission framed its disallowance of labor costs in terms of a lack of “an adequate showing” that labor costs were (i) in addition to costs that would have been incurred in the absence of electric implementation and (ii) for a task or activity that would not have been performed but for restructuring, not an absolute prohibition.

In contrast, the Commission effectively found in its July 11 Order in Case No. U-12358 that labor costs can never be incremental unless the number of employees is at a level greater than at the time base rates were last established and overall operation and maintenance expense is higher than when base rates were last established. This standard is unlawful and unreasonable.

As discussed previously, PA 141 and prior Commission orders provide for full recovery of implementation costs. Labor costs incurred in implementation of electric restructuring and employee impact costs are encompassed within the categories that both the Commission and the Legislature have found to be recoverable. Prior Commission orders provide for recovery of such costs.

The Commission’s disallowance was not based on a finding that the labor and employee impact costs were imprudent. Indeed there was no evidence that such costs were imprudent. Rather the Commission indicates that it relied upon the Staff’s analysis in making its disallowance. The Staff’s analysis consisted of stating that electric operation and maintenance

expenses were lower in 1999 than the level included in base rates and that the employee level at the end of 1999 was lower than the level at the time rates were last set.

PA 141 froze the Company's electric rates. The Commission committed legal error, and to the extent discretion exists abused that discretion, in disallowing costs based on the number of overall employees¹ and the overall level of electric operation and maintenance expense in 1999 as compared with 1996. This is an inappropriate and unlawful standard, is a form of retroactive ratemaking, and is a violation of the existing statutory rate freeze.

The Commission cannot lawfully or reasonably make recovery of labor costs dependent upon whether the Company has managed its operation and maintenance expense at a level below or above the amount used in establishing rates. Nor can it lawfully or reasonably make recovery of labor costs dependent upon whether the Company has managed its operations such that the number of employees is higher or lower than the number of employees that existed when base rates were last set. Neither is a proper criterion for whether labor costs incurred for implementation of retail open access are incremental. Whether operation and maintenance expenses are above or below levels used in setting rates and whether the number of employees is above or below the levels used in establishing existing rates are legally irrelevant to recovery of labor costs incurred in implementing retail open access.

The question with regard to whether labor costs are recoverable is not whether the Company has successfully or unsuccessfully managed its business within the expenses and employee numbers used in establishing existing rates. Rather the question (as set forth by the Commission in Case Nos. U-11955 and U-11956) is whether the labor costs are (i) costs which

¹ Staff looked at the total employee level, not just electric employee level. This provides another reason that the comparison cannot be relied upon.

would not have been incurred but for restructuring and (ii) represent activities which would not have been performed but for restructuring. The answer is not dependent upon the ability of the Company's management to manage within the operation and maintenance expense levels assumed in establishing rates or the ability of the Company's management to manage within the number of employees assumed in setting rates. In essence, the Commission's approach penalizes efficiency.

Section 10d(1) of PA 141 states:

“(1) ...Notwithstanding any other provision of law or commission order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on the effective date of the amendatory act that added this section and remain in effect until December 31, 2003 and all other electric rates of an electric utility with 1,000,000 or more retail customers authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003, unless otherwise reduced by the commission under subsection (4).”

Subsection (4) is not relevant to the instant issue. The above language makes clear that Consumers Energy's base electric rates are frozen and thus cannot be reduced. Yet, what the Commission cannot do directly it has done indirectly.

The Commission has taken \$3,369,000 of implementation labor costs that would otherwise be recoverable and refused to allow recovery under the premise that these costs should be absorbed by base rates. In effect, the Commission has reduced 1999 base rates by this amount. The Commission's use of operation and maintenance expense levels used in setting base rates and employee levels at the time base rates were set as the basis for disallowance of these costs violates both the letter and the spirit of PA 141.²

² Further, as discussed below, this results in unlawful retroactive ratemaking.

Operation and maintenance expenses and employee levels are almost never at the levels that are used in establishing rates. The Commission is applying a standard which makes a determination of whether labor costs and employee impact costs are recoverable dependent upon factors unrelated to whether those costs would not have been incurred but for restructuring or represent a task or activity that would not have been performed but for restructuring.

The Commission attempts to support its disallowance of labor costs by stating that the number of employees as of December 31, 1999 was 202 less than reflected in current rates. This reliance on employee levels in 1999 compared to 1996 illustrates the fallacy of the approach as a gauge of whether employee labor was incremental. The evidence shows that the number of employees as of December 31, 1999 was 133 more than at the end of 1998. 3 Tr 67. That increase more than covers the number of employees whose labor was classified as being attributable to restructuring. Thus, if the question is whether there were more employees than there would otherwise have been, the evidence establishes there were. Comparing the number of employees is the incorrect criteria in evaluating whether costs are incremental. However, if that method were used, the appropriate base period would not be 1996.

C. The Commission Unreasonably and Unlawfully Failed to Apply the Criteria that the Commission Held Would Be Used in Evaluating Whether Labor Costs Were Incremental

The disallowance of labor costs violates the standard that the Commission adopted in Case Nos. U-11955 and U-11956. While the Commission disallowed labor costs incurred in 1997 and 1998 in Case Nos. U-11955 and U-11956, it did not state that labor costs would never be recoverable. Rather, it stated that the evidence in that particular case did not establish that such costs were incremental. The Commission identified what it viewed as weaknesses in the evidence and set forth a two-prong test for evaluation of labor costs.

The Commission in its Case Nos. U-11955 and U-11956 Order stated with regard to the evidence in that case:

“Neither Consumers not Detroit Edison provided an adequate showing that those costs were in addition to the employee-related costs typically incurred by a utility operation in providing electric service in a reasonable, efficient manner...Unless the cost would not have been incurred, and represents a task or activity that would not have been performed, but for restructuring, it is more properly classified as the type of expense assigned to base rates. The record [in Case Nos. U-11955, U-11956] does not establish that the labor costs subject to the proposed disallowances are incremental. In future true-up proceedings, Consumers and Detroit Edison should demonstrate the extent, if any, to which employee reassignments represent incremental costs. One approach would be to identify the vacated positions or responsibilities that the company was, or will be, required to fill by hiring additional employees or acquiring replacement services.” Order, pp 9-10 (Footnote omitted) (Emphasis added)

In the present case, Consumers Energy has presented evidence which meets the criteria identified by the Commission.

The evidence presented by the Company in Case No. U-12358 establishes that the labor costs incurred in 1999 were incremental. Mr. Gilzow testified:

“The labor costs are (i) for costs that would not have been incurred but for restructuring and (ii) represent activities that would not have been performed but for restructuring. These costs are in addition to the costs that would typically be incurred in providing electric service in a reasonable, efficient manner.” 3 Tr 62.

Mr. Gilzow illustrated the incremental nature of the labor hours on his Exhibit A-2. That evidence has been summarized above.

This is not a situation in which the Commission evaluated each of the six categories of labor costs and found one or even two were not recoverable. Rather the Commission made an across-the-board disallowance. The fallacy of the Commission’s conclusion is illustrated in the fact that among the labor costs which it disallowed were labor

costs that were attributable to new employees that were hired to fill new positions created by electric restructuring and labor costs that were attributable to employees from areas outside of the electric strategic business unit. 3 Tr 63-64. The additional categories, which involved (i) moving existing employees from their existing jobs and backfilling that position through use of new employees, (ii) paying for overtime hours, (iii) incurring chargeback labor, and (iv) utilizing existing employees with other personnel picking up additional workload, work being deferred, or use of non-paid overtime for other work, likewise meet the criteria identified by the Commission. The evidence established labor costs for all six categories would not have been incurred but for restructuring and represent activities that would not have been performed but for restructuring.

No party presented any evidence disputing the Company's classification of labor hours or claiming that the labor hours did not meet the Commission's two-prong test. The two-prong test set forth by the Commission in its order in Case Nos. U-11955 and U-11956 was met. The Commission did not apply the correct standard and has erroneously disallowed all labor costs.

D. The Commission Erroneously Relied Upon Speculative Evidence in Disallowing Labor Costs

The Commission disallowance of labor costs is based on speculation, not upon competent, material and substantial evidence. The only witness to recommend disallowance was Mr. Kusiak. Mr. Kusiak used a "proxy method" that looked at operation and maintenance expense and at employee levels rather than a labor-specific analysis.

In seeking to support his proposed disallowance, Mr. Kusiak did not directly address whether labor costs were incremental. After stating that Operation and Maintenance levels were lower in 1999 than the amounts used in setting rates, he testified:

“It would therefore appear the company’s base rates already allow for a level of spending above those incurred by the company.” 3 Tr 137 (Emphasis added)

After stating that employee levels at the end of 1999 were lower than at the time rates were established, Mr. Kusiak stated:

“Again, one could conclude the current rates of the company provide ample coverage of any implementation related labor costs.” 3 Tr 137 (Emphasis added)

These two speculative conclusions are the extent of the support in the record for disallowance of the labor costs. Mr. Kusiak concluded:

“Based on this review, I do not believe Consumers Energy is incurring any incremental labor costs which are over those already included in their existing rates.” 3 Tr 137 (Emphasis added)

As discussed above, Mr. Kusiak applied the wrong criteria. But in addition, the tentative nature of his conclusions does not support disallowance in any event. This is particularly true given the extensive labor-hour specific analysis presented by Consumers Energy. Reliance on the evidence presented by Staff to disallow recovery of labor costs is legal error.

E. The Disallowance of Recovery of Labor Costs Constitutes Unlawful Retroactive Ratemaking

To deny recovery of prudently incurred labor costs, which would otherwise not have been incurred, on the grounds that such incremental amounts should be recovered in base rates is a retroactive reduction in base rates by the amount of the labor expense. Such a retroactive reduction in base rates is unlawful and unreasonable. See Michigan Bell Telephone Co v Public Service Commission, 315 Mich 533, 546-547; 24 NW2d 200 (1946), ABATE v Public Service Commission, 205 Mich App 383, 393-395; 522 NW2d 140 (1994).

Furthermore, the disallowance of these costs constitutes unlawful retroactive ratemaking for an additional reason, as well. The rules were changed after the Company had put

into place an implementation plan in reliance on Commission pronouncements providing assurance of recovery of implementation costs. The Commission has abused its discretion by denying recovery of these labor costs.

F. The Commission's Disallowance of Employee Impact Costs is Erroneous

1. The Disallowed Costs Are Due to Electric Restructuring and are Recoverable Costs

The Commission disallowed \$1,481,000 of employee impact costs. In identifying what this category of costs included, the Commission stated:

“Employee impact expense’ is Consumers’ terminology. Although not explicitly defined, the record evidences that this category of expenses includes costs associated with the retention, training, and relocation of Consumers’ employees.” July 11 Order, p 3, footnote 1.

This summary of the types of costs encompassed by the terminology is correct. The initiatives that gave rise to the costs are described at 3 Tr 55, 68-71.

Section 10a of PA 141 included the following provisions:

“(1) ...The orders shall provide for full recovery of a utility’s...implementation costs as determined by the commission.

Section 10p of PA 141 states in subsections (1) and (2):

“(1) Each electric utility operating in this state shall establish an industry worker transition program that shall, in consultation with employees or applicable collective bargaining representatives, provide skills upgrades, apprenticeship and training programs...

“(2) Stranded costs shall include audited and verified employee-related restructuring costs that are incurred as a result of the amendatory act that added this section or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have

been approved and found to be prudently incurred by the commission.”

These provisions, as well as prior Commission orders,³ make clear that labor costs and employee impact costs incurred for implementation of electric restructuring are recoverable costs.

The \$1,481,000 of employee impact costs that the Commission has disallowed are the very types of costs that the Legislature made clear in PA 141 were not to be excluded.⁴ There is no competent, material or substantial evidence supporting disallowance of these costs. Indeed, there is no record evidence at all addressing these costs other than the evidence presented by Mr. Gilzow explaining these costs and an unexplained line item disallowance in a Staff exhibit. The disallowance of \$1,481,000 of employee impact costs is never explained on the record. Neither the level of operation and maintenance expense in 1999 compared with 1996 nor the employee levels in 1999 compared with 1996 have any relevance to these costs.

The Commission seeks to explain its disallowance of these costs by stating:

“The burden is on Consumers to establish that an expense for which it seeks recovery is related to electric restructuring. The Commission is not persuaded that Consumers has met this burden with regard to the disputed employee impact expenses.” July 11 Order, pp 6-7.

There is no support in the record for rejection of the Company’s request for recovery of these costs. The Commission committed error by rejecting recovery of these costs.

The employee impact costs relate to two initiatives. One involved the retention of critical electric transmission controllers. The other involved retraining, relocation and associated

³ For example, the Commission stated at page 8 of its June 5, 1997 Order in Case No. U-11290 that “Promoting the retraining of employees...is good public policy, will improve the Michigan economy..., and is consistent with the approach taken in other states....”

⁴ The \$331,000 non-labor component is included within the \$1,481,000. There was no evidence at all refuting the recoverability of these costs. Carrying costs need to be added to amounts found recoverable.

expenses related to elimination of the traveling repair crew. Consumers Energy presented competent, material and substantial evidence that these costs are directly related to industry restructuring and that restructuring caused these costs to be incurred. 3 Tr 55, 67-71.

a. Rejection of Recovery of Costs Related to Retention of Critical Energy Controllers is Error

The Commission finds at page 8 of its July 11 Order that the retention of critical energy control employees is not related to electric restructuring. However there is no record evidence that supports this conclusion.

The record evidence shows, among other things, that (i) on December 31, 1996 Detroit Edison gave Consumers Energy notice of its intent to terminate the Electric Coordination Agreement, (ii) the existence of electric restructuring necessitated a program to retain critical employees, (iii) as a result of electric restructuring jobs of energy controllers are more complex and more in demand, (iv) the 28 employees who were part of this initiative have highly specialized skills that are critical to the transmission function of the Michigan Electric Power Coordination Center, (v) in order to assure retention through 2001 it was necessary to offer a comprehensive retention package, and (vi) these costs are directly related to electric restructuring and incremental. 3 Tr 69-70. These are non-recurring costs in addition to operational costs already included in base rates. The Commission's conclusion that the need to make these expenditures is not related to implementation of retail open access and expenses should be assigned to base rates is not supportable on the record and is contrary to the letter and spirit of PA 141.

b. Rejection of Recovery of Retraining Costs is Error

With regard to retraining expense, the Commission finds:

“It is more likely, based on evidence developed in other Commission proceedings that Consumers abandoned year-round scheduled outages due to the tight summertime electric supply situation in this state during recent years.” July 11 Order, p 7. (Footnote omitted) (Emphasis added)

It should go without saying that the Commission cannot legally rely upon evidence in other proceedings for purposes of Case No. U-12358. The decision must be based on the record evidence in this case. The Commission’s rejection of recovery is an error of law and fact.

The record evidence in this case does not support the Commission’s conclusion.

Mr. Gilzow testified:

“Electric restructuring has resulted in changing the way outages are scheduled...Because of electric restructuring, outages will be concentrated in the off periods of the spring and fall requiring large numbers of craft during those periods and few if any in the summer and winter peak periods. Maintaining a workforce year around under those conditions cannot be justified...

* * *

“Forty-three of the employees transferred into substation construction jobs in the transmission and distribution area of the Company....In order to make this transition, these employees had to be retrained....In addition, six employees transferred to meter reading. This again required retraining....” 3 Tr 68-69

These are exactly the types of costs the legislature envisioned in Section 10p(1) of PA 141 when they referred to a worker transition program that would provide skills upgrades and in Section 10p(2) when they referred to employee retraining programs.

2. There Is No Valid Basis to Disallow Employee Impact Costs

Consumers Energy has presented evidence showing that the employee impact costs that were incurred in 1999 were the direct result of electric restructuring. There is no

evidence in the record to the contrary. Given the record evidence in this case it is contrary to both the letter and spirit of PA 141 to disallow recovery of the \$1,481,000 of employee impact costs incurred in 1999 in connection with implementation of electric industry restructuring.

G. Disallowance of Labor Costs, Retraining Costs and Other Employee Impact Costs Violates Consumers Energy's Constitutional Rights

Consumers Energy has acted in reliance upon the Commission's prior orders. For reasons which have been discussed above, the denial of recovery of labor costs, retraining costs and other employee impact costs violates Consumers Energy's due process rights and is an unlawful confiscation of property. United States Constitution, Am V, XIV, Michigan Const 1963, art 1, section 17; art 10, section 2.

IV. CONCLUSION

Consumers Energy Company respectfully requests the Commission to grant rehearing in this matter to the extent described above and on rehearing amend its July 11, 2001 Order such that (i) the recovery of the \$25,156,000 of 1999 implementation costs which the Commission found to be recoverable is not conditioned upon further events or reviews and (ii) it allows recovery of the additional \$4,996,000 of labor, employee retraining and other employee-impact related implementation costs incurred in 1999.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: August 10, 2001

By:

H. Richard Chambers
H. Richard Chambers
212 West Michigan Avenue
Jackson, Michigan 49201
Attorney for Consumers Energy Company
(517) 788-1482

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
to recover implementation costs for)
the period ended December 31, 1999)
_____)

Case No. U-12358

PROOF OF SERVICE

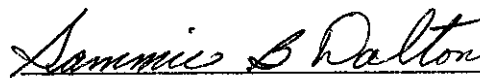
STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Kelly Fisher, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that she served an electronic copy of the "**Petition of Consumers Energy Company for Rehearing**" upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein. She further states that she served a copy of the above-referenced document upon the same parties, at the addresses listed therein by depositing the same on August 10, 2001, in the United States mail in the City of Jackson, Michigan with first-class postage thereon fully paid.



Kelly Fisher

Subscribed and sworn to before me this 10th day of August, 2001.



Sammie B. Dalton
Notary Public, Jackson County, Michigan
My Commission Expires: 01/04/04

ATTACHMENT 1 -- to Case No. U-12358

Administrative Law Judge

Honorable James N. Rigas
Ottawa State Office Building
611 West Ottawa Street, 2nd Floor
P.O. Box 30695
Lansing, MI 48909-8195
Facsimile: 517-335-6696
E-Mail: james.n.rigas@cis.state.mi.us

**Counsel for the Michigan Public
Service Commission Staff**

Steven D. Hughey, Esq.
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
E-Mail: hugheys@ag.state.mi.us
bibbst@ag.state.mi.us

Counsel for Energy Michigan, Inc.

Eric J. Schneidewind, Esq.
Angela M. Brown, Esq.
Varnum, Riddering, Schmidt & Howlett
The Victor Center, Suite 810
201 N. Washington Square
Lansing, MI 48933
E-Mail: ejschneidewind@vrsh.com
ambrown@vrsh.com

**Counsel for the Attorney General,
Jennifer M. Granholm**

Donald E. Erickson, Esq.
Assistant Attorney General
6520 Mercantile Way, Suite 2
P. O. Box 30218
Lansing, MI 48909
E-Mail: ericksond@ag.state.mi.us

**Counsel for the Association of Businesses
Advocating Tariff Equity ("ABATE")**

Thomas E. Maier, Esq.
Robert A.W. Strong, Esq.
Robert A. LeFevre, Esq.
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
E-Mail: tmaier@clarkhill.com
rstrong@clarkhill.com
rlefevre@clarkhill.com