

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and)
conditions for retail customers of)
CONSUMERS ENERGY COMPANY)
to choose an alternate electric supplier)
_____)

Case No. U-12488

ENERGY MICHIGAN, INC.'S INITIAL BRIEF

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I. INTRODUCTION

In Order U-12488 issued June 19, 2000, the Michigan Public Service Commission (Commission) Ordered the Consumers Energy Company (Consumers or Consumers Energy) to file tariffs governing the Rate DA and Retail Open Access programs with any revisions appropriate to comply with PA 141 and PA 142 of 2000 and to remedy the problems that consumers have experienced thus far. On December 15, 2000 Consumers filed a revised Retail Open Access (ROA) tariff together with supporting testimony. Staff and Intervenors filed their direct testimony February 16, 2001 and Rebuttal was filed March 16, 2001. Cross examination of all witnesses was waived.

II. SUMMARY OF ENERGY MICHIGAN POSITION ON EIGHT MAJOR ISSUES

A. Introduction

This proceeding represents the last opportunity for the Commission to fashion a new ROA tariff which will function efficiently and fairly to deliver ROA service on the Consumers system when that system is open to full competition January 1, 2002. A new tariff is critical because the existing framework as implemented by Consumers does not work predictably or efficiently. Unfortunately, the Consumers ROA

tariff proposed in this case does not remedy or revise the provisions which have delayed enrollment, reduced or eliminated predictability of service and caused substantial, unnecessary cost increases for ROA participants. However, only eight major changes and approximately 14 requests that the Commission utilize two different focuses to address these issues. The first focus should be on the eight major policy issues which must be addressed throughout the ROA tariff to fashion a workable open access program. The second and equally important focus is to deal with the 14 much narrower tariff issues which can be decided much more rapidly and objectively. The Energy Michigan presentation in this case will focus on the eight major and 14 minor issues in a format that allows rapid consideration of each issue.

Attached to this tariff is a comprehensive list of Energy Michigan's proposed changes to Consumers' revised ROA tariff filed December 15, 2000. *Attachment 1, (Case Exhibit I-5)*. If adopted, these changes will transform the current Consumers tariff into a workable program for delivery of ROA services.

B. Eight Major Issues Should Be Addressed

1. Consumers currently prohibits marketers from purchasing transmission service and combining the loads of several retail customers to achieve the most efficient use. Marketers should be allowed to purchase transmission capacity under the OATT and resell that transmission capacity and electricity to more than one retailer for resale to end users.
2. Retailers should be allowed to aggregate multiple customer loads on point to point service transmission capacity into Michigan so that many small loads can be aggregated into the required minimum quantities of 1000 kW.
3. A mandatory ROA enrollment processing time frame of 15 days should be implemented. If the deadline is not met, the AES should commence power deliveries to the Consumers system

and customers of the AES would receive credit.

4. ROA curtailment procedures should be revised so that curtailment is invoked for all (retail and open access) customers only during Emergency Electrical Procedures. Suppliers who are deficient should be treated like utilities and given adequate time to correct the situation or verify that insufficient supply problems exist.

5. Profile management charges to serve small energy metered customers should be reduced or the balancing band width or time frame over which balancing takes place should be greatly liberalized to reduced cost because Consumers current load profile rates are unaffordable.

6. Until alternate suppliers have adequate access to firm transmission service into Michigan in manner, type and quality similar to utilities, ROA customers should be allowed to return to bundled rates with a 15 day notice.

7. The Commission should rule on each Staff change identified in their list of changes Exhibit S-14 and specifically disclaim any intent to adopt Consumers' language or provisions which are contained in the Staff tariff but are not supported by Staff.

8. Consumers' request for 120 days to implement any changes to its ROA tariff should be rejected because it would delay implementation of ROA tariff changes until late 2001 or even into the first few months of 2002.

C. Numerous Minor But Important Details Must Be Addressed

IV. below contains a discussion of numerous ROA revisions proposed by Consumers. None of the Consumers proposals discussed should be adopted without a ruling by the Commission. Energy

Michigan has provided cogent reasons for rejecting or revising each change which is discussed. If the Commission deals with the eight major issues in III. and then takes the time and effort to rule on the 14 issues which are also presented in IV. below, a new ROA tariff can be fashioned which will be a sound, workable basis for future competition on the Consumers Energy system.

III. DETAILED DISCUSSION OF EIGHT MAJOR ISSUES

#1: ROA Sec. 3D(7), (8): Consumers Requirements That Only Retailers Contract for Transmission *and* Distribution Services

A. The Problem

Consumers has proposed revisions to the ROA tariff and specifically Sec. 3.D(7) and (8) which strengthen their current requirement that a retailer / AES entity must contract for both transmission service across the Consumers' system and the distribution services necessary to deliver power to the customers' point of use. See Attachment 2 (Case Exhibit I-3, p. 3 of 10) which confirms that Consumers treats each retailer as a separate transmission customer who must purchase all of the transmission needs of its end users. These existing and new provisions in the proposed ROA tariff effectively prevent a marketer / wholesale entity from purchasing transmission which could serve the load of more than one retail / AES entity. The Consumers changes prevent a marketer from combining the on peak load of one retailer with the off peak load of another retailer, thus achieving a much higher load factor for the contracted transmission capacity. Also, the marketer would not be able to sell unneeded transmission capacity to multiple unaffiliated retailers on a spot basis. *Polich, 2 Tr 104-06.* The Staff's markup of the Consumers tariff appears to repeat this error at F1.3-The Retailer Role in the Staff mark up of Consumers's ROA tariff. (Exhibit S-15).

In summary, requiring only retailers (and not marketers) to purchase transmission service reduces

flexibility to move and schedule power supplies and increases cost to the power marketer or retailer because one marketer cannot combine the transmission load of many retailers in the most economical and efficient “bundle”. By requiring retailers to purchase what may be redundant transmission capacity, the overall supply of scarce transmission is also reduced. *Polich, id.*

B. Proposed Solution

The Consumers proposed modifications to F3D(7) and (8) which require that the Retailer be the party to execute transmission agreements should be rejected. Marketers should be allowed to execute transmission agreements. Staff’s modifications to F1.3 which seem to imply a similar role for the Retailer similar to that proposed by Consumers should also be rejected.

The Commission should implement Mr. Polich’s suggestion by 1) deleting Consumers new language in F3D(7) and (8) and 2) by requiring an additional phrase in the definition of Marketer contained in F1.1(o) by adding the sentence, “A marketer may contract for transmission to the point of delivery on the Consumers distribution system.” Also, F3D(7) should be modified by adding the following language, “...has executed the agreements required under the Company’s distribution requirements. A retailer or a marketer may execute agreements required under the Company’s FERC open access tariff such as the Transmission Enabling Agreement and the Transmission Service Agreement.”

#2: ROA Sec. 1.1(8) and (r): Retailers Should Be Allowed to Aggregate

Multiple Customer Loads Under the Same Point to Point Transmission Schedule

A. The Problem

Currently, Consumers only allows retailers to aggregate multiple customer loads into a single combined transaction for transmission scheduling using network transmission service. This position

prevents use of point to point transmission service for aggregated customer loads. Inability to use point to point transmission service is a problem because in order to qualify for network transmission service, a retailer must demonstrate that they have procured firm annual electric supplies and the necessary firm transmission service from the point of generation to Consumers' transmission system. Mr. Polich testified that it was impossible for competitors (marketers or retailers) to obtain firm transmission service through the summer of 2000 thus procurement of firm electric supplies was and can be difficult or impossible. *Polich, 2 Tr 108-09.*

Since network transmission service due to the inability to qualify, a retailer must utilize point to point transmission service. However, Consumers has taken the position that the point of delivery for scheduling power supplies is the customer meter rather than the Consumers' transmission system. Consumers' position on point of delivery has the practical consequence of denying retailers the right to aggregate small customer loads into the 1000 kW blocks which are required for scheduling. Without the ability to aggregate small customer loads on point to point service, a 1000 kW block would have to be used in order to serve a 500 kW customer thus wasting 500 kW of transmission capacity. Thus, the Consumers position effectively excludes ROA loads of less than 1000 kW due to the inability to aggregate these loads on point to point service into 1000 kW blocks. *Polich, 2 Tr 109-10.*

There is nothing in the Consumers' OATT or ROA tariff that would prevent aggregation of customer loads under point to point transmission service. *Polich, Id.* And, in fact, Consumers aggregates its own native load customers, regardless of size, into larger blocks and those customers are often served by purchased point to point transmission capacity.

B. Proposed Solution

The Consumers OATT and ROA tariff do not clearly prohibit aggregation of multiple customer loads under point to point transmission service.

The Commission should therefore require Consumers to allow aggregation of ROA loads served under point to point service over its entire distribution system for purposes of transmission scheduling and require Consumers to provide a single transmission “sink” for those loads a retailer desires to aggregate. *Polich, 2 Tr 111*. This outcome will not result in rate reduction or loss to Consumers. In fact, since point to point transmission service is likely to be more expensive than network service, Consumers may gain revenue. *Id.*

In addition, the ROA retailer should be allowed to combine the power delivery schedules for both load profile customer loads and demand and energy metered loads into one combined schedule. This approach will increase the efficiency of transmission use and hence provide a lower total cost. Mr. Polich has explained how to handle imbalance issues under these circumstances. *Polich, 2 Tr 115-16*.

C. The Consumers Rebuttal is Not Persuasive

Consumers rebuttal witness Feahr makes several arguments against Mr. Polich’s position.

First, Ms. Feahr claims that it was not the intent of FERC to consider all 250 Consumers interconnections between transmission and distribution as one point of delivery. *Feahr, 2 Tr 84-85*. However, Ms. Feahr neglects to point out that Consumers itself is able to use all interconnections between transmission and distribution as one point of delivery when it uses either network or point to point transmission service to serve its own customers. Consumers would prohibit its customers from having the same right.

Second, Ms. Feahr claims that Mr. Polich is incorrect in saying that a customer must procure firm electric supplies and firm transmission on an annual basis in order to obtain network transmission service. She maintains that network service can be maintained with monthly, weekly or even daily commitments. *Feahr, 2 Tr 85*. Ms. Feahr’s statements do not contradict the fundamental point made by Mr. Polich

which is that network service cannot be obtained without having firm electric and firm transmission service. This was impossible during the summer of 2000 and may be impossible in future summers. It is totally unreasonable to make point to point service uneconomic on the theory that network transmission service can be obtained when in fact, under many foreseeable conditions, network service will not be available.

Third, Ms. Feahr disputes Mr. Polich's statement that Consumers is discriminating against competitors by requiring them to contract for network service when Consumers is allowed to utilize point to point service. *Id.* Ms. Feahr maintains that Consumers does not discriminate but does not dispute Mr. Polich's fundamental point that Consumers' own rules and procedures have made point to point service unavailable in economic terms to ROA customers whereas Consumers can aggregate and serve its own small loads through point to point service.

Conclusion

Network transmission service has often been unavailable to retailers because they must have firm transmission and firm power supplies to obtain network service. The summer of 2000 was certainly such a case. Consumers' own procedures make point to point service unaffordable for many retailer loads because Consumers has decided, unilaterally, that it will not allow small customer loads to be aggregated into the blocks of 1000 kW needed for scheduling. A retailer is left with the alternative of not utilizing point to point service for small loads, not serving small loads or serving small loads on point to point service and literally wasting or paying for substantial amounts of 1000 kW block of service that cannot be utilized if the customer is only 400-450 kW in size. Consumers should be ordered to cease this discriminatory and unnecessary prohibition on the grounds that it is wasteful of scarce transmission resources, discriminatory and unjustified.

#3: Mandatory Electric Choice Processing Deadlines

A. The Problem

Energy Michigan witness Polich has proposed that Consumers be required to switch a customer to open access service within 15 days of enrollment. Mr. Polich has stated that the mandatory time frame is required to shorten and add predictability to the enrollment process and mandatory time frames of a similar duration have been adopted by at least five states as referenced in his testimony. *Polich, 2 Tr 125*.

B. The Solution

Mr. Polich proposed the 15 day deadline for enrollment because it will give Consumers ample time to notify the customer of the enrollment, time for the verification of customer data and time for customer to rescind the enrollment. *Polich, Id.* If enrollment is not completed in 15 days, the AES should be allowed to commence energy deliveries on the 16th day and the customer should be credited for EC service.

Also, enrollment can be speeded by ensuring that telemetry is not required for all ROA demand meter installations, particularly the smaller installations below 1000 kW. As described in IV. M. below, use of manual meter reads can provide required data for determining imbalances and the time delay and technical problems associated with thousands of new telemetry installations could be avoided.

#4: ROA Sec. 5.3: Consumers ROA Service Curtailment Procedures

A. The Problem

As written, Consumers has complete discretion under ROA Sec. F5.3 on when and how a ROA

customer could be curtailed due to insufficient supply of power. This type of discretion places too much power in the hands of the utility. This latitude has not been granted by any other states with customer choice programs. Consumers' subjective approach to curtailment is totally at odds with the other criteria and mechanisms that currently exist to address supply imbalance problems. For example, under the OATT, large energy imbalance penalties are assessed against suppliers failing to deliver sufficient energy to meet their load obligations. These remedies are contained in Consumers' OATT. *Polich, 2 Tr 118*.

Also, the Consumers service curtailment concept is unenforceable because it depends on isolating customer load as a means of enforcement. In reality, few customers below 3000 kW can be isolated on an instantaneous basis. *Polich, Id.*

B. The Solution

Revised curtailment procedures should be adopted which are based on two fundamental concepts:

1. The trigger for implementation should be an objectively verifiable event.

Mr. Polich suggested that curtailment procedures only be invoked when circumstances require utilization of Consumers' current Emergency Electrical Procedures. If there is sufficient supply but a customer is in imbalance, Consumers has mechanisms in its OATT Schedule 4 to financially penalize the retailer or its supplier. *Id.*

2. Where supplies are not sufficient, Consumers should utilize mechanisms for imbalances that currently exist between utilities.

Under utility procedures, the out of balance party is notified of the problem and required to work out methods of solving the problem within a specific time frame (usually a few

hours). Mr. Polich recommended that two hours should be allowed. If the retailer fails to correct the situation, then Consumers can invoke economic penalties under the OATT and petition the MPSC to revoke the retailer's license. *Polich, p. 22.*

Mr. Polich's proposals are a rational plan based upon existing workable solutions between utilities. The Consumers' Rule 5.3 curtailment procedures are subjective, vague and if allowed to stand may discourage customers from selecting ROA service.

#5: ROA Sec. 5.4: Consumers Load Profiling Service

A. The Problem

The Consumers load leading, load profile service is intended to provide estimated demand data for small energy metered customers (less than 20 kW demand on the Consumers system) which will allow retailers to deliver amounts of power to the Consumers system which are roughly equal to the current customer demand. The Consumers load leading profiling system accomplishes this goal by installing demand meters on a statistically significant number of customers within the various customer classes. The meter sample data is used to generate profiles of load on an hourly basis which should be representative for all customers within the class. These profiles are provided to retailers or their suppliers before the load occurs. Retailers are in effect told that if they follow the load profile generated by the sampling meters they will not be penalized for imbalances but rather will be cashed out (over and under deliveries are balanced and costs assessed) at the end of the month at top incremental cost times the monthly energy imbalance for over deliveries and monthly top incremental cost times the monthly energy imbalance for under deliveries (paid per Consumers ROA tariff Sec. 5.4).

Consumers charges \$.0046/kWh for load profile service. The Consumers profile management service charge is designed to fund energy imbalances resulting from any difference between a forecasted

load profile and actual energy use. The profile management charge provides the ability to collect for the energy imbalance cost. *Polich, 2 Tr 112*. Assuming that the load profile charge is to pay for imbalances, the cost is unrealistically high. Mr. Polich developed an example to demonstrate that the profile charge would end up compensating Consumers at the rate of almost 12.6 ¢ /kWh for all imbalances. This price is well above the deviation energy imbalance charge of 10 ¢ /kWh during on peak hours that is contained in the Consumers' OATT. In fact, a load leading charge increases the cost of power to residential and small secondary customers by over 10%. This level of cost will make ROA service uneconomical for much of Consumers customer base. *Polich, 2 Tr 113*.

The second problem with the Consumers load profile system was identified by Energy Michigan witness Vail. Mr. Vail testified that Alternate Electric Suppliers hope to offer load management service to current energy metered customers. This service would allow customers to alter usage patterns to allow a more efficient use of generating and transmission resources in return for cost incentives. Currently, however, the Consumers load profiling system does not develop profiles based on residential or small secondary customers with managed load. Therefore, to the extent that such customers actually reduce on peak use for example, the Consumers profiles would still dictate a higher level of on peak energy use that is typical of non-managed customers and would penalize the managed customer power supplier if power deliveries were reduced during on peak times. *Vail, 2 Tr 90-94*. Mr. Vail's conclusions are supported by a Consumers discovery response which admits that load profiling (as done by Consumers) does not measure off peak use. *Attachment 3, (Case Exhibit I-3, p. 8 of 10)*. Thus, Consumers cannot detect and price types of service which shift use from on peak to off peak periods.

In other words, in order for load management programs to be successful among small energy metered customers, the Consumers load profiling system must be changed to provide load profiles which recognize energy deliveries on the basis of managed load that reduces during on peak times rather than traditional patterns of use that do not reduce during on peak times.

B. Recommended Solutions

1. Solutions to excessive profile management service charges

Mr. Polich testified that the preferred solution to excessive profile management charges is to reduce the charge to \$.001/kWh or about 2% of power costs. If the Commission is prohibited from reducing the profile management charge by PA 141, Mr. Polich recommends one of the following solutions:

- a. Expand the energy imbalance band from 2% to 10% so that the scheduler would not incur any energy penalties or costs if its deliveries were within 10% of the Consumers estimates. This more liberal imbalance band would reduce the possibility of penalties or higher priced imbalance charges at the end of the month;
or
- b. Treat the profile management service charge similar to a PSCR adjustment factor cost and establish a mechanism in which the actual energy imbalance costs for all profiled customers are reconciled with the revenue obtained from the profile management charge and refunds are provided to customers. *Polich, 2 Tr 113-14.*
In effect, this system determines the actual cost of serving all load profile customers (the difference between costs paid by those customers who follow the load profiles and the actual cost of serving those customers to the extent that actual use was greater or lesser than dictated by profiles). In the current load profile tariff, Consumers pays each load profile customer the top incremental cost if there are over deliveries and charges the customer top incremental cost if under deliveries occur. Mr. Polich's recommendation would balance the over and under deliveries of all profiled customers during the month and determine if, on a net

basis, Consumers incurred any costs above the level of revenue generated by the profile management charge which was intended to cover imbalance costs in the first place. To the extent that Consumers' actual out of pocket costs are less than the total profile management charges, a refund of the difference would be made to all load profile customers. *Polich, 2 Tr 114-15.*

Mr. Polich provided a methodology to reconcile energy metered and demand metered loads. Also, standards are needed to prevent Consumers from generating profiles which cause over deliveries of power during high cost periods and under deliveries during low cost periods. Mr. Polich recommended a requirement that Consumers keep its hourly imbalances within 3 3 [three sigma] deviation of actual sample meter data. *Polich, 2 Tr 116.*

C. Consumers' Rebuttal is Not Persuasive

Consumers witness Bearman attempted to rebut Mr. Polich by stating that the proposed rate reduction for profile management service was prevented by PA 141 and claimed that Mr. Polich provided no foundational cost support for his proposal even if the MPSC would consider such a change. *Bearman Rebuttal, 2 Tr 46.* Mr. Bearman did not rebut Mr. Polich's alternative suggestions for a monthly reconciliation of actual Consumers imbalance cost versus profile management service revenue or expansion of the imbalance band. Both proposals have merit and since they are unrebutted should be adopted by the Commission.

Mr. Vail's proposal to expand load profiling to small managed loads was not rebutted.

#6 ROA Sec. F10: Return to Service

A. The Problem

Consumers is proposing new Return to Service provisions in F10 which require nine months notice and a compulsory minimum term of 12 months on full bundled service after return. If the customer gives less than nine months of written notice, market based rates would be charged during the time difference between the required nine months notice and the customer's actual notice.

Mr. Polich stated that the Consumers Energy return to service proposal does not work if transmission access is not available to competitors that will enable reliable, continuing service to open access customers. Mr. Polich testified that reliable transmission service has not been obtainable across the AEP system into Michigan and without such access, power suppliers cannot ensure reliable supplies to ROA customers. These circumstances almost guarantee that customers will be forced to return to the Consumers system and be subjected to the relatively punitive Consumers return to service proposal. *Polich, 2 Tr 107-08.*

While MPSC Staff did not describe the Return to Service problem, the very fact that Staff has proposed a revision to the Consumers approach suggests that Staff believes that approach to be flawed. *See MPSC Staff Proposal to Revise Sec. F2.5 in Exhibit S-14 and S-15.*

B. Proposed Solutions

Mr. Polich proposes that Consumers' ROA customers be allowed to return to tariff rates on 15 day notice and be required to remain on the Consumers full service rate for a minimum of three months but thereafter be allowed to switch back to ROA with 15 days notice. Once the annual firm transmission capacity is increased by the 2000 MW mandated in PA 141, Mr Polich recommends that the customer

be required to provide 15 days notice of return to ROA service and the Consumers return to service proposal would otherwise be implemented. *Polich, 2 Tr 107.*

Mr. Polich stated that Consumers should be indifferent to this proposal. Given the shortage of transmission capacity into Michigan, Consumers will end up with virtually all of the retail load during the summer of 2001. Thus, Consumers Energy must already have sufficient transmission capacity to meet its total system load. If Consumers allowed power marketers to wheel power from out of state sources into Michigan, Consumers could elect to sell or allow usage of its transmission rights by a power marketer and the actual power flows would not significantly change. Therefore, Consumers would not be financially harmed. In other words, if Consumers plans to serve all of the load in Michigan this summer through transmission capacity purchases, that same capacity can be sold, assigned or otherwise and made available to ROA load at a compensatory price. Thus, Consumers would not experience a financial loss for under use of purchased transmission capacity whether customer load stays on its system or migrates to open access providers. In order to enhance the attractiveness of this proposal to Consumers, assignment of Consumers transmission capacity might be accompanied by some waiver of a duty to serve such load.

Staff witness Bailey proposed revised Rule F2.5 to provide Return to Service upon one month written notice but with a 12 month minimum contract to remain on utility service. While the Bailey proposal was not explained (see Exhibit S-14, page 1 of 2 and Exhibit S-15, Sec. F2.5) the proposed reduced notice of return was presumably inspired by the same concern raised by Mr. Polich regarding the relatively punitive Consumers nine month notice proposal.

C. The Consumers Rebuttal of Witnesses Polich Not Persuasive

Consumers rebuttal witness Bearman complained that the Polich return to service proposal transferred risk to Consumers from the customer or marketer. Mr Bearman cited Consumers' experience in the Gas Customer Choice Program. Mr. Bearman claims that a rapid return to service provision would

allow abuse during times when retail rates are substantially lower than market rates. *Bearman Rebuttal, 2 Tr 41.*

Consumers Rebuttal witness Ronk claims that the ability to rapidly return to retail service would reduce reliability of service by making supply planning more difficult and volatile, and by stressing Consumers Energy generating reserves which are claimed to be inadequate. Mr. Ronk claims that the nine month return notice forces the AES to be a reliable supplier. *Ronk Rebuttal, 2 Tr 53-57.*

Both Mr. Bearman and Mr. Ronk have failed to address the key point in Mr. Polich's testimony: The proposed more liberal Return to Service provision would be utilized only until and not beyond the time when transmission capacity into Michigan is expanded so that adequate power can be imported into the State by AES entities. *Polich, 2 Tr 107-08.* If Consumers achieves expansion of import capacity into Michigan by 2000 MW that is available to AES entities, it will not have to fear the liberalized Return to Service provisions proposed by Mr. Polich in the interim. It is only if the 2000 MW commitment is not met that Consumers will bear a long term burden from Mr. Polich's new Return to Service proposals. Unless Consumers believes that transmission capacity into Michigan will not be increased by 2000 MW, it should support or at the very least not object to the Polich proposal.

If Consumers is concerned that it will retain an obligation to serve which allows customers to transfer between bundled and unbundled service even after transmission capacity is adequate, it should make proposals to address that concern.

#7: Format of the Staff ROA Tariff Proposal

A. The Problem

The MPSC Staff has proposed a new ROA tariff format which substantially rearranges the existing

Consumers ROA tariff and incorporates numerous proposals for change which are exhibited in redline format. However, the Staff rearrangement of the ROA sections makes it very difficult to determine if all existing Consumers tariff provisions have been retained in original language or if the new Consumers proposals in this case have been incorporated.

B. Proposed Solution

The best solution to this problem would be to rule on each Staff change listed in Exhibit S-14 rather than adopting the Staff tariff format which may contain many other unidentified changes proposed by Consumers and not necessarily supported by Staff.

#8: The New Consumers Proposal to Defer ROA Implementation to
120 Days After Approval Should Be Rejected

A. The Problem

The rebuttal of Consumers witness Bearman contains a new proposal: To defer implementation of changes to the ROA tariff to at least 120 days after the date of any MPSC Order. *Bearman Rebuttal, 2 Tr 48.* This new proposal was not included in the Consumers direct case and therefore is improperly before the Commission as Rebuttal. Mr. Bearman's proposal should be rejected from a procedural standpoint because it was presented in a format that does not allow responsive testimony.

Mr. Bearman's proposal to delay tariff changes includes no details to support a virtually untenable premise: all changes to the ROA would take 120 days to implement. Mr. Bearman groups complex new proposals including implementation of different load profiling and aggregation mechanisms with significant but vastly less complex tariff revisions such as revising penalty provisions, deleting reference to local government requirements and action on ROA deposits, etc. Rejection of new Consumers proposals in this

use can be implemented instantly since rejection merely means that existing systems, rates and concepts continue to be applied.

Equally troubling is the time delay that would be forced by adoption of Mr. Bearman's proposal. Assuming fairly expeditious processing of this case, a Proposal For Decision is expected early July with Exceptions and Replies by late July or early August. If the Commission moves swiftly, a final decision might be expected late September or early October. If Mr. Bearman's proposed 120 day delay is adopted, new tariff provisions for ROA service would likely not be implemented until February 2002. Parties who hoped to commence power deliveries in the Fall of 2001 or January 1, 2002 would not be allowed to take advantage of new ROA provisions until February 2002. Adoption of Mr. Bearman's proposal would be another significant ROA program delay in a long series of delays.

B. Proposed Solution

The Commission should Order adoption of any new tariff measures effective January 1, 2002. *Polich, 2 Tr 121.* A possible exception could be made for those measures requiring implementation of new methodologies, such as new sampling techniques for load profiling, etc. For these complicated new programs, 30 to 60 days may be warranted but could be accommodated in the proposed January 1, 2002 effective date of the Order in this case is issued by November 1, 2001.

IV. DETAILED DISCUSSION OF OTHER INDIVIDUAL ROA TARIFF ISSUES

This section of the Energy Michigan Brief will proceed through Consumers' proposed ROA tariff (Exhibit A-1) and discuss each modification recommended by Energy Michigan witnesses Vail and Polich as well as selected proposals of MPSC Staff and other interveners. A list of the Energy Michigan proposals is attached as Attachment 1 (Exhibit I-5).

A. Sec. F1.1(w) and F3D(2): Mandate to Comply With Government Requirements

At several places (e.g. F1.1(w), F3D(2), etc), the Consumers ROA tariff references local government requirements to be met by an AES entity. These references should be deleted since PA 141 defines and limits the requirements for an AES to render service. The requirements in PA 141 are limited to obtaining a license approved by the Commission. Neither the Commission nor Consumers are authorized to enforce additional local government requirements.

B. ROA Sec. F1.3: Reciprocity Requirements Should Be Liberalized As Recommended by Staff

Energy Michigan supports Staff's revisions to the Consumers reciprocity requirements to change the reciprocity requirement standard from equivalent specific rates, terms and conditions to a "relatively equivalent" type of service. *Bailey Exhibit S-15, Sec. F-3.10, Restates Consumers Rule F1.3.*

While Consumers has taken a step in the right direction by simply referencing that reciprocity will apply to the extent required by PA 141, the Bailey proposal provides a more realistic and easily understood standard.

C. ROA Rule F2: Unused ROA Service Deposits "Default" Transition Charges and Inclusion of Bid Process

1. Return of Bid Deposits

Energy Michigan witness Polich proposed that Rule F2 be modified to require return of bid deposits for ROA capacity that is not currently used or will not be used in the near future. *Polich, 2 Tr 121.* The reasons for AES failure to commence ROA service were beyond the control of marketers or AES entities and included events such as lack of summer transmission capacity in the

year 2000. Interest should be awarded to prevent a windfall to Consumers.

Note that the MPSC Staff in their draft Rule F4 recommended return of deposits by March 31, 2002. *Bailey, Exhibits S-14 and S-15.*

2. Effective Date of ROA Tariff Changes

The new ROA rules should be made effective January 1, 2002. This would allow deletion of reference to pre-2002 programs such as the bid process and phase in schedule contained in Consumers Rule F2. *Id.*

3. “Default” Transition Charge

Finally, Consumers existing and proposed Rule F2 provides that the transition surcharge implemented January 1, 2002 will be as “established by the Michigan Public Service Commission and specified in the then existing company’s existing rate schedule.” *See Consumers Rule F2.* The Bailey proposed tariff at Sec. F2.4 provides that if the Commission does not determine the transition charge as of January 1, 2002 a charge of .5 ¢ /kWh would be implemented.

Energy Michigan believes that the Consumers language is a better choice. Given the recent bid results for Consumers open access programs it is unlikely that ROA service would be economical with a transition charge above zero. Staff’s proposal for a default .5 ¢ /kWh transition charge should be rejected since it could inadvertently eliminate what little competition does exist on the Consumers system today. If the Staff .5 ¢ /kWh rate is rejected, silence on this issue would result in implementation of a zero transition charge which is clearly more realistic on the Consumers system in the current economic environment than the .5 ¢ advocated by the Staff.

D. ROA Sec. F3: Slamming

Consumers proposed ROA Sec. F3 deals with slamming at (3). The new language added by Consumers should be clarified to state that it is the role of the Commission, not Consumers, to enforce slamming prohibitions other than in the verification of customer enrollment data. *Polich, 2 Tr 122.*

E. ROA Sec. F3: Retailer Eligibility

ROA tariff eligibility requirements should be revised regarding credit and the requirement to purchase transmission.

1. The MPSC Staff Position

As described in III. Issue #1 above, Energy Michigan believes that ROA Rule F3D(7) requirements that retailers be the entity to purchase transmission service should be deleted so that marketers (and retailers) may contract for transmission and thus use available transmission capacity more efficiently. *Polich, 2 Tr 104-06.*

The Staff has proposed new ROA Sec. 3.2 to specify retailer credit requirements. It appears that Staff's recommendations assume that retailers will contract for transmission. Staff's proposed credit standards required would establish two months of financial exposure as a reasonable amount of creditworthiness. Waiver of these requirements would be required following 24 months of full and timely payment to Consumers. *Exhibit S-15, Sec. 3.2.*

2. Energy Michigan Position

a. If retailers do not provide transmission

It should be kept in mind that since the Commission Order in U-12505 there is very little exposure on the part of Consumers for non-transmission retailer credit risk. Retailers do not pay transition charges and it is likely that the retail customer would be liable for all other ROA charges. Thus, where retailers do not provide transmission there should be little or no credit requirement.

b. Where retailers or marketers provide transmission

To the extent that Mr. Bailey's proposal applies to retailers and assumes that the retailer functions as a purchaser of transmission as envisioned by Consumers (see Issue #1 above). Mr. Bailey's standard of two months exposure and waiver after 24 months of good pay is acceptable.

If the Commission agrees with the Energy Michigan position in the III. #1 that marketers should be allowed to purchase transmission, application of Mr. Bailey's credit standard to marketers performing that function would be acceptable to Energy Michigan. Energy Michigan strongly believes that it is marketers and not retailers who should be allowed to purchase transmission for sale to retailers, thus achieving maximum efficiency in the use of transmission capacity.

3. Reply to Consumers

Consumers rebuttal witness Carrier objects to Mr. Bailey's credit proposal on the grounds that imbalance risk could be exceedingly expensive for transmission capacity and be more than Mr. Bailey's standard of two months of exposure. Mr. Carrier also testified that dropping credit requirements after 24 months of good payment is not reasonable because retailers do not have a physical tie to Consumers and retailers are exposed to the risks of the commodity market where

there is no limitation to volume of business. As an alternative to the Bailey proposal, Mr. Carrier proposes to use Mr. Bailey's concepts from Case U-12489 which delete credit requirements after 24 months good payment and made a new proposal that the credit required for back up service for energy used during June, July and August be based on the market price of power. *Carrier Rebuttal, 2 Tr 70-72.*

Energy Michigan believes that the credit requirements proposed by Mr. Polich in Case U-12489 are appropriate:

a. There should be no credit requirement for AES entities which do not purchase transmission since they no longer pay transition charges. For marketers or AES entities which purchase transmission there should be two months of OATT charges for the required transmission capacity as an appropriate credit requirement. This amounts to \$5,000/MW of capacity based on the cost of \$100/MW plus 50 hours of imbalances. After 12 months of consistent good credit history, credit requirements should be waived. *U-12489, 2 Tr 307 (Polich).* Note that since Consumers referenced the Bailey testimony in U-12489, Energy Michigan is referencing Mr. Polich's testimony in the same case.

b. At the least, Mr. Bailey's proposed credit standard equaling two months of charges and waiver of all credit requirements after 24 months of good payment should be adopted.

F. ROA Sec. F3D(3): Retailer Requirements

1. Energy Michigan Position

Consumers' new proposal for customer service request language in F3D(3) places the

Company in the role of enforcing anti-slamming requirements and does not clarify that electronic means can be used to create a contract between customer and retailer.

Energy Michigan witnesses Polich and Vail have proposed the following clarification and revisions to the new Consumers proposal:

- a. Rule FD(3) should be revised to clarify that it is the role of the Commission, not Consumers, to enforce slamming prohibitions other than in the verification of customer enrollment data. *Polich, 2 Tr 125.*
- b. Rule FD(3) should also be clarified to include language that allows all business between an AES and its customers to be conducted electronically.

Witness Polich proposed including electronic data interchange requirements in the tariff to provide for retailers to conduct business using industry standard EDI maps. Consumers should be required to conduct electronic funds transfers and the AES should be allowed to conduct all business with customers on an electronic basis if approved by the customer including notices, contracts and credit checks. *Polich, 2 Tr 124.* Valid contracting should be able to be accomplished through signature, third party verification, voice recording or other form approved by the Commission as is the case with the Consumers Energy Gas Choice Rule H3 Program. *Polich, 2 Tr 122; Vail 2 Tr 94.* These proposals are consistent with consumer protection and modern streamlined contracting practices which will ensure that AES service is made widely available at the most economical price. *Id.*

2. Reply to Consumers

a. Consumers did not rebut Mr. Polich's recommendation to revise F3D(3) to make the Commission responsible for slamming enforcement.

b. Consumers rebuttal witness Carrier responded to Mr. Polich by proposing that the Polich proposal be accepted with some modifications. Mr. Carrier proposed to establish a working group of electric utilities and interested AES entities as well as PSC Staff and that the group develop a "Michigan standard" that would make sense given the particular program requirements in Michigan. Once a uniform standard was set for Michigan, Consumers and Edison could then implement EDI maps that adhere to the resulting standard. Mr. Carrier also proposed that the cost of implementing EDI functionality equivalent to Detroit Edison (\$400,000-\$450,000) be included in Consumers implementation costs. *Carrier Rebuttal, p. 6-7.*

Energy Michigan believes that Mr. Carrier's proposal is a reasonable attempt to address the concerns of Messrs. Polich and Vail.

c. In a Discovery Response Consumers has said that it will not review the validity of customer's signatures. *See Attachment 4, Case Exhibit I-3, p. 7 of 10.* Therefore this issue is resolved.

G. ROA Sec. 3.5: Complete Billing Charges

1. MPSC Staff Position

Staff witness Bailey proposed a new Sec. 3.5 which would outline, among other things,

charges rendered by the Company for a so-called “complete billing” option in which Consumers performs the billing function both for itself and for an AES entity. *Bailey, Exhibit S-15, Sheet F-15.00.*

2. Energy Michigan Position

Energy Michigan opposes inclusion in a Consumers tariff of competitive services offered by Consumers. The complete billing option is offered in competition with billing services provided by other private vendors. To the extent that charges for the billing service rendered by Consumers are contained in an official tariff, Consumers has a competitive advantage over non-utility entities which may offer the same service but are not listed in the tariff.

H. ROA Sec. F5.2: Specifications for Power Supply Schedules

Consumers proposed Rule F5.2A incorporates the statement that scheduled supplies of power shall be made in 1 MW increments “as required by the OATT”. Since the OATT may change its requirement from time to time the phrase, “1 MW” should be deleted so that the amount of power increments used would simply be as required by FERC tariffs.

I. ROA Sec. F5.3: Curtailment of Service

See discussion of Issue #4 above.

J. ROA Sec. 5.4: Load Profile Service:

See discussion of Issue #5 above.

K. ROA Sec. F7: Billing and Payment

ROA Sec. F7 addresses the means by which customers are billed for services rendered by Consumers and the order in which payments received from customers are applied to Company and retailer charges when the retailer purchases billing services from the Company. Energy Michigan witness Polich noted that the language does not address situations where a customer has withheld a portion of payment due to billing disputes. Mr. Polich recommended that in such a case, the amount applied to each category be reduced by the disputed payment amount. *Polich, 2 Tr 123.*

Energy Michigan witness Vail also proposed that Rule F7C be revised to ensure that customers may require Consumers to send their bill to a third party (such as an AES) for payment. This option is highly valued by customers who wish to receive only one bill for electric service in order to minimize paperwork and processing. *Vail, 2 Tr 94.*

L. ROA Sec. 11: Proposed MPSC Staff Arbitration Program

1. MPSC Staff Position

In their proposed dispute resolution procedures, MPSC Staff recommends utilization procedures essentially similar to the Detroit Edison proposal in which the American Arbitration Association is utilized instead of the current Consumers program in which the Company first attempts to resolve the disputes and then disputes are sent to the Michigan Public Service Commission. *Exhibit S-15, Rule F3.6(1)-(6).*

2. Energy Michigan Position

Energy Michigan supports Consumers proposed dispute resolution procedures. Use of

the MPSC as the first level of dispute resolution after discussions between retailers and Consumers offers the most expeditious, inexpensive and unbiased resolution possible. Use of the Arbitration Association will be more expensive than the dispute resolution procedures recommended by Consumers in proposed tariff Sec. F11.

M. Individual ROA Tariff Sheets R, S, P: Individual Tariffs

1. Energy Michigan Position

The tariff sheets proposed by Consumers and proposed in amended form by Staff contain provisions which could place unreasonable burdens on retailers.

a. Telecommunication Links

The Consumers ROA S (Secondary) and P (Primary) tariffs discuss telecommunication links between demand meters and Consumers in terms of “telephone lines”. Witness Polich testified that the phrase “analog remote communication links” should be substituted to allow a wider range of technology to be used than just telephone lines. *Polich, 2 Tr 124.*

b. Metering Requirements

Energy Michigan supports Consumers proposal to modify the ROA-S and ROA-P tariff sections dealing with metering requirements so that customer responsibility for telephone lines is limited to situations “when required” rather than in all cases. As noted below, there can and should be instances when telemetry is not required, particularly for installations below 1000 kW, and the Consumers language recognizes this fact. The Staff

draft ROA tariff, particularly at Sec. 2.2 (metering) is phrased at Sheet F-5.00 so that it appears that customers would be required to install telemetry in all instances where time of use metering is utilized. The cost of mandatory telemetry could be quite high where the demand is relatively small (1000 kW or below).

Also, note that the Electric Choice enrollment program of Detroit Edison has been slowed significantly by the requirement to install telemetry between demand meters and the utility which is usually accomplished by new telephone lines¹. The Staff's language which could be interpreted as mandating use of telemetry would prevent an alternative approach recommended by Energy Michigan in Case U-12489 and of waiving telemetry for customers with less than 1000 kW of demand and using manual meter reads to provide demand data for billing purposes.

c. Payment for Reactive Power Supply Service

1) Staff Position

The Staff has proposed to insert language in ROA-R, -S and -P which makes the retailer responsible for payment of the reactive power supply service charge. *S-15*.

2) Consumers Rebuttal

Consumers rebuttal witness Bearman opposed that Staff language on the grounds that application of power factor charges is driven by the customer's

¹ MPSC Staff Report on Investigation of Detroit Edison Company Retail Open Access Customer Enrollment, December, 2000.

manner of utilizing power as well as the efficiency of the customer's equipment. Customers having power factor issues need to take corrective action to address the situation by improving the efficiency of their equipment or installing capacitors. *Bearman Rebuttal, 2 Tr 45*. Since it is a customer issue, pricing signals should be sent to the customer. *Id.*

3) Energy Michigan Position

Energy Michigan agrees with Consumers. The retailer should not be held responsible for a customer power factor that is beyond its control. The Staff proposal should be rejected.

d. Contract Issues

The Staff R, S and P language under "term and form of contract" provides that all service under this rate shall require a written ROA service contract. This issue is discussed in Rule F3.D3 above. It is the position of Energy Michigan that ROA procedures should allow contracts to be formed in writing, electronically by voice or other means.

N. Staff curtailment of service/standby proposal F2.11

1. Staff Position

Staff has proposed a new Sec. F.2.11 of Exhibit S-15 providing that where a retailer's sources of supply do not deliver to the point of receipt, the retailer shall pay for all power delivered. Unless contracted for separately with the Company, the price of the service will be the same as

ROA backup service tariff charges. *Staff draft F2.11*, Exhibit S-15.

2. Energy Michigan Position

Under the Consumers OATT, Schedule 4 governs pricing of company supplied power in situations where retailer imbalances exceed allowable band widths.

The Staff proposal for standby service appears to address the same factual situation and improves the Consumers standby rate by limiting calculation of incremental or market rate price to the hour which service is actually used.

Energy Michigan can support the Staff proposal with the following changes:

- a. The ROA tariff should clearly state that standby is provided either under OATT Schedule 3 or the ROA-SB rate but not both.
- b. The 10% mark up for standby rates should be deleted as inconsistent with PA 141. *Phillips, 2 Tr 137*.
- c. Incremental costs should be calculated for the amount of service used not the highest single Mwh used.

V. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests that the Commission:

1. Reject the Consumers Energy ROA tariff revisions described above; and

2. Adopt the Energy Michigan proposals for each tariff provision described above and in attached Exhibit I-5, # 1-15 including the eight major issues set forth by Energy Michigan on a detailed basis and the remaining 14 ROA issues contained in the page by page discussion of the Consumers ROA tariff.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
Attorneys for Energy Michigan

May 11, 2001

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Attachment 1

Energy Michigan, Inc. Brief U-12488

EM____ (RAP-1)

ENERGY MICHIGAN PROPOSED CHANGES TO CONSUMERS ROA TARIFF

1. Revise tariff to allow power marketers to conduct wholesale transactions including transmission transactions to the point of delivery on Consumers distribution system. Retailers would conduct and perform distribution transactions.
2. Amend rules to allow retailers to aggregate multiple customer loads for point-to-point transmission service.
3. Add language to tariffs providing that Consumers must accomplish enrollment, including customer switch to open access service, within 15 days of enrollment.
4. Add a new rule providing that contracts implementing ROA service must comply with the tariff approved in this case.
5. Include new electronic data interchange requirements on standard EDI basis. Also require that an AES may be allowed to conduct business with customers electronically including notices, contracts and credit checks, if approved by the customer.
6. Rules F1.1(w) and F3D(2): Change to remove reference to local government requirements to be met by AES.
7. Rule F2: Add return of deposits if ROA service is not commenced. Delete inclusion of language regarding bid process and permanent rules.
8. Rule F3: Revise to clarify it is role of Commission, not Consumers, to enforce slamming prohibitions.
9. Rule F3D3: Clarify that customer agreements can be verified by signature, third party verification, voice recording or other form approved by the Commission.
10. Rule F5.2: Delete reference to scheduling supplies of power in 1 MW increments.

11. Rule 5.3 Curtailment of Service: Amend to set up process where Consumers first determines that the AES's power supplies are out of balance. Then AES is requested to correct the problem within two hours. If the AES fails to correct the situation, then Consumers invokes economic penalties under the OATT or revocation of AES license.
12. Revise Rule 5.4 Load Profile Service: Reduce charges to \$0.001/kWh or allow suppliers to schedule within 10% of the load profile without imbalance penalties or costs or provide annual reconciliation of actual imbalance costs.
13. Rule F7 Billing and Payment: Revise to address billing disputes by providing that if a customer withholds a portion of payment due to billing disputes, the amount applied to that category of amount due shall be reduced by the disputed payment amount. Also, add language to F7C to ensure customers maintain the right to have their Consumers bill sent to a third party.
14. Rule F10: Revise Return to Service to allow return to tariff rates on 15 days notice. Until 2000 MW of transmission capacity available to competitors has been added.
15. Revise individual tariffs ROA-R, S, P to replace "telephone line" with "analog remote communications links". Also in those tariffs delete reference to a 1.2 ¢ /kWh transition charge.

Attachment 2

Energy Michigan, Inc. Brief U-12488

12488-UE-CE-24

Question:

UECE007. Does Consumers believe it would be practicable and desirable to net the total power imbalances of various retailers using its transmission and delivery system before applying any imbalance charges? If not, why not?

Response:

UECE007. No. Since each retailer is a separate transmission customer under the Company's Electric Customer Choice Program, each transmission customer must balance their power deliveries under the terms and conditions of the Company's Open Access Transmission Tariff.

James F. Bearman, being first duly sworn, states that the above response is true and correct to the best of his knowledge, information or belief.

James F. Bearman

Sworn to before me and subscribed in my presence this 12th day of December 2000.

Gail M. Spees

Gail M. Spees, Notary Public
Jackson County, Michigan
My Commission Expires: March 13, 2001

Rates and Electric SBU Planning Dept

48800059

Attachment 3

Energy Michigan, Inc. Brief U-12488

12488-UE-CE-27

Question:

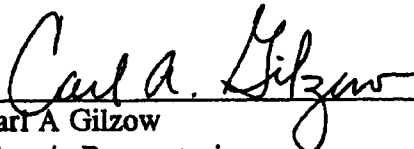
UECE010: What is Consumer's rationale for setting the threshold for the requirement of Time-of-Use meters, set forth on Sheet F-16.00, at a Maximum Demand of 20 kW? Please provide any supporting documentation for your answer.

Answer: In determining what the threshold should be for profiling, we considered two factors: 1) What the percentage increase to a customer would be for paying for a time-of-use meter and 2) What was being considered at the time in other states. Attached is a calculation showing the estimated effect of the higher customer charge (\$27.00 per month vs \$16.20 per month) on a 20 kW customer. For this example, I have assumed a 25% load factor which is typical of small secondary commercial customers. The percentage increase is only 3.3% which means that if the customer can negotiate savings in their power supply costs of greater than 3.3%, they will save money by participating in Electric Customer Choice. Another factor that was considered, especially for larger customers, is that profiling does not recognize unique usage patterns such as high load factor or off-peak use which means that for customers with these characteristics, they would not achieve the savings with profiling that they would with interval metering.

In 1997, when we were designing our program, we looked at other states which were considering profiling as an alternative to metering. One state, California, was recommending a 20 kW threshold. See "Load Profiling Final Report dated June 17, 1997."

(NOTE: Attached is numbered document: 48800065)

Carl A Gilzow being duly sworn, states that the above response is true and correct to the best of his knowledge, information, and belief.



Carl A Gilzow
Electric Restructuring

Sworn to before me and subscribed in my presence this 5th day of December, 2000.

SAMMIE B. DALTON
NOTARY PUBLIC JACKSON CO., MI
MY COMMISSION EXPIRES Jan 4, 2004



48800064

Attachment 4

Energy Michigan, Inc. Brief U-12488

12488-UE-CE-26

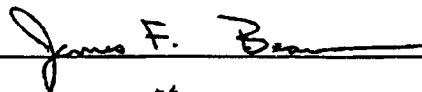
Question:

UECE009. Does Consumers believe that it is practicable to verify customer enrollments through methods other than a physical or "wet" signature? If not, why not? Is it Consumers' intent that only a "wet" signature from a Customer will satisfy the "signed statement" requirement of Section F3.D(3) of the proposed tariff?

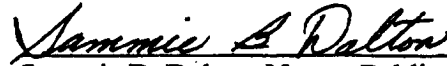
Response:

UECE009. Unless there is a customer complaint regarding valid enrollment, it is not Consumers intent to review and/or validate customer signatures. A ROA customer enrollment is considered valid if the retailer provides the correct account number, account name, and account address. In addition, the retailer must acknowledge/affirm (by signing their CE retailer contract) that they are responsible for documenting and maintaining proof of a customer's authorization. Any of the MPSC-approved authorization formats (currently signatures, but may some day include third party phone recording or electronic signatures). Consumers will only seek proof of authorization on behalf of investigating a customer inquiry, concern, or complaint. It is conceivable that the MPSC may also ask for proof of compliance.

James F. Bearman, being first duly sworn, states that the above response is true and correct to the best of his knowledge, information or belief.



Sworn to before me and subscribed in my presence this 13th day of December 2000.



Sammie B. Dalton, Notary Public
Jackson County, Michigan
My Commission Expires: January 4, 2004