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August 13, 2001

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

Re: Case No. U-12488

Dear Ms. Wideman:

Enclosed for filing in the above captioned matter please find the original and 15 copies of Exceptions of Energy Michigan, Inc. to Proposal for Decision. Also enclosed is the original Proof of Service indicating service on counsel.

Please date stamp one copy of the above entitled document for my records and return it in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP

A handwritten signature in cursive script that reads "Eric J. Schneidewind".

Eric J. Schneidewind

EJS/mrr

cc: ALJ
parties

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

EXCEPTIONS OF ENERGY MICHIGAN, INC.

TO PROPOSAL FOR DECISION

August 13, 2001

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

 A. Introduction 1

 B. Summary of Six Key Issues Which Must Be Addressed by the Commission ... 1

 1. 10 day period to cancel AES contracts: PDF Issue #8 1

 2. Shut off: PDF Issue #11. 2

 3. Ability of marketers to contract for transmission: PDF Issue #29. 2

 4. Retailers should be allowed to aggregate multiple loads on point to point service: PFD: Issue # 30. 2

 5. Mandatory processing deadlines and waiver of telemetry requirement: PDF Issue # 31. 2

 6. Revise load profile charge structure and use of managed load profiles: PDF Issue # 32. 3

II. DETAILED ENERGY MICHIGAN EXCEPTIONS TO PDF 3

 PFD Issue # 6 Capacity Bidding Procedures Exhibit S-15
 Sheets F20.00, F21.00 and F22.00 3

 a. PFD 3

 b. Energy Michigan exception 3

 PFD Issue # 8: Retailers Obligations (S-15, Sheet 14.00, Sec. 3.1) 4

 a. PFD 4

 b. Energy Michigan exception 4

 PFD Issue # 9: ROA Standby Rate (S-15 Sheet F33.00) 5

 a. PFD. 5

 b. Energy Michigan exception 5

 PFD Issue # 10: Optional Billing Charges (S-15 Sheet F9.00 and
 F10.00, Sec. F2.6 and Sheet 15.00, Sec. F3.5) 6

 a. PFD 6

 b. Energy Michigan exception 6

 PFD Issue # 11: Customer Service Shut Off (S-15, Sheets F11.00
 and F16.00, Sec. 2.7 and F3.5C) 7

a.	PFD	7
b.	Energy Michigan exception	7
PFD Issue # 12:	Return to Service (Exhibit S-15, Sheets F8.00 and F9.00, Sec. F2.5)	8
a.	PFD	8
b.	Energy Michigan exception	9
PFD Issue # 16:	Third Party Costs (S-15 Sheet 3.20, Rule F1.7)	10
a.	PFD	10
b.	Energy Michigan exception	10
PFD Issue # 17:	Termination of Service (S- Exhibit 15, Rules F1.8, 2.1 and 3.1, Sheets 3.4, 4.0 and 14)	10
a.	PFD	10
b.	Energy Michigan exception	10
PFD Issue # 19:	Metering (S-15 Sheet F4.00, Rule 2.2)	11
a.	PFD	11
b.	Energy Michigan exception	11
PFD Issue # 29:	Requirement That Retailer Contract for Transmission ROA Sections 3D(7) and (8) corresponds to S-15 Rule 3.1G and H, Sheet F14.00)	12
a.	PFD	12
b.	Energy Michigan exception	12
PFD Issue # 30:	Aggregation of Multiple Loads Under Point to Point Transmission Service (S-15, Sheet F3.00, Rule 1.4(q) and (r)) ..	12
a.	PFD	12
b.	Energy Michigan exception to #29 and #30	13
PFD Issue # 31:	Mandatory Enrollment Processing Deadlines and Waiver of Telemetry	18
a.	PFD	18

b.	Energy Michigan exception	18
PFD Issue # 32:	Load Profiling Service (S-15, Tariff Sheets F25.00 ROA R and F29.00 ROA P)	21
a.	PFD	21
b.	Energy Michigan exception	21
III.	CONCLUSION AND PRAYER FOR RELIEF	23

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EXCEPTIONS OF ENERGY MICHIGAN, INC. TO PROPOSAL FOR DECISION

I. INTRODUCTION AND SUMMARY

A. Introduction

On July 30, 2001 presiding Administrative Law Judge James Rigas forwarded a Proposed Decision in this matter to the parties of record. Pursuant to the direction of Judge Rigas, these Exceptions of Energy Michigan have been filed August 13, 2001. Failure to except to additional rulings of the Law Judge or statements in the Proposal for Decision (PFD) should not be construed as agreement or acceptance of those positions.

The Exceptions below are set forth with the same Issue numbers and titles used by the Administrative Law Judge.

B. Summary of Six Key Issues Which Must Be Addressed by the Commission

The PFD addresses 37 tariff issue. While Energy Michigan excepts to 13 of the proposed decisions, six issues are of critical importance to the competitive industry:

1. 10 day period to cancel AES contracts: PDF Issue #8

The PFD allows all customers a 10 day period to cancel AES contracts for any reason. Cancellation should only be allowed where slamming has occurred.

2. Shut off: PFD Issue #11.

The PFD rejected Staff's proposal requiring Consumers to shut off AES customers for failure to pay bills. An AES should be given the same right to shut off as Consumers or Consumers should have to take the AES customer back with no notice period.

3. Ability of marketers to contract for transmission: PFD Issue #29.

The PFD adopts Consumers new language which prevents use of a separate marketer entity to purchase transmission and sell to multiple retailers as is used by Detroit Edison. Marketer entities should be allowed to purchase transmission and use the capacity most efficiently by combining retailer loads.

4. Retailers should be allowed to aggregate multiple loads on point to point service: PFD: Issue # 30.

The PFD rejected Energy Michigan's request that point to point transmission service be made available to aggregate loads as it is on the Edison system. The decision to allow aggregation at the distribution level is within the authority of the MPSC. Aggregation of point to point loads should be ordered by the Commission because it allows more efficient use of transmission. If point to point loads cannot be aggregated, the AES must use network service which requires inefficient or unrealistic fixed transmission paths and specific generation resources. These limitations increase costs.

5. Mandatory processing deadlines and waiver of telemetry requirement: PFD Issue # 31.

The ALJ rejected Energy Michigan's proposals for an ROA processing deadline of 15 days and that telemetry be waived for customers with less than 1,000 kW. Waiver of the small load telemetry requirement would remove the only legitimate reason that utilities can't be required to meet a 15 day processing deadline.

6. Revise load profile charge structure and use of managed load profiles: PFD Issue # 32.

The ALJ rejected Energy Michigan's proposals for cost based load profile charges and to develop profiles for managed small customer loads. Consumers' current load profile charges make small customer service unaffordable and literally discourage small customer load management.

II. DETAILED ENERGY MICHIGAN EXCEPTIONS TO PFD

The Exceptions of Energy Michigan to the PFD are listed below in the same order as presented by Judge Rigas in his July 30, 2001 PFD. All tariff references are to the Staff markup of the Consumers tariff - Exhibit S-15.

PFD Issue # 6: Capacity Bidding Procedures Exhibit S-15, Sheets F20.00, F21.00 and F22.00

- a. PFD

The ALJ rejected Staff's proposal to delete language in the Consumers tariff stating that "the retailer shall pay" [transition charges]. *P. 8.* The ALJ adopted Staff's proposal to return bid deposits by March 31, 2002 without interest. *Sheet F22.00.*

- b. Energy Michigan exception

The ALJ mistakenly adopted language requiring retailers to pay transition charges. Staff language deleting the retailer obligation to pay transition charges prior to 2002 should be adopted because the Commission has already so ruled in Case U-12505. *October 24, 2000. See p. 44-45, ordering Consumers to initiate direct billing for transition charges to customers, not retailers*. Bid deposits should be returned with interest. Otherwise the utility holding the deposits is unjustly enriched.

PFD Issue # 8: Retailers Obligations (S-15, Sheet 14.00, Sec. 3.1)

a. PFD

The ALJ adopted four Staff proposals regarding Sec. 3.1. As part of the changes adopted, 3.1 B was amended to give an absolute right for ROA customers to cancel enrollments within 10 days to prevent slamming. *PFD, p. 10-11.*

b. Energy Michigan exception

The Staff anti-slamming language adopted by the ALJ is susceptible to misinterpretation that could cause severe financial damage to the competitive market. If the 10 day cancellation period is used to confirm whether the customer was slammed or not and, if so, to cancel the enrollment, the requirement appears appropriate. If, however, the 10 day period allows the customer to cancel an AES contract for any reason whatsoever including a change in market prices, the impact could be devastating.

If ROA customers, including large commercial and industrial customers, receive binding price quotes from marketers and sign a contract on that basis, an AES would have to cover the obligation by purchasing power for that customer at a fixed price. A 10 day cancellation period for price reasons would allow such customers to cancel contracts if another, better price became available due to market fluctuations. If customers cancel an

AES contract just because the market now offers a better price, the AES would be left with a binding obligation to purchase power but no customer to pay for the power. A 10 day unconditional cancellation requirement would also allow Consumers or any other utility the opportunity to undercut binding AES prices or terms offered to the ROA customer.

Energy Michigan urges the Commission to modify the second sentence in 3.1B so that it reads, “Consumers Energy provides customers with pending enrollments with a retailer a 10 day notice period in which the customer may cancel the enrollment before the switch is executed only if the customer has been slammed”.

An alternative would be to the 10 day cancellation period to three days which would be applicable only to un aggregated residential customers per Energy Michigan Comments in the Disclosure Standards Docket U-12487.

PFD Issue # 9: ROA Standby Rate (S-15 Sheet F33.00)

a. PFD

The Law Judge adopted Consumers' proposed ROA SB (standby) tariff priced at market cost plus 10% with Staff changes which clarified that the highest incremental cost must apply to the hour used by the customer. The ALJ rejected by ABATE's position that the 10% markup be deleted because it is inconsistent with 2000 PA 141, § 10b(4) which states that standby is to be provided at market cost not at market cost plus 10%. The ALJ also rejected as burdensome and unworkable. Energy Michigan's proposal that the incremental costs charged for standby relate to the amount of standby service actually used, not just the highest single Mwh. *PFD, p. 12-13.*

b. Energy Michigan exception

The 10% markup on standby service is a violation of 2000 PA 141, § 10b(4) which clearly states that standby service must be provided at market cost, not market cost plus 10%. *Energy Michigan Brief, p. 32, Reply Brief, p. 39-40.*

Also, it is unfair to charge all standby customers at Consumers' cost for the highest single Mwh of power. If, for instance, 500-1000 Mwh of standby were used and the average cost of power was substantially lower than the most expensive 1 Mwh. Consumers would be unjustly enriched by charging at the cost of the most expensive Mwh. Consumers has not proved that the Energy Michigan proposal to charge at Consumers' average price for standby power is unworkable. The fairness of the Energy Michigan proposal provides a compelling argument for adoption. *Energy Michigan Brief, p. 32.*

PFD Issue # 10: Optional Billing Charges (S-15 Sheet F9.00 and F10.00, Sec. F2.6 and Sheet 15.00, Sec. F3.5)

a. PFD

The ALJ rejected Staff's revisions to the tariff language which would have included specific pricing and terms for complete billing that derive from an Edison complete billing proposal. Instead, the ALJ proposed that a complete billing option be “included [in the tariff], structured and priced in accordance with the optional billing service being offered today by Consumers”. *PFD, p. 13-15.*

b. Energy Michigan exception

Energy Michigan excepts to any interpretation of the ALJ's PFD language which would place a detailed description of Consumers' competitive service offering in a tariff which describes the prices and terms of that offering . Inclusion of this detail in an approved tariff gives Consumers an advantage over its competitors whose prices are not revealed to

ROA customers. *Energy Michigan Initial Brief, p. 30.*

PFD Issue # 11: Customer Service Shut Off (S-15, Sheets F11.00 and F16.00, Sec. 2.7 and F3.5C)

a. PFD

The ALJ rejected a Staff proposal which required Consumers to shut off service to AES customers who are terminated by the AES for failure to pay bills. Such customers, according to Staff, would be taken back by Consumers. Staff interprets Sec. 10t of Act 141 as providing that the AES may request that Consumers shut off service. Staff has argued that Sec. 10t(4) does not prohibit such requested shut offs from being carried out by Consumers consistent with the requirements of the shut off protection plan, etc.

b. Energy Michigan exception

Sec. F3.5C(1) and (2) (Sheet F16.00 of Staff Exhibit S-15) was rewritten by Consumers to deny shut off of AES customers who are current in paying the Company's bill for distribution service but are delinquent in paying the AES' bill. Note that F3.5C1 states that Consumers is the only entity allowed to physically shut off service to a customer.

Consumers' new language regarding shut off creates a Catch-22 situation. Consumers is the only entity allowed to physically shut off service. *F3.5C(1)*. However, Consumers new rule states that it will not shut off service to a customer who is current on the Company's bill but is delinquent on an AES bill. *F3.5C(2)*. Finally, to add to the confusion, Rule F1.8 (Staff Exhibit S-15, Sheet 3.20) provides that termination of Retail Open Access service to a customer can be initiated by a retailer or a customer only upon 30 days notice. The customer would be returned to Consumers. *See PFD, p. 18 approving Staff F1.8.* These rules force an AES to provide an additional 30 days of service even after it has decided to

terminate service by returning the customer to Consumers. Consumers does not have to provide 30 days notice of termination to customers.

It is important to note that the Consumers language stating that it will not terminate service where a customer is current in its Consumers distribution bill but delinquent in the AES bill is a brand new proposal not existing in the current ROA tariff. *Energy Michigan Reply Brief, p. 23-24.* Consumers proposes to place the AES in a position that Consumers would not find tolerable: the AES cannot terminate service even if the customer does not pay its bill.

Consumers revisions to F2.7 and F3.5C are unreasonable. If Consumers is the only entity allowed to physically shut off service and Consumers is allowed to shut off service where a customer does not pay the Consumers bill, then this right to shut off must be extended to the AES as well. The Staff recommendations accomplish this objective and therefore should be adopted.

As an alternative, if Consumers will not allow the AES to shut off service for non-payment, the tariff should clearly provide that where AES customers are delinquent in paying their bills, such customers may be immediately (not on 30 day notice) returned to Consumers by the AES.

PFD Issue # 12: Return to Service (Exhibit S-15, Sheets F8.00 and F9.00, Sec. F2.5)

a. PFD

The PFD adopts the Staff position on Return to Service which allows return on one month notice at tariff rates with a minimum term of 12 months. The ALJ rejected the Energy Michigan proposal to allow return on 15 days notice for a minimum term of three months where there has not been an increase of 2,000 MW of firm transmission capability into the

Detroit Edison / Consumers control area. PFD, p. 16-18.

The ALJ also proposed adding the language proposed by Staff to Rule F1.8, Staff Sheet 3.20 allowing the retailer or customer to initiate termination of service on 30 day written notice. *PFD, p. 18; See Energy Michigan Comments on PFD Issue #11.*

b. Energy Michigan exception

Where a customer fails to pay AES bills, it is Energy Michigan's position that the AES should be allowed to terminate service on the notice period contained in the customer-AES contract. IF the Commission will not adopt this position, the AES should be allowed to return the customer to Consumers with little or no notice. *See Issue #11 above.*

Energy Michigan witness Polich testified that the Staff proposal, except for non-payment of bills, is appropriate under normal conditions. However, there have been shortages of transmission capacity in the past which have made it impossible for competitors to continue offering service to open access customers. Under these circumstances it is almost certain that ROA customers will be forced to return to the Consumers system and subjected to long notice provisions and obligations to remain on utility service for 12 months. *Polich, 2 Tr 107-08.*

Where transmission capacity has not been increased 2000 MW by 2002 as mandated by PA 141, it is entirely reasonable to allow ROA customers to return to tariff service on a 15 day notice and to require a minimum stay of only three months as opposed to the 12 in the Staff proposal. Once transmission capacity has been increased by 2,000 MW, the more lenient Energy Michigan return to service provisions would be deleted and Staff's proposal would become operative. *Energy Michigan Brief, p. 15-17; Reply Brief, p. 12-15.*

PFD Issue # 16: Third Party Costs (S-15 Sheet 3.20, Rule F1.7)

a. PFD

The Law Judge rejected Staff's request to delete Sec. F1.7 which states that the customer or retailer will compensate Consumers for third party costs as a result of the customer's or retailers failure to meet their obligations under the ROA program.

b. Energy Michigan exception

The Staff proposal to delete Sec. 1.7 should be adopted. The Consumers liability language is so broad that it could lead to claims for enormous and unpredictable damages. The tariff does not subject Consumers to the same standard of liability to retailers. *Energy Michigan Reply Brief, p. 20.*

PFD Issue # 17: Termination of Service (S- Exhibit 15, Rules F1.8, 2.1 and 3.1, Sheets 3.4, 4.0 and 14)

a. PFD

The Law Judge adopted a Staff proposal to allow termination of ROA service on 30 days written notice and, in addition to making this applicable to retailer termination of a customer (see #11 and #12 above) also extended the right to terminate ROA service on 30 days notice to the customer or Company and allowed the Company or retailer on 30 days notice to terminate ROA service to a retailer in Sec. 3.1. *PFD, p. 21-22.*

b. Energy Michigan exception

The Staff proposal is generally acceptable with two exceptions:. First, as discussed

in Issue #11 above, customer failure to pay AES bills should be an exception to the 30 day notice requirement. Consumers is not subject to a 30 day notice as regards shut offs. An AES bills customers for 30 days of service already rendered. The bill does not become due until the 20th day of the billing month. If 30 days notice of termination must be provided, the customer will have received at least three months of service prior to termination for non-payment. Termination of service, whether through shut off of service or, if shut off is not permitted, through transfer to Consumers should be allowed immediately after delinquency as provided by the AES-customer contract except in the case of residential customers covered by the shut off protection plan.

Second, Staff's language seems to allow Consumers to shut off the AES on 30 days notice at whim. The phrase "for good causes shown" should be added to Staff's proposed language regarding shut off of an AES.

PFD Issue # 19: Metering (S-15 Sheet F4.00, Rule 2.2)

a. PFD

The ALJ accepted the Staff changes to this rule which provide procedures in the event that meter data cannot be accessed, including use of a \$12 manual read fee. The ALJ agreed with the Consumers' exception that a specific \$12 charge should not be established since there is no record basis for the charge. *PFD, p. 23.*

b. Energy Michigan exception

Energy Michigan agrees that a manual meter read fee should not be established but, as discussed in #31 below, believes that telemetry should not be required for customers with demand of less than 1,000 kW. In those instances, the manual read procedures which are already in place should be continued at no additional charge. *Energy Michigan Issue #3,*

Brief, p. 9.

PFD Issue # 29: Requirement That Retailer Contract for Transmission (ROA Sections 3D(7) and (8) corresponds to S-15 Rule 3.1G and H, Sheet F14.00)

a. PFD

Detroit Edison allows marketer entities to purchase transmission and serve multiple AES retailer entities which purchase distribution services. However, Consumers requires the retailer to purchase both transmission and distribution services. Energy Michigan proposed that a marketer entity be permitted to purchase transmission capacity so that it could aggregate or combine the loads of multiple retailers to achieve a higher load factor than requiring each retailer to purchase its own transmission service.

The Law Judge rejected Energy Michigan's proposal that retailer / AES entities should not be required by Consumers to contract for both transmission and distribution service on the grounds that the available forms of transmission service do not provide the type of aggregations requested by Energy Michigan. *PFD, p. 32-33.*

b. Energy Michigan exception

See #30 below.

PFD Issue # 30: Aggregation of Multiple Loads Under Point to Point Transmission Service (S-15, Sheet F3.00, Rule 1.4(q) and (r))

a. PFD

Consumers prohibits retailers from aggregating multiple customer loads into a single

combined transaction for transmission scheduling under point to point service. Only network service can be used to aggregate loads. This is a problem because use of network transmission service requires retailers to demonstrate that they have procured firm annual power supplies and firm transmission which is often not available into the Michigan system. Therefore, the precondition for use of network service may not be met with network service and Consumers refuses to allow aggregated loads with point to point service which can be used without firm transmission. The result has been an inability to use any transmission such as was the case in the summer of 2000. The ALJ rejected Energy Michigan's request based upon Consumers' representations that this is a FERC issue and that Energy Michigan has not demonstrated that network service will not be available as an option. *PFD, p. 33-35.*

b. Energy Michigan exception to #29 and #30

Energy Michigan believes the Law Judge erred in several areas regarding the conclusions reached in Section 29 and 30 of the PFD. We will address both sections together because of the strong interrelationship of the two issues. In essence, the PFD adopted a position based upon the premise that Energy Michigan was requesting a change in that would allow aggregation of retail customer loads at the transmission level, when in fact the aggregation would occur at the distribution level. The confusion arises because the issue was addressed under the discussion of treatment of Point-to-Point Transmission service. We believe the position in the PFD is wrong and will significantly harm the Retail Open Access program for the following reasons:

- i. Consumers requires Retailers to sign for distribution services under their contract; “Electric Customer Choice Distribution Agreement - Retailer”

The Law Judge erred in Section 29 of the PFD in accepting Consumers statement that it does not require Retailers to contract for distribution services. Consumers requires all Retailers to sign a “Retail Open Access Service Contract,”

as referenced in section F3.D.(10) of Consumers' proposed retail Open Access Service Tariff. This distribution contract is not an agreement required, authorized or even seen by FERC. Thus, Retailers are performing distribution services even in Consumers eyes, under an MPSC authorized contract and these services are subject to MPSC jurisdiction.

- ii. Consumers already requires aggregation of retail loads for Retailers using Point-to-Point Transmission service under the Retail Open Access Tariffs ROA-R and ROA-S.

In the Retail Open Access Program, under Tariff ROA-R and ROA-S and as required in section F5.4, customers without monthly demand and energy hourly recording meters, are aggregated into a single load profile and those load profiles are provided by Consumers to the Retailers. Under these provisions, Consumers has to take the following steps:

- (1) Add up the total usage of small customer loads for each Retailer (aggregated small customer load), as metered at the distribution level.
- (2) Derive a standard load profile for customers with small retail loads, using statistical sample metering of several of these type of retail customers, also at the distribution level.
- (3) Apply the load profile to the Retailer's aggregated small customer load to establish the Retailer's Load Profile.

The Retailer then uses this Load Profile for the purpose of scheduling transmission service under Consumers' OATT. Retailers can use this Load Profile for scheduling transmission service under Consumers' Point-to-Point Transmission Service. Thus, Consumers has chosen to implement aggregation at the retail level for one class of customers but is refusing to allow Retailers to perform aggregation

for other retail customer loads.

- iii. Retailers schedule power deliveries to the transmission system as a single point of delivery.

The Retailer schedules power into Consumers transmission system as a single point of delivery. Each retailer is supplied a single “Sink”, which is a scheduling point for the delivery of power to Consumers transmission system. This is required by Consumers under their practices for power delivery scheduling. When scheduling Point-to-Point Transmission Service, Retailers schedule their deliveries to the Consumers grid as delivery to the Sink point. For Consumers to further require Retailers to schedule deliveries of power to individual retail customer meters under Point-to-Point Transmission Service in itself crosses jurisdictional boundaries because the Retailer in effect is scheduling power delivery within the distribution network, not to the distribution network. For Consumers to properly comply with the jurisdictional separation it is trying to enforce, it would have to establish each interface with substations that transmit the power to the distribution system as the point of delivery. Even if Consumers does this, it would still have to allow the Retailer to aggregate all retail loads served beyond that interface point to follow its own OATT requirements. It would also need to revise its OATT to make this a new requirement. Thus, Consumers arguments that the aggregation of retail customer loads violates its OATT is false and should be rejected.

- iv. The aggregation occurs at the distribution level.

Retail customers are served by a distribution system (except for some very large customers), that is served from the transmission system. The transmission system deals with the combined loads of all the points of interface with the various distribution system and other transmission system interfaces. Consumers total load

is the aggregation of these loads. Supply to the transmission system for Consumers own loads is scheduled based upon the load on the transmission system. In fact, Consumers operates its transmission system as a single load entity, adjusting its own generation resources to maintain system stability and integrity. Retailers pay for these service through the Ancillary services of the OATT. In reality, the aggregation of retail customer loads occurs at the distribution level, not the transmission level. Once a Retailer has delivered power to the Transmission System, the delivery to the point of interface with the distribution system is assured. The distribution system transfers the load to the end user. Thus, aggregation of retail customer loads occurs at the distribution level not the transmission level.

- v. Detroit Edison allows aggregation of retail customer loads for Point-to-Point Transmission service under the same OATT language approved by FERC.

The terms defining Point-to-Point Transmission Service for all Transmission Service Providers were defined in FERC's Order 888 and have been included in each Transmission Providers OATTs almost verbatim. Edison's International Transmission Company's and Consumers' Michigan Transmission Company's, OATTs include the same language for rules governing Point-to-Point Transmission Service. Since these rules are the same, then Consumers' arguments that aggregation of retail customer loads under Point-to-Point service would apply to Detroit Edison as well. Yet, Detroit Edison allows and encourages Retailers to aggregate all of their retail loads for scheduling of Point-to-Point Transmission Service. Consumers arguments for not allowing aggregation of retail loads because it is not allowed under its OATT nor authorized by FERC is not valid.

- vi. FERC does not have jurisdiction over aggregation of loads at the retail customer level.

The jurisdictional split between Consumers' transmission and distribution was approved by the MPSC. The MPSC established jurisdiction over retail loads, served at the distribution level. Since aggregation of retail customer loads occurs at the distribution level, the MPSC has jurisdiction over the decision requiring Consumers to allow Retailers to aggregate retail customer loads.

- vii. In the Direct Access program, Consumers aggregated all retail customer loads of a Retailer at the transmission level for scheduling purposes and uses the same practice for ROA Program.

In the Direct Access program, Retailers were required to schedule all power supplies to a single “Sink” on Consumers transmission system. Further, scheduling of individual customer loads was done outside of the transmission scheduling system, Open Access Same-Time Information System. Thus, for purposes of scheduling power deliveries to Consumers’ transmission system, loads were aggregated and treated as a single entity.

For the above reasons, Energy Michigan requests the MPSC to require Consumers to allow Retailers to be allowed to aggregate distribution customer loads into the Consumers system as necessary. This will significantly reduce the difficulty of scheduling, reduce energy imbalance charges, allow Retailers to properly schedule power deliveries and make the program more competitive.

Without this option, it is unlikely Retailers will serve individual retail customers with hourly demand and energy meters because they will be required to schedule a minimum of 1,000 kW for each retail customer served under Point-to-Point transmission service. This would create a 900 kW hourly energy imbalance for every 100 kW retail customer. This simply does not work.

a. PFD

The ALJ rejected the Energy Michigan proposal that Consumers be required to switch a customer to open access service within 15 days of an enrollment and if that deadline is not met that the AES should be allowed to commence energy deliveries on the 16th day. The ALJ also rejected the Energy Michigan proposal to waive telemetry for installations below 1,000 kW and continue use of the existing manual read process for such installations to address Consumers' position that enrollment delays were largely caused by phone line installation problems. *PFD, p. 36*

Consumers claims that the 15 day standard can be met with one exception involving small customers who switch from one internal billing system to a different internal billing system. For these customers, Consumers states that the switch must be made on the customers normal meter read day which can be anywhere from one to 30 days from enrollment. Consumers, however, does admit that the time to accomplish the switch will be dependent on the time taken by the customer and its phone company to install telephone lines. Based upon these assertions the Law Judge rejected the Energy Michigan proposals for mandatory deadlines and waiver of telemetry. The ALJ concluded that the necessity for a deadline has not been demonstrated and that it has not been shown that the time required to switch a customer to ROA service had been troublesome. *PFD, p. 37.*

b. Energy Michigan exception

The ALJ's rejection of mandatory enrollment deadlines and waiver of telemetry is based on a finding that the necessity for such a deadline has not been demonstrated and it has not been shown that a time required to switch a customer to ROA service has been troublesome. *PFD, p. 37.* Two credible sources of information contradict the basis for the

recommendation of the ALJ:

i. Mr. Richard Polich is a professional in the competitive electric market who has attempted unsuccessfully to gain timely enrollment of his customers. He testified supporting the necessity of a deadline to enforce rapid processing. *2 Tr 125*. It is also Mr. Polich's expert opinion that one reason enrollments cannot be processed rapidly is related to the Consumers requirement for installation of telemetry phone lines on all ROA meters. *Energy Michigan Brief, p. 29-30. Consumers even agreed that installation of telemetry phone lines takes a long time and is not within the control of Consumers Energy. Consumers Brief, p. 40-41.* The Energy Michigan Reply Brief concluded that Consumers was unable to process even tiny volumes of ROA applications and that this situation was scandalous after the expenditure of scores of millions of dollars. *Reply Brief, p. 7.*

However, the ALJ chose to give Mr. Polich's evidence less weight than the assertions of Consumers that all was well and that there would be no problems implementing the ROA program.

ii. In June of 2001, the MPSC Staff released a report summarizing their investigation of the Consumers Energy Retail Open Access enrollment process (the Staff Report).¹ Among the findings are: 1) it has generally taken about 50-90 days to complete the enrollment process. Staff concluded that the range was excessive (page i); 2) interviews with customers, aggregators and AES entities relate a general impression that the Consumers enrollment process has been wholly inadequate during the startup period (page i); and, 3), Staff is still concerned whether Consumers enrollment procedures and systems will be capable of handling much larger numbers of customers in the future when full open access becomes available

¹ MPSC Staff Report on Investigation of Consumers Retail Open Access Program Customer Enrollment and Supplier Support System and Processes. June 2001.

to all Consumers customers January 1, 2002. Staff also noted that even with major changes, the Consumers system still had gaps that prevent complete tracking (p. ii).

Thanks to the Staff Report, there cannot be any doubt that Consumers has a serious problem completing ROA enrollments on a timely basis. There also cannot be any doubt that the requirement for telemetry particularly as it regards smaller customers, will continue to be the major obstacle to predictable and timely enrollment. These obvious conclusions from the evidence presented by Mr. Polich and contained in the Staff Report support the Energy Michigan recommendations for enrollment deadlines and waiver of telemetry requirements.

Waiver of telemetry simply places Consumers in the same position regarding ROA customers with demand meters as has been the case for sales customers with demand meters. Sales customers below 1,000 kW with demand meters have no telemetry now. Consumers should be able to continue to read these meters and provide data at an acceptable cost when the sales customer switches to ROA service.

If the Energy Michigan solution of deadlines and telemetry waiver is not adopted, what solution will the Commission adopt? The failure of both Consumers and Edison to achieve rapid and predictable ROA enrollment must be corrected with new incentives which will create a significant financial downside for failure to improve enrollment efficiency. A time deadline which can be enforced by the legal sanctions contained in PA 141 is just such an incentive. Waiver of telemetry requirements for customers below 1,000 kW of demand eliminates Consumers' only reasonable objection to a mandatory processing deadline. The Energy Michigan proposal for enrollment deadlines and waiver of telemetry for customers below 1,000 kW of demand should be adopted.

PFD Issue # 32: Load Profiling Service (S-15, Tariff Sheets F25.00 ROA R and F29.00 ROA P)

a. PFD

Energy Michigan recommended revisions to Consumers load profiling charges which would reduce the cost of those services and proposed that Consumers be required to provide load leading profiles based on residential or small secondary customers with managed load.

The ALJ rejected both of these proposals based upon the fact that PA 141 freezes rates and that one of the alternatives presented by Energy Michigan involved expanding the OATT deadband which Consumers claims is an FERC matter. Consumers also opposed the requirement that it supply customers who have interruptible managed loads with load leading profiles that reflect such usage characteristics. Consumers' opposition ignored the fact that development of special managed load profiles for customers would create incentives for small customers to use time of day and off peak pricing or energy storage services. Consumers claims these customers can install expensive time of use meters as an alternative.

b. Energy Michigan exception

There are two issues involved: the charges for load profiling and the need to offer special profiles for small customers with managed loads.

Load Profiling for Managed Loads

Consumers and the ALJ gave no good reasons to reject the Energy Michigan request for a load profile program tailored to small customers with managed loads. It is clear that residential and other small customers can often shift load or accept interruption as a way of reducing on peak power. This point is amply proved by the Detroit Edison managed air

conditioning load system. In theory, small customer changes in load could be tracked by time of use metering which would accurately assess the customer's interruptions and eligibility for lower cost service. However, the cost of time of use metering for a very small customer would likely outweigh any savings offered. Edison has recognized this fact by offering a retail residential load management program that does not use demand metering. That system has not been made available to ROA customers.

Energy Michigan proposed a technically sound alternative to cost prohibitive time of use metering for small customers with managed loads. This proposal requires Consumers to install sampling meters on customers with managed load and use this sample data, as they do for their other load profiling programs, to generate a usage profile which would be associated with managed load. Retailers who matched deliveries to this managed load profile would avoid imbalance penalties while delivering interruptible or off peak service offerings which are available at lower cost because they use less on peak power. Energy Michigan witness Vail provided evidence on the record that such a system was practical and technically accurate. *2 Tr 90-94*. Mr. Vail's proposal to expand load profiling to small managed loads was not rebutted. *Energy Michigan Brief, p. 14*.

The evidence of record supports the need for load profiling designed for managed loads, the feasibility of such a program and contains no evidence that such a program is not possible. If the Commission wants small customers to increase their efficiency of use, a proposal of the type advocated by Mr. Vail must be implemented. Expensive time of use meters are no solution for small customers because they are cost prohibitive.

Charges for Load Profiling

Consumers is unable to refute Mr. Polich's basic contention that the current load profile charge vastly over-recovers costs. Consumers appears horrified by the suggestion that a reconciliation program be adopted which actually tracks the cost of providing load profile

service and results in recovery of costs incurred rather than the recovery of the gross over estimations currently utilized by Consumers. It is within the Commission's power under Act 141 to move from a specific cost rate to a process which would establish costs periodically. As with profiling services for managed load, the Commission should understand what is at stake: Unless load profiling can be made economical, small residential customer loads cannot be economically served on an individual basis.

III. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests that the Commission adopt a decision in this matter containing its Exceptions to the PFD as more fully detailed above.

Respectfully submitted,

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August 13, 2001

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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

PROOF OF SERVICE

Eric J. Schneidewind, duly sworn, deposes and says that on this 13th day of August, 2001 he served a copy of Exceptions of Energy Michigan Inc. to Proposal for Decision by e-mail and regular mail upon those individuals listed on the attached service list at their last known addresses.

Eric J. Schneidewind

Eric J. Schneidewind, Deponent

Subscribed and sworn to before me
this 13th day of August, 2001.

Monica Robinson

Monica Robinson, Notary Public
Clinton County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: September 21, 2001

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