

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
CONSUMERS ENERGY COMPANY)
for a financing order approving the)
securitization of its regulatory assets and)
other qualified costs)
_____)

Case No. U-12505

REPLY BRIEF OF ENERGY MICHIGAN

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This Reply Brief responds to certain issues contained in the Initial Briefs of Consumers Energy Company, the MPSC Staff and the Attorney General. Failure to discuss or reply to other issues or positions raised by these parties or any other parties should not be construed as agreement with those issues or positions.

I. INTRODUCTION AND SUMMARY OF POSITION

A. Before 2002 Securitization Will Make ROA Residential Service .155 ¢ /kWh Less Competitive. Commercial and Industrial ROA Will Not Be Affected.

Before 2002 a Consumers bundled sales customer will be charged a uniform securitization charge of about .2 ¢ /kWh as a separate line item on their bill. That securitization charge will be offset by an equal .2 ¢ /kWh reduction in the base rates paid by all bundled sales customer classes. The result: no rate increase. Bundled sales residential customer rates will drop 5% or about .375 ¢ /kWh.

Retail Open Access (ROA) customers will be assessed the securitization charge of about .2 ¢ /kWh which will be subtracted from the price bid for transition charges which is paid by the retailer.

The retailer will pay the same bid transition charge as before securitization but part of that charge will be dedicated to paying securitization costs. The result is no rate increase for ROA customers.

However, residential open access customers will receive a rate reduction of about .22 ¢ /kWh, not the .375 ¢ /kWh received by bundled sales customers.

It is not disputed that prior to 2002 the net result of securitization is that residential ROA service is less competitive by about .155 ¢ /kWh for residential customers but there is no impact on commercial or industrial ROA economics in comparison with bundled sales rates.

B. Starting January 1, 2002: Securitization Makes All Classes of ROA Service Less Competitive With Sales Service

1. Securitization Charge Impact

For bundled sales customers the results (after January 1, 2002) are the same as described above prior to 2002: securitization charge increases are offset by base rate decreases and residential sales customers get a net .375 ¢ /kWh reduction.

For open access customers the story is different. A securitization charge of about .2 ¢ / kWh will appear as a line item on ROA customer bills. There is no credit or base rate reduction to offset this charge.

Also, Consumers proposes to assess an equal securitization charge for residential, commercial and industrial customers. An equal securitization charge bills large high load factor customers too much for service! To the extent an equal charge allocates an increased amount of stranded generation cost to industrial customers, that increase will actually be paid by ROA customers unlike securitization charges to bundled sales customers which are offset by an equivalent rate decrease. Thus, to the extent an equal securitization charge reallocates

generation costs in a way that is different than the allocation method used in current rate designs, the negative consequences of that reallocation will fall on open access customers with high load factors. An equal securitization charge will make large customer ROA service less competitive in relation to bundled sales service than ROA service was prior to securitization.

A telling and unrebutted point was made by Energy Michigan witness Richard Polich. There is a 12% difference in line losses alone between residential and transmission voltage industrial customers. *4 Tr 441*. Based on this unrebutted testimony, equal securitization charges bill the industrial customer 12% too much or the residential customers 12% too little.

2. Rate Reduction Impact

ROA residential rates will still be reduced by .22 ¢ /kWh after January 1, 2002 but bundled sales residential rates will have gone down by .375 ¢ /kWh. ROA residential service will still .155 ¢ /kWh less competitive because securitization rate reductions are not equal between residential sales service and residential ROA service.

C. The Consumers Securitization Proposal Violates PA 141

ABATE and Energy Michigan testimony is unrefuted that use of equal securitization charges will allocate securitized generation costs to open access customers in a way that is different than contained in Consumers' last rate case U-10685. This is a violation of 2000 PA 141, Sec.10d(5).

Equal securitization charges increase generation costs allocated to large high load factor customers. Unless the increase is totally offset, it is a violation of PA 141, Sec.10d(1).

Failure to recognize undeniable differences in line losses between classes results in residential customers paying 12% too little or large industrial customers paying 12% too much with equal

securitization charges. This is a clear violation of PA 141, Sec.10d(5).

Since ROA customers will have a securitization charge which is not offset by equal reductions, they are subjected to a rate increase which is a violation of 2000 PA 141, Sec.10d(1).

D. Rulings In This Case Will Impact Other Open Access Programs

This case will create a precedent for the Detroit Edison securitization Case U-12478. In the Edison case, average securitization charges are about .5 ¢ /kWh. All Edison bundled sales customers are given a .4 ¢ /kWh reduction while no reductions are given to ROA customers. ROA customers would be charged for securitization but given no offsetting rate decreases. The net result of these two Edison positions is to make ROA service approximately .9 ¢ /kWh less economic in comparison with bundled sales service. By using an equal securitization charge for all customers, high load factor commercial and industrial customers would pay 60% too much (.2 ¢ to .3 ¢ /kWh). This effect would create a further .2 ¢ -.3 ¢/kWh disincentive for Edison customers to use open access service.

Can there be any doubt that the precedents requested by Consumers in this case will destroy Retail Open Access economics for 15 years on the Detroit Edison system? Can there be any doubt that the Consumers proposals will make residential Retail Open Access service uncompetitive for 15 years and cripple commercial and industrial ROA competitiveness on the Consumers system?

E. There is a Reasonable, Lawful and Easily Implemented Solution to These Problems

Energy Michigan has proposed three steps which would correct the problems described above and still allow securitization to proceed:

1. As part of the decision in this case, the Commission should direct Consumers to file, securitization charges within two weeks which are calculated for each customer class on the same 75/25 12 CP basis used in the last Consumers rate case. Parties should be given one week to comment and the rates would be finalized by the Commission in one week. This 28

day process will not delay securitization because it can proceed during and in parallel with the 30 day accelerated appeal process authorized in PA 142, Sec.10i(2)(8).

2. Starting January 1, 2002 Consumers will charge ROA customers a net transition charge to collect all net stranded costs. As separate billing items, the ROA customer should be charged a class specific securitization charge and the equivalent amount should be subtracted from the net transition charge. The result is that Consumers would collect all securitization costs and ROA customers would pay full stranded costs in much the same way as the pre-2002 calculation which subtracts securitization charges from transition charges.

For example, if net stranded costs were .3 ¢ /kWh covering all Consumers generating facilities including Palisades, and securitization costs were .2 ¢ /kWh, the ROA bill would show a transition charge of .3 ¢ /kWh, a securitization charge of .2 ¢ /kWh and an offset to the transition charge of .2 ¢ /kWh. The net result would be an ROA customer cost of .3 ¢ /kWh.

3. The Commission should Order that ROA residential customers through 2001 receive the same dollar per kilowatt hour reduction as bundled sales customers using excess securitization savings as allowed by PA 141, Sec.10d(5) or recognizing that the funding requested by Consumers to reduce residential rates will cover equal dollars per kilowatt reductions for any customer switching to ROA residential service. Starting January 1, 2002 the residential ROA stranded costs and transition charges would be reduced by .375 ¢ /kWh to reflect the fact that the 5% sales rate reduction also made Consumers residential sales rates .375¢ /kWh more competitive with market rates thereby reducing stranded costs.

Conclusion

The Energy Michigan plan described above will collect legitimate securitization costs and avoid violations of 2000 PA 141, Sec.10d(1) (rate increases) and 10d(5) (reallocation of

costs). Most important of all, these concepts will preserve fair competition between Consumers Energy or Detroit Edison bundled service and ROA service.

II. DETAILED DISCUSSION OF OPEN ACCESS ISSUES IN INITIAL BRIEFS

A. Energy Michigan's Proposal to Reduce ROA Residential Rates by the Same Dollars Per Kilowatt as Residential Bundled Sales Rates

1. Before 2002

a. Consumers Position

Consumers makes two arguments against the Energy Michigan proposal to reduce ROA residential rates by the same $.375 \text{ ¢ /kWh}$ as bundled sales rates reductions instead of the $.22 \text{ ¢}$ reduction implemented by Consumers:

1) Consumers claims that ROA residential rates cannot be reduced by the $.375 \text{ ¢/kWh}$ instead of $.22 \text{ ¢}$ "because rates are frozen by 2000 PA 141." *Consumers Brief, p. 41.*

2) Consumers also claims that retailers should have protected themselves against lowered competing bundled sales rates as a market risk. Retailers should not ask the Commission to eliminate such risks. *Brief, p. 41.*

b. Reply

Regarding Argument 1): Consumers is mistaken that the Commission cannot give ROA residential customers a $.375 \text{ ¢/kWh}$ decrease. 2000 PA 141 contains language allowing use of securitization savings to produce further rate reductions or "...to reduce the level of

any charges authorized by the Commission to recover an electric utility's stranded costs." *10d(5)*. Energy Michigan witness Polich proposed that the additional ROA residential reductions needed to achieve parity with bundled sales rates should take the form of reduced transition charges. The Commission is expressly given the authority to reduce transition charges under the PA 141 language quoted above. The Energy Michigan proposal to equalize rate reductions between sales and ROA customers is perfectly lawful. *4 Tr 443-44*.

Regarding Argument 2): It is extremely ironic that Consumers has argued for open access retailers to protect themselves from changes in the law affecting market conditions when Consumers itself is before this Commission requesting permission to implement a program of ratepayer guaranteed loans which provide it with below market interest rates which are not available to its competitors. It is no secret that Consumers lobbied to obtain passage of PA 142. Consumers should not be allowed to protect itself from market forces by asking for public bailout while denying its competitors equal protection under the same law.

Exhibit 2 of the Energy Michigan Initial Brief demonstrates that PA 141 and 142 were introduced after completion of the fourth bid cycle for ROA service. There is no way that ROA retailers could have protected themselves against Act 141, an event of which they were completely unaware, and which according to the attached article was a significant surprise to industry participants. Even if retailers should have protected themselves it would be unfair to deny their customers benefits of a legally mandated rate reduction.

2. Equal Reductions Starting 2002

Consumers does not address Mr. Polich's contention that starting 2002, ROA and bundled sales economics can be equalized if the transition charges applicable to the residential ROA customer class (or any class receiving a rate reduction) are calculated incorporating the reduced costs of generation to serve the residential class which were made possible by

securitization.

In other words, if residential bundled sales generation costs are lowered from 5 ¢ to 4.6 ¢ /kWh by securitization, transition charges calculated for residential ROA customers should be reduced by a corresponding .4 ¢ /kWh to recognize the increased competitiveness of bundled sales generation serving the residential class.

Mr. Ernst of Consumers characterized the Polich plan as a “double give back” when in fact the component of Mr. Polich’s plan to equalize ROA and bundled sales residential economics merely asks the Commission to calculate residential ROA transition charges starting 2002 using the new, lower securitized cost of generation to serve the residential class. *3 Tr 393-94.* This solution is obvious and fair.

Conclusion Regarding Equal Reductions

The Consumers Brief discussion of Energy Michigan’s proposal to reduce ROA rates by the same amount as bundled sales reductions through securitization contains a fatal flaw: Consumers does not address evidence of record in Mr. Polich’s testimony that equal reductions are necessary to make ROA economics competitive with bundled sales rates. *4 Tr 443.* No Consumers evidence on the record contradicts the testimony of Mr. Polich, a thoroughly seasoned rate making professional, who has concluded that an equalization of securitization rate reductions between ROA and bundled sales is necessary to make ROA economics workable. Mr. Polich’s evidence stands uncontradicted that the Consumers program of unequal rate reductions could frustrate ROA service and that Mr. Polich’s reasonable solution is needed to fix the problem.

B. The Need to Offset ROA Transition Charges by the Same Amount as ROA Securitization Charges Starting 2002

1. Energy Michigan witness Polich has emphasized that starting 2002 Consumers will

charge ROA customers a securitization charge and that it must offset the securitization charge by a corresponding reduction from transition charges just as Consumers proposes to offset the bundled sales securitization charge by an offsetting reduction in base rates. *4 Tr 436.*

Consumers did not produce any rebuttal testimony to undermine or contradict Mr. Polich's position on this issue.

2. The Consumers Position On This Issue is Confused or Misleading

Consumers appears to be confused as to how ROA customer securitization charges will be handled starting 2002. When asked about this issue on cross examination, Consumers witness Ernst agreed that he had provided discovery responses to Energy Michigan stating that Consumers Energy will reduce transition charges by an amount necessary to offset the billed securitization charges for open access customers (as is the case before 2002). *3 Tr 339.*

To nail down the point, Mr. Ernst was asked the following question by Energy Michigan:

Q: "Is it correct to say that under your proposal then that if the securitization charges and tax charges were a total rounded off to 2 mills that the 2 mills would be subtracted from the 5 mills [of transition charges] and that the customer would end up paying 2 mills for securitization and 3 mills for transition charges for a total of 5?"

A: "Yes." *3 Tr 343-44.*

On redirect, Mr. Ernst changed his story totally. Mr. Ernst came up with a new theory of securitization charge collection for ROA customers starting 2002. He stated that ROA securitization charges would cover assets which are not part of the transition cost

proceeding and that this strategy would eliminate the need for subtracting such charges from the total calculated transition charges starting 2002. 3 Tr 383. This position was not enunciated in Mr. Ernst's direct or rebuttal testimony nor in the Consumers Brief.

Consumers has presented no effective rebuttal to the Polich proposal to handle ROA securitization charges starting 2002. Mr. Polich's point stands: the Consumers proposal is anti-competitive and violates 2000 PA 141, Sec. 10d(1) by increasing ROA rates without an equal offset.

C. Reply to Consumers, AG and PSC Staff Support for Equal Securitization Charges

1. Consumers, Staff and Attorney General Position

The Staff Brief supports the use of equal securitization charges based on the fact that they are "simple, efficient and transparent to use." *Brief*, p. 28. The Attorney General makes no mention of equal securitization charges in its Brief, but opposed use of a 75/25 demand energy allocation to set securitization charges for a base load plant such as Palisades. 5 TR 755. The Consumers Energy Brief supports equal securitization charges on the grounds that they are easier to track, promote cross-collateralization and are easier to administer. *Brief*, p. 17, 66.

2. Reply

a. Staff's Alleged Support Was Based on Incorrect Facts

Consumers Brief claimed that no party attacked the Staff's support for equal securitization charges. *Consumers Energy Brief*, p. 17. This is simply not true. See Energy Michigan cross of Staff witness Ballinger which shows that when Mr. Ballinger supported equal charges he was not aware that the charges would not be

offset by equivalent reductions. Mr. Ballinger admitted that he didn't know what he would do if he had been aware that there was no equal offset to the securitization charges. 5 Tr 615-16. Mr. Ballinger's support for equal charges is therefore not credible because it has been shown to be based on an inaccurate understanding of the facts.

b. Equal Securitization Charges Reallocate Costs!

Consumers also claims that its witness Ernst rebutted the claims of ABATE witness Phillips and Energy Michigan witness Polich that equal securitization charges would reallocate customer costs in violation of PA 141, Sec.10d(5). *Brief, p. 51.* This is simply untrue! Mr. Ernst's rebuttal testimony focuses on the time period prior to 2002 when the securitization charge is subtracted from the bid price paid by ROA retailers.

Mr. Ernst said on rebuttal: "Mr. Polich states that for ROA retailers/aggregators who are paying a per kWh bid charge as a transition charge, the same separation of the per kWh charge for securitization, taxes and per kWh charge for the remainder of the transition charge will leave the retailer/aggregator paying the same per kWh total that they paid prior to securitization. Clearly no reallocation of cost responsibility takes place. Mr. Phillips position should be rejected by the Commission." *3 Tr 275 (emphasis supplied).*

It is clear that the Ernst rebuttal quoted above has nothing to do with the period after 2001 when customers, not retailers, pay securitization charges and when the securitization charges are not offset. At another place in his testimony, Mr. Ernst, admits that starting 2002 securitization charges will not be subtracted from the bid or any other transition charge but rather will be charged as a separate charge. *3 Tr 381-83.*

Thus, Consumers has not rebutted the Polich proposal applicable to the period starting 2002. By limiting his rebuttal to the period before 2002, Mr. Ernst has failed to show that the Consumers method assessing equal securitization charges produces no cost reallocation starting 2002. From Consumers' perspective, the record is a blank on that issue but is opposed by credible testimony of witnesses Phillips and Polich.

Given the absence of credible evidence to support the Consumers position on the need for equal securitization charges after 2001, the evidence presented by witnesses Polich and Phillips stands unrefuted that equal securitization charges produce a reallocation of costs between customer classes.

Consumers also claims that current rates contain uniform transition charges per rulings in Case U-11290 so a new uniform charge is not a reallocation of costs. *Brief, p. 68*. This argument is ridiculous on its face. The Commission has ruled in Case U-11290 that the transition charges described in its Orders were mere estimates which are subject to wild fluctuation and must be determined after netting and true up. *Order of the Commission, U-11290, et al, February 18, 1998, p. 7-8*.

c. Equal Securitization Charges Are Not Necessary for Good Bond Ratings!

The Consumers Brief attempts to support the need for equal securitization charges by reciting testimony presented by its witness Hoffman who claimed that equal securitization charges would produce a favorable impact on bond costs. *CE Brief, p. 66*. However, Energy Michigan witness Polich literally demolished Mr. Hoffman's arguments. Mr. Polich is the most seasoned rate design witness participating in this case. *4 Tr 426-29*. Mr. Polich explained that, contrary to the claims of Mr. Hoffman, unequal charges will provide greater assurance to the investment community of recovery than equal charges. This is so because the

customers most likely to leave the Consumers system or utilize self-generation, as feared by Mr. Hoffman, would be charged the lowest securitization fees under the Polich proposal. Since customers likely to leave the Consumers system would be paying the lowest fees, the Polich proposal would produce the lowest loss of revenue if those customers left on the one hand and create the lowest incentive for them to leave on the other hand. *4 Tr 439-40*. Different securitization charges by class will increase bond holder security, not decrease it.

d. Equal Securitization Charges Change ROA Economics!

Mr. Polich showed that equal charges create incentives for large high load factor customers to not participate in ROA because unequal charges change ROA economics by producing rate increases for high load factor customers. These ROA increases make Consumers bundled rates artificially more competitive. *4 Tr 440-41*.

Particularly damaging is Mr. Polich's explanation that use of equal securitization charges cannot be cost justified when it is a known fact that the line losses alone should account for rate differences of 12% between residential and large industrial customers. Ignoring these line loss differentials produces a clear cut reallocation of cost and is contrary to any known principal of cost based rate making. *Tr 440-41*.

These arguments of Mr. Polich are unrebutted on the record. The only rebuttal offered by Consumers references the Ernst testimony at 3 Tr 275 which deals with the period before 2002, not the period starting 2002 after unbundling, which is the subject of Mr. Polich's testimony.

e. Equal Securitization Charges Cause Prohibited Rate Increases!

Consumers Brief claims that since rates are frozen there is no rate increase from equal securitization charges. *Brief, p. 67*. On the contrary, Mr. Polich has

testified that use of equal securitization charges which are not offset after 2001 will in fact create a rate increase for high load customers while the rate freeze mandated by PA 141, Sec.10d(5) is supposed to be in effect. *Tr 441*. This testimony and conclusion was not contradicted by Consumers evidence of record in this case. There is no testimony rebutting Mr. Polich's contention that the Consumers equal rate charges for securitization will create a rate increase after 2001 for high load factor customers.

f. Development of Class Specific Securitization Charges Based on 75/25 12-CP Methodology Will Not Delay This Case!

Implementation of class specific securitization charges based on 75/25 12-CP methodology will not delay this case. Consumers own witness Hoffman admitted this fact on cross exam. *3 Tr 228*.

The Commission can issue an Order in this matter which adopts the same 75/25 12-CP method of allocating securitization costs as was used in Consumers' last rate case U-10685. As with U-10685 and most other rate cases, Consumers would be given two weeks to file class specific securitization charges complying with the Order. Parties could have one week to comment and the Commission would have one week for approval. This 28 day process would be accomplished in the time frame allowed by PA 141, Sec.10i(2)(8) for review by the Court of Appeals.

Conclusion

Energy Michigan witness Richard Polich presented key evidence on this record in opposition to the use of equal securitization charges. This evidence is unrebutted by Consumers Energy. Mr. Polich has shown that use of securitization charges calculated individually for each customer class would produce less risk to securitization bond holders than equal charges. No witness rebutted this

testimony.

Mr. Polich testified that use of equal securitization charges are a rate increase prohibited by 2000 PA 141, Sec.10d(1) starting 2002. No Consumers witness has rebutted this testimony.

Mr. Polich's conclusion that uniform charges are a reallocation of costs, starting 2002, for Consumers customers in violation of 2000 PA 141, Sec.10d(5) is also unrebutted. Consumers mistakenly cites rebuttal applicable to the period before 2002 when there is really no problem because rates have not been unbundled.

There is no substantial record evidence to rebut or challenge the testimony of Mr. Polich which destroyed Consumers' fundamental arguments in favor of equal securitization charges.

D. Securitization Charges and Transition Charges Should be Billed Directly to Customers Now Instead of Waiting until January 1, 2002

1. Consumers Position

Consumers opposes Mr. Polich's proposal to bill ROA customers for all securitization charges and transition charges now instead of billing these charges to retailers through 2001 and billing the charges to customers after January 1, 2002. Consumers claims that the Polich proposal is a simple attempt to shift bid cost responsibility from retailers to customers. *Consumers Brief, p. 40.*

2. Reply

Mr. Polich supported his proposal with testimony demonstrating that billing securitization and transition costs to retailers now and shifting the billings to customers in 2002 would create confusion, billing problems for retailers and likely increase implementation

costs. 4 Tr 432-36. These practical considerations, presented by a person who must deal with them on a day to day basis are a powerful argument when coupled with the fact that the change proposed by Mr. Polich must be made in any event as of January 1, 2002. If the change must be made, why not do it now and save both money and customer confusion?

Consumers cites no testimony rebutting Mr. Polich's conclusions. *Brief, p. 40.* Other than a few offhand remarks impugning Mr. Polich's motives, Consumers comes up short on substance to refute Mr. Polich's proposal.

The reasonableness of Mr. Polich's proposal, as well as the implementation cost savings and elimination of customer confusion should persuade the Commission to adopt his proposal to start billing customers immediately for securitization and transition charges. Consumers has offered no evidence whatsoever to oppose this conclusion.

E. The Consumers Draft Order Should Be Rejected

1. Consumers Position

Consumers itself characterizes the draft Order presented by Mr. Hoffman as a document "designed to incorporate the expectations of the financial ratings agencies whose opinion concerning the securitization bonds will be the determining factor in setting the interest rate of the bonds". *Brief, p. 29.* The Consumers Brief then jumps to the unsupported conclusions that a) without a favorable AAA rating the securitization bonds will not be marketable and there will be no securitization transaction and b) that the draft Order will affect the achievement of the desired AAA rating. *Id.*

2. Reply

Consumers' only legal support for adoption of its draft Order is to cite Act 142,

Sec.10i(2)(c) which is a requirement that the “expected structuring and pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing Order”. *Brief, p. 83-84.*

Nowhere in its discussion of PA 142 or other issues does Consumers cite a legal requirement that the Order issued by the Commission be drafted in a form dictated by Consumers particularly when Consumers has offered no proof that the form of the Order will affect bond ratings or achieve the desired AAA rating.

As noted in the Energy Michigan Brief, the draft Order presented by Mr. Hoffman merely embodies the Consumers position on securitization. *3 Tr 222.* Requesting adoption of this Order is tantamount to Consumers requesting that the Commission adopt its entire position without modification or rejection of any component. To the extent the Commission makes changes to the Consumers position, the Order will become less useful or downright useless. The Commission should continue to write its own Orders and not use Orders provided by interested parties.

F. Bid Deposits on Residential ROA Service Should Be Returned

1. Consumers Position

Energy Michigan witness Polich proposed that bid deposits for residential ROA service be returned on the grounds that PA 141 has changed the economics of such service in a way that could not have been predicted by retailers or customers bidding for such capacity. *4 Tr 444.*

The Consumers Brief claims, inaccurately, that Mr. Polich is proposing that, “Bid deposits be returned to winning bidders regardless of rate class.” *Consumers Brief, p. 40 (emphasis supplied).*

2. Reply

The Consumers Brief inaccurately quotes Mr. Polich. Mr. Polich said, “In addition the MPSC should seriously consider requiring Consumers to refund the bid deposits if it is no longer economical for the customer to participate due to the bundled rate reduction.” *Tr 444.* Since the Consumers bundled rate reduction applied only to Consumers’ residential rates, the residential class is the only class to which the bid deposit refund would apply under Mr. Polich’s proposal. Consumers’ inaccurate characterization of the Polich proposal should be ignored.

The thrust of Mr. Polich’s testimony is that when a law changes the economic basis upon which decisions are made, financial commitments made on the basis of inaccurate assumptions should be terminated since the assumptions were changed for reasons beyond the control of the bidders.

G. Three Energy Michigan Issues Which Are Not Challenged: Spreading Securitization Bond Costs Over All Sales, Collection of Securitization Bond and Tax Charges as Separate Charges and Annual True up

The Consumers Brief through inadvertent or advertent omissions leaves unchallenged three Energy Michigan proposals. Based upon this situation, the support on the record by Mr. Polich for these positions and the inherent reasonableness of those positions, Energy Michigan recommends that the following positions be adopted:

1. Spreading securitization costs over all sales

Spreading securitization costs over all Consumers sales would reduce charges by 9% based on year 2000 sales data. *Exhibit I-25.*

Energy Michigan proposed that securitization costs be spread over all Consumers sales including wholesale, retail, inadvertent energy flows, energy interchanges and ancillary services. 4 Tr 441-42, *Energy Michigan Brief*, p. 14-15. Consumers introduced rebuttal from witness Ernst which only challenged inclusion of ancillary services for the purposes of spreading costs. 3 Tr 276. While Mr. Ernst based his opposition to use of ancillary services sales on the grounds that nuclear costs had been removed, Energy Michigan noted that numerous non-nuclear generation related costs which are securitized were still included in ancillary services and thus rendered ancillary services a reasonable addition to the total sales which would be used to recover securitization costs. *Energy Michigan Brief*, p. 14-15.

Nonetheless, the Consumers testimony on this issue does not challenge Mr. Polich's proposal to spread securitization costs over wholesale transactions, interchange and inadvertent energy flows. Thus, most of Mr. Polich's position to spread securitization costs over a wider sales base is unchallenged and should be adopted by the Commission regarding all sales but ancillary services. Since the weight of the evidence in the Polich testimony and the Energy Michigan Brief supports inclusion of ancillary services transactions, those sales should be added to the transactions used to recover securitization costs as well.

Adoption of this position could reduce securitization charges by 9%.

2. Annual true ups

a. Consumers Position In Testimony

Quarterly or even monthly true ups are possible under the initial testimony of Consumers witnesses Ernst and Hoffman. 3 Tr 221 and 268.

b. Consumers Position on Brief

The Consumers Brief contains the following statement: “According to Consumers proposal, true ups for the securitization charges (and the tax charge) would be made annually until 12 months prior to the last expected maturity date of the securitization bonds after which true ups would be done at least quarterly.” *Brief, p. 9, emphasis supplied.*

c. Energy Michigan Position

Energy Michigan witness Polich testified in support of his proposal that Consumers be required to use only annual true up proceedings citing the fluctuation in transition charges which could be caused by more frequent true ups. *4 Tr 546.*

Conclusion

It appears that Consumers has supported, or at least agreed, to the Energy Michigan position that true ups should be made on an annual basis until the last year of bonding.

If Consumers disagrees on Reply, the Commission should recognize the weight of the evidence presented by Mr. Polich showing that quarterly or monthly true ups would produce unacceptable volatility in securitization charges. *4 Tr 546.*

3. Collection of Securitization Bond and Taxes as Separate Charges

a. Consumers Position

Consumers initially proposed that the securitization charge include principal

interest, servicing and expenses related to securitization bonds. However, the projected principal taxes associated with securitization revenues were not included in the securitization charge. *4 Tr 431.*

b. Energy Michigan Position

Energy Michigan witness Polich recommended inclusion of all securitization costs including taxes in the securitization charge. *Id.*

In its Brief, Consumers makes the statement, “However, Consumers would not have any objection if the Commission determined in the Financing Order that it would rather have the tax charge broken out as a separate line item on customer bills just like the securitization charge will be broken out as a separate line item.” *Consumers Brief, p. 15-16.*

While Consumers appears to have moved in the direction recommended by Mr. Polich, it has not taken all the steps recommended. Mr. Polich’s testimony stands unrebutted. Inclusion in securitization costs of taxes and bond charges simplifies the true up process the Consumers’ new proposal which even Consumers admits may result in more confusion for customers. *Energy Michigan Brief, p. 16.* Mr. Polich’s proposal for one charge covering all securitization costs would not increase customer confusion and would eliminate arguments regarding the recovery of the tax related charges as well as simplifying the true up process. *4 Tr 432.*

For these reasons the Polich proposal to include taxes and bond charges in one securitization charge should be adopted.

III. CONCLUSION AND PRAYER FOR RELIEF

A. Conclusion

While the amounts involved in the Consumers proposal for securitization are relatively small (less than $.2 \text{ ¢ /kWh}$) and the rate reductions are narrowly applicable (only residential) this case is likely to set precedent for the Detroit Edison securitization case which includes much larger securitization charges ($.5 \text{ ¢ /kWh}$) and has reductions of $.4 \text{ ¢ /kWh}$ which cover all bundled sales classes.

Consumers proposes to recover securitization costs as an equal charge for all customer classes. Other jurisdictions, such as Illinois Power, have recovered securitization charges which are different for each class, a method that charges some high load factor customers $.26 \text{ ¢ /kWh}$ and some residential customers 1.07 ¢ /kWh . *6 Tr 844*. This evidence illustrates the magnitude of the legitimate cost based rate differences hidden by equal securitization charges. This evidence also illustrates the amount of economic damage that can occur through application of equal securitization charges.

In reality, equal securitization charges are a device to increase ROA rates for high load factor customers who dare to leave bundled sales service. The rate increase inherent in equal securitization charges will surely discourage participation in ROA service. Based on the Edison request for $.5 \text{ ¢}$ securitization charges, the unjustified rate increase impact could equal $.2 \text{ ¢} - .3 \text{ ¢ /kWh}$ for high load factor customers.

Consumers proposes to reduce residential bundled sales rates $.375 \text{ ¢ /kWh}$ but only reduce residential ROA by $.22 \text{ ¢}$. Unequal reductions will discourage participation in ROA service. On the Edison system, the difference between ROA and bundled sales service would be $.4 \text{ ¢ /kWh}$ for all customer classes. This difference alone would eliminate participation in ROA service in the current electric markets.

Finally, bundled sales customers are charged a securitization fee but their sales rates are reduced by an equivalent amount leaving them with no rate increase from securitization. Starting January 1, 2002 ROA customers would pay a securitization fee but have no corresponding reduction. This is tantamount to a .2 ¢ /kWh rate increase with no promise of a corresponding offset. This increase will make ROA service less competitive for all customer classes on the Consumers system and set a precedent which would allow .5 ¢ of extra charges on the Edison system for all ROA customers.

Collectively, these anti-competitive aspects of the Consumers securitization program would make ROA service uneconomic for the foreseeable future. Surely the Commission will not allow Consumers to turn securitization into an anti-competitive tool to destroy competition.

B. Prayer for Relief

WHEREFORE, Energy Michigan respectfully requests the Commission:

1. Adjust Retail Open Access transition rates for the impact of securitization as follows:

a. Prior to January 1, 2002

Reduce residential ROA transition bid charges by the same .375 ¢ /kWh amount as residential bundled service rates were reduced as proposed by Energy Michigan in this case. Also, subtract securitization charges from the bid transition charge as proposed by Consumers in this case.

b. 2002 through 2014

(1) Reduce ROA transition charges calculated by the Commission (including use of credits after 2007 as necessary) by an amount equal to the

non-bypassable securitization bond and tax charges on ROA service, and;


(2) Reduce future transition charges by the same amount in dollars per kilowatt hour as the reductions implemented June 12, 2000 for residential sales customers and any other net rate reductions which occur in the future for other customer classes.

2. Develop different securitization charges for each customer class and allocate securitization costs and charges on the same 75/25 - 12 CP basis as used in Consumers last rate case. Order Consumers to file such rates within two weeks as part of its acceptance of the Order as detailed in No.7 below. Allow parties one week to review and comment on the filed rates.
3. Spread securitization costs over all Consumers' sales including wholesale, interchange and ancillary sales.
4. Collect securitization and transition charges directly from ROA customers starting immediately through 2015.
5. Collect securitization bond and securitization tax charges as one charge rather than separate charges.
6. True up securitization charges on an annual basis.
7. Require that Consumers accept the modifications to its application described above and any other changes Ordered by the Commission as a condition of Commission approval of the overall securitization Order.
8. Reject the draft Order in this case proposed by Consumers.

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