

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) Case No. U-12505
other qualified costs)
_____)

INITIAL BRIEF OF ENERGY MICHIGAN

September 22, 2000

Eric J. Schneidewind
Varnum, Riddering, Schmidt & Howlett, LLP
Attorneys for Energy Michigan, Inc.
201 N. Washington Square, Suite 810
Lansing, Michigan 48933
517-482-6237

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF POSITION 1

 A. Introduction 1

 1. The Promise of Securitization 1

 2. The Reality of Securitization for Consumers’
 Open Access Customers: Financial Problems 2

 3. Administrative problems 3

 4. The Consumers proposal contains legal difficulties 4

 5. 2000 PA 141 was enacted, in part, to ensure a choice
 and to foster electric competition. 4

 B. Summary of Energy Michigan Position 5

 1. Adjusting Retail Open Access Rates for Securitization
 Savings and for Bond and Tax Charges 5

 2. Securitization charges should be different for each class 5

 3. Consumers should be required to spread securitization costs
 over all sales 6

 4. Administrative Issues 6

 5. Legal issues 6

II. SECURITIZATION ECONOMIC ISSUES AFFECTING ROA SERVICE 7

 A. Adjusting ROA Rates for Securitization 7

 1. Assuring that ROA customers receive credit or reductions 7

 2. Assuring Net Rate Reductions For ROA Customers 9

 a. Prior to 2002 9

 b. January 1, 2002 Through 2015 11

 B. Deposits 12

 C. Allocation of Securitization Charges Between Classes 12

 D. Collection of Securitization Costs From All Electric Transactions 14

 E. Conclusion: Why a Few Tenths of a Cent per Kilowatt Hour Are Important ... 15

III. ADMINISTRATIVE ISSUES 16

A.	Annual True Up	16
1.	When Consumers bills securitization charges directly	17
B.	Billing ROA Customers for Transition Charges Prior to January 1, 2002	17
C.	Collection of Securitization Tax Charges	19
IV.	LEGAL ISSUES	19
A.	All Securitization Issues Must Be Finalized in This Case	19
B.	Consumers Proposed Draft Implementation Order	21
V.	PRAYER FOR RELIEF	21

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)	Case No. U-12505
other qualified costs)	
_____)	

INITIAL BRIEF OF ENERGY MICHIGAN

This Brief is filed on behalf of Energy Michigan, Inc. (Energy Michigan) by its attorneys Varnum, Riddering, Schmidt & Howlett, LLP pursuant to the scheduled adopted by the parties.

I. INTRODUCTION AND SUMMARY OF POSITION

A. Introduction

1. The Promise of Securitization

Securitization was advertised as a technique to create benefits for utilities, competitors and customers. Utilities would issue bonds to refinance generation costs at lower interest rates. Non-bypassable bond debt service and tax costs would be added to each customer's bill but would be offset by an equivalent credit, thus avoiding rate increases to any customer. In the case of Consumers the interest savings from securitization would be used to provide 5% rate reductions for all residential customers. In theory, residential customers would get a 5% reduction and no customer rates would be raised.

2. The Reality of Securitization for Consumers' Open Access Customers: Financial Problems

a The proposed Consumers securitization plan could severely damage Retail Open Access (ROA) service economics thus frustrating the competition which was a major purpose for passage of PA 141 and PA 142. The Consumers securitization plan provides .375 ¢ /kWh of reductions to bundled residential customers and about .22 ¢ /kWh to ROA residential customers. The result is that ROA service is .15¢ /kWh less competitive in comparison to bundled utility service. Thus, the proposed Consumers securitization plan would provide a "rate tilt" against competition that was unintended by Michigan Legislature.

Bond debt service and tax payment charges estimated at about .2 ¢ /kWh for bundled sales customers are offset by equivalent rate reductions for all retail bundled sales customers, resulting in no rate increase. The Consumers securitization plan assesses non-bypassable securitization charges to all ROA customers but does not provide for an offsetting base rate reduction. The result is almost .2 ¢ /kWh of new non-bypassable charges for ROA customers. Under the proposed Consumers securitization plan, ROA customers would pay for securitization bonds but would be denied the offsetting benefit intended by the legislation. Moreover, since customers of marketers and other non-utility competitors that provide ROA service would collect or pay these charges and be denied the corresponding benefits therefrom, marketers are effectively being asked to support utility rates against which they must compete.

b The securitization bond and tax charges are equal for all bundled and ROA customers and are allocated on the basis of energy only, despite the fact that previous Consumers rate cases have allocated generation costs on the basis of only 25% to energy with 75% of costs allocated to demand. Also, different line loss characteristics

between customer classes mean that an equal securitization charge overcharges an industrial transmission voltage customer by almost 12% compared to residential customers. The Consumers proposal for equal securitization charges raises costs for the large high load factor customers who are likely to switch to ROA service. Since these equal securitization charges are not offset by base rate reductions (as is the case for bundled sales customers) the result is a rate increase for high load factor customers switching to ROA service.

c. Finally, the Consumers securitization proposal exempts significant wholesale, interchange and other sales transactions from securitization charges thus overcharging other customers.

3. Administrative problems

The Consumers securitization plan creates administrative problems for open access customers including:

a. Securitization tax collections are provided through energy charges but bond debt service is collected through separate non-bypassable charges. This creates a reconciliation problem for Consumers, marketers and customers.

b. Instead of billing customers directly for both transition charges and securitization charges before and after January 2002, the retailer will be billed for securitization and bid transition charge through 2001 and the customer is billed for the same charges after 2001.

c. Consumers leaves the door open for quarterly or even monthly true-ups which would result in variations in securitization charges of up to 23 % between months, a chaotic result.

4. The Consumers proposal contains legal difficulties:
 - a. The Consumers proposal increases rates for ROA customers and reallocates costs between classes.
 - b. The legal fast track process for appeal of a Commission decision in this matter could result in Consumers' acceptance of securitization approval with Consumers rejection and legal delay of Commission decisions designed to protect ROA customers from discrimination or ensure economic soundness of the Order.
 - c. The 98 page draft Order proposed by Consumers is a mere recitation of the Consumers legal position and if that position is rejected in any aspect, the Order must be substantially revised.
5. 2000 PA 141 was enacted, in part, to ensure a choice of electric providers for all customers and to foster electric competition. 2000 PA 141, Sec.10(2)(a) and (b).

The Consumers Energy Company (Consumers) securitization proposal is so tilted against Retail Open Access (ROA) customers that ROA service would be uneconomical in comparison with bundled sales service. Thus, the intent of the Michigan Legislature to foster competition and achieve electric choice would be frustrated.

The Consumers securitization proposal clearly assigns securitization costs in a way that reallocates cost responsibility between customer classes. If approved by the Commission, this reallocation would constitute reversible error that could jeopardize the entire securitization program.

If the Commission really wants securitization and competition it must modify the

Consumers securitization proposal to achieve competition and rate reductions with no financial damage to Consumers.

B. Summary of Energy Michigan Position

1. Adjusting Retail Open Access Rates for Securitization Savings and for Bond and Tax Charges

a. Prior to January 1, 2002

Consumers should reduce ROA residential class bid charges for the first four bid phases completed prior to passage of PA 141 by the same net amount in dollars per kilowatt hour as bundled residential service rates are reduced.

b. January 1, 2002 through 2015

(1) ROA transition charges should be reduced in an amount exactly equal to the non-bypassable securitization bond and tax charges.

(2) Net rate reductions such as the 5% residential reduction of June 2000 should be reflected for ROA customers by calculating of reduced stranded costs and resulting ROA transition charges for the affected ROA customer class. E.g. This would show a 5% or approximately . 4 ¢ /kWh transition charge reduction for any residential ROA customer in addition to the offset for securitization charges on ROA bills.

2. Securitization charges should be different for each class. The allocation of securitization costs should be on the same 75% demand, 25% energy - 12 CP basis as in Consumers' last rate case rather than the equal securitization charges allocated 100% on

energy which were proposed by Consumers. This will prevent rate increases and reallocation of generation costs between classes.

3. Consumers should be required to spread securitization costs over all sales including wholesale, interchange, ancillary and others rather than just retail bundled and retail access sales.

4. Administrative Issues

a. All securitization bond and tax related charges should be collected through one charge rather than separately through an energy charge and a securitization bond charge.

b. Prior to January 1, 2002 open access customers should be billed directly for bid transition charges, securitization charges and securitization reductions in one net charge rather than billing these charges to the marketer before 2002 and then billing these charges to the customer starting 2002.

c. The true up of securitization should take place on an annual basis to prevent the significant fluctuations in charges which would occur with quarterly true ups.

5. Legal issues

a. ROA customer issues regarding offsetting credits for securitization bond and tax charges as well as the means to flow net securitization reductions through to open access customers in the calculation of transition charges must be decided in this case and acceptance of these decisions by Consumers must be made a condition of the overall securitization Order.

b. The draft Order in this case proposed by Consumers should be rejected as a

mere recitation of the Consumers case which would require extensive revision by the Michigan Public Service Commission (Commission) if even one element of Consumers complex position were rejected or modified.

DETAILED DISCUSSION OF ISSUES

II. SECURITIZATION ECONOMIC ISSUES AFFECTING ROA SERVICE

A. Adjusting ROA Rates for Securitization

There are two basic issues regarding adjustment of customer rates for securitization:

- Ensuring that securitization bond and tax related charges are offset by equivalent credits or reductions for both on bundled sales and open access customers to produce a revenue neutral affect. As proposed by Consumers, bundled sales customers would pay a securitization charge of about $.2 \text{ } \phi / \text{kWh}$ and receive a base rate reduction of $.2 \text{ } \phi / \text{kWh}$ for a net affect of zero. ROA customers after 2001 pay a securitization charge of $.2 \text{ } \phi / \text{kWh}$ and receive no offset for a net increase of $.2 \text{ } \phi / \text{kWh}$.
 - Ensuring that bundled sales customers and Retail Open Access Program customers in the same class get the same rate reductions in dollars per kilowatt hour. Consumers proposes a residential bundled sales reduction of $.375 \text{ } \phi / \text{kWh}$ but only reduces residential ROA rates by $.22 \text{ } \phi / \text{kWh}$. This looks like a minor issue but could create precedent for the Detroit Edison securitization program where all residential, commercial and industrial ROA customers would lose a reduction of $.4 \text{ } \phi / \text{kWh}$.
1. Assuring that ROA customers receive credit or reductions equaling the securitization bond and tax related charges.

a. Prior to 2002

Consumers will subtract the equivalent of securitization bond and tax related charges from ROA bid transition charges through December 31, 2001. *3 TR 271*. The net effect on open access bidders should be zero just as it is with bundled sales customers. Consumers has proposed that to the extent this practice produces a negative number (the securitization charges exceed the bid) that such lost revenue would be deferred until 2002 and collected at that time as a transition cost. *Id.*

b. January 1, 2002 - 2007

Consumers has made no proposal to reduce retail access charges to offset securitization bond and tax related charges billed to ROA customers regarding the period after December 31, 2001.

Energy Michigan witness Richard Polich addressed this problem by proposing that an amount equal to the securitization bond and tax charges billed to ROA customers be subtracted from ROA transition charges starting 2002. *4 Tr 436-37*. Billing ROA customers for securitization charges, then subtracting an equal amount from their authorized transition charges will give ROA customers the same type of offset treatment as bundled sales customers who will receive reductions in their bundled sales rates which equal all directly billed securitization related charges.

The Commission is required under PA 141, to allocate approved securitization and transition charges in a manner that does not result in reallocation of cost responsibility. *PA 141, Sec.10d(5)*. Mr. Polich's proposal to require reductions in ROA transition charges after December 31, 2001 which equal the non-bypassable securitization bond and tax related charges imposed on ROA customers is consistent with the intent of PA 141, Sec.10d(5). This solution will preserve the current

competitive relationship between ROA and bundled sales rates and prevent a shift of stranded costs from bundled sales customers to ROA customers.

c. After 2007

After 2007, if stranded cost recovery ends, securitization offsets should be reflected in negative charges or credits through 2015 or the end of securitization bond recovery.

2. Assuring Net Rate Reductions For ROA Customers Which Are Equal to Bundled Sales Net Rate Reductions Produced by Securitization

a. Prior to 2002

Consumers has committed to use the vast majority of securitization savings to reduce all elements of residential bundled sales rates by 5%. The net residential rate reduction implemented in June, 2000 has equaled .375 ¢ /kWh. Net reductions for ROA residential customers have been .22 ¢ /kWh. 3 Tr 338, 387. The ROA 5% reduction yields less savings because it applies only to transmission and distribution costs, not generation.

Energy Michigan witness Richard Polich proposed that securitization savings also be utilized to provide the same reductions in dollars per kWh for ROA residential customers as are given bundled sales residential rate customers. Mr. Polich's proposed reduction is justified by the fact that prior to 2002, retail access participants made bids for transition charges based on a comparison of retail rates with open access rates. Because PA 141 mandates bundled sales rate reductions, ROA service is less competitive. Mr. Polich testified that the bids offered for ROA service prior to 2002 would have been correspondingly lower if bidders had been

aware that sales rates would be reduced by 5%. 4 Tr 442-444. Note that PA 141, which mandated the 5% reductions, was introduced by Governor Engler on May 3, 2000 and passed after the first four bid cycles were completed on March 20, 2000. See Exhibit 1.

Stranded costs for Consumers' residential customers are lowered by securitization because securitization savings are used to lower residential rates .375 ¢ / kWh in relation to market price. Because residential bundled rates are lower in relation to market price, a reduction in bid transition charges for residential service is also warranted. *Id.* Mr. Polich proposed to accomplish these reductions before 2002 by subtracting the equivalent of the .375 ¢ /kWh bundled sales reductions in dollars per kilowatt hour (not as a percentage) from ROA bid transition charges instead of the .22 ¢ /kWh reduction implemented by Consumers. *Id.*

PA 141 Sec.10d(5) grants authority to the Commission to reduce transition charges with securitization savings to achieve this equitable result. "...securitization savings greater than those used to achieve the 5% rate reduction under subsection 1 [the residential reduction] shall be allocated by the Commission to further rate reductions or to reduce the level of any charges authorized by the Commission to recover an electric utility's stranded costs. PA 141, Sec.1-d(5), *emphasis supplied.* The Commission can use this legal authority to reduce ROA rates by the same dollars per kilowatt amount as bundled sales service under two alternative theories:

Alt 1: The record shows that Consumers' projected securitization savings exceed the amount needed for a 5% residential rate reduction by \$8,921,000. 3 Tr 259. These funds which are greater than needed for a 5% bundled residential rate reduction may be used pursuant to PA 141, Sec.10d(5) to reduce residential ROA transition charges by .375 ¢ /kWh instead of .22 ¢ /kWh in order to preserve competitive neutrality between bundled sales and ROA service.

Alt 2: The record shows that \$49,783,000 of the \$58 million in securitization savings are sufficient to reduce all current residential kWh deliveries by approximately .375 ¢ /kWh. 3 Tr 259, 338. There are no current residential ROA sales or any other ROA sales on the Consumers system. Thus, if residential sales customers migrate to ROA status, the same \$49.8 million will be sufficient to achieve a .375 ¢ /kWh reduction for both residential sales and residential ROA because the number of kilowatts is the same. 4 Tr 549, 552. Given the evidence presented by Mr. Polich, the Commission can and should interpret the mandate of PA 141, Sec.10d(1) for a 5% reduction as a mandate to reduce all residential customer rates by .375 ¢ /kWh and to continue the same reduction to ROA customers if and when such customers leave bundled sales for ROA.

Note that Mr. Polich's proposed reductions would only apply to bids for ROA service made in the first four bid cycles which were completed as of March 2000. By Cycle 5 in November 2000, Consumers' customers will be aware of PA 141 reductions and can reduce their transition charge bids accordingly. Clearly, customers that participated in the earlier bid cycles could not have reasonably known that bundled service would be reduced by the 5%. Bids in Cycle 5 on November 20, 2000 will reflect the changes provided by PA 141 as implemented by the Commission.

b. January 1, 2002 Through 2015

On January 1, 2002, transition charges for ROA service should be reduced to reflect any net reductions produced by securitization. The transition cost for an ROA customer class would be calculated incorporating the reduced total cost of generation made possible by securitization for each affected customer class. 4 Tr 436. Thus, if ROA residential class stranded cost transition charges were .4 ¢ /kWh before securitization and securitization savings for the residential class were .3 ¢ /kWh, the new ROA residential transition charge should be .1 ¢ /kWh. *Id.*

The Commission is empowered to implement such deductions or reductions in the level of any charges authorized by the Commission per PA 141, Sec.10d(1) and (5) as discussed in II.A.2. above. Also, 2000 PA 141 at Sec.10(2) clearly states that the purposes of the Act include (a) ensuring electric choice for all customers and (b) encouraging and fostering competition. Such a use of securitization savings would be necessary and justified through the 2015 term of securitization bonds in order to make securitization competitively neutral for both retail bundled sales and ROA customers.

After 2007 if stranded cost recovery ends, securitization reductions could be reflected in negative charges or credits.

B. Deposits

The Commission should cancel deposit requirements related to Cycles 1-4 of the ROA transition charge bid program for Consumers residential ROA service given the fact that participants bidding for residential capacity in bid Cycles 1-4 could not have known that the retail rates for that service would be reduced by PA 141 and that competition in the residential class would be made less economic. *4 Tr 444.*

C. Allocation of Securitization Charges Between Classes

Consumers witness Ernst proposed that securitization bond and tax charges be collected on an equal per kWh basis from all bundled sales and ROA customer classes. *Exhibit CE-11.*

Bundled sales customers will not be affected by equal securitization charges. All bundled customers will be assessed charges which equal about .178 ¢ /kWh in 2002 and are offset by base rate reductions of .178 ¢ /kWh. *Exhibit CE-8.* The customer impact is neutral for all bundled sales classes provided, however, that they remain on bundled service and do not utilize ROA service.

In contrast, ROA customers will be affected by equal securitization charges. The .178 ¢ /kWh ROA charges in 2002 will not be offset by base rate reductions. *CE 12.* Incredibly, transmission voltage ROA customers will pay the same .178 ¢ /kWh as residential ROA customers despite the obvious difference in their service usage costs of service and patterns of use. *Id.*

With equal securitization charges, customers with high load factors pay more for securitized generation assets than they currently pay under bundled tariffs because generation costs were allocated among Consumers customers partly on energy demand and partly on energy consumption *4 Tr 441*. The “75/25” methodology used by the Commission results in a high load factor customer like an industrial user paying less for generation per kWh than a low load factor such as a residential customer. Consumers’ proposal for equal securitization charges across all classes has the effect of making Consumers bundled rates artificially more competitive for high load factor customers by increasing the cost allocated to ROA high load factor customers as compared to a high load factor customer remaining on bundled sales rates. *Id.* Consumers’ securitization proposal, if approved by the Commission, would effectively reallocate utility securitization costs among customer classes in violation of the clear direction provided in 2000 PA 141, Sec.10d(5) that costs will not be allocated among customer classes in a manner that results in a reallocation of cost responsibility.

Equal securitization charges also have the effect of a rate increase for certain open access customers. Current Consumers bundled sales rates contain significant differences in the allocation of generation costs between the large high load factor customers and residential customers. The differences include line losses associated with delivery of the power which alone could justify cost differences of over 12%. Since residential customers take service at a much lower voltage than the industrial customer, it takes almost 12% more power to supply 1 kWh of low voltage service than 1 kWh of transmission voltage. *Id.* If retail access charges are the same for residential and industrial customers, the industrial customer has paid 12% too much or the residential customer is paying 12% too little. *Id.* This is also a violation of PA 141, Sec.10d(5).

Allocation of securitization costs on the same basis as recent rate cases would increase the likelihood of securitization cost collection because those customers most likely to leave the Consumers system, move to self generation or fall into bankruptcy would have the lowest securitization charges. *4 Tr 440.*

The solution here is fairly simple, the method of securitization cost allocation should include all the same factors such as line losses, amount of generation resources used during peak periods and the 75/25 rule for distribution of the cost recovery between energy and demand charges which were applied in Consumers' most recent rate case. *4 Tr 442.* This solution complies with the mandate of PA 141, Sec.10d(5) to avoid cost reallocation because the solution uses the rate allocation methodologies which are the basis for existing Consumers rates.

D. Collection of Securitization Costs From All Electric Transactions

Consumers proposes to collect securitization bond and related taxes from all retail bundled service and Retail Access Program service rates. *3 Tr 264, Exhibits CE-11 and CE-12.* Wholesale, interchange and other transactions are not included.

Energy Michigan witness Richard Polich has testified that securitization costs should be recovered from all electric sales including wholesale, retail, inadvertent energy flows, and interchange. *4 Tr 441-42.* In addition, sales associated with ancillary services in Consumers open access tariff (OATT) should also be credited with contribution to securitization costs. *Id.* Spreading securitization costs over a larger number of kilowatt hours would lower the securitization and bond charges assessed to each kWh. The un rebutted evidence shows that Consumers total sales including interchange, wholesale and ancillary have ranged from 5-12% greater than retail sales. *Exhibit I-25 attached as Exhibit 2.*

In his rebuttal, Consumers witness Ernst claims that a credit for ancillary services in the Consumers OATT tariff is not appropriate because all nuclear related generation costs will be

removed from those tariffs in the future. 3 Tr 276.

However, on cross examination, Mr. Ernst agreed that the amount to be securitized by Consumers contains generation expenditures for generation units that are not nuclear. Specifically, costs related to the Ludington hydro plant and non-nuclear employee FAS 109 and 106 costs were included. 3 Tr 345, Exhibit CE-4.

Consumers ancillary service sales will include non-nuclear generation related costs that have been securitized. For this reason, those ancillary service sales as well as all other wholesale and interchange transaction should be included in the calculation of sales over which to spread securitization charges.

E. Conclusion: Why a Few Tenths of a Cent per Kilowatt Hour Are Important

As of June 12, 2001 Consumers bundled sales residential customers got a .375 ¢ /kWh reduction and ROA residential customers got a .22 ¢ /kWh reduction. 3 Tr 338, 387. Why the fuss about a .155 ¢ /kWh difference?

There are two answers: First, a .155 ¢ /kWh difference can become a significant competitive issue in the current high priced electric market. Customers typically make buying decisions on increments even smaller than .155 ¢ /kWh. Further, those who would have the Commission believe that this amount is *de minimis* should not be heard to complain if the amount is accordingly reallocated in a manner that eliminates the “rate tilt” it provides.

Second, a decision to grant equal dollars per kilowatt hour reductions to bundled sales and ROA customers through 2001 may set precedent for commercial and industrial customers in the Consumers and Detroit Edison territories. Stated alternatively, failure on the part of the Commission to adopt an equitable and competition-enabling allocation of securitization proceeds in the instance of residential rates may lock the Commission into doing likewise for commercial and industrial

customers. There is no policy reason to treat these customers differently - fairness for one customer is fairness for the others. Subsequently, if Consumers returns to the Commission for additional securitization, the increased savings may permit commercial and industrial class rate reductions. Also, the Detroit Edison securitization and rate filings propose 5% reductions for all bundled sales rates and no reductions for any ROA class. See *U-12478, Sasek testimony and U-12595, Falletich*. If the Commission does not grant equal dollars per kilowatt hour reductions for Consumers residential ROA service prior to 2002 the precedent may make ROA service less competitive through 2001 for classes other than residential and for companies other than Consumers.

ROA customers will also be affected by equal securitization charges. Their .178 ¢ /kWh of securitization charges in 2002 will not be offset by base rate reductions. *CE 12*. Transmission voltage ROA customers will pay the same .178 ¢ /kWh as residential customers. *Id.* In Illinois, where securitization charges were developed for each class, the residential charge was 1.07¢ but the industrial charge was .63 ¢ and the high load factor industrial charges was .26 ¢. *6 Tr 844*. Differences of this magnitude could produce major negative economic impacts for large customers even with the Consumers securitization charges which are smaller than the Illinois charges.

III. ADMINISTRATIVE ISSUES

A. Annual True Up

Consumers Revised Testimony proposes that true ups be accomplished not less than annually until one year before the end of securitization and then not less than quarterly. *3 Tr 268, emphasis supplied*. The position of Consumers does not preclude quarterly and monthly true ups. *3 Tr 221*. However, Consumers testified that annual true ups could be made to work. *Id.*

Energy Michigan witness Polich has proposed that Consumers be required to use only annual true up proceedings as opposed to quarterly or monthly true ups for the following reasons:

1. When Consumers bills securitization charges directly to customers starting 2002, frequent and large changes in the securitization charges could create a source of customer confusion and could change customer economics from month to month or quarter to quarter. *4 Tr 546*. These changes in securitization charges could be as high as 15% from month to month or 23% from highest to lowest month. *4 Tr 546*. There could be a significant lag time between actual sales and sales reports which would make it difficult for Consumers to make sales volume adjustments in a timely fashion. *4 Tr 438*. Also, Mr. Polich believes that such sales adjustments would be done without adequate MPSC supervision and therefore constitute unsupervised rate making. *Id.*

In rebuttal, Mr. Ernst stated that Consumers sales data is available 7-14 days after a sales month. *3 Tr 276*. Mr. Ernst, however, did not say that this more timely data can be used to prevent the type of lag between consumption and imposition of charges that is Mr. Polich's concern.

Given the potential impact of changes in Consumers' sales volumes which can equal almost 23% between highest and lowest months and the corresponding impact on open access economics, Energy Michigan recommends that Consumers be directed to perform true ups no more than one time per year until the last year when more frequent true ups may be necessary..

B. Billing ROA Customers for Transition Charges Prior to January 1, 2002

Consumers Energy has proposed to bill retailers for securitization charges prior to January 1, 2002 by subtracting securitization bond and tax charges from the transition charge bid currently paid by retailers. *Exhibit CE-12*. The retailer would pay no more than the transition charge bid but if the bid amount is less than securitization bond and tax charges, the uncollected amount would be deferred until 2002 and collected as a stranded cost thereafter. *3 Tr 271, Id.*

Energy Michigan witness Polich explained that when Consumers bills the retailer for transition charges through 2001, the retailer passes on the transition charges to the ROA customer. *4 Tr 433.*

For the period starting January 1, 2002 Consumers will change this system and bill ROA customers directly for all transition charges and securitization charges. Thus Consumers proposes to use two different billing methodologies in the future. *Id.* The method of billing the retailer for transition and securitization charges would last 9-10 months until the end of 2001. *4 Tr 469-70.* Then in 2002 a new system of billing the customer directly for both securitization and transition charges would be implemented through 2015. *Id.*

Mr. Polich proposes that the Commission require Consumers to bill transition and securitization charges directly on the ROA customer bill (instead of billing the charge to the retailer who in turn bills the customer and remits payment to Consumers through 2001). *4 Tr 435-36.* The customer would receive one bill directly from Consumers for both securitization and transition charges and would remit one payment to Consumers for both.

Unless Mr. Polich's suggestion is adopted, Consumers will bill retailers for securitization charges and transition charges through 2001 then change the system and bill ROA customers directly for the same charges from 2002-2015. This needless change will cause complication and create a source of confusion that can easily be eliminated by adopting Mr. Polich's proposal to implement securitization "from day one" by directly billing customers for both charges and continue the practice through 2007.

The tariff language change necessary to implement Mr. Polich's proposal is detailed in 4 Tr 435-36.

If Consumers is going to have to change its billing system in 2002, why not do so now?

C. Collection of Securitization Tax Charges

The Consumers securitization charge includes principal, interest, servicing and expenses related to securitization bonds. However, the projected principal taxes associated with securitization revenues are not included in the securitization charge. *4 TR 431.*

Mr. Polich recommends inclusion of all securitization costs including taxes in the securitization charge. *Id.* The benefits of Mr. Polich's proposal are that it would simplify accounting, billing and true up of securitization costs. It would also simplify the true up process. This is because inclusion of taxes in the energy charge as proposed by Consumers requires an allocation of energy charge revenue to cover the tax related securitization charge. Such an allocation will inevitably create arguments regarding the quantity recovered. Mr. Polich believes that the mechanism proposed by Consumers would not be able to show exactly how much of the taxes associated with securitization revenues were recovered because there is no specific rate per kWh or line item on the customer bill. A benefit to Consumers from the Polich proposal is that taxes would be included in a non-bypassable charge. *4 Tr 432.*

IV. LEGAL ISSUES

A. All Securitization Issues Must Be Finalized in This Case

This Brief has shown that the securitization proposals of Consumers Energy are extremely disadvantageous to ROA customers. The Consumers direct case outlines and advocates a securitization program which will assess a non-bypassable securitization bond and related tax charge to all bundled sales and ROA kilowatt hours. The Consumers position goes on to detail how those securitization charges will be offset by credits or reductions for all bundled sales customers and how bundled residential sales customers will receive a net 5% reduction from securitization savings.

Consumers fails to provide any indication of how securitization charges will be offset to ROA customers and opposes residential ROA customers receiving credits equivalent on a dollar per kilowatt basis to the 5% overall reduction afforded to bundled sales customers.

Unless the Commission clearly specifies the means by which ROA transition charges will be reduced to offset securitization charges and also clearly specifies how securitization net savings will be granted to ROA customers for the same dollars per kilowatt hour as to bundled sales customers, the Commission may fatally injure the entire ROA competitive program.

Without clear direction, Consumers has every incentive to obtain and accelerate a decision on the financial aspects of its one sided securitization proposal, pursue accelerated review through the court system and begin early implementation of a program which would literally wreck ROA economics. Meanwhile, Consumers could appeal any modifications of its securitization plan which make the program feasible for ROA service. The Commission or the courts would then be forced to consider the mechanics of assuring ROA competitiveness in a series of cases which most assuredly would not be decided in the rapid time frame of the current case. Moreover, Consumers would be free to pursue a course of delay and obstruction or downright opposition to cases assuring ROA competitiveness which would prevent final resolution of matters necessary to assure competitive equality until years of appeals have passed.

The Commission should adopt the position advocated by Energy Michigan to provide ROA credits and rate reductions equivalent to those granted bundled sales customers and make these provisions of its Order mandatory by requiring Consumers to accept the entire Order including such provisions as a condition of obtaining any benefits of the Order at all. This course of action was used in Case U-11726. *Detroit Edison Fermi 2 Opinion and Order, December 28, 1998, p. 32.*

If Consumers is allowed to pick and choose the portions of a securitization Order that it will enforce or, worse yet, defer consideration of or simply resist the adjustments necessary to place ROA programs on a competitively neutral basis with bundled sales, a period of years will pass before these

adjustments can be made. That time delay may well prove fatal to the entire purpose behind PA 141 and 142: achieving fair competition.

B. Consumers Proposed Draft Implementation Order

Consumers witness Hoffman Exhibit CE-15 sponsored 98 pages of draft language in the form of a proposed Order in this matter. The draft Order embodies the Consumers position on securitization. *3 TR 222.*

If the Consumers draft Order is used at all, the Commission and parties to this case would have to thoroughly review each and every page, paragraph and sentence to conform the Order with the actual decision of the Commission to the extent the Commission departs in any respect whatsoever from Consumers direct case. The potential for error using the Consumers draft Order is exceedingly great and is not counterbalanced by any substantial benefits. Consumers' draft Order should be rejected.

V. PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests that 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 2015
 - (1) Reduce ROA transition charges (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.
- 3. Spread securitization costs over all Consumers' sales including wholesale, interchange and ancillary sales.
- 4. Collect securitization and transition charges directly from 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.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETTLLP
Attorneys for Energy Michigan

September 22, 2000

By: Eric J. Schneidewind
Eric J. Schneidewind (P20037)
The Victor Center, Suite 810
201 N. Washington Square
Lansing, Michigan 48933
(517) 482-6237

MICHIGAN REPORT

GONGWER
NEWS SERVICE, INC.

Information Pertinent to Legislative and State Department Activities Since 1906

REPORT NO. 86, VOLUME 39

WEDNESDAY, MAY 3, 2000

ENGLER PUSHES 5 PERCENT PHONE, ELECTRIC RATE CUT

Like it or not, there is now alive legislation on the table to restructure the electric industry and to rewrite the telecommunications act, and bills are scheduled for a fast train to Governor John Engler's desk. The bills would provide 5 percent rate cuts to electric and telephone customers and more authority to the Public Service Commission to oversee the markets.

The new fast-paced plan is suddenly in place because Mr. Engler proposed the legislation and is pushing for its passage by both chambers prior to their June summer recess.

Mr. Engler put out his plan Wednesday, calling a halt to House and Senate committee meetings on telecommunications, to stop the "logjam" that was holding up current legislation on both utility issues.

The key to the proposal for both telecommunications, on which state regulations expire January 1, and electric utilities, which has been addressed by the PSC but ruled non-binding by the courts, is competition, Mr. Engler said. "Michigan's overriding goal must be to put in choice for those who want it and protection for those who don't," he said. "The rate cuts give customers what they deserve and a taste of what competition will bring."

Also key is moving the bills as a unitary package, he said. "The approach is a whole proposal, not a partial proposal," Mr. Engler said.

While he said he would be willing to discuss changes, such discussions would only be with a consensus of various interests behind those changes. And so far proposed changes appear few.

Mr. Engler said he decided to act now on electric as well as telecommunications because it was becoming obvious that the former could not be resolved through the normal legislative process. "The complexity of this issue precludes resolution of this issue," he said. "Legislators can't agree; the PSC can't act; the bottom line is Michigan is falling behind."

And he said the weather forecasts for a hot summer put more of a point on the need for action. The state has about a 5 percent margin of excess generating capacity, while experts say it should be closer to 15 percent.

"With legislative certainty these companies will construct power plants in Michigan," he said of potential competitors to Consumers Energy and Detroit Edison. "I believe the failure to act would lead to brownouts or worse.. No action is the worst of both worlds: high prices and low supply."

The proposal got cautious support from a number of quarters, including some of the most vociferous opponents of legislation previously aired.

Rep. **Maryanne** Middaugh (R-Paw Paw), chair of the House Energy and Technology Committee, called the governor's proposals interesting but refrained from extensive comment until she has

12505-EM-CE-3

Question:

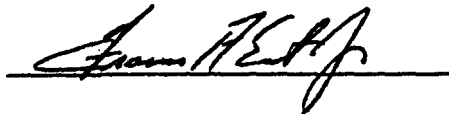
3. In reference to Exhibit FAE-5, vertical **column (J)**, do these estimated **sales include** interchange, wholesale and ancillary services sales? If some or all of these categories of sales are not included, please provide year 1999 total retail sales and **total** sales including interchange, ancillary services, wholesale and retail sales. Please provide estimated year 2000 and 2001 total sales including retail, ancillary services, interchange and wholesale transactions.

Response:

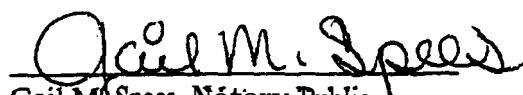
3. Exhibit FAE-5, column J, includes wholesale sales but excludes **interchange** and **ancillary services** volumes. See attached sheet.

(NOTE: Attached **is numbered** document: 50500004)

Francis A. **Ernst, Jr.**, 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 ^{24th} day of July 2000.



Gail M. Spees, Notary Public
Jackson County, Michigan
My Commission Expires: March 13.2001

	Total Retail Sales (MWh)	Total Retail Sales Including Interchange, Wholesale and <u>Ancillary Services</u> (MWh)
1999 Actual	36,417,107	41,041,907
2000 Estimated	36,864,718	40,393,888
2001 Estimated	37,804,159	39,647,935

07/21/2000

50500004