STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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 OF ENERGY MICHIGAN TO CONSUMERS ENERGY PETITION FOR REHEARING

November 30, 2000

Eric J. Schneidewind (P20037)
Varnum, Riddering, Schmidt & Howlett, LLP
Counsel for Energy Michigan, Inc.
The Victor Center, Suite 810
201 N. Washington Square
Lansing, Michigan 48933
(517) 482-6237

TABLE OF CONTENTS

I. BACKGROUND AND SUMMARY OF REPLY 1

A. Background 1

B. Summary of Replies 2

1. Substantive Defects in "Acceptance Letter" ¶ C: Requested Delay in Offset of Securitization Charges, Equal Rate Reductions and Levelization of Excess Savings Reductions 2
2. Substantive Defects in "Acceptance Letter" ¶ B: Requested Regulatory Asset Treatment of the 5% Residential Rate Reduction Subsequent to October 24 But Before Issuance of Bonds 5
3. Procedural Defects 6
4. Conclusion 7

Detailed Discussion

II. DELAYING SECURITIZATION OFFSET AND RATE REDUCTION EQUALIZATION UNTIL THE NETTING PROCESS WOULD CREATE THE VERY UNCERTAINTY WHICH THE COMMISSION ELIMINATED IN ITS OCTOBER 24 ORDER 7

A. Background 8

B. Four Reasons Why the Consumers Proposal to "Wait and See" What Will Happen to ROA Securitization Charges Should Be Rejected 11

1. Granting Consumers' Request Would Create the Very Competitive Uncertainty the Commission Wishes to Avoid 11
2. The Consumers "Wait and See" Approach Does Not Resolve Post 2007 Issues 12
3. The "Wait and See" Approach Gives Consumers Another Bite at the Apple 13
4. Consumers Has Given No New Reason to Change the Commission Order 13

C. Use of Excess Securitization Savings to Offset Transition Charges 14

III. CONSUMERS REQUEST TO CREATE A REGULATORY ASSET FOR THE 5% RESIDENTIAL RATE REDUCTION COMMENCING OCTOBER 24, 2000 BUT BEFORE BONDS ARE ISSUES ASKS ITS RATEPAYERS TO

FUND AN APPEAL OF THIS ORDER 16

A. Background 16

1. The Consumers "Letter of Acceptance, ¶ B is a New Request Not Present in Case U-12505 16
2. The Request for Regulatory Asset Treatment After October 24, 2000 is Open Ended, It Could Go On For Years 17

B. The Consumers' Request for Regulatory Asset Treatment of the 5% Reductions Should Be Rejected 17

1. Consumers Request Could Force Customers to Pay for the 5% Reduction Through Years of Appeals 17
2. The Requested Relief Was Not Considered on the Record 18
3. The Grounds Upon Which the Commission Rejected Consumers' Original Request Are Applicable to the New Request 18
4. The U-12478 Order Does Not Allow the Costs of the 5% Rate Cut to Be Treated as a Regulatory Asset After October 24, 2000 19

IV. PROCEDURAL ISSUES 20

A. The Criteria for Granting a Petition for Rehearing Were Not Satisfied by Consumers 20

B. Mere Re-Argument of a Previous Position is Not Grounds for Reversing a Commission Decision 21

1. Offset of Securitization and Equalization of Rate Reductions 21
2. The New Proposal to Levelize and Limit Application of Excess Securitization Savings to ROA Costs 22

C. Procedural Conclusion 23

V. CONCLUSION AND PRAYER FOR RELIEF 23

A. Conclusion: What is Going On Here? 23

B. Prayer for Relief 24

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ENERGY PETITION FOR REHEARING

This Reply to the Consumers Energy (Consumers) Petition for Rehearing is filed by Varnum, Riddering, Schmidt & Howlett, LLP on behalf of Energy Michigan. Failure to address or reply to any contention or assertion of Consumers should not be construed as agreement with that position.

I. BACKGROUND AND SUMMARY OF REPLY

A. Background

On November 9, 2000 Consumers filed a Motion for Rehearing (the Petition) and an Acceptance Letter in the above captioned matter. While the Consumers letter is styled an "Acceptance Letter" the text of that letter and the Petition make it clear that the Consumers' acceptance is conditional upon Commission approval of various "understandings" of Consumers which are tantamount to a substantial revision of the Commission's Opinion and Order in this matter dated October 24, 2000 (the October 24 Order). The conditional nature of the Consumers "Acceptance Letter" is emphasized by the Consumers Petition which requests that 1) rehearing be granted (¶ A, page 2); 2) that certain interpretations, understandings and requests be confirmed (¶ B, page 2); and 3) that the Acceptance Letter stating these conditions and understandings be incorporated into the Commission's Financing Order (¶ C, page 2).

In reality, the Consumers filings of November 9, 2000 are nothing more than a Petition for Rehearing which requests that the Commission change its rulings in the October 24 Order. Specifically, Consumers desires a change in the treatment of securitization charge offsets and rate reduction credits which were Ordered by the Commission to ensure that securitization would be competitively neutral for Retail Open Access (ROA) customers and bundled sales customers.

B. Summary of Replies

1. <u>Substantive Defects In "Acceptance Letter" ¶ C:</u> Requested Delay in Offset of Securitization Charges, Equal Rate Reductions and Levelization of Excess Savings Reductions

Paragraph C of the "Acceptance Letter" requests that the Commission reverse its decision that 1) securitization charges be offset by a reduction in ROA customer bills; 2) residential rate reductions for sales customers be equalized by equivalent reductions in ROA bills; and 3) that excess securitization savings of $4.5 million per year be subtracted from ROA bills.

Consumers instead proposes that a two step process be used: 1) Until netting occurs, securitization charges and rate reductions would be subtracted from ROA bills; 2) During the netting process these issues would be reconsidered by calculating netted stranded costs and a transition charge for assets excluding securitized items. This transition charge for non-securitized costs would be added to the securitization charge which covered securitized assets to yield a total amount payable by ROA customers. This exact position was proposed in Consumers' Reply Brief and was rejected by the Commission at page 42 of the October 24 Order. Yet, Consumers boldly asks that its "new interpretation" of the October 24 Order be approved.

Consumers also asks the Commission to reverse its October 24 Order that retail rate

reductions granted to residential sales customers be subtracted from transition charges of ROA customers on an equal dollar per kilowatt basis and asks that this issue be deferred to the netting case. Finally, Consumers proposes a new and unsupported "levelization method" for subtracting excess securitization savings from transition charges. The Consumers requests regarding securitization charges, rate equalization and excess savings ought to be rejected for the following reasons:

a. Delay in Resolving the Impact of Securitization Will Damage Competition

The Consumers request to resolve the impact of securitization on ROA customers in Case U-12634 delays resolution of this issue until netting has been accomplished, an event which may occur by January 1, 2002 or may occur every year from 2002-2007. The resulting uncertainty of a netting process which will go on through 2007 will make customers and marketers less willing to commit to an ROA program where costs are unknown.

b. Consumers "Wait and See" Approach Fails to Address Post 2007 Issues

Consumers' request to deal with the impact of securitization on ROA in a netting case, even if granted, fails to address the way securitization charges would be offset for ROA customers after 2007 when netting and transition charges come to an end.

The Commission decision can address the post 2007 time frame issue because it provides a mechanism to reduce ROA charges which can operate during the period 2008 through 2014 when there are no transition charges but securitization charges and benefits continue. From 2008-2014 securitization charges assessed to ROA customers must be offset to avoid collection of non-existent "stranded costs". From 2008-2014 ROA residential rates must be reduced to prevent loss of excess

securitization reductions and rate equalization credits long after 2007 when stranded costs are not collectible and transition charges will not be assessed.

c. Resolution of Securitization Issues in the Netting Case Could Lead to a Different Result

The Consumers proposal to resolve ROA securitization issues in a netting case would force the Commission to adopt a large negative transition charge for non-securitized assets in netting case U-12639 to offset securitization charges if that issue is not resolved in this docket. Consumers knows that financial and political pressures will make it difficult for the Commission to order a substantially negative transition charge. Deferring this issue to the netting case would likely result in a very different outcome. Note that the presiding Law Judge in U-12639 has Ordered that the case will develop a methodology, not a numerical result. Thus, U-12639 does not offer a near term numerical resolution. Rather, a series of Orders implementing U-12639 through 2007 will defer this matter even further into the future when Consumers probably hopes that a different result can be obtained.

d. Consumers Has Given No New Reasons to Change the Commission Order

The Consumers request to delay resolution of the impact of securitization on ROA customers is based on the assumption that this issue will be decided as part of the netting docket U-12639. As noted above, this assumption is wrong since U-12639 will not result in a numerical decision. This same theory was urged by Consumers in their Reply Brief and was specifically rejected by the Commission. *October 24 Order, p. 42.* Since Consumers gives no new reasons for adoption of its position, the request must be rejected as mere re-argument. The Commission should not change position merely because Consumers did not like the Commission decision an wants another bite at the apple.

2. Substantive Defects In “Acceptance Letter” ¶ B: Requested Regulatory Asset Treatment of the 5% Residential Rate Reduction Subsequent to October 24 But Before Issuance of Bonds

a. Granting Regulatory Asset Treatment of the 5% rate Cut After October 24, but before issuance of bonds 2000 Will Finance a Consumers Appeal of This Case

Granting the Consumers request for treatment of the 5% rate cut as a regulatory asset after October 24, 2000 but before issuance of bonds would have the effect of financing a prolonged Consumers appeal of portions of this entire case. If regulatory asset treatment is granted for the 5% rate cut after October 24, 2000 and before bond issuance Consumers has no financial penalty for a prolonged appeal of this Order. The risk of appealing U-12505 would fall entirely on Consumers customers who would be forced to pay for an ever growing regulatory asset because the Consumers request for regulatory asset treatment of the 5% rate cut after October 24, 2000 but before bond issuance contains no end date on the termination of regulatory asset treatment. Consumers could pursue appeals for years with no financial harm.

b. U-12478 Did Not Authorize Regulatory Asset Treatment for the 5% Residential Reduction Before Bond Issuance

Consumers cites language from Order U-12478 which it claims allows treatment of the 5% rate reduction as a regulatory asset after October 24, 2000 but before the issuance of securitization bonds. *Acceptance Letter, page 2*, ¶ *B* . The meaning of the referenced U-12478 language quoted by Consumers is ambiguous at best since that section of the Commission Order rejects, not adopts, the Edison

proposal for regulatory asset treatment. The meaning seems to be that the rate reduction can be recovered after the Finance Order, starting when bonds are issued. *See first sentence, page 27, Order U-12478*.

It is extremely clear, however, that the Commission specifically ruled in U-12478 1) a rate cut does not constitute a regulatory asset; and 2) that treatment of a rate cut as a regulatory asset requires rate payers to pay for their own rate cut, a result prohibited by PA 141. Those two findings cannot be read together with Consumers' claimed interpretation of that one ambiguous sentence permitted rate cuts as regulatory assets after October 24, 2000 but not before October 24. Either the 5% rate cut is a regulatory asset or it is not. If the rate cut is not a regulatory asset, the date of the securitization Order makes no difference, <u>except</u> to state that bonds may be issued after that date which recover the costs of securitization on a going forward basis. The rate cut still may not be treated as a regulatory asset to be recovered from customers.

3. Procedural Defects

The Commission's Rules of Practice and Procedure specify three grounds for granting a Petition for Rehearing:

a. A claim of error supported by a brief statement of the basis of the error;
b. A claim of newly discovered evidence or facts or circumstances arising subsequent to the close of the record; or
c. Unintended consequences resulting from compliance with the decision setting forth the matters relied upon. *R 403.*

Consumers has provided no evidence to support a claim of error or unintended consequences in this matter. The only new circumstance alleged is the issuance of the

Commission's Order in Case U-12478, a scant nine days after the October 24 Order. Consumers, in essence, claims that every difference in the wording of the October 24 Order and U-12478 ought to be used as grounds to revise the October 24 Order despite the fact that the claimed differences exist merely in the discussion section as dicta at best and have no impact on the Ordering provisions. There is no demonstration that Case U-12478 contains holdings or findings which conflict with the October 24 Order.

4. Conclusion

Granting Consumers' Petition would subvert the core finding of the October 24 Order that the critical need for certainty and clarity regarding the impact of securitization on ROA customers justified taking immediate action to assure competitively neutral treatment for these costs between sales and ROA customers rather than adopting a "wait and see" approach. The October 24 Order of the Commission furthers ROA competition by immediately clarifying the rules of the game. Consumers requests the Commission to defer these issues to a netting process more than12 months distant where Consumers might prevail or create enough uncertainty to economically damage competition. Either result is unacceptable. Consumers has litigated these issues and the Commission has spoken. Adoption of Consumers unsupported "clarifications and interpretations" would literally reverse the Commission Order in this case and introduce twelve more months of uncertainty which will surely damage competition.

DETAILED DISCUSSION

II. DELAYING SECURITIZATION OFFSET AND RATE REDUCTION EQUALIZATION UNTIL THE NETTING PROCESS WOULD CREATE THE VERY UNCERTAINTY WHICH THE COMMISSION ELIMINATED IN ITS OCTOBER 24 ORDER

A. Background

Energy Michigan raised concerns on the record in U-12505 that Retail Open Access (ROA) customers would be disadvantaged by securitization after 2001 because securitization charges would not be offset by equal base rate offsets or reductions as was the case for sales customers and that residential ROA customers would not receive the same dollar per kWh reductions as were given to bundled sales customers. *October 24, 2000 Order, page 41-42*.

Consumers argued that the preferable method to deal with these issues would be to delay resolution of these issues until completion of a netting docket in which the Commission would calculate ROA transition charges in two parts. Under Consumers' proposals, the first part of the transition charge would be the cost associated with securitized assets and the transition charge for these assets would be the same as the securitization charge. In theory, the second part of the transition charge would be the net cost of all remaining qualified costs (generation, power purchase contracts, implementation costs, etc.). Consumers argues that any rate savings produced by securitization would be reflected in lower transition charges as well. These positions were argued very specifically in the Consumers Reply Brief at pages 24 through 25 and were rejected by the Commission at pages 42 through 44 of the October 24 Order.

Two Examples Illustrate the Difference Between The Consumers Position and the Energy Michigan Position

Assumptions Used in Examples

Assume Consumers' total claimed stranded costs were $2 billion of which $500 million was for securitized assets (Palisades, FAS 109 and 106, etc.) and $1.5 billion was for above market Power Purchase Agreements. Assume further that Consumers' fossil fuel generating plants have a stranded benefit of $1.25 billion. Finally, assume that a securitization charge of .2 ¢ /kWh would pay for the securitized assets and a transition charge of .1 ¢ /kWh would pay for each $250 million

of stranded costs.

How the Consumers Proposal Works

1. Securitization offset

Under the Consumers proposal, ROA customers would pay a .2 ¢ /kWh securitization charge and the netting case would determine a net transition charge for the stranded plant and benefit plant ($1.5 billion minus $1.25 billion = $250 million of net stranded cost) equaling .1 ¢ / kWh. Total ROA securitization and transition charges would be .3 ¢ /kWh.

Consumers says that it is concerned that the securitization offset adopted by the Commission will, in effect, duplicate their proposal to handle this issue in the netting case. However, under Consumers proposal, the final outcome would not be known until completion of the netting process. Note that the ALJ presiding over the netting Case U-12639 has determined that the case will develop a methodology, not a numerical result. Thus, the netting process could stretch into late 2001 and be redetermined every year thereafter.

2. Rate equalization

Under the Consumers proposal rate reduction equalization would also take place in the netting case. Like securitization offsets, a numerical result would not be known until late 2001 at the earliest and could be redetermined every year thereafter through 2007.

How the Energy Michigan Proposal Works

1. Securitization offset

Under the Energy Michigan proposal, the Commission would authorize an ROA

securitization charge of .2 ¢ /kWh and an offset in the form of rate reductions equaling .2 ¢ /kWh. In the netting case, Consumers' total net stranded cost would be determined ($500 million of securitized assets plus $1.5 billion of PPA cost minus $1.25 billion fossil plant benefits equal $500 million of securitized costs and $250 million of stranded cost). ROA charges would be .3 ¢ /kWh (.2 ¢ for securitized assets and .1 ¢ for non-securitized assets.)

This proposal, which was adopted by the Commission, addresses Energy Michigan concerns that future netting cases, particularly with Detroit Edison, might have to adopt a large negative transition charge to offset securitization charges.

The final result regarding treatment of securitization charges would be known when this Order is final in December 2000.

2. Rate equalization

Under the Energy Michigan proposal the Commission Orders now that the residential rate reduction of .375 ¢ /kWh produced by securitization will be subtracted from future charges for residential ROA customers. That decision would be implemented immediately during the phase in of competition and continue through 2014.

The result would be known when this Order is final, December 2000.

The Commission considered both Consumers and Energy Michigan positions and decided that it should adopt the Energy Michigan position which effectively guarantees now that a fixed amount (the equivalent of securitization charges plus applicable rate reductions) would be subtracted from whatever total transition charge was determined as a result of the proceedings in Case U-12639. *October 24 Order, p. 44.*

B. Four Reasons Why the Consumers Proposal to "Wait and See" What Will Happen to ROA Securitization Charges Should Be Rejected

1. Granting Consumers' Request Would Create the Very Competitive Uncertainty the Commission Wishes to Avoid

The Commission used its Order to solve the most significant problem created by securitization: <u>the impact of uncertainty on competition.</u> In the current proceeding the issue of applying securitization to ROA service has been litigated and is sharply in focus. All parties are well aware of the fact that an unfavorable decision on this issue could frustrate or destroy ROA competitiveness for a period of 14 years. The numbers in the Edison case in particular are so large that ROA service cannot be economic unless securitization charges are offset and rate reductions are equalized. Uncertainty regarding these issues will delay ROA participation by customers and providers. What business would willingly risk millions of dollars of start up capital in 2001 if full competition on January 1, 2002 is in doubt?

The Commission faced this issue clearly and forcefully. It recognized that securitization offsets and rate reduction equalization for sales customers and ROA customers could be assured <u>now</u> in a way that was fair to utilities, customers and ROA providers by Ordering <u>now</u> that any securitization charge and rate reduction be subtracted from future ROA charges. With this approach, the U-12369 docket determines the total stranded costs of each affected utility and translates these findings into a total transition charge applicable to ROA customers leaving the system. The calculated stranded costs and resulting transition charges will include both securitized and non-securitized qualified costs. Once the total transition charge is calculated, equal treatment of ROA customers will be assured by the U-12505 Order which mandates subtracting from ROA rates an amount equivalent to the securitization charge applicable to all customers and the rate reductions delivered to bundled sales customers. This method would assure ROA providers and customers up front that they will be treated fairly.

The Consumers rehearing request which asks the Commission to "wait and see" on securitization until a second process determines the total stranded cost associated with all other qualified costs (Power Purchase Agreements, implementation costs and the potential, but not demonstrated) impacts of netting. The outcome of second process (netting) is far less certain because it is not known how or if netting will offset some or all remaining qualified costs or whether future Commissions would be willing to adopt the large negative transition charges that would be necessary to offset securitization charges for Consumers. Clearly Consumers "wait and see" approach is less certain than an Order now and, in the case of Detroit Edison, may depend on the Commission's willingness to adopt a large negative transition charge. Worst of all, a decision and will not occur until at least one and perhaps more years into the future.

A clear decision now on how securitization will impact ROA guarantees equality of treatment and more important certainty of outcome. It is the certainty of outcome that was the basis for the Commission's decision and which is not addressed in any fashion by the conditions in Consumers' "Letter of Acceptance".

2. The Consumers "Wait and See" Approach Does Not Resolve Post 2007 Issues

The Consumers proposal to resolve ROA related securitization issues in a future stranded cost netting docket fails to consider the post 2007 impact of securitization on ROA service.

The netting case will establish transition charges through 2007. The Commission has determined that stranded cost recovery is unlikely to extend past 2007. *Opinion and Order, U-11290, January 14,1998, p. 11.* However, Consumers' securitization charges will extend through 2014. *See Exhibit CE-6.*

The Commission Order in this case deals with the 2007-2014 time frame by stating

that the equivalent of securitization and tax charges will be subtracted from customer bills to offset securitization charges. Thus, the Commission Order provides direction regarding the period from 2008-2014 when the securitization offset must continue to be subtracted from customer bills but transition charges will have ended. The Consumers proposal to deal with these issues in the context of the netting process does not provide a methodology to deal with ROA securitization impacts for the 2008-2014 period when there are no transition charges.

3. The "Wait and See" Approach Gives Consumers Another Bite at the Apple

Consumers' proposal to defer ROA securitization issues to future netting or unbundling proceedings is a thinly disguised attempt to get another bite at the apple. If Consumers can devise a new way to eliminate or reduce the securitization offset and rate reduction equalization in U-12639 or any case implementing netting through 2007 it might hope to win the issue in a future case. ROA proponents have no upside in this scenario. They obtained a reasonable Order in this case which should bind Consumers for 14 years. Consumers would have them relitigate the issue in a future case or cases . This is double jeopardy.

4. Consumers Has Given No New Reason to Change the Commission Order

There is literally no difference between the position advocated by Consumers in its Reply Brief, page 24-25 and the position advocated by Consumers in ¶ C of its "acceptance Letter." Similarly there is no doubt that adoption of the Consumers rehearing request would require ROA participants to "wait and see" what would happen in a future transition charge netting proceeding to determine the ultimate impact of securitization on ROA service costs. This is an outcome that the Commission has already considered and specifically found to be unacceptable. *October 24 Order, p. 42.*

Consumers has failed to introduce any new evidence demonstrating why its previously rejected position should now be accepted. For this reason alone the Petition should be rejected. *Also see IV. below re procedural defects.*

Conclusion

The Commission has been given absolutely no reason to revise its original determination that Consumers should be required to agree that securitization charges and securitization rate reductions will be subtracted from ROA customer bills. Consumers' mere re-argument of its earlier position which was rejected by the Commission is not sufficient grounds to alter what is perhaps the most important decision the Commission has ever made to promote competition.

Note that even the Detroit Edison Company has indicated that it can live with the securitization offset if future transition charges are not already reduced to reflect an SQC offset. *Edison Petition for Rehearing, U-12478, November 22, 2000, p. 11.*

If the Commission wishes to address Consumers' fears that the Ordered rate equalization will duplicate reductions that would be produced through netting, it could clarify its Order by stating that rate equalization will be implemented in Case U-12639 or other netting cases so that ROA customers receive the same (not more and not less) reduction from securitization that is received by sales customers. Excess securitization savings would be applied to customer bill as provided in the October 24 Order.

C. Use of Excess Securitization Savings to Offset Transition Charges

The Consumers "Acceptance Letter" at ¶ C contains a new proposal to "levelize" use of excess securitization savings to offset transition charges (footnote 2, page 3 of 4) through 2007 and to terminate such levelized excess savings upon removal of the revenue requirement associated with the securitized assets from base rates for ROA customers. *Footnote 1, page 3 of 4.* Presumably this

latter reference would allow Consumers to cease use of the excess securitization savings upon the conclusion of rate unbundling which must occur by 2002.

These requests regarding use of "excess securitization savings" were not discussed on the record as part of Consumers' testimony or in the Consumers Brief or Reply Brief. Hence, they are brand new proposals.

On the face of it and with what little detail is provided, the Consumers proposals appear to be inconsistent with the language of the Commission which provides for use of "the remaining 50% [of $9 million of excess securitization savings] for use in reducing the transition charge developed in the context of Consumers stranded cost recovery true up proceedings and charged to the utilities ROA customers." *October 24, 2000 Order, page 32.*

As with the matters discussed in ¶ B above, Consumers appears to have fabricated a new position designed to frustrate or neutralize a Commission ruling which is favorable to competition, presented that issue for the first time in this "Letter of Acceptance" and failed to support its conclusions or proposal with any manner of detail, evidence, or a demonstration of why their new proposal is properly before the Commission. *See IV. below.*

As to substance, Consumers' proposed new treatment of the excess securitization savings appears to be a mere replay of the format proposed by Consumers for securitization rate reductions and offsets. Consumers effectively proposes to defer consideration of the excess securitization savings until the netting process is complete (a date which is increasingly unclear given the fact that U-12639 will not produce a numerical result), at which time it promises that the excess savings will be reflected in lower transition charges but that result is not assured. The result of Consumers' proposal is to create uncertainty at a minimum and at worst, a series of opportunities for Consumers to reverse a decision which it opposes.

In conclusion, it is simply impossible to accurately respond to brand new proposals to deal

with excess securitization savings which are not even described in detail and are not properly before the Commission. It is enough to say that the few details given by Consumers regarding the new proposals lead to the conclusion that these proposals are totally inconsistent with the intent of the Commission as expressed in its Order at page 32 and are improperly before the Commission as part of a Petition for Rehearing.

III. CONSUMERS REQUEST TO CREATE A REGULATORY ASSET FOR THE 5% RESIDENTIAL RATE REDUCTION COMMENCING OCTOBER 24, 2000 ASKS ITS RATEPAYERS TO FUND AN APPEAL OF THIS ORDER

A. Background

Consumers original request in this case asked for Year 2000 costs of the 5% residential reductions to be treated as a regulatory asset. *Order, page 33*. Staff, ABATE and the Attorney General opposed that request on the grounds that a rate reduction cannot constitute a regulatory asset and that granting the request would result in Consumers' customers funding their own rate cut which would, in effect, mean that it was not a rate cut. *Id.*

The Commission rejected Consumers' requested regulatory asset treatment of the 5% rate reduction on two specific grounds: 1) a rate reduction is not an incurred cost and therefore cannot become a regulatory asset; and 2) granting regulatory asset treatment for the rate cut would allow Consumers to collect the costs of the rate cut from its customers which would frustrate the intent of Act 141 to actually grant a rate reduction. *Order, page 34.*

1. The Consumers "Letter of Acceptance", ¶ B is a New Request Not Present in Case U-12505

In ¶ B of its "Letter of Acceptance" Consumers now requests that the cost of the 5%

residential reduction incurred after October 24, 2000 and before bond issuance be treated as a regulatory asset. In the thinnest possible justification Consumers claims that the Commission's language contained in Case U-12478 at pages 13 and 27 interprets Act 141 and Act 142 as allowing this result for Detroit Edison and thus that interpretation has become available to Consumers even though the issue was not discussed on the record of this case.

2. The Request for Regulatory Asset Treatment After October 24, 2000 is Open Ended, It Could Go On For Years of Court Appeals

Consumers request for post October 24, 2000 treatment of the 5% cut as a regulatory asset is totally open ended and could result in regulatory asset treatment of the 5% rate reductions through many years of appeals and court actions even though securitization does not occur. Gone is the Year 2000 limit on its request and replacing that request is what could be years of regulatory asset costs at roughly $50 million per year.

B. The Consumers Request for Regulatory Asset Treatment of the 5% Reductions Should Be Rejected

There are four reasons to reject Consumers' request:

1. Consumers Request Could Force Customers To Pay for the 5% Reduction Through Years of Appeals

Consumers' requested accounting treatment for the 5% residential reduction is a mechanism which would offset the $50 million/year costs of the 5% residential rate reduction during a Consumers' appeal of portions of the October 24 Order which it does not like. Consumers' request to treat the 5% rate cut as a regulatory asset subsequent to October 24 has no cut off date. If Consumers chooses to delay securitization for years using a series of appeals and legal wrangling, the 5% rate cut regulatory asset would continue to grow year

after year at the rate of $50 million per year, all payable by Consumers customers and not Consumers. The pressure would mount on Consumers customers to settle an appeal.

Thus, Commission approval of Consumers requested regulatory asset treatment of the 5% rate cut with no fixed date for securitization would have the perverse result of encouraging Consumers to appeal this securitization Order by transferring the cost of the rate cut from Consumers to Consumers' customers.

2. The Requested Relief Was Not Considered on the Record

The request is for a brand new form of relief that is very different from Consumers' original request for regulatory asset treatment of rate reductions occurring during the Year 2000. As such, this request is not properly before the Commission as part of a rehearing petition.

3. The Grounds upon Which the Commission Rejected Consumers' Original Request Are Applicable to the New Request:

a. The new request for relief still asks that a rate reduction (albeit after October 24, 2000) be treated as a regulatory asset. The Commission has already held, at page 33, that a rate reduction does not constitute an incurred cost and because it is not an incurred cost it will not be treated as a regulatory asset. *October 24 Order, page 34.*

b. The regulatory asset treatment requested by Consumers still results in rate payers paying for their own rate cut, a result already found by the Commission to be inconsistent with the intent of Acts 141 and 142. *Id.*

4. The U-12478 Order Does Not Allow the Costs of the 5% Rate Cut to Be Treated as a Regulatory Asset After October 24, 2000

Order U-12478 can not be read to approve regulatory asset treatment for rate reductions occurring after October 24, 2000. Case U-12478 provides as follows, "The Commission finds that it must reject Detroit Edison's proposal to treat the (5%) rate reduction as a regulatory asset prior to the issuance of this Order. A regulatory asset is created when the Commission issues a ruling making it probable that the utility's incurred cost will be recovered through future revenue. Unlike an investment in an abandoned or economically uncompetitive generation plant a rate cut does not constitute an incurred cost. Thus the 5% residential rate reduction mandated by Sec. 10d(1) of Act 141 falls outside the definition of a regulatory asset. Moreover, granting Detroit Edison the authority to treat this amount as either a regulatory asset or a qualified cost could result in its recovery, albeit over time, from utility customers. This would have the illogical effect of requiring rate payers to pay for their own rate cut." *Order, U-12478, page 27.*

This language clarifies any ambiguity created by the Consumers interpretation of Case U-12478 in ¶ B of its "Acceptance Letter." While the first sentence discusses treatment of the asset prior to the issuance of Order U-12478, the remaining portion of the paragraph enunciates grounds for rejecting the request. The grounds for rejection are applicable to the period before and after the Order. In other words, whether before or after the date of the October 24 Order, a rate cut cannot be treated as a regulatory asset and customers cannot be required to ultimately pay the cost of their own rate cut. You can read the language to approve use of securitization savings to pay for the rate cut. You cannot read approval of regulatory asset treatment after October 24 and before bonds are issued to be consistent with all of the language of the Commission in U-12478.

DETAILED DISCUSSION OF ISSUES

IV. PROCEDURAL ISSUES

A. The Criteria for Granting a Petition for Rehearing Were Not Satisfied by Consumers

1. A Petition for Rehearing must show error, new facts or unintended consequences.

The Commission's Rules of Practice and Procedure specify that a Petition for Rehearing may be based on a claim of error, discovery of new evidence, facts or circumstances or the presence of unintended consequences. A claim of error must be supported by a statement of the basis of error, a claim of newly discovered facts or circumstances or an assertion of unintended consequences must be accompanied by a discussion and description of the new facts or unintended consequences alleged to occur. *R. 403, Commission Rules of Practice and Procedure.*

The Consumers Petition and "Letter of Acceptance" contain no facts demonstrating error or unintended consequence.

As to ¶ C even though the paragraph it discusses U-12478 as a new fact, Consumers does not allege that the Order of the Commission in Case U-12478 contains any language or holding which would lead to a different conclusion regarding the items discussed in ¶ C(offsets, rate credits and levelization of reductions) than was Ordered by the Commission in U-12505. Consumers merely repeats its request (rejected in the October 24 Order) that securitization offsets and rate reduction equalization be handled <u>as part of</u> the netting process in U-12639 not as a subtraction from the transition charges Ordered by the netting process. Paragraph C of the "Acceptance Letter" contains no <u>new</u> discussion of why a different result is called for than provided in the Order of October 24 or language which would support Consumers "interpretation" of why or how the use of excess securitization savings should

be levelized. Consumers merely states that it wants relief which was already rejected.

B. Mere Re-Argument of a Previous Position is Not Grounds for Reversing a Commission Decision

Paragraph C of the Consumers "Letter of Acceptance" makes two separate requests:

1) That the offset of securitization charges as well as the equalization of rate reductions be determined in the docket establishing net transition charges rather than being a simple subtraction from whatever transition charges are found appropriate as Ordered by the Commission; and

2) That the excess securitization savings to be subtracted from transition charges be limited to a period prior to netting and then be a part of the netting process.

1. Offset of Securitization and Equalization of Rate Reductions

The Consumers positions in ¶ C of its "Acceptance Letter" are a mere restatement in the case of securitization offsets and rate reduction equalization of the position it took on Reply Brief at page 25, a position which was specifically considered and rejected by the Commission at page 42 of the October 24 Order. Virtually the entire discussion in ¶ C is an explanation of how the rejected proposal would work. A review of pages 24-25 of the Consumers Reply Brief in this matter reveals that the text of ¶ C is a direct paraphrase of the testimony of Mr. Ernst which was referenced in the Consumers Reply Brief, considered by the Commission and specifically rejected. *October 24 Order, p. 42.*

It is basic law that a mere re-argument of a position already rejected is not proper grounds for granting a Petition for Rehearing. The Commission has repeatedly held that a Petition for Rehearing is 'not merely another opportunity for a party to argue a position or

to express disagreement with the Commission's decision." *In re GTE North Inc*, Case No. U-11832; 2000WL 1336287 (Mich PSC). This, however, is precisely the goal expressed in Consumers Petition for Rehearing. Further, the Commission will not grant rehearing unless a party can show that the decision was "incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision." *Id*; see also, *In re Consumers Energy Co.,* Case No. U-11941; 2000 WL 1531637 (Mich PSC). The Commission's position on compliance with this standard is clear and unyielding: "Information and arguments that do not meet this standard are not entitled to consideration." *In re Ameritech Michigan*, Case No. U-11280; 1998 WL 110170 (Mich PSC).

In summary, the standard imposed by Rule 403 is one of limitation and simply does not allow a party to raise any argument it chooses. *Id.* Consumers' Petition ¶ C merely seeks to reargue the position it advocated previously. The only discernable basis for error in the Petition is that Consumers arguments were rejected by the Commission and Consumers is, of course, displeased with this result. This is precisely what is not permitted by Rule 403. As stated over and over by the Commission, it is inappropriate and impermissible to simply set forth a regurgitation of the position advocated in the initial hearing as the sole basis for a Petition for Rehearing. Consumers's Petition for Rehearing must therefore be denied for failure to meet the standard mandated by Rule 403.

2. The New Proposal to Levelize and Limit Application of Excess Securitization Savings to ROA Costs

Consumers proposes to "levelize" excess securitization savings and limit use of those savings until netting occurs. No evidentiary basis or even explanation of this proposal was presented on the record to support these new proposals. The author was provided an informal letter of explanation which basically repeats the assertion that these matters will be taken case of in a future netting case.

Therefore there is no foundation for adoption of a levelization process or limitation of that process. *See "Acceptance Letter", page 3 of 4, footnote 1 and 2*. Consumers has introduced new subject matter and attempts to gain approval of new proposals without providing both the detail and opportunity for comment and review which form the most fundamental application of due process to its request.

C. Procedural Conclusion

Consumers' requested clarifications in ¶ C of the "Acceptance Letter" are basically a reiteration of formerly rejected positions or, in the case of the levelization and limitation of excess securitization savings, are brand new proposals. These items are unsupported by any details showing error or any showing of new facts or unintended consequences. Consumers main support for its position is a regurgitation of testimony paraphrased in its Reply Brief which was specifically considered and rejected by the Commission at page 42 of its October 24 Order. Absent basic compliance with the criteria for approval of a Petition for Rehearing, The Consumers position in ¶ C must be read as a simply restatement of a previously rejected argument. Whether ¶ C fails to comply with even the most basic reading of the requirements of a Petition for Rehearing or is rejected because it is a re-argument of a previously asserted position, the result is the same: The requests in ¶ C should be rejected on procedural grounds.

V. CONCLUSION AND PRAYER FOR RELIEF

A. Conclusion: What is Going On Here?

The Petition for Rehearing of Consumers Energy demonstrates beyond all doubt that we have moved from a case which proceeded at warp speed to a case that is in the go slow mode. The utility which claimed a desperate need for rapid securitization now seems to have all the time in the world to pursue rehearing on the flimsiest grounds imaginable.

One thing is clear: the Consumers Petition for Rehearing will delay securitization. If the Commission grants regulatory asset treatment of the 5% residential rate reduction after October 24, 2000 that delay will be painless for Consumers but not for Consumers' customers.

This filing gives the appearance that Consumers would rather not have securitization or not have it quickly if it is forced to deliver securitization benefits on an equal basis to both sales and ROA customers. If this conclusion is correct, it leads to the further conclusion that one of the main purposes behind the Consumers securitization application was not to fund rate reductions for customers, but rather to handicap or at the very least cloud and make uncertain the prospects for competition.

The Commission balanced its Order in this proceeding by determining that the matters considered here which have a competitive impact must be decided quickly and clearly to avoid uncertainty which would handicap competition.

If utilities want fair treatment, an Order clearly requiring subtraction of an amount equal to securitization costs and sales rate reductions from any determined transition charges is just as fair as a future determination of transition charges which incorporate the impact of securitization and rate reductions. The only real difference concerns when that determination is made and how clear it is to potential entrants into the competitive market. The Commission's decision to act on the matter now and clarify the matter now benefits the market by creating certainty. The position advocated by Consumers assures uncertainty and creates the chance that the Commission's decision may be reversed or weakened in future proceedings in which the Commission is very reluctant to adopt the large negative transition charge which would be necessary to offset securitization charges.

B. Prayer for Relief

WHEREFORE, Energy Michigan respectfully requests that the Commission:

1. Deny Consumers' request in ¶ B of its "Acceptance Letter" that the cost of residential rate reductions be treated as a regulatory asset after October 24, 2000 and before issuance of bonds; and

2. Deny Consumers' request in ¶ C of its "Acceptance Letter" that an offset to securitization charges and equalization of rate reductions and deduction of excess securitization savings from ROA transition charges be determined in future netting and unbundling proceedings instead of as Ordered in this case by the Commission.

3. If the Commission wishes to address Consumers' fears that the Ordered rate equalization will duplicate reductions that would be produced through netting, it could clarify its Order by stating that rate equalization will be implemented in Case U-12639 or other netting cases so that ROA customers receive the same (no more and no less) rate reduction from securitization that is received by sales customers.

4. Reiterate that Consumers must accept the entire October 24 Order.

Respectfully submitted,

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

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By: Eric J. Schneidewind

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