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September 10, 2004

Ms. Mary Jo Kunkle  
Michigan Public Service Commission  
6545 Mercantile Way  
P.O. Box 30221  
Lansing, MI 48909

Re: Case No. U-14098

Dear Ms. Kunkle:

Enclosed for filing in the above captioned matter please find the original and four copies of Energy Michigan's Initial Brief. Also enclosed is the original Proof of Service indicating service on counsel.

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

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETTLLP

Eric J. Schneidewind

EJS/mrr

cc: ALJ  
parties

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
CONSUMERS ENERGY COMPANY )  
for determination of net stranded costs )  
for the year 2003 and approval of net )  
stranded cost recovery charges. )  
\_\_\_\_\_ )

Case No. U-14098

ENERGY MICHIGAN, INC. INITIAL BRIEF

September 10, 2004

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**I. Introduction and Summary of Position**

A. Introduction

In Order U-12639 the Michigan Public Service Commission ("Commission") directed Consumers Energy Company ("Consumers" or "Consumers Energy") to file proposals each year to calculate and collect stranded costs and any resulting transition charges. The Commission further ordered that stranded costs be calculated using a method proposed by MPSC Staff which compares the Production Fixed Costs ("PFC") of a utility's generating plants with the revenue available to pay those fixed costs (PFC revenue) during a historical period for which one year of MPSC or FERC reported data is available. Since the U-12639 formula uses historic data, this case calculates 2003 stranded costs to develop transition charges to collect such costs, if any, in 2005.

Energy Michigan, Inc. ("Energy Michigan") presented direct testimony in this matter covering calculation and collection of stranded costs and securitization related fees in a manner consistent with the basic approach adopted by the Commission. The Energy Michigan position on implementing the basic formula adopted by the Commission is discussed in III. of this Brief.

B. Summary of Energy Michigan Position on Calculation of 2003 Stranded Costs to Develop a 2005 Transition Charge

Listed below are the major components of the Energy Michigan position opposing Consumers' proposal to collect over \$112 million of stranded costs relating to the year 2003:

1. Consumers has overstated the Production Fixed Costs of its power supply which are recoverable in this case.

2000 PA 141 § 10d(1) imposed a rate freeze on Consumers Energy from the June 5, 2000 date of passage of PA 141 until December 31, 2003. During this period, Consumers was legally prohibited from raising retail rates to collect increased costs. Id. Nonetheless, Consumers proposes to recover, from ROA customers, 100% of its increased capital, purchased power and purchased summer capacity expenses which exceed the amount of these costs included in frozen rates for retail customers that were in effect in 2003. Consumers has proposed to recover these cost increases from Retail Open Access customer rates by raising the 2003 transition charge.

The U-12639 standards of stranded cost recovery require that stranded costs first be determined to be collectible under regulation and be uncollectible in a competitive market. However, in this case, Consumers proposes to recover costs associated with increases in rate base and new long and short term power purchases which have never been reviewed and approved as reasonable and prudent. Nor have the costs been alleged to be or found to be uncollectible in a competitive market.

Consumers' proposed transition charges should be rejected because the charges represent an attempt to circumvent the PA 141 rate freeze and the criteria adopted in U-12639. To stop these violations of the PA 141 rate freeze and U-12639 criteria the Commission should:

a. **Seasonal power:** Reject Consumers' request to collect, from ROA customers, over \$30 million of seasonal purchased power capacity costs above levels recovered from retail customers in the 2003 frozen PSCR levels.

All of these increased seasonal capacity costs were incurred and used to serve retail customers but none of the cost increases could be collected through the 2003 PSCR due to the PA 141 rate freeze. Few of the long term purchases were ever reviewed or approved by the Commission as is required by MCL 460.6. Instead, Consumers proposes to violate the rate freeze by labeling these purchases as "stranded costs" and collecting all of the costs from ROA customers.

b. **QF costs:** Reject Consumers' request to collect, from ROA customers, over \$60 million of increased costs of Qualified Facility contracts which were not included in the 2003 frozen PSCR factor due to the 2000 rate freeze.

Commission Orders U-11180R dated March 14, 2000 and July 11, 2001 refused permission for Consumers to modify its frozen PSCR to include increased costs of purchases from the Ada, MCV and MPLP co-generation projects. Order U-12366 dated June 19, 2000 refused Consumers' request to reinstate an increased PSCR factor which included these QF increases. Neither Consumers nor party QFs appealed these orders.

Instead, Consumers has attempted to recover uncollectible QF increases from ROA customers as stranded costs. Under this approach, ROA customers would be the only customer class who would see an increase in their rates to pay for these 2003 QF purchases.

Individual QFs also have no right to complain in this case because they were paid the full amount of contracted 2003 capacity payments. Torrey, 2 Tr 45.

Consumers has no right to recovery of incremental QF costs in this case because it failed to appeal the U-11180R and U-12366 orders and because it has not attempted to collect these costs from the retail customers who benefited from the purchases.

c. **Clean Air Act investment:** Reject Consumers' request to recover over \$51.4 million related to capital cost improvements to its generation plants which are necessary to comply with Clean Air Act ("CAA") requirements.

The Commission's Orders in Case U-13380 December 20, 2002, p. 2 and in U-13715, June 2, 2003, p. 59-60 directed Consumers to recover CAA costs from retail customers rather than from ROA customers.

d. **Post-PA 141 capital additions:** Reject Consumers' proposal to calculate Production Fixed Costs eligible for recovery from ROA customers using capital additions to generation plants above levels in rate base as of the passage of PA 141 of 2000.

PA 141 § 10d(4) provides that PFC fixed costs above June 2000 depreciation levels cannot be collected from any customer until a proceeding to determine the reasonableness and prudence of these costs has occurred. Such a proceeding has not been held. Therefore, these cost are not eligible for recovery under regulation as required by U-12639. Increased PFC fixed costs below June 2000 depreciation levels cannot be recovered from any customer under the PA 141 § 10d(1) rate freeze.

2. Consumers has understated the amount available to pay for Production Fixed Costs – Special Contracts.

Contrary to numerous Commission orders starting with U-10646 decided March 23, 1995, Consumers reported revenue from Special Contracts at the discounted Special

Contract rates which are below retail rate levels. This practice reduces the revenue available to pay stranded costs and thus increases stranded costs. Staff and Energy Michigan support reporting Special Contract revenue at tariff levels which would increase overall revenue by \$21.63 million and decreases stranded costs by 29.105% or roughly \$6.3 million of stranded costs. Consumers' position is also contrary to the Commission's rulings on the same issue in stranded cost Cases U-12639, U-13350 and U-13380.

3. Consumers Energy had \$10.1 million of stranded benefits.

Based upon the modifications of Consumers' position described above, Consumers' Production Fixed Costs revenue exceed its Production Fixed Costs revenue requirement by approximately \$10.1 million in calendar year 2003. See Tab A, p. 2 of 2. Given this conclusion, Consumers has no stranded costs. Indeed, Consumers' Production Fixed Cost revenue exceeds Production Fixed Costs thus creating over \$10 million of stranded benefits.

Even if Consumers rate base is allowed to increase above June 2000 levels, exclusion of seasonal power costs, QF costs and Clean Air Act costs results in stranded benefits of almost \$3 million. See Tab A, p. 1 of 2.

4. Securitization offsets should continue.

Consumers has proposed to terminate securitization offsets because it claims that 50% of excess securitization savings are inadequate to fully offset ROA customer securitization charges. Energy Michigan supports the MPSC Staff recommendation that securitization offsets be continued at a level equal to available funds divided by projected sales.



Detailed Discussion  
II. Summary of Applicable Law and Facts

A. Applicable Law

1. Case Law

The criteria for calculation and recovery of net stranded costs were adopted by the Commission in Case U-12639. The following passage from U-12639 describes the criteria for recovery of stranded costs as "[C]apital costs that would have been recovered under regulation that cannot be recovered under competition, offset by mitigation (such as market sales of capacity and energy that are freed up when customers choose alternative suppliers) and stranded benefits (such as generation assets with below market costs)". U-12639, December 20, 2001 ("U-12639"), p. 10. This cited passage effectively establishes three criteria for recovery of stranded costs:

- a. The cost must have been recoverable under regulation;
- b. The subject costs cannot be recoverable under competition; and
- c. The costs must be offset by mitigation such as sales of freed up energy and capacity and stranded benefits such as generation assets with below market costs.

2. Statutory Law: PA 141

PA 141, however, establishes other specific requirements for utility recovery of alleged stranded costs.

- a. PA 141 § 10d(1).

Section 10d(1) provides:

Except as provided under subsection (3) [now subsection (4)] or unless otherwise reduced by the Commission under subsection (5) [now subsection (6)] the Commission shall establish residential rates for each electric utility with 1,000,000 or more retail customers in this State as of May 1, 2000 that will result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. Notwithstanding any other provision of law or Commission Order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on June 5, 2000 and remain in effect until December 31, 2003 and all other electric retail rates of an electric utility with 1,000,000 or more retail customers authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003. (Emphasis supplied).

PA § 10d(1) has popularly named the "rate freeze provision". This provision has acted to prevent a utility serving more than 1,000,000 customers as is the case with Consumers Energy, from increasing any rates through December 31, 2003. Section 10d(1) must be applied notwithstanding any other provision of law or Commission Order such as U-12639.

b. PA § 10d(4).

PA 141 § 10d(4) [formerly 10d(3)] provides two exceptions to the PA 141 10d(1) rate freeze which electric utilities may use to collect two categories of costs above rate freeze levels.

Beginning January 1, 2004, annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time period described in subsection (2) [a period prior to the time the utility meets the market test prescribed in Section 10(f) and completes transmission expansion plans] and expenses incurred as a result of changes in taxes, laws, or other state and federal government actions incurred by electric utilities during the period described in subsection (2) shall be accrued and deferred for recovery. After notice and hearing the Commission shall determine the amount of reasonable and prudent costs, if any, to be recovered and the recovery period, which shall not exceed five

years, and shall not commence until after the expiration of the period described in subsection (2).

Section 10d(4) allows a utility to accrue and defer certain capital expenditures and recover them over a five year period so long as these items are capital expenditures in excess of depreciation levels incurred prior to January 1, 2004 or are expenses (such as Clean Air Act items) which are mandated by law. However, recovery of such expenditures, whether mandated by law or in excess of depreciation levels, must not occur until notice and a hearing in which the Commission determines the amount of reasonable and prudent costs if any to be recovered. PA § 10d(4).

A recent PFD authored by Chief Administrative Law Judge James Rigas interpreted PA § 10d(1) as it applied to a specific factual situation similar to those presented in this case. In Case U-13935 Detroit Edison asked for deferred accounting which would enable it to recover costs related to the August 2003 blackouts which it claimed were in excess of levels recovered under its frozen rates. Judge Rigas found that the Commission was prohibited by PA 141 § 10d(1) from authorizing Detroit Edison to book the blackout costs as a regulatory asset because the Commission was prohibited from assuring recovery of these costs through future ratemaking.

ALJ Rigas stated, "The Act 141 rate freeze must be applied notwithstanding any other provision of law or Commission order. In this regard, the Legislature's intent is clearly expressed. Act 141 does provide for several specific exceptions to the rate freeze for which deferred recovery is permissible. Extraordinary expenses, whether arising from storm damage or blackouts, do not come within these limited exceptions. Staff has properly cited the tenet *expressio unius est exclusio alterius* (the express mention in a statute of one thing implies exclusion of similar things). Because Act 141 expressly identified several exceptions, any others not mentioned are excluded by implication. Blackout costs are not among

the items specifically excluded from the rate freeze in Act 141." PFD, p. 10-11, July 29, 2004.

The MPSC Staff Brief in that case specifically opposed Edison's attempts to collect either directly or indirectly expenses not specifically provided for in Section 10d(4). Staff Brief, U-13935, June 11, 204, p. 5-6.

Thus, in addition to the tests posed in U-12639 for recovery, PA 141 § 10d(1) prohibits recovery of costs incurred during the PA 141 rate freeze above levels contained in frozen rates unless these cost increases are of the type covered by Section 10d(4): 1) annual return of and on capital expenditures in excess of depreciation levels which were incurred during and before 2004), or 2) expenses incurred as a result of changes in taxes, laws or governmental actions. However, the request for recovery must be brought to the Commission for notice and hearing and the Commission must determine the amount of reasonable and prudent costs to be recovered.

3. Statutory law MCL 460.6j (PSCR recovery).

Law governing the recovery of capacity power purchases specifically prohibits recovery of capacity purchases for periods greater than six months unless the utility has obtained prior approval from the MPSC as to the reasonableness and prudence of such purchases.

B. Applicable Facts

1. The Consumers request.

In their application, Consumers requests recovery, as stranded costs, of Consumers' 2003 power supply costs which were above levels recoverable from retail customers under frozen rates. These costs which were otherwise unrecoverable from retail customers in 2003 are related to:

- 1) Purchases from QF projects which were not included in the frozen PSCR factor applicable during the PA 141 rate freeze: \$61.2 million. Exhibit A-1, line 21.
- 2) Over \$30 million of largely unapproved one year and multi-year seasonal power costs in excess of levels included in the frozen PSCR Exhibit A-1, line 9; and
- 3) Unapproved post-2000 generating plant additions including to rate base Clean Air Act additions amounting with a revenue (stranded cost) impact of over \$51 million per year. Exhibit A-1, line 19.

The impact of the Consumers application is to burden ROA customers with about \$112 million of costs which were largely incurred to serve retail customers after passage of PA 141. These costs are uncollectible from those retail customers, not because of competition but because of the PA 141 rate freeze or, for CAA cost, Consumers' failure to comply with § 10d(4). 2 Tr 33.

The following facts related to these categories of additional costs are uncontested:

- 1) Consumers did not present testimony or evidence regarding the reasonableness or prudence of rate base additions or seasonal power purchases which occurred after start of the PA 141 rate freeze up to and including the 2003 period covered by this case. The rate base expenditures have never been reviewed or approved by the Commission for recovery from retail ratepayers. Only 117 MW of new seasonal capacity purchases out of 762 MW requested were even reviewed and approved as to reasonableness and prudence.<sup>1</sup> This review took

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<sup>1</sup> U-13162, December 10, 2001.

place after passage of PA 141 and thus the price of the PSCR factor was not increased to reflect the higher cost of these resources.

2) Consumers did not present testimony or evidence in this case demonstrating how much of its rate base capital expenditures from June 2000 to January 1, 2004 were in excess of depreciation levels in place before PA 141. Thus, the Commission does not know how much, if any, of the post-PA 141 rate base additions were eligible for recovery under PA 141 § 10d(4).

3) Consumers did not prove that the production costs of its generation assets together with costs of power purchases (including the QF and seasonal purchases) were above market costs. On the other hand, Energy Michigan introduced testimony that Consumers' generation costs with post-PA 141 additions are at or below market levels and could offset power purchase costs. Polich, 2. Tr 121.

4) Consumers did not demonstrate compliance with Section 10d(4) requirements for recovery of alleged QF costs, and Clean Air Act or generating plant investments above depreciation levels nor did it prove that such investments could not have been recovered under the provisions of Section 10d(4) had Consumers complied with those requirements.

The facts in this case do show that the alleged QF cost increases of \$61.2 million and seasonal power purchase costs of over \$30 million were not recoverable from retail customers because these increases are above the amounts that will be recovered through growth in sales that will offset only the costs associated with those resources that are at or below levels contained in frozen rates (e.g. sales growth offsets increased costs at or below frozen rates but 100% of power supply costs above frozen rates would be paid by ROA customers under the Consumers proposal).

Consumers' attempt to recover increased rate base investment, increased seasonal power costs and increased QF costs all above levels collected in the frozen Consumers rates is

an illegal end run around the PA 141 rate freeze and the requirements of PA 141 § 10d(4) which provide specific procedures for the collection of increased costs which are permissible exceptions to that freeze. Increases not covered by the PA 141 § 10d(4) exceptions to the freeze are uncollectible notwithstanding any other provision of law or MPSC order.

### III. Energy Michigan Recommendations Regarding Stranded Costs

#### A. **INCREMENTAL SEASONAL POWER PURCHASES** Above Levels Collected By the Frozen PSCR Are Not Recoverable As Stranded Costs

##### 1. Consumers position.

Consumers witness Kurzynowski proposed to recover \$30.7 million of both summer and winter seasonal capacity costs attributable to purchases of power required to meet Consumers planning reserve margins. Kurzynowski Direct, 2 Tr 90-91.

##### 2. Energy Michigan reply.

###### a. Facts.

Over two-thirds of the more than \$30 million of claimed seasonal capacity costs have not been approved by the MPSC for reasonableness and prudence. Tab B, Discovery Response 14098-EM-CE-14. Of the 762 MW of summer capacity and peak load management capacity, only 117 MW were approved by the Commission prior to purchase. Polich, 2 Tr 117, and Tab B. All of these costs except for 58 MW were incurred after enactment of PA 141 and after the rates for retail customers were frozen under that Act. See Discovery Response 14098-EM-CE-14, Tab B; Polich, 2 Tr 117.

Also, it is uncontested that these costs were incurred exclusively for the benefit of retail customers and were incurred after Consumers Energy knew or should have known that Electric Choice would reduce its summer peak demand.

Most important, the testimony of Consumers' lead witness Kurzynowski does not include any offset for seasonal capacity costs already included in the bundled rates and PSCR surcharges. Thus, it is impossible to accurately gauge the amount of these costs which are displacing contracts which were included in the frozen PSCR but terminated before or during 2003. The assumption in the Consumers filing is that all of these costs are in excess of the levels recovered through the P&I capacity costs included in the generation revenue requirement shown in Exhibit A-1, line 7 but proof on that point is lacking. Polich, 2 Tr 117-18.

It is uncontested that with the potential exception of the 117 MW of 2003 seasonal capacity approved in Case U-13162, none of the other multi-year contracts were submitted for MPSC review and approval as would be necessary for inclusion in the PSCR factor under regulation pursuant to MCL 460.6j.

There are questions regarding the reasonableness and prudence of Consumers' purchases which could have been and should have been raised in a regulatory proceeding regarding the reasonableness and prudence of these purchases. Energy Michigan witness Polich raised a number of these concerns in his testimony including questions regarding whether 1) Consumers adequately used its ability to interrupt load to avoid such purchases; and 2) Consumers' failure to promote interruptible rates, self-generation and encourage customer participation in Retail Open Access programs. Polich, 2 Tr 119-120.

Adoption of the Consumers' seasonal capacity proposal in this case would transfer the \$30 million of costs which were incurred to ensure reliable service for retail customers from those customers to the ROA customers who actually reduce the need for such expensive power sources. Under Consumers' proposal, the cost of



additional seasonal power purchases would be covered to a certain degree by load growth but to the extent that the cost of those purchases exceeds the average levels contained in the frozen PSCR, the entire difference or overall increase is passed on to ROA customers. As will be seen below, that result cannot be supported under regulation or the frozen rate structure mandated by PA 141.

### Recommended Disallowances

Based upon his review, Mr. Polich recommended disallowance, as stranded costs, of seasonal capacity purchases in the form of contracts or options, peak load shaving costs and the associated costs of transmission. Polich, 2 Tr 120. See Exhibit I-18, p. 2 of 2, line 9.

b. Seasonal power purchases, peak load contracts and associated transmission costs not included in frozen PSCR levels do not meet the U-12639 criteria for recovery.

i. Seasonal power costs were not shown to be recoverable under regulation.

A discovery response provided by Consumers witness Kurzynowski proved that of the 762 MW of proposed seasonal power contracts, and peak load management capacity only 117 MW of the 762 MW were ever approved for reasonableness and prudence and they were approved in Case U-13162 which took place after the rate freeze. Tab B (Exhibit I-19, p. 9-10, Discovery EM-CE-14, line 4). Case U-13163, December 10, 2001. The rest of the power purchase and peak reduction contracts plus associated transmission were not even approved by the Commission for reasonableness and prudence pursuant to MCL 460.6 for inclusion in a PSCR factor.

When Consumers incurred the increased seasonal power costs including costs of transmission in the year 2003, it had not secured prior Commission review or approval of the vast majority of these expenses. When incurred, the seasonal power costs including costs of transmission were not costs which would have been recovered under regulation, but for competition, because the costs, of power and transmission, could not be recovered under regulation until they have been approved by the Commission. See MCL 460.6j. Thus, the basic criterion of U-12639 (that costs be recoverable under regulation) has not been satisfied because the vast majority of these seasonal expenses were incurred without any prior review or approval by the Commission for reasonableness.

The record presented in this case does not contain any detail regarding the terms and conditions of these contracts or alternative methods of securing supply which would support reasonableness and prudence. Indeed, the testimony of Energy Michigan witness Richard Polich demonstrates that these expenses were not reasonable and prudent. Polich, 2 Tr 119-120.

ii. Seasonal power cost were not shown to be unrecoverable in a competitive market.

Consumers Energy has presented no proof, as required under the U-12639 criteria, that the proposed seasonal power costs including transmission were unrecoverable in the competitive market. Also, Consumers ignored the criteria of U-12639 which state that the Commission would consider the extent to which above market costs could be mitigated or offset by stranded benefits (such as generation assets with below market costs). See U-12639, p. 10.

c. Recovery of incremental seasonal power costs incurred during the PA 141 rate freeze is illegal under PA 141.

Consumers cannot purchase or incur power supply costs including costs of transmission during the PA 141 rate freeze which are above levels recoverable in the frozen PSCR and then avoid the PA 141 § 10d(1) prohibition on recovery simply by labeling these unrecoverable costs as stranded costs. This tactic fails to consider that the requirements of PA 141 § 10d(1) apply to prevent recovery "notwithstanding any other provision of law or Commission order".

The Commission cannot authorize a rate increase based upon Commission orders or any other provision of Act 141 allowing recovery of cost increases incurred during the PA 141 rate freeze unless those costs fit within the two specific exemptions to the rate freeze enumerated in Section 10d(4): 1) capital expenditures in excess of depreciation levels; and 2) expenses incurred as a result of changes in taxes, laws or other state or federal governmental actions. A discretionary purchase of additional seasonal capacity does not fall within either of these exemptions. Thus, pursuant to the interpretation of Section 10d(1) adopted by ALJ Rigas adopted in Case U-13935, PFD, p. 10-12 which was based in large part upon the MPSC Staff's interpretation of PA 141 § 10d(4), such costs cannot be recovered because that would be a violation of the rate freeze.

See also the discussion of ALJ Rigas in the U-13935 PFD re applicability of the PA 141 rate freeze to costs above frozen levels. U-13935 PFD, July 29, 2004, p. 10-12.

#### Summary

Inclusion of peak load management contracts, single year and multi-year seasonal capacity purchases and associated transmission cost above levels contained in the frozen PSCR should be rejected for collection as stranded costs because:

- a. The purchases do not meet U-12639 criteria since the purchases

- i. Were largely unapproved by the Commission as to reasonableness and prudence;
  - ii. Have not been shown to be above market levels or to drive Consumers' total cost of power above market levels;
  - iii. Have not been shown to be above levels actually collected in the Consumers frozen rates which were effective during 2003.
- b. Because recovery of these additional costs which were incurred during the PA 141 rate freeze is a violation of that rate freeze.

**B. QUALIFYING FACILITY COSTS Above Levels Collected By The Frozen PSCR Clause Cannot Be Treated As Stranded Costs**

1. The Consumers proposal.

The Consumers Energy claimed Production Fixed Cost revenue requirement for 2003 includes \$499.9 million of purchased and interchanged capacity costs associated with the purchase of power from external generating sources such as Qualified Facilities, other utilities and independent generating plants. Exhibit A-1, line 7. Contained in the amount requested for recovery is approximately \$61 million associated with payments to the Ada Cogeneration, MCV and MPLP Cogeneration Projects which the Commission had found reasonable but refused to include in the 2003 (and 2000, 2001 and 2002) PSCR factor collected from Consumers' retail customers.

In rulings in PSCR Case U-11180R as well as a subsequent request for a new PSCR factor in Case U-12366, the Commission denied Consumers the ability to add \$13.7 million of QF costs to the PSCR factor billed to retail customers on the grounds that this increase in rates would violate the PA 141 § 10d(1) rate freeze. See U-12366, June 19,

2000, p. 2; U-11180R, July 11, 2001. Neither Consumers nor party QFs appealed these decisions.

Nonetheless, Consumers did pay all contracted 2003 capacity amounts to the QFs. Torrey Direct, p. 10.

In this case, Consumers has based its stranded cost request upon full recovery of the \$61 million of QF cost escalators from ROA customers.

2. Recovery of Qualifying Facility Costs Above Levels Contained In The Frozen PSCR Clause

a. U-12639 criteria.

i. The above PSCR QF costs are not recoverable under traditional regulation.

Energy Michigan witness Polich testified that Consumers' mere inability to increase its PSCR charge for recovery of QF costs does not turn these costs into stranded costs to be recovered from ROA customers. The Consumers proposal in effect treats 100% of these costs as stranded costs. Mr. Polich noted that these costs have been rejected for inclusion in the 2003 PSCR and thus the costs were not recoverable under the regulatory framework. Polich, 2 Tr 116-17.

Notwithstanding the protests of Consumers regarding the initial approval of these costs, on two occasions the Commission specifically rejected Consumers' request to include the costs in a PSCR factor actually paid by retail customers. U-12366, February 19, 2000, p. 2; U-11180R, July 11, 2001. Consumers did not appeal these decisions. Nor was an appeal filed by any of the participating QF parties including the MCV. Thus, there is no question that the QF costs proposed by

Consumers for collection as stranded costs were denied by the Commission for recovery from retail customers through the PSCR process. Hence these costs do not qualify under the criteria stated in U-12639 that costs be recoverable under regulation.

Also, Consumers has not demonstrated on this record that the so-called "incremental" QF costs were unrecoverable in a competitive market. Therefore, this criterion of U-12639 has not been met.

b. PA 141.

i. Costs not covered by Section 10d(4) cannot be recovered during the rate freeze.

Consumers has identified another category of expense (QF costs not included in the frozen PSCR) which it claims should be recovered from ROA customers because the costs cannot be recovered from retail customers. In this instance, unlike the Edison request in U-13935, it is true that the expenses were approved by the Commission as reasonable and prudent but these costs were rejected by the Commission for inclusion in the PSCR clause which was frozen by PA 141. See Case U-11180R, July 11, 2001 and U-12366, June 19, 2000, p. 2. Consumers apparently hopes that by labeling these incremental QF costs as "stranded costs" instead of "extraordinary expenses", it can recover the costs in violation of the PA 141 rate freeze.

The Consumers proposal to collect QF costs above frozen PSCR levels in this proceeding is a direct violation of PA 141 § 10d(1) unless excepted by Section 10d(4).

Note that the MPSC Staff in its Brief in Case U-13935 specifically urged that the express mention in PA 141 § 10d(1) of exceptions implies exclusion of other exceptions.

Statutory exemptions, which is what Edison is in effect asking the Commission to create in this case, are not extended beyond their plain meaning. *Grand Rapids Motor Coach v Michigan Public Service Commission*, 323 Mich 624, 36 NW2d 299 (1949). The Legislature has specifically identified the exceptions or exemptions from the rate "freeze" imposed under Act 141. Extraordinary expenses, whether due to storm damage or blackouts simply do not fall within the exceptions created by the Legislature. The maxim *expressio unius est exclusio alterius* (the express mention in a statute of one thing implies exclusion of other similar things) is applicable in this case. Act 141 expressly mentions or identifies the exceptions to the rate freeze. By expressly identifying these exceptions, the Legislature by implication excluded any others not mentioned. *Taylor v Michigan Public Utilities Commission*, 217 Mich 400; 186 NW 485 (1922), *Marshall v Wabash Ry Co*, 201 Mich 167; 167 NW 19 (1918) (a statute giving priority to personal injury judgments against railroad companies, by expressly naming liens made subordinate, by implication excludes any others not mentioned. *Id.*, p. 5; U-13935 PFD, p. 11. Staff Brief, U-13935, June 11, 2004, p. 4-6.

In this case, while PA 141 expressly identified exceptions to the rate freeze including governmental mandated expenses and costs above depreciation levels, Consumers has not claimed that QF costs are mentioned as 10d(4) exceptions to the PA 141 rate freeze.

Consumers' reliance on Case U-12369 criteria is to no avail. PA 141 § 10d(1) states that the prohibition on recovery of costs above frozen rate levels exists "...notwithstanding any other provision of law or Commission order...". Emphasis supplied. Thus, even if it were conceded that MPSC Orders authorized recovery of these QF costs above frozen PSCR levels as stranded costs, the language of PA 141 § 10d(1) specifically overrides a

Commission order as well as any other statutory provision including the authority of PA 141 § 10a which authorizes the Commission to determine stranded costs.

Cost increases not included in frozen rates nor exempted by PA 141 § 10d(4) from the PA 141 rate freeze cannot be recovered from Consumers customers if they are attributable to a service during the PA 141 rate freeze. The Consumers' request for such recovery should be rejected for this reason.

C. **CLEAN AIR ACT COSTS:** Consumers Is Attempting To Collect Revenues Associated Clean Air Act Improvements From ROA Customers Contrary To MPSC Rulings In Cases U-13380 and U-13715

1. Consumers position.

Consumers has presented a request to collect the costs of Clean Air Act improvements from ROA customers despite rulings to the contrary by the MPSC in Cases U-13808 and U-13715. Consumers witness Torrey justifies this request by stating that the Clean Air Act investments benefit all customers because ROA customers use these facilities through the return to service benefits which they can claim (Torrey, 2 Tr 46) and because CAA modification benefits all customers (Torrey, 2 Tr 47). Mr. Torrey concludes that benefits of the return to service provision are demonstrated by the fact that 11 MW of load returned to Consumers service February 1, 2004. Torrey Direct, 2 Tr 47-48.

2. Energy Michigan reply.

Energy Michigan witness Polich testified that inclusion of Clean Air Act costs (as well as other rate base additions) in the stranded cost calculations should be rejected because the Clean Air Act costs are being securitized for Consumers' production facilities which are price and cost competitive with the market and therefore are not likely to be stranded.



Any payment for CAA costs by ROA customers is a subsidy being granted to full service customers. Since Consumers' power plants are competitive in the market, the criteria of U-12639 that says the cost requested be unrecoverable in the competitive market is unmet. Polich, 2 Tr 121. Also, Consumers' discovery responses indicate that the amount of ROA load returning to Consumers full service has been minimal. Thus ROA customers have not relied substantially on Consumers' generators. See Discovery responses, Tab C, Exhibit I-19, p.1.

- a. Consumers has not met PA 141 criteria for recovery of CAA costs.

Virtually every other party to this case recognizes and accepts that PA 141 clearly provided for a mechanism to collect Clean Air Act costs outside of the stranded cost process. PA 141 § 10d(4) allows utilities to both defer and collect from all customers a return on and of capital expenditures in excess of depreciation levels incurred during and before the PA 141 rate freeze and to get the same treatment for expenditures (such as Clean Air Act expenditures) mandated by government action. PA 141 § 10d(4).

Thus, when Consumers attempted to collect Clean Air Act costs from ROA customers during 2003 the Commission forcefully ordered Consumers to remove such costs from the case because collection was a violation of PA 141. U-13380, December 2, 2002, p.2. More recently, the Commission found in Case U-13715 that it is inappropriate to collect Clean Air Act costs from ROA customers because such costs were incurred for the benefit of retail customers and that collection from ROA customers who had to pay similar costs to their own suppliers would be anti-competitive. U-13715, June 2, 2003, p. 59-60.

The appropriate path for Consumers to recover these CAA costs is to utilize provisions of PA 141 § 10d(4) to accrue and defer the Clean Air Act costs for recovery until Consumers files a general rate case whereupon the costs can be

recovered in as few as five years. Detroit Edison has pursued this course and it is available to Consumers as well. See U-13808.

Additional reasons for rejecting this request include Consumers' failure to prove 1) the investments are both uneconomic or unrecoverable in a competitive market; 2) that they have netted or removed costs which are recoverable in a competitive market and; 3) that they have secured MPSC approval for these costs as reasonable and prudent, a prerequisite for recovery.

**D. POST-2000 CAPITAL COSTS: Consumers Cannot Recover Rate Base Increases Occurring During the PA 141 Rate Freeze Unless the Rate Increases Have Been Determined To Be Reasonable And Prudent And Qualify For Section 10d(4) Exceptions From The Rate Freeze**

1. MPSC Staff and Consumers' Position.

Both MPSC Staff and Consumers Energy calculated Production Fixed Cost revenue requirements on the basis of all of Consumers generating plant capital costs incurred through 2003 including investments which had been made after passage of PA 141 in June 2000. See Exhibit A-1, line 1 and S-21, line 1. Staff adjusted the \$162.5 million revenue requirement for Consumers' production plant rate base to remove \$51.4 million of revenue requirement associated with Clean Air Act investments. As a result, Staff's position is that all post-PA 141 non-Clean Air Act production plant investment increases both above and below depreciation should be included in the calculation of stranded costs.

2. Energy Michigan Reply.

Energy Michigan witness Polich testified that of the roughly \$500 million of increased production plant rate base used by Consumers to calculate its revenue requirement (difference between approximately \$1 billion of rate base in 2002 and \$1.5 billion at the

end of 2003) about \$300 million was for Clean Air Act investments and about \$211 million was for other general production plant investment. None of the increased production plant revenue requirement has been included in bundled rates due to the PA 141 rate freeze. Moreover, Mr. Polich testified that Consumers' total amount of production related depreciation expense incurred from June 2000 through end of 2003 was about \$236 million and the amount of depreciation expense recovered through frozen rates in the same period was over \$258 million. Polich, 2 Tr 113-114. Thus, Mr. Polich concluded that Consumers' non-CAA production expenditures have not exceeded its production plant depreciation during the rate freeze period and these expense would not be eligible for post-rate freeze recovery under PA 141 § 10d(4). Id. Mr. Polich concluded therefore that Consumers is attempting to recover over \$200 million of investment from ROA customers as a form of stranded costs while at the same time recovery of those investments is not included in frozen rates and would not be eligible for recovery from the retail customers whom they were intended to benefit due to operation of the PA 141 § 10d(1) requirement. Mr. Polich also testified that Consumers has not requested the Commission to assess the reasonableness or prudence and eligibility for rate base treatment for any of the production related capital expenditures since its last rate case. Thus there is no Commission determination that these expenses were reasonable and prudent. Polich, 2 Tr 114.

#### Consumers' Rebuttal

Consumers witness Torrey attempted to rebut Mr. Polich's testimony by stating that 1) the Polich position did not properly net all Consumers' costs (Torrey Rebuttal, 2 Tr 72-73); and 2) that the standards of the Commission's decision in U-12639 were intended to include new production plant investment in the calculation of stranded costs (Torrey Rebuttal, 2 Tr 74).

Consumers also claimed that its total non-CAA production related depreciation expense was \$171 million, not \$236 million. Thus, Consumers claims that its non-CAA

production related cattail expenditures actually exceed depreciation expense by \$40 million. Torrey Rebuttal, 2 Tr 73-74.

3. Energy Michigan Reply:

Stranded costs cannot include return on capital expenditures in excess of depreciation levels existing during the PA 141 rate freeze unless such expenditures have been determined reasonable and prudent per Section 10d(4).

a. U-12639 standards.

The Consumers Energy request to recover stranded costs related to over \$211 million of investments in generation plant made after passage of PA 141 has not met the requirements of the Commission as set forth in U-12639.

i. No finding of prudence.

MPSC Order U-12639 states that a utility is only entitled to recover such costs as would have been recovered under regulation but cannot be recovered under competition. U-12639, p. 10.

In order to obtain recovery under regulation, a utility is required to prove that the investments to be recovered were reasonable and prudent. Yet, the record in this case is devoid of any evidence or testimony by Consumers demonstrating the reasonableness and prudence of investments in production plant made after passage of PA 141. Polich, 2 Tr 114. There is no record demonstrating the reasonableness or prudence of the specific rate base investments, categories of investment, alternatives or cost impact. The information to make this assessment was not provided by Consumers, the subject matter of reasonableness and prudence was not

noticed to the ratepayer community at large and Consumers did not seek specific determinations on this issue.

In effect, Consumers is asking ROA customers to pay for a return on about \$211 million of investments which have never been approved for recovery from retail customers.<sup>2</sup>

As will be seen below, there is a statutory mechanism which operates even during the period of the PA 141 rate freeze, which can make Consumers whole regarding rate base investments above depreciation or which are required by law. But even that procedure which is set forth in PA 141 § 10d(4), requires notice, hearing and a determination by the Commission that the investments were reasonable and prudent. Without these determinations, there are no provisions under State law for Consumers to obtain compensation under regulation for new capital investments in generating plant other than the revenue increase which occurs through increased sales at frozen rates.

ii. No finding that investments cannot be recovered in a competitive market.

The U-12639 criteria also provide that investments are not stranded unless they cannot be recovered in a competitive market. U-12639, p. 10.

Consumers has not presented testimony or evidence that the output of its generating plants is uncompetitive in the marketplace.

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<sup>2</sup> See Tab A. The \$500 million difference between Consumers' requested rate base of \$1.52 billion (Col. b., line 1) and Energy Michigan's proposed rate base of \$1.03 billion (Col. c, line 1) is post-PA 141 rate base additions including about \$300 million of Clean Air Act investment. See Exhibit I-19, p. 9-10.

On the other hand, Energy Michigan witness Polich has testified that the costs of the Consumers generation plants are competitive in the marketplace. Polich, 2 Tr 121.

b. PA 141 standards.

The recovery of Consumers' generating plant investments during the rate freeze other than by means of the exceptions created by PA 141 § 10d(4) would violate the PA 141 § 10(1) rate freeze.

In his PFD in Case U-13935, ALJ James Rigas ruled that the PA 141 rate freeze requirements must be construed strictly as applicable to all expense items incurred during the rate freeze except those categories of expense specifically enumerated in Section 10d(4): expenses above depreciation levels and expenses incurred as a result of changes in taxes, laws or state of federal governmental actions. Proposal For Decision in Case U-13935 issued by James R. Rigas July 20, 2004, p. 10-12.

This case does not contain any direct evidence presented by Consumers demonstrating that their non-CAA generating plant investments which were made during the period starting with passage of PA 141 and ending with the close of 2003 are above the depreciation levels in effect when PA 141 was passed. However, in discovery response EM-CE-20, Consumers admits that its non-CAA production plant investment between June 2000 and December 31, 2003 (\$211 million) exceeded depreciation expense (\$171 million) during the same period. See Exhibit I-19, p. 13-14. By failing to provide this vital part of its proof, Consumers has forfeited eligibility for one of the two exemptions from the PA 141 rate freeze provided by law.

If Consumers' non-CAA plant investment really did exceed depreciation levels by up to \$200 million, Consumers should and must request recovery via Section 10d(4) procedures, not in this case.

To label these expense items as stranded costs rather than as a prohibited rate recovery is to engage in an end run around the basic requirements of the PA 141 rate freeze. If Consumers is allowed to increase its costs during the rate freeze and then collect those increases from any category of customers, it has made a mockery of the PA 141 rate freeze.

c. Consumers failed to meet another criterion of U-12639: a consideration of potential stranded benefits relating to Consumers generation.

U-12639 requires that stranded benefits be applied to stranded costs (such as generation assets with below market costs). U-12639, p. 10, December 20, 2001. Energy Michigan witness Polich testified that the Consumers Energy generating fleet produces power at or below market rates and therefore does not require a subsidy from ROA customers. This testimony was not rebutted by Consumers or the MPSC Staff. Polich, 2 Tr 121.

Consumers failed to carry its burden of proof to show that costs associated with its generation production plant are unrecoverable in a competitive market. In fact, the opposite is true. Consumers generating costs are so low that these costs are in fact recoverable in a competitive market. Mr. Polich's unrebutted Direct Testimony demonstrates this fact. Polich, Id. Thus, one of the criteria of the U-12639 test to determine stranded costs has not been met by Consumers.

d. The ability to return to utility service does not justify large transition charges.

Consumers contends that recovery of its fossil plant costs from ROA customers is justified on the grounds that ROA customers can return to Consumers for tariff service and thus the plant upgrades were of benefit to ROA customers. Torrey, 2 Tr 47-48.

However, the Commission should consider alternative return to service measures such as those presented by Energy Michigan in Case U-13715 which lessen the value of the return to service option and therefore justify freeing ROA customers from the burden of paying for Consumers' generating plant investments. Energy Michigan Reply Brief, U-13720, p. 14-15.

The Commission should also be aware that Consumers' recent summer capacity plan filing makes it abundantly clear that Consumers has not purchased capacity nor built capacity which is sitting idle, waiting to be used by ROA customers upon returning to utility service. See Consumers 2004 Summer Capacity Plan, Tab D. Rather, Consumers is currently short of power as is shown by their Summer 2004 Capacity Plan. Given their shortage of generating capacity or purchased power to serve native load, it is clear that Consumers would serve returning customers through power purchases in the open market rather than with its own generating plants which it infers are sitting idle waiting to serve returning customers. Thus, Consumers incurs no cost of standing ready to serve ROA customers.

Finally, Consumers' own discovery responses show that the amount of ROA load returning to Consumers service is minimal (.4 MW of demand during the 2003 peak season) compared to the 11.4 MW of load leaving Consumers for ROA during the same period. Tab C, (Exhibit I-19, p. 1 of 2 (EM-CE 6 and 7)).

## **E. SPECIAL CONTRACT REVENUE**

1. Consumers position.



Alone among the parties, Consumers proposes that the Commission's long standing practice of attributing Special Contract revenue at tariff rates rather than discounted rates be changed. Torrey, 2 Tr 62-63. Consumers requests that it be allowed to report Special Contract revenue at discounted rates which in effect produces a revenue deficiency relative to the monies needed to pay for its fixed generation assets. This revenue deficiency creates a shortfall between Production Fixed Costs and the revenue to pay for these costs. This deficiency then becomes a stranded cost payable by ROA customers.

Consumers claims that the Commission's long standing policy regarding revenue treatment should be changed because it has demonstrated that its Special Contract terms are justified based on cost of service and that the benefits to non-participating customers outweigh the costs in the form of higher transition charges or higher retail rates to subsidize discounts given to other customers. Consumers attempts to show that Special Contracts have not impeded competition by demonstrating growth in ROA sales. Torrey, 2 Tr 65.

2. Energy Michigan reply.

Once again, Consumers requests that the Commission use discounted revenue rates from Special Contract customers to calculate the amount of revenue available to pay stranded costs. However, ever since the mid-1990s, the Commission has required both Detroit Edison and Consumers Energy to report Special Contract revenues as though the Special Contracts were billed at retail rates for purposes of determining how much revenue the company has available to pay for production (generating) costs. As recently as January 29, 2004, the Commission stated:

The policy [of treating Special Contract revenue as if it were at tariff rates] that [Consumers] seeks to undo was established by the March 23, 1995 order in Case U-10646, an application by Detroit Edison for Special Contract approval. In that landmark decision, which was developed in a fully litigated proceeding, the Commission determined that any attempt to reallocate the discounts granted by a utility to a

Special Contract customer to other ratepayer classes would require "a compelling showing" to overcome the "substantial burden" of the presumption that such discounts should be recovered from utility shareholders. The inability to impute the special contract discounts revenues in any proceeding affecting Consumers' rates would mean an increase in the cost of service for bundled and unbundled customers not party to the contract absent the "compelling showing" required by the Commission's prior orders. Moreover, it would constitute the abandonment of longstanding and consistently followed precedent.

[A Consumers contract provision prohibiting imputation of revenues at tariff rates] is contrary to dozens of prior Commission orders approving Special Contracts. The procedures set forth in the March 23, 1995 order in Case No. U-10646 were reaffirmed in the October 25, 1996 order in Case U-10961, a Special Contract application for Consumers. Further, in 1997 alone, the Commission applied this policy in approving 39 Special Contracts, including 14 for Consumers. See, the February 5, 1997 orders in Cases Nos. U-11299 and U-11312, the April 10, 1997 order in Case No. U-11353, the April 29, 1997 orders in Cases U-11341 and U-11342, the May 7, 1997 order in Case No. U-11360, the May 30, 1997 orders in Cases Nos. U-11254, U-11256, U-11257, U-11258, U-11259, U-11260, U-11261, U-11262, U-11263, U-11264, U-11266, U-11267, U-11268, U-11269, U-11313, U-11317, U-11318, U-13343, U-11384, U-11385, U-11386, U-11387, U-1188, U-11389, U-11390, U-11391, U-11392, U-11393, U-11394, U-11395 and U-11386, the June 25, 1997 order in Case U-11336, and the July 31, 1997 order in Case No. U-11447. Conspicuous by its absence is any citation of contrary authority by Consumers to support its position. U-13989, January 29, 2004, p. 13.

The Commission decisions listed above avoid the obvious inequity of allowing Consumers to compete with cogeneration or ROA service through rate discounts while calculating stranded costs by using a revenue stream which is deliberately reduced in order to compete with ROA service. To adopt the Consumers position would be to allow the utility to reduce its rates on the one hand to compete with ROA and on the other hand pass along the revenue shortfall resulting from those reduced rates to ROA customers as stranded costs. This would occur because discounted rate revenue was insufficient to cover Consumers' Production Fixed Costs.

To refute Consumers' contention that its Special Contracts did not harm competition, Energy Michigan witness Richard Polich testified that a primary purpose of Consumers'

Special Contracts was to discourage competition from Direct Access competitors. Polich, 2 Tr 125-26.

To refute Consumers' contention that it had met the tests posed by the Commission as a condition to refrain from imputation of Special Contract revenue at tariff rates, Mr. Polich also testified that the Consumers methodology in allegedly conducting cost of service studies to justify the discount rates was flawed, the analysis did not show the impact on other customer classes due to redistribution of costs and the allocation factor of 29.105% is not appropriate for this class of customers where a much higher percent of revenue is attributable to generating costs than would be the case for the other customers. Polich Direct, 2 Tr 122-24. Mr. Polich also showed that Consumers has not demonstrated benefits to other classes. 2 Tr 125.

Finally, Energy Michigan witness Polich demonstrated that Consumers' proposed treatment of SMC income would adversely affect competition by forcing ROA customers to pay for the discounts which were used to frustrate competition. Polich, p. 20.

Both Staff and Energy Michigan agreed on this issue and followed long standing Commission precedent by increasing Special Contract revenue to impute the Special Contract revenue at tariff rates. See Exhibit I-18, p. 1 and p. 2, lines 15-16. Staff witness Devon made the same adjustment in Exhibit S-21, line 15).

**F. CONSUMERS' PROPOSAL TO TERMINATE THE SECURITIZATION CHARGE OFFSET SHOULD BE REJECTED**

**1. Consumers Position**

Consumers recommends that the Commission terminate the securitization charge offset and allegedly return excess securitization savings to commercial and industrial customers. Torrey, 2 Tr 49-53.

Disguised as a fairly confusing accounting exercise, Consumers essentially is proposing that the 50% of excess securitization savings dedicated to ROA transition charge reductions (offsets of securitization charges) be prematurely terminated at the end of 2004. The roughly \$6 million of funds that would normally go to these ROA securitization offsets on 2005 would be pooled with accumulating excess savings and all of the funds would be delivered pro rata to every commercial and industrial customer (both retail and ROA) as a one time distribution charge reduction. Torrey, 2 Tr 52-53.

2. Energy Michigan reply.

There are several reasons to reject this Consumers proposal and, instead, reduce the ROA securitization reduction to a level which will spread the more than \$6 million of "excess savings" which will be available in 2005 over the projected amount of ROA sales. Polich, 2 Tr 128:

a. Excess securitization savings will continue to accumulate in amounts that would fund both commercial and industrial reductions and ROA transition charge reductions until Consumers files a base rate revision case similar to that filed by Detroit Edison in U-13808. Consumers Witness Torrey, Exhibit A-7. Thus, a revision of the Commission policy set forth in U-12505 (that two forms of reduction occur) is not appropriate until a revision of all base rates has taken place to fold in or incorporate these excess savings into the base rate structure. Such a revision cannot take place until a filing has been submitted which addresses all rate classes, not just the ones that are currently unfrozen.

b. The Commission's policy to continue both the ROA transition charge reduction and the commercial and industrial distribution charge reduction to the extent of available funds has not been revised by the Commission. This structure was authorized and mandated in an irrevocable order contained in Case U-12505. October 24, 2000, p. 43-44 and January 4, 2001, p. 6-8. Consumers did not appeal those orders. Consumers well understands that the irrevocability of these

orders precludes a change until a base rate case has been filed. However, Consumers has presented no reason on this record to justify a change in Commission policy before a base rate case. Thus, the Consumers position in his case is in effect a collateral attack on the U-12505 final order which Consumers did not appeal.

The prudent and reasonable course of action on this complex issue if funds do run out before the end of 2004 is to reduce the credit so that the available 50% of excess savings are spread over the projected ROA sales. Polich, Id.

c. The remaining 50% of securitization savings which have been accumulated should be refunded to all commercial and industrial customers, including ROA, and refunded on the basis of a plan similar to that proposed by Consumers in 2005.

#### IV. Prayer for Relief

Based upon the evidence and argument presented in this case, Energy Michigan requests that the Commission adopt the following adjustments to Consumers' stranded cost request:

1. Reject Consumers claims that \$30.4 million of incremental seasonal capacity costs which were not included in the frozen 2003 PSCR factor paid by retail customers should be recovered only from ROA customers as stranded costs.
2. Reject Consumers' claim that over \$61 million of incremental QF capacity costs which were not included in the 2003 PSCR factor should be recovered from ROA customers as stranded costs.
3. Reject treatment as stranded costs for over \$51 million of Clean Air Act costs which have been ruled by the Commission to be unrecoverable from ROA customers and are recoverable from retail customers in either retail rate increases or securitization bond payments.

4. Reject Consumers request for recovery, as stranded costs, of post-2000 Generating Plant capital improvements to Generating Plants since these improvements were not included in the rates paid by retail customers as of the PA 41 rate freeze which took effect June 2000.
5. Reject Consumers' request to report Special Contract revenues at discounted rates rather than imputing these revenues at retail levels to prevent requiring ROA customers to subsidize competitive offerings.
6. Find that Consumers experienced \$10.138 million of 2003 stranded benefits (excess of Production Fixed Cost Revenue over Production Fixed Costs) based on issues #1-#5 above.
7. Reject Consumers' proposal to terminate the rate credit for ROA customers funded by excess securitization savings.

Respectfully submitted,

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September 10, 2004

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# **TAB A**

**Energy Michigan Initial Brief  
Case No. U-14098  
September 10, 2004**

**Consumers Energy**  
**Calculation of 2003 Stranded Cost**

Case No: U-14098  
 Exhibit No.: I-18  
 Page No.: 1 of 2  
 Witness: Richard A. Polich  
 Date: 23-Jul-04

Line No.	Description (a)	Energy Mich with CECO		Source
		Consumers (b)	Prod (c)	
<b>Direct Costs</b>				
1	Net Production Plant	\$1,528,950	\$1,528,950	MA Torrey Exhibit (MAT-1R)
2	Pre-Tax Rate of Return	10.63%	10.63%	MA Torrey Exhibit (MAT-1R)
3	Return Required	\$162,527	\$162,527	MA Torrey Exhibit (MAT-1R)
4	Depreciation	\$63,048	\$63,048	MA Torrey Exhibit (MAT-1R)
5	Property Taxes	\$42,421	\$42,421	MA Torrey Exhibit (MAT-1R)
6	Insurance	\$3,056	\$3,056	MA Torrey Exhibit (MAT-1R)
7	PPA Capacity Charges	<u>\$499,869</u>	<u>\$472,983</u>	2000 PPA Capacity Costs
8	Revenue Required of Fixed Gen.	\$770,921	\$744,035	Sum of Lines 3-7
9	Net Cost of Summer Capacity (Options)	\$30,395	\$0	
10	Total			
11	<b>Total Generation Related Reg Assets</b>	<b>\$801,316</b>	<b>\$744,035</b>	Sum of Lines 8-10
12	Remove Clean Air Act Rev Req	(\$51,440)	(\$51,440)	
13	<b>Total Revenue Requirement</b>	<b>\$749,876</b>	<b>\$692,595</b>	
<b>Fixed Generation Related Revenue</b>				
14	Total Revenue from Sales to Ultimate Customers	\$2,321,440	\$2,321,440	MA Torrey Exhibit (MAT-1R)
15	2003 Special Contract Revenue	\$0	(\$132,394)	MA Torrey Exhibit (MAT-8)
16	2003 Special Contract Revenue under Standard Tariffs	\$0	<u>\$154,019</u>	MA Torrey Exhibit (MAT-8)
17	Tariff Based 2002 Revenue	\$2,321,440	\$2,343,066	Sum of Lines 12-14
18	Generation as Percent of Sales	29.10%	29.10%	MA Torrey Exhibit (MAT-1R)
19	Fixed Generation Related Revenues	\$675,650	\$681,945	Line 12 * Line 13
20	From: Third Party Sales	\$13,553	\$13,553	MA Torrey Exhibit (MAT-1R)
21	<b>Total Contribution to Fixed Generation Costs</b>	<b>\$689,203</b>	<b>\$695,498</b>	Sum of Lines 14 & 15
22	<b>Total Stranded Costs</b>	<b>\$60,673</b>	<b>(\$2,902)</b>	Line 11 minus Line 20
23	ADD: Clean Air Act Revenue Requirement	\$51,440		
24	<b>Final Stranded Costs/(Benefits)</b>	<b>\$112,113</b>		



**Consumers Energy**  
**Calculation of 2003 Stranded Cost**

Case No: U-14098  
Exhibit No. I-18 (RAP-1R)  
Page No: 2 of 2  
Witness: R.A. Polich  
Date: 23-Jul-04

<u>Line No.</u>	<u>Description</u>	<u>Consumers</u>	<u>Energy Michigan</u>	<u>Source</u>
	(a)	(b)	(c)	
<b><u>Direct Costs</u></b>				
1	Net Production Plant	\$1,528,950	\$1,034,060	RAP WP-1
2	Pre-Tax Rate of Return	10.63%	10.63%	MA Torrey Exhibit (MAT-1R)
3	Return Required	\$162,527	\$109,921	MA Torrey Exhibit (MAT-1R)
4	Depreciation	\$63,048	\$56,979	
5	Property Taxes	\$42,421	\$42,421	MA Torrey Exhibit (MAT-1R)
6	Insurance	\$3,056	\$3,056	MA Torrey Exhibit (MAT-1R)
7	PPA Capacity Charges	<u>\$499,869</u>	<u>\$472,983</u>	2000 PPA Capacity Costs
8	Revenue Required of Fixed Gen.	\$770,921	\$685,360	Sum of Lines 3-7
9	Net Cost of Summer Capacity (Options)	\$30,395	\$0	
10	Total			
11	<b>Total Generation Related Reg Assets</b>	<b>\$801,316</b>	<b>\$685,360</b>	Sum of Lines 8-10
12	<b>Remove Clean Air Act Rev Req</b>	<b>(\$51,440)</b>	<b>\$0</b>	
13	<b>Total Revenue Requirement</b>	<b>\$749,876</b>	<b>\$685,360</b>	
<b><u>Fixed Generation Related Revenue</u></b>				
14	Total Revenue from Sales to Ultimate Customers	\$2,321,440	\$2,321,440	MA Torrey Exhibit (MAT-1R)
15	2003 Special Contract Revenue	\$0	(\$132,394)	MA Torrey Exhibit (MAT-8)
16	2003 Special Contract Revenue under Standard Tariffs	\$0	\$154,019	MA Torrey Exhibit (MAT-8)
17	Tariff Based 2002 Revenue	\$2,321,440	\$2,343,066	Sum of Lines 12-14
18	Generation as Percent of Sales	29.10%	29.10%	MA Torrey Exhibit (MAT-1R)
19	Fixed Generation Related Revenues	\$675,650	\$681,945	Line 12 * Line 13
20	From: Third Party Sales	\$13,553	\$13,553	MA Torrey Exhibit (MAT-1R)
21	<b>Total Contribution to Fixed Generation Costs</b>	<b><u>\$689,203</u></b>	<b><u>\$695,498</u></b>	Sum of Lines 14 & 15
22	<b>Total Stranded Costs</b>	<b>\$60,673</b>	<b>(\$10,138)</b>	Line 11 minus Line 20
23	ADD: Clean Air Act Revenue Requirement	<u>\$51,440</u>		
24	<b>Final Stranded Costs/(Benefits)</b>	<b>\$112,113</b>		

# **TAB B**

**Energy Michigan Initial Brief  
Case No. U-14098  
September 10, 2004**

14098-EM-CE-14

## Question:

14. Identify the differences in P&I Capacity shown on Exhibit MAT-1, line 7 and MAT-2 line 7. Include an itemization of the contracts (including MPSC approval dates, if any) which are included in these changes, how much additional capacity was purchased, dates of contract execution, capacity and energy costs for each contract and any other contract terms.

## Response:

The items on Exhibit MAT-1, line 7 and Exhibit MAT-2, line 7 represent different contracts. MAT-1 represents 2003 purchased and interchange costs and MAT-2 represents 1997 purchased and interchange costs. With the exception of contract #4, the MPSC did not approve these contracts, as they were for a short duration of 3-4 months. Please refer to the following table for the capacity contracts represented in MAT-1, line 7.

#	Executed	Capacity (MW)	Energy (\$/MWh)	Capacity Total	MPSC Approval	Other Terms
#1	1/28/1999	27.250	\$ 60.00	1,417,000		(a)
#2	1/21/2000	27.375	\$ 65.00	1,642,500		(b)
#3	5/27/1999	4.000	\$ 60.00	208,000		(c)
#4	5/11/2001	117.000	\$ 68.00	6,961,500	12/21/2001	(d)
#5	7/31/2000	150.000	\$ 100.00	2,006,400		
#6	7/31/2000	150.000	\$ 100.00	1,915,200		
#7	7/31/2000	150.000	\$ 100.00	3,921,600		
#8	5/19/2003	50.000	\$ 70.00	410,136		
#9	5/19/2003	75.000	\$ 70.00	584,664		
#10	5/14/2001	100.000	\$ 71.80	4,317,504		(e)

(a) Energy price is based on Duration Schedule 1 (16 hours). The energy cost for Duration Schedule 2 (12 hours) is \$63.33. The energy cost for Duration Schedule 3 (8 hours) is \$70.00. The energy cost for Duration Schedule 4 (other durations) is any mutually agreeable price between \$60/MWh and \$210/MWh.

(b) Energy price is based on Duration Schedule 1 (16 hours). The energy cost for Duration Schedule 2 (12 hours) is \$70.00. The energy cost for Duration Schedule 3 (8 hours) is \$80.00. The energy cost for Duration Schedule 4 (other durations) is any mutually agreeable price between \$65/MWh and \$305/MWh.

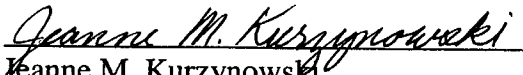
(c) Same as (a) above.

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14098-EM-CE-14 (continued)

(d) Energy price for the year beginning May 2002 is \$68, adjusted upward or downward annually by the year-to-year change in the 12-month (May through April) average of the Oil Price Information Service's ("OPIS") for gross low sulfur No. 2 oil prices for Lansing, MI (rounded to the nearest one-thousandth of a cent). Energy price is rounded to the nearest \$1/MWh.

(e) This is a "must-take" contract, whereby Consumers takes delivery of the product every on-peak day of the contract term. The total cost of the contract, including capacity and energy is \$7,352,320.

  
Jeanne M. Kurzynowski  
Jeanne M. Kurzynowski  
July 9, 2004

Electric and Gas Supply Department

**09800009**

# **TAB C**

**Energy Michigan Initial Brief  
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I-19

14 p


1342 #

Question:

6. How much ROA load returned to bundled service during the summer months of June, July and August in 2003? Provide the quantity in terms of load at the generation level in MW and actual reduction in Consumers MWh of generation service.

Response:

6. Approximately 0.4 MW (non-coincident maximum demand) of ROA load returned to bundled service during June, July and August 2003. The metered usage related to this bundled load was approximately 206 MWh. The generation related load and sendout increase would vary due to losses and the timing of individual customer peaks relative to system peaks.

  
Michael A. Torrey  
July 12, 2004

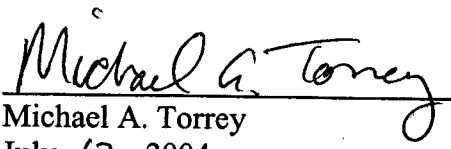
14098-EM-CE-7

Question:

7. How much ROA load started taking generation service from an alternative supplier during the summer months of June, July and August of 2003? Provide the quantity in terms of load at the generation level in MW and actual reduction in Consumers MWh of generation service.

Response:

7. Approximately 11.4 MW (non-coincident maximum demand) of load commenced ROA service during June, July and August of 2003. The metered usage related to this ROA load was approximately 11,850 MWh. The generation related load and sendout reduction would vary due to losses and the timing of individual customer peaks relative to system peaks.

  
Michael A. Torrey  
July 12, 2004

Rates Department

14098EM7MAT

**09800006**

# **TAB D**

**Energy Michigan Initial Brief  
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**Comparison of Summer 2004 Load and Capacity**

	<u>MW</u>
Load	
Interruptible	5
Firm	8,059
Projected Peak Load Demand (MW)	<u>8,064</u>
Capacity	
Utility-Owned Generation	6,440
Non-Utility Generators	1,657
Sub - Total (MW)	<u>8,097</u>
Current Summer Capacity Plans	
(Power Supply Call Options, Self-Generation Contracts, Load Shift Contracts and Other Seasonal Purchases)	856
Total (MW)	<u>8,953</u>

\* Assuming a nominal retail open access load of 873 MW is supplied by others.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter of the application of )  
CONSUMERS ENERGY COMPANY )  
for determination of net stranded costs )  
for the year 2003 and approval of net )  
stranded cost recovery charges. )  
\_\_\_\_\_ )

Case No. U-14098

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 10th day of September, 2004 she served a copy of Energy Michigan, Inc's Intitial Brief in the above captioned matter upon those individuals listed on the attached service list by e-mail and regular mail at their last known addresses.

\_\_\_\_\_  
Monica Robinson

Subscribed and sworn to before me  
this 10th day of September 2004.

\_\_\_\_\_  
Eric J. Schneidewind, Notary Public  
Eaton County, Michigan  
Acting in Ingham County, Michigan  
My Commission Expires: April 24, 2006

U-14098 SERVICE LIST

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