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July 1, 2005

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

Re: Case No. U-14148

Dear Ms. Kunkle:

Enclosed for filing in the above captioned matter please find the original and four copies of Energy Michigan's Exceptions. 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

Digitally signed by Eric J. Schneidewind
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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<br>CONSUMERS ENERGY COMPANY<br>for approval of recovery of costs pursuant<br>to MCL 460.10d(4). | )<br>)<br>)<br>) | Case No. U-14148 |

EXCEPTIONS OF ENERGY MICHIGAN, INC.

I. Introduction and Summary of Position

A. Introduction.

These Exceptions to the Proposal For Decision in this matter issued June 16, 2005 (the "PFD") by Administrative Law Judge Barbara A. Stump (the "ALJ") are filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by Varnum Riddering Schmidt & Howlett LLP. Failure to comment on or Except to any specific provision of the PFD should not be taken as agreement with that provision or finding.

B. Summary of Three Exceptions.

Exception #1: The PFD incorrectly describes applicable ROA 10d(4) charges.

The PFD made two separate mistakes regarding the Section 10d(4) charges that would be paid by ROA customers under the Consumers proposal or the Staff proposal. Staff has proposed that ROA customers pay zero 10d(4) surcharges. The PFD was silent on this issue. Consumers proposed that the ROA surcharges be $0.00053/kWh not the $0.00586/kWh described by the PFD.

Exception #2: The PFD fails to charge the Section 10d(4) costs related to 2000 through 2003 non-Clean Air Act generation costs in excess of depreciation to retail customers. The ALJ incorrectly found that the Commission's orders in stranded cost Cases U-13380 and U-14098

prohibited collection of these 10d(4) generation costs from retail customers. However, MPSC case precedent in U-13808 disposing of exactly these types of costs ordered that all Section 10d(4) generation costs including non-Clean Air Act costs above depreciation were properly billed to retail customers. The Commission should order in this case that such 10d(4) costs be recovered from retail customers and produce a corresponding reduction in the stranded cost liability of ROA customers determined in Case U-13380 and U-14098.

Exception #3: The ALJ incorrectly adopted Staff's proposal that Section 10d(4) be interpreted so that retail customers above 15 kW would pay virtually no accrued generation related or legally mandated expenses incurred during the PA 141 rate freeze. Staff incorrectly interpreted PA 141 as halting accrual of such costs when the rate freeze was lifted for a particular customer class. The correct interpretation is that Section 10d(4) costs may be accrued and deferred through the period of December 31, 2005 and collected thereafter from all retail customer classes. If the Staff's proposal is adopted, residential customers would end up paying literally five times the rate for generation facilities which is paid by industrial customers using the exact same generation facilities.

## DETAILED DISCUSSION

## II. Exception #1
## The PFD Incorrectly Described Consumers' Proposed ROA 10d(4) Charges And Failed To Recommend A Final ROA 10d(4) Charge Of Zero

### A. The PFD

The PFD describes the final 10d(4) charges payable by all customer classes in two specific locations: The first location is at page 4 under the Discussion and Findings. There, the ALJ, incorrectly summarizes the ROA 10d(4) charges proposed by Consumers and Staff as follows:

Consumers Proposal

1. Non ROA C&I Customers: $0.00390/kWh

2. ROA Customers: $0.00586/kWh

3. Residential Customers: $0.00053/kWh. (PFD, p. 4.)

NOTE THAT THIS IS AN INCORRECT DESCRIPTION. As will be more fully described below, the Consumers proposal was a charge of $0.00586/kW for residential customers and $0.00053/kWh for ROA customers. See Exhibit A-2, p. 1-4.

The Staff proposal is correctly described by the ALJ as:

1. C&I Customers with peak demands of more than 15 kW: $0.0009/kWh

2. C&I Customers with annual peak demands of less than 15 kW: $0.0020/kWh

3. Residential Customers: $0.0046/kWh

THE PFD FAILS TO NOTE THAT THE STAFF ALSO RECOMMENDED A ZERO CHARGE FOR ROA CUSTOMERS. See Attachment 1, Energy Michigan Exhibit EM-8: Staff Discovery Response. Also, Testimony of Alan Droz, 2 Tr 140.

The PFD final recommendation uses the Staff proposal as the basis for actual 10d(4) charges to be assessed to customers. PFD, p. 33. The PFD repeats the charges described above at page 4 (Staff Exhibit S-2) and once again fails to note that part of Staff's recommendation was that ROA customers pay zero 10d(4) charges. Exhibit EM-8 and Droz Testimony, 2 Tr 140.

B. Energy Michigan Exception #1: ROA 10d(4) costs should be zero if the Staff's proposal is adopted or less than $0.00053/kWh if Consumers' proposed recovery of 10d(4) costs is adopted.

ROA Surcharges Under the Staff Proposal

Energy Michigan has contested Staff's interpretation of PA 141 § 10d(4) and 10d(2) which effectively exempts retail customers with a load of greater than 15 kWh from any significant 10d(4) cost responsibility. However, if Staff's position is accepted, inherent in that position is the proposal that ROA customers would pay zero 10d(4) costs as a surcharge or assessment. This is because the Staff interpretation of Sections 10d(4) and Section 10d(2) assumes that accrual of 10d(4) costs stops as of the date the PA 141 rate freeze is lifted for the subject class of customers. In the case of ROA customers with a load of 15 kW or more, the PA 141 rate freeze is lifted as of January 1, 2004 and thus no accrual of 10d(4) costs occurs. Also, little cost would remain for a retail customer above 15 kW (MISO costs among others). See PFD, p. 26-27. However, all of these costs are generation related and are not incurred to serve ROA customers and therefore are not applicable to ROA loads.

This interpretation of Staff's position is supported by the testimony of Staff Witness Alan Droz who stated that Section 10d(4) capital costs, "…do not accrue to Retail Open Access (ROA) customers for whom Section 10d(4) costs only accrue through 2003…. Therefore there is no need to separate the generation related capital additions (which would not have applied to ROA customers) from those that are not generation related." Droz Testimony, 2 TR 140. Staff's position that its proposed charges do not apply to ROA customers is confirmed by Staff's response to Energy Michigan's First Discovery Request. In those responses, Staff confirmed that its 10d(4) surcharges would not apply to customers taking ROA service. Exhibit EM-8. See Attachment 1.[1]

ROA Surcharges Under Consumers' Proposal

The Consumers Energy interpretation of Sections 10d(4) and 10d(2) was supported by Energy Michigan. Under that interpretation, costs above depreciation including non-generation costs

[1] Staff's provided two responses to Energy Michigan's First Discovery Request. Attachment 1 contains both discovery responses. The Exhibit EM-8 to this case, which is marked as containing Staff's Response to Energy Michigan First Discovery Request only contained the response to Question 1 and response to Question 2 was omitted.

such as distribution, accrued through December 31, 2005 for all customer classes (rather than just for those classes whose rates remain frozen as under the Staff interpretation).

The Consumers interpretation thus would result in ROA customers paying accrued non-generation costs such as distribution system costs.

The Consumers proposed surcharges were incorrectly described by the ALJ at page 4 of the PFD as $0.00586/kWh. The correct description of the Consumers charges is contained in Exhibit A-2, pages 1 through 4. In that exhibit, Consumers' proposed customer charges are:

1. Residential: $.00586/kWh. Exhibit A-2, p. 1 of 4.
2. All commercial and industrial customers: $.00390 (Exhibit A-2, p. 1 of 4).
3. All ROA customers (R, S, P) are charged $.00053/kWh. (Exhibit A-2, p. 2, 3 and 4 of 4).

However, these charges would be reduced under the final Consumers position in this case because Consumers reduced its requested total recovery from $627.716 million to $568.255 million and agreed to allocate these costs using 2003 sales data instead of projected 2006. Thus, if Consumers' interpretation of Sections 10d(2) and 10d(4) is accepted, all Consumers 10d(4) charges including the proposed ROA charge of $.00053/kWh would be reduced proportionately and adjusted for use of historic 2003 sales levels rather than projected 2006 sales levels.

## Conclusion

The PFD erred in the description of the Consumers proposed surcharges for ROA customers. The PFD also failed to state that the Staff proposed zero for the ROA surcharge.

If the Commission adopts the Consumers interpretation of Sections 10d(4) and 10d(2) the ROA surcharge should be less than $.00053 and if the Staff interpretation is adopted, the ROA surcharge should be zero.

## III. Exception #2:

## 2000 Through 2003 Non-Clean Air Act Generation Costs In Excess Of Depreciation Should Be Recovered From Retail Customers, Not From ROA Customers

### A. The PFD.

In this case Energy Michigan took the position that in addition to other capital costs, costs relating to non-Clean Air Act generation capital investment in excess of depreciation for the years 2000 through 2003 should be recovered from Consumers' retail customers and not exclusively from ROA customers as recommended by Consumers.

The ALJ found that this position had been rejected in Cases U-13720 and U-14098 and ruled against the Energy Michigan request on those grounds. PFD, p. 12.

### B. Energy Michigan Reply.

#### 1. Background.

Under PA 141 two categories of expenditures are required to be subject to the 10d(4) process of recovery: 1) annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time period described in subsection (2); and 2) expenses incurred as a result of changes in taxes, laws or other state or federal governmental actions incurred by electric utilities during the period described in subsection (2). PA 141 § 10d(4).

Pursuant to this authority, Consumers' Application U-14148 proposes to recover the following expenditures for the period 2000-2005:

1) Non-generation capital expenditures in excess of depreciation for the period 2000 through 2005. Exhibit A-1 referencing WP-DSA-2.

2) Clean Air Act generation capital expenditures for the period 2000 through 2005. WP-DSA-10.

3) Other O&M investment for the period 2000 through 2005. Exhibit A-1 referencing WP-DSA-11;

4) MISO costs for the period 2000 through 2005. WP-DSA-12.

5) However: Non-Clean Air Act generation related capital expenditures in excess of depreciation are only recovered for the period 2004 through 2005. WP-DSA-5. Polich Direct, 2 Tr 95 and Exhibit EM-2.

Of all the 10d(4) capital expenditures listed above, only non-Clean Air Act generation costs above depreciation were recovered for just 2004-2005 despite the fact that Section 10d(4) allows these non-Clean Air Act costs to be recovered back to June, 2000. All other generation and non-generation 10d(4) expenses are recovered for the period 2000-2005.

Consumers' lead witness Daniel Alfred testified that in his development of costs for ROA customers he did not include any of the generation or MISO related expenses. Alfred Direct Testimony, 2 Tr 39. Therefore, the surcharge for ROA customers was limited by Mr. Alfred to 2000-2005 non-generation (largely distribution) costs above depreciation.

Position of Staff and Attorney General

Both MPSC Staff and the Attorney General also agreed that ROA customers should not be charged for any generation related costs. See Exhibits EM-8 and EM-9.

2. Consumers' Position Requires ROA Customers To Pay 100% Of 2000-2003 10d(4) Non- Clean Air Act Generation Costs Above Depreciation Generating Costs.

The Consumers position in this case has the effect of requiring ROA customers to pay 100% of Consumers' non-Clean Air Act expenditures for generation equipment above depreciation during the years 2000 though 2003. Polich, 2 Tr 97. Mr. Alfred's workpapers show that Consumers incurred $138.68 million of non-Clean Air Act generation capital costs in excess of depreciation since 2000. Exhibit EM-2. The Company's presentation in this case requests recovery from retail customers of the return of and on those capital costs for years 2004 through 2005 but not for the period 2000 through 2003. Polich Direct, 2 Tr 95.

In fact, Consumers included the year 2000 through 2003 return of and on non-Clean Air Act capital investments for generation in excess of depreciation in the calculation of stranded costs in three cases: Case U-13380, U-13720 and U-14098. Consumers' position in these stranded cost cases had the effect of including approximately $42 million of non-Clean Air Act generation related capital investment in the cost charged to ROA customers but none of these costs is included in the U-14148 calculation of costs to be passed on to current retail customers. Thus under the Consumers proposal in this case, ROA customers pay 100% of Consumers non-Clean Air Act generation expenses above depreciation as a stranded cost and retail customers pay nothing despite the fact that PA 141 § 10d(4) mandates collection of these expenses from retail customers. 2 Tr 95-97.

By charging 100% of the 2000 through 2003 non-Clean Air Act generating costs above depreciation to ROA customers, Consumers has in effect determined that none of these generation related costs should be charged to retail customers. Polich, Id., p. 96-97. Note also that discovery responses confirm that Consumers included these non-Clean Air Act generation costs in its 2000-2003 stranded cost calculations but not in its request in this case. See Exhibit EM-3.

2. Energy Michigan Exception #2: Cases U-13702 and U-14098 do not preclude charging non-Clean Air Act generation costs above depreciation to retail customers.

There are four major arguments against the Staff contention that the Commission has already decided in Cases U-13720 and U-14098 to recover non-Clean Air Act 2000 through 2003 generation costs above depreciation as stranded costs and cannot consider such costs to this proceeding:

a. Energy Michigan witness Polich has recommended that the 2000 through 2003 non-Clean Air Act costs be included in this proceeding for recovery from retail customers.

By including recovery in this proceeding and then taking these authorized revenues into account in a recalculation of the stranded cost case for 2000 through 2003, the Commission can determine the share to be paid by ROA customers as stranded costs. If so, both ROA and retail customers are effectively billed their fair share of the subject generation costs.

b. As both Consumers and Energy Michigan have stated, the provisions of Section 10d(4) are not voluntary, they are mandatory. See Consumers Brief, p. 3.

PA § 10d(4) requires that the return of and on capital expenditures in excess of depreciation incurred from 2000 through 2003 be recovered in a specified way: pursuant to the procedures in Section 10d(4). The word "shall" is used throughout this section and does not allow the Commission or Consumers or the Staff to determine that an alternative method of recovery (e.g. from ROA customers as stranded costs) may be utilized.

The Consumers Initial Brief eloquently argues this point, albeit in opposition to Staff's interpretation of Section 10d(4) rather than in support of Energy Michigan. Consumers noted that when it attempted to recover Clean Air Act costs from ROA customers in Case U-13380 the Commission, at Staff's urging, rejected this proposal using the following language,

> The Staff argues that the appropriate vehicle for Consumers to recover federal Clean Air Act related costs is the mechanism provided in Section 10d(3) [now 10d(4)] pursuant to which recovery may not start until after January 1, 2004. Because that mechanism provides for deferral of recovery of those costs, the Staff submits that they should not be included in Consumers' stranded cost calculations in the present case. Order U-13380, July 10, 2003, p. 3-4.

In its ruling, the Commission accepted the Staff position that 10d(4) costs (Clean Air Act costs Case U-13380) must be recovered in a 10d(4) proceeding and not as stranded costs. The Commission used the following language,

> Recovery of capital expenditures for compliance with the Clean Air Act and other statutory regulatory requirements is expressly provided for in Section 10d(3) [now (4)]. Contrary to Consumers' arguments, the language of that section is <u>mandatory</u> with respect to such costs. The Commission is not persuaded that it may legitimately read into the statutory framework a legislative intention to provide an alternative means of recovering costs that might fit in two categories. Rather, the statute provides that expenses incurred by electric utilities described in Section 10d(3) [now (4)] shall be accrued and deferred for recovery. That section specifically deals with the costs at issue in the Staff's Application for Leave to Appeal, unlike the general provision governing recovery of stranded costs. Even if these costs were to be considered stranded costs, Section 10d(3)(3) [now 10d(4)] provides for special treatment for them which the Commission is bound to follow. July 10, 2002 Order, p. 9 (emphasis supplied).

Consumers goes on to note that this precedent was followed in the U-13880 Final Order and Clean Air Act costs were removed from the stranded cost calculation.

c. The Commission reached exactly the same conclusion urged by Energy Michigan in Case U-13808 when it authorized a method of collecting non-Clean Air Act generation costs above depreciation incurred by Detroit Edison.

In Case U-13808 the Commission adopted an Edison Regulatory Asset Recovery Surcharge ("RARS") which collected, among other things, generation expense above depreciation incurred after the year 2000 (during the PA 141 rate freeze) <u>only from retail customers and not from Electric Choice customers</u>. The

Commission stated, "Initially Detroit Edison suggested that the RARS applied to all customers, bundled and Choice. However, after removal of Choice implementation costs from the RARS, Detroit Edison agreed with the Staff, Energy Michigan and Kroger that the surcharge should be applied only to bundled customers." See p. 63. This was the Commission decision which was adopted to collect the RARS. See U-13808, November 23, 2004, p. 62-65. Thus there is clear Commission precedent that non-Clean Air Act generation costs above depreciation should be billed to retail customers. Moreover, this position is reinforced by the Case U-13715 decision discussed above.

Also see the Commission's Order in Case U-13720 in which the Commission stated that it would be inappropriate to collect securitization charges related to Clean Air Act equipment from ROA customers because these costs were generation related and had not been shown to be stranded. The Commission concluded that such assets should not be recovered from ROA customers. U-13715, October 14, 2004, p. 10.

d. Consumers cannot use two separate theories to collect 10d(4) costs.

Consumers has admitted that it attempted to bill ROA customers for 100% of 2000 through 2003 non-Clean Air Act generation costs above depreciation. Consumers Brief, p. 16. However, the language of PA 141 § 10d(4) mandates that the Commission correct this error by including these 10d(4) costs in the current proceeding and recovering them from retail customers, not ROA customers. To the extent that such 10d(4) costs cannot be recovered or that recovery is still not sufficient to offset all stranded costs for the years 2000 through 2003, recalculation of the Commission's previous stranded cost Orders in Cases U-13380 and U-14098 will ensure that ROA customers pay their fair share of such costs through approved stranded cost mechanisms.

To repeat Consumers' own argument, the Commission cannot use two separate theories to recover Section 10d(4) costs. It must use Section 10d(4) first and then

allow any unrecovered capital costs or expenses related to generation to be recovered from ROA customers as stranded costs in other proceedings.

## IV. Exception #3
## The PFD Erroneously Concludes That Section 10d(4) Costs Are Accrued During Three Different Timeframes for Residential, C&I Below 15 kW and C&I Above 15 kW

A. The PFD.

Section 10d(4) allows a covered utility to recover certain costs "incurred during and before the period described in subsection (2)…". Section 10d(4).

Staff interpreted that language as allowing the covered capital costs and expenses to be accrued and only recovered during the time that the rate freeze was in effect for each customer class, thus resulting in no accrual whatsoever for customers greater than 15 kW (since the PA 141 rate freeze expired for them at the beginning of the Section 10d(2) period on January 1, 2004), accrual for only one year for C&I customers below 15 kW (since their rate freeze expired one year after January 1, 2004) and accrual for two full years for residential customers (since their freeze expired two years after the 10d(4) commencement date of January 1, 2004). PFD, p. 28.

Consumers interpreted Section 10d(4) as establishing only one accrual period in Section 10d(2) which would end December 31, 2005 and thus require all three customer classes (residential, C&I below 15 kW and C&I above 15 kW) to share equal recovery of the subject costs through December 31, 2005. Any difference in surcharges would be attributable to cost allocation based on load which Consumers agreed to revise according to Staff's use of historic 2003 data.

The ALJ accepted Staff's interpretation of PA 141 reasoning that 10d(2) and 10d(4) are in conflict because Section 10d(4) refers to accrual occurring during the period established in Section 10d(2) and yet, according to the ALJ, Section 10d(2) has three periods, not one period. PFD, p. 31. The ALJ therefore stated that she would read the two statutes as a whole and that the

plain meaning which she divined was that "each customer class has a "period" as defined by the expiration of the rate freeze for that class in Section 10d(2)." PFD, p. 31.

The consequence of the ALJ's and the Staff's interpretation is that residential customers would pay a surcharge of $.0046/kW for generation costs incurred during the PA 141 rate freeze and C&I customers above 15 kW pay a surcharge of only $0.0009/kW, i.e. only 1/5 the charge paid by residential customers for using exactly the same generation facilities.

B. Energy Michigan Exception

The PFD erroneously failed to find that Section 10d(4) costs accrue over the same period for all three customer classes.

The PFD reaches an erroneous conclusion regarding the proper accrual date for Section 10d(4) charges for three reasons:

1. The decision is inconsistent with the Commission decision in Case U-13808 on the same issue.

2. The decision incorrectly interprets the relevant statutes.

3. The decision leads to an absurd result: residential customers pay five times the rate for generation facilities than is paid by C&I customers using the same exact facilities.

1. U-13808 Precedent

In Case U-13808 the Commission adopted treatment of the Edison Regulatory Asset Recovery Surcharge ("RARS") which is billed to recover from retail customers generation expense above depreciation incurred after the year 2000 (during the PA 141 rate freeze). The Commission stated, "Initially Detroit Edison suggested that the RARS applied to all customers, bundled and Choice. However, after removal of Choice implementation costs from the RARS Detroit Edison

agreed with the Staff, Energy Michigan and Kroger that the surcharge should be applied only to bundled customers." See p. 63. This was the Commission decision which was adopted to collect the RARS. See U-13808, November 23, 2004, p. 62-65. Thus there is clear Commission precedent that all Section 10d(4) generation costs above depreciation incurred during the PA 141 rate freeze should be billed to all retail customers.

2. Incorrect Interpretation of Section 10d(4) and (2)

Consumers Energy has advanced the best and most correct response to Staff's argument: Staff's entire interpretation of 10d(4) rests upon the assumption that the end date for accrual and deferral is three separate periods described in Section (2): (January 1, 2004 for large customers, January 1, 2005 for small business customers and January 1, 2006 for residential customers). However, the language of PA 141 § 10d(4) for both capital expenditures in excess of depreciation and for expenses incurred as a result of change in taxes permits recovery during the "period" described in subsection (2) not the "periods" described in (2). Energy Michigan will leave it to other parties to argue that the Commission is bound to use the plain meaning of words when interpreting a statute. In this instance it is quite clear that the plain meaning of Section 10d(4) is that accrual and deferral may continue through the entire period described in subsection (2) and that period ends January 1, 2006, not as three separate periods ending on three separate dates.

3. Staff's Position Leads To An Absurd Result

The interpretation argued by Staff would lead to an absurd result. Under Staff's interpretation, each of the three customer classes would have significantly different responsibilities for generation facilities which are designed to serve all groups equally. Staff's interpretation of 10d(4) would result in smaller customers paying a far greater (five times) share of generation expenses than large customers. In the next rate case, these smaller customers would find the unrecovered costs lumped together and these remaining costs would be billed to all customer classes on a cost basis despite the greater contribution made by the smaller customers. This result makes no sense whatsoever and is precluded by the more logical interpretation that Section 10d(2) contains one "period" extending through January 1, 2006.

Impact on ROA Customers

The interest of Energy Michigan in this matter is that the Staff's interpretation effectively prevents retail C&I customers with demand greater than 15 kW from paying any of the more than $42 million of non-Clean Air Act generation costs above depreciation which were billed to ROA customers in Cases U-13720 and U-14098 and which should properly be billed to retail customers as more fully described in Exception # 2 above. If the Consumers Energy interpretation of Sections 10d(4) and (2) is accepted, all three customer classes can be properly billed for the generation expenditures during the PA 141 rate freeze which were incurred to serve these customer classes.

## V. Conclusion and Prayer for Relief

WHEREFORE Energy Michigan respectfully requests that the Commission:

1. Order that if the MPSC Staff position regarding the proper interpretation of Sections 10d(2) and (4) is adopted, charges to ROA customers should be zero and if the Consumers position on implementing those statutes is adopted, the ROA charge should be less than $.00053/kWh;

2. The $42 million of non-Clean Air Act generation costs above depreciation incurred during the PA 141 rate freeze should be properly billed and collected from retail customers in this proceeding rather than exclusively from ROA customers; and

3. The proper period for accruing Section 10d(4) and costs for all customer classes extends through December 31, 2005.

Respectfully submitted,

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

July 1, 2005

By: Eric J. Schneidewind

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# Attachment 1

Energy Michigan, Inc.
Case U-14148
Exceptions

MPSC Staff's Response to Energy Michigan's First Discovery Request
MPSC Case No. U-14148
March 22, 2005

**Question**

1. Under your proposal to collect Applicant's return on and of capital in excess of base depreciation levels (excess capital), if an ROA customer is less than 15 kWh, would they pay for 2004 excess capital including generation related capital additions? If not, why not? If they do pay for 2004 excess costs including generation related capital additions, doesn't this outcome conflict with your statement on page 6, line 6-8, that ROA customers should not pay for generation related capital additions?

**Response**

First, Staff assumes the question was meant to read, "...if an ROA customer is less than 15 kW, would they pay for 2004 excess capital..."

No, under Staff's proposal an ROA customer with less than 15 kW in annual demand would not pay for 2004 excess capital including generation related capital additions since, in the November 23, 2004 order in U-13808 (page 63), the Commission determined that the recovery of Act 141 10d(4) costs should be recovered only from bundled customers.

Respondent: Alan Droz

**Question**

2. Regarding Exhibit S-2 (AYD-2) do any of the listed surcharges apply to customers taking ROA service in any of the three customer categories (greater than 15 kWh, less than 15 kWh, residential)? If the answer is yes, doesn't such an outcome result in the ROA customer paying for generation related costs including Clean Air related and MISO costs?

**Response**

No, none of the listed surcharges on Exhibit S-2 (AYD-2) apply to customers taking ROA service.

Respondent: Alan Droz

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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|---|---|---|
| In the matter of the application of<br>CONSUMERS ENERGY COMPANY<br>for approval of recovery of costs pursuant<br>to MCL 460.10d(4). | )<br>)<br>)<br>)<br>) | Case No. U-14148 |

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 1st day of July, 2005 she served a copy of Energy Michigan, Inc.'s Exceptions to PFD upon the individuals listed on the attached service list by e-mail and regular mail at their last known addresses.

Monica Robinson

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Monica Robinson

Subscribed and sworn to before me
this 1st day of July, 2005.

Eric J. Schneidewind

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

U-14148 SERVICE LIST

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