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ERIC J. SCHNEIDEWIND

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July 15, 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 Replies to 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

EJS/mrr

cc: ALJ
parties

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of recovery of costs pursuant)
to MCL 460.10d(4).)
_____)

Case No. U-14148

ENERGY MICHIGAN, INC. REPLY TO THE
EXCEPTIONS OF CONSUMERS ENERGY COMPANY

I. Introduction and Summary of Replies to Exceptions

A. Introduction

These Replies to the Exceptions filed by Consumers Energy Company ("Consumers" or "Consumers Energy") are filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by Varnum Riddering Schmidt & Howlett LLP. Failure to comment on or reply to any other specific Exceptions should not be taken as agreement with those Exceptions.

B. Summary of Replies to Consumers' Exceptions #1 and #2

Energy Michigan disagrees that the \$67 million of unrecovered Clean Air Act costs could be recovered as stranded costs because this result was prohibited in Case U-13380.

Energy Michigan agrees with the portions of Consumers' Exceptions #1 and #2 which state that the Commission should allow recovery from all retail customers of legitimate 10d(4) expenses for items such as Clean Air Act costs. The recommendation of the MPSC Staff, adopted in the PFD, would effectively exempt large commercial and industrial customers from payment of \$67 million of Clean Air Act expenses. This would result in two illogical and undesirable consequences:

1. Residential customers would pay nine times the 10d(4) charges paid by large C&I customers despite the fact that they use the same generation resources.

2. The decision in this case would contradict the Order of the Commission in Case U-13808 which allowed Detroit Edison to recover projected 2005 10d(4) costs from all residential, small commercial and large commercial and industrial customers by means of a 10d(4) (Regulatory Asset Recovery) surcharge despite the fact that rate caps would expire for both large and small commercial and industrial customers as of January 1, 2005.

The Commission should follow the clear precedent set in Cases U-13880 and U-13808 which literally directed Consumers (in the Case of U-13380) to use the 10d(4) mechanism for recovery of Clean Air Act costs and which clearly allow 2004 10d(4) costs (MISO) to be recovered from all three classes of customers described in 10d(2). This result is fair to all retail and ROA customers and is consistent with the Commission precedent se in U-13808. The recommendation of the PFD meets neither criteria.

II. Detailed Reply to Consumers' Exceptions #1 and #2

A. Consumers' Position.

Consumers Exceptions #1 and #2 protest the MPSC Staff theory, which was adopted by the PFD, that 2004 Section 10d(4) costs attributable to customers greater than 15 kW of demand and 2005 10d(4) costs attributable to all commercial and industrial customers should be excluded from 10d(4) recovery based on the Staff's theory that 10d(4) recovery ends for each class (large and small C&I and residential) when the PA 141 rate freeze ends for the class.

Consumers contends that this interpretation of PA 141 is inconsistent with the language of the statute. More important, Consumers contends that the Commission literally found that Clean Air Act costs must be recovered through the 10d(4) process and in Case U-13808 specifically ordered recovery of 10d(4) costs for Detroit Edison through mechanisms which implicitly recover post-2004 costs from large and small commercial and industrial customers. Consumers Exceptions, p. 2-9.

Finally, and of greatest concern to Energy Michigan, Consumers contends that if Clean Air Act costs are not recoverable through Section 10d(4) that such costs will be recovered in stranded cost filings covering the years 2004 and 2005 in the amount of \$67 million. Consumers Exceptions, p. 10.

B. Energy Michigan Reply.

The decisions of the Michigan Public Service Commission have clearly stated that Clean Air Act related costs incurred during the PA 141 rate freeze may not be recovered as stranded costs and must be recovered pursuant to PA 141 § 10d(4) (formerly 10d(3)). U-13380, July 10, 2002, p. 9.

Moreover, in Case U-13715 the Commission denied Consumers' request to utilize securitization as an alternate means of collecting Clean Air Act costs. U-13715, October 14, 2004.

However, in Case U-13808 the Commission specifically permitted Detroit Edison to recover projected calendar year 2005 Section 10d(4) costs (MISO for 2004 through end of 2005) from all three classes of customers mentioned on PA 141 § 10d(2) including both large and small commercial and industrial customers. U-13808, November 23, 2004, p. 67.

The language of PA 141 § 10d(4) and (2) is consistent with this result. If Section 10d(4) is read as allowing recovery of all 10d(4) costs from all classes of customers through the entire period described in Section 10d(2) which ends December 31, 2005 this reading is consistent with the actions of the Commission in Case U-13808 where projected 2005 MISO costs were found to be collectible through a Regulatory Asset Recovery surcharge charged to and collected from all three classes of customers mentioned in 10d(2). U-13808, November 23, 2004, p. 67. In fact, Staff recommended this result. See Staff Replies to Exceptions in Case U-13808, Attachment 1, p. 1 of 8 where Staff proposed that 2005 MISO charges be collected from all three classes of retail customers described in Sec. 10d(2).

Thus, the Commission has interpreted Sec. 10d(4) as mandating collection of costs incurred through the end of 2005.

Also, the Staff interpretation of Sections 10d(4) and (2) would achieve an inequitable solution: residential customers would pay a 10d(4) charge of 4.6 mills/kWh which is literally five times greater than the .9 mills/kWh proposed by Staff for commercial and industrial customers despite the fact that all of these customers use the Clean Air Act assets equally.

For these reasons the Commission should reject the finding of the PFD denying recovery of legitimate 2004 and 2005 10d(4) Clean Air Act costs from all three customer classes described in Sec, 10d(2).

III. Conclusion and Prayer For Relief

WHEREFORE, Energy Michigan respectfully requests that the Commission adopt the proposed findings recommended in II. above.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETTLLP
Attorneys for Energy Michigan, Inc.

July 15, 2005

By: _____
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PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 15th day of July, 2005 she served a copy of Energy Michigan, Inc.'s Replies to Exceptions upon the 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 15th day of July, 2005.

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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