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March 31, 2006

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

Re: Case No. U-14526

Dear Ms. Kunkle:

Attached for paperless electronic filing is Energy Michigan, Inc. Motion To Strike The Entire Supplemental Testimony, Exhibit And Workpapers Of Charles F. Belknap, Jr. And Portions Of The Rebuttal Testimony Of Charles F. Belknap, Jr and Notice of Hearing. Also attached is the original Proof of Service indicating service on counsel.

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 the determination of net stranded costs )  
the year 2004. )  
\_\_\_\_\_ )

Case No. U-14526

ENERGY MICHIGAN, INC. MOTION TO STRIKE THE ENTIRE SUPPLEMENTAL  
TESTIMONY, EXHIBIT AND WORKPAPERS OF CHARLES F. BELKNAP, JR. AND  
PORTIONS OF THE REBUTTAL TESTIMONY OF CHARLES F. BELKNAP, JR.

Energy Michigan, Inc. ("Energy Michigan") by their counsel Varnum Riddering Schmidt & Howlett LLP pursuant to R460.17325 and R460.17335, files this Motion to Strike the Supplemental Testimony, Exhibit A-8 and Workpapers WP-71, 72 and 73 of Charles F. Belknap, Jr. filed on March 7, 2006 and lines 7-11 of page 5 of Mr. Belknap's March 20, 2006 Rebuttal Testimony and in support states as follows:

I. Background

On January 18, 2006 a prehearing conference in the above referenced matter was conducted and a schedule for the conduct of this case was established by presiding Administrative Law Judge Sharon L. Feldman ("ALJ"). The schedule provided that testimony of Staff and Intervenors be filed March 6, 2006 and Rebuttal Testimony be filed March 20, 2006.

On March 2, 2006, MPSC Staff filed a letter with the ALJ and parties stating that, "The Michigan Public Service Commission Staff will not be filing testimony in the above entitled case." Letter from Attorney Kristen M. Smith to parties and ALJ. See Attachment A.

The Consumers Application for determination of stranded costs was based upon the traditional method of calculating stranded costs authorized in Case U-12639 which determines Production Fixed Cost revenue requirement and calculates the amount of Production Fixed Cost revenue available to meet that revenue requirement. A deficiency is a stranded cost to be paid by Retail Open Access ("ROA") customers and a surplus would be a stranded benefit presumably to be refunded to ROA customers.

On March 6, 2006 Energy Michigan and the Attorney General filed Direct Testimony. The Direct Testimony of Energy Michigan analyzes the calculations of stranded costs contained in the Consumers Energy Application which were based on the U-12639 method of calculating stranded costs. The Direct Testimony of Energy Michigan Witness Polich asserted that the Consumers direct case filing contained fundamental errors which if revised would produce stranded benefits rather than stranded costs. See Polich Direct Testimony, p. 4-11.

## II. Consumers March 7, 2006 Supplemental Testimony

Three pages of Supplemental Testimony, one two-page Exhibit A-8 and Workpapers WP-71, 72 and 73 were filed by Witness Charles F. Belknap, Jr. on March 7, 2006. Mr. Belknap stated that the purpose of this Supplemental Testimony was, "...to provide a calculation of the Company's 2004 stranded cost that is consistent with the Staff's proposal in Case U-14274. During its audit of our filing in this U-14526 proceeding, the Staff requested that I perform this calculation." Belknap Supplemental Testimony, p. 1, lines 7-10. Thereafter, Mr. Belknap's Supplemental Testimony describes the calculation of stranded costs for the 2004 year using the new method of determining stranded costs proposed by MPSC Staff in Case U-14274. At no place does Mr. Belknap support Staff's new U-14274 method of calculating stranded costs nor does he claim that his Supplemental Testimony is the position of Consumers Energy.

In response to discovery question 14526 EM/CE 11 asking if his Supplemental Testimony meant that the Consumers position on stranded costs had changed from the position contained in his Direct Testimony filed on November 21, 2005, Mr. Belknap merely refers to his statement on page 1, lines 7-10 to the effect that the Supplemental Testimony was filed at the request of the MPSC Staff. See Attachment B.

Thus, the Belknap Supplemental Testimony describes a method of calculating stranded costs that was unsupported, is not the position of Consumers Energy nor did the Supplemental Testimony modify the position stated in the Direct Testimony of Consumers Energy.

### III. Consumers Rebuttal

On March 20, 2006, Consumers Witness Charles Belknap filed Rebuttal Testimony. As part of that Rebuttal, Mr. Belknap urged adoption of the new U-14274 Staff method of calculating stranded costs that was described but not supported in Mr. Belknap's Supplemental Testimony. See Belknap Rebuttal, p. 5, lines 7-11. "If the Commission wishes to consider a modification to that [U-12639 traditional] method, the Staff method that is reflected in my Supplemental Testimony filed in this case accomplishes the same goal that is apparently sought by Mr. Polich (that of reflecting the fact that there was a (partially) functioning PSCR process in effect in 2004), but does so in a manner that preserves the basic structure of the Commission approved [U-12639] method."

### IV. Argument

#### A. Energy Michigan Has Been Prejudiced By the Consumers Energy Supplemental Testimony and Portions of the Consumers Rebuttal Testimony

The Consumers Energy Supplemental Testimony was filed one day after the Direct Case of Energy Michigan and the Attorney General. For this reason, Consumers Energy had the opportunity to review the Direct Case presented by Energy Michigan and the critique of the Consumers stranded cost case that was contained in the Energy Michigan filing. The Supplemental Testimony, in effect, contains a calculation of stranded costs based on a brand new theory of stranded cost recovery which was not supported in Mr. Belknap's Direct or Supplemental Testimony and was not addressed by the Energy Michigan Testimony because it was not a part of Consumers' Direct Case. For this reason, Energy Michigan was deprived of its due process right to respond to the Direct Case of Consumers Energy.

If Staff had placed its U-14274 method of calculating stranded cost and supported that method on the record as Direct Testimony, Energy Michigan could have filed Rebuttal.

Because Mr. Belknap waited until Rebuttal to place any support for the new Staff method on the record, Energy Michigan was deprived of any opportunity whatsoever to rebut the limited support of the new Staff method (as opposed to the mechanical calculation of stranded costs under that method) contained in Mr. Belknap's Rebuttal Testimony.

Moreover, Consumers Energy has in effect presented a brand new theory of stranded cost recovery on this record which could have been presented by MPSC Staff but was not because the Staff waived its opportunity to present Direct Testimony. See Attachment A. Page 5, lines 7-11 of the Belknap Rebuttal is the only testimony of record supporting the method of calculating stranded costs described in the Belknap Supplemental Testimony.

Because Consumers failed to introduce or support the Staff U-14274 methodology in its Direct Case and because Staff waived its opportunity to present a Direct Case, the Staff U-14274 method of calculating stranded costs cannot be placed on this record as Supplemental Direct Testimony and should not be supported in Rebuttal since the Belknap Supplemental Testimony is a new theory of cost recovery that could have been presented by Consumers or Staff as Direct Testimony.

B. The Belknap Supplemental Direct Testimony, Exhibit A-8 and Workpapers WP 71,72 and 73 Should Be Stricken Because They Are Not Relevant To This Case.

The Michigan Rules of Evidence ("MRE") are generally applicable to MPSC proceedings. MPSC Rule 460.17103.

The Belknap Supplemental Testimony is irrelevant to this case. MRE 401 provides that "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401. In order to be relevant, evidence would have to be able to be utilized by the trier of fact. If the evidence is not able to be utilized because it is unsupported, the offered evidence becomes irrelevant.

The MRE provide that expert testimony may be utilized if it will assist the trier of fact understand evidence or to determine a fact in issue. MRE 702. Applicable case law has

established that expert opinion is substantial if offered by a witness who has a rational basis for his views. Great Lakes case, Steel v MPSC, 130 Mich App 470; 344 NW 2d 321, p. 325. A decision of the Commission cannot be based on an inadequate record where there is no record or explanation for the decision reached. *Id.*, at 330.. It has also been found that a decision is unreasonable when unsupported by evidence. Sprint Communications Co v MPSC, 324 Mich App 22; 592 NW 2d 825, 831.

The Supplemental Testimony offered by Mr. Belknap is merely a calculation of stranded costs that would occur under a method of stranded cost calculation which is unsupported on this record as to theory as opposed to mechanical calculation either in the Consumers Supplemental or Direct Testimony. In fact, Mr. Belknap's response on discovery can fairly be read to state that the Consumers position initially stated in their Application in this matter and in his Direct Testimony has not changed as a result of the submission of the Supplemental Testimony. See Attachment B. For these reasons, the entire Supplemental Testimony of Mr. Belknap is a mechanical calculation of stranded costs under a theory which is unsupported in his Supplemental Testimony and could not be adopted by the Commission for that reason. MRE 702. Therefore the calculation is clearly irrelevant to this proceeding since it could not serve as a basis for a Commission decision in this matter. MRE 401.

C. Portions of the Rebuttal Testimony of Charles Belknap Are Not Proper Rebuttal.

In his Rebuttal Testimony, Mr. Belknap, among other things, states, "If the Commission wishes to consider a modification to that [the "traditional" U-12639] method [of calculating stranded costs], the Staff method that is reflected in my Supplemental Testimony filed in this case accomplishes the same goal that is apparently sought by Mr. Polich [that of reflecting the fact that there was a (partially) functioning PSCR process in effect in 2004] but does so in a manner that preserves the basic structure of the Commission approved method." Belknap Rebuttal, p. 5, line 7-11.

In this passage, Mr. Belknap attempts to provide expert opinion supporting his own Supplemental Direct Testimony which illustrates the new method of calculating stranded costs described by the MPSC Staff in Case U-12474.

Mr. Belknap's statement is not proper Rebuttal. As has been stated by the MPSC Staff, "The purpose of Rebuttal Testimony is to refute relevant and material testimony contained in the direct case of a party opponent. Nolte v Port Huron Bd of Ed, 152 Mich App 637; 394 NW 2d 54 (1986). The only "type of contradictory evidence that is admissible is that which directly tends to disprove the exact testimony given by a witness." People v McGillen, 392 Mich 251, 268; 220 NW 2d 677 (1974). As the Court of Appeals noted in Barrows v Grand Rapids Real Estate Board, rebuttal evidence is that given by one party to contradict, repel or disprove evidence by the other party. Rebuttal testimony is properly stricken where it fails to provide new factual material and is unresponsive to the direct testimony. In re Detroit Edison MPSC Case U-7660, p. 12, 15-16 (July 16, 1985 Order)." This quotation is taken from a series of Staff Motions to Strike Testimony filed in Case U-14547 and is directly applicable to the referenced Rebuttal of Mr. Belknap.

Staff's view of matter properly stricken is particularly applicable to this case since the clear purpose of Mr. Belknap's referenced Rebuttal Testimony is to provide expert testimony in support of his own Supplemental Testimony filed on March 7, 2006 which was unsupported by any other direct testimony or rebuttal.

In effect, Consumers has placed an unsupported method of stranded cost calculation on the record in violation of the schedule and then filed a very limited form of support for its own testimony as Rebuttal in a timeframe when that support could not be subjected to any rebuttal at all. Another effect of this entire maneuver is to place a method and a specific calculation of stranded cost on the record without the benefit of any direct testimony from the Staff which is the author and potentially the only supporter of this methodology.

#### V. Relief Requested

WHEREFORE, Energy Michigan respectfully requests

A. That the entire three pages of Supplemental Testimony, attached two page Exhibit A-8, and workpapers WP-71, 72 and 73 filed by Charles F. Belknap, Jr. on March 7, 2006 be stricken as irrelevant to this case; and that

B. The Rebuttal Testimony of Mr. Charles F. Belknap, Jr. at page 5 line 7-11 which supports the method of calculating stranded cost described in pages one through three and Exhibit A-8 of Mr. Belknap's Supplemental Testimony be stricken because it is not proper rebuttal.

Respectfully submitted,

Varnum, Riddering, Schmidt & Howlett LLP  
Attorneys for Energy Michigan, Inc.

March 31, 2006

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



STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL

Attachment A



MIKE COX  
ATTORNEY GENERAL

6545 MERCANTILE, STE. 15  
LANSING, MICHIGAN 48911

March 2, 2006

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

Dear Ms. Kunkle:

*Re: Consumers Energy Company  
MPSC Case No. U-14526*

The Michigan Public Service Commission Staff will not be filing testimony in the above-entitled case.

Very truly yours,

A handwritten signature in cursive script that reads "Kristin M. Smith".

Kristin M. Smith (P46323)  
Assistant Attorney General  
Public Service Division  
6545 Mercantile Way, Suite 15  
Lansing, MI 48911  
Telephone: (517) 241-6680

KMS/pw

c: Parties of Record  
Sharon L. Feldman  
Larry Bak

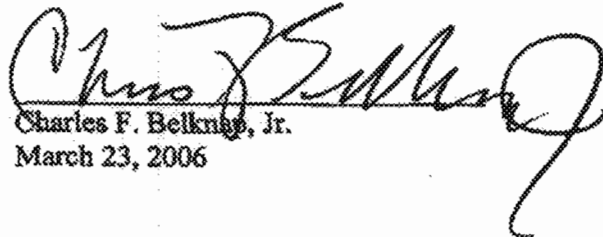
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QUESTION

11. Has Consumers Energy changed its position from the position stated in your Direct Testimony dated November 21, 2005 regarding the amount of 2004 stranded costs that it requests to collect?

RESPONSE

11. Please see my Supplemental Testimony at page 1, lines 7 through 10.

  
Charles F. Belknap, Jr.  
March 23, 2006

Rates and Business Support Department

52600011

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
CONSUMERS ENERGY COMPANY )  
for the determination of net stranded costs )  
the year 2004. )  
\_\_\_\_\_ )

Case No. U-14526

NOTICE OF HEARING

TO: Parties

PLEASE TAKE NOTICE that the attached Energy Michigan, Inc. Motion To Strike The Supplemental Testimony, Exhibit A-8 And Workpapers WP-71, 72 And 73 Of Charles F. Belknap, Jr. And Page 5, Lines 7-11 Of The Rebuttal Of Charles F. Belknap, Jr. will be brought on for hearing in the posted hearing room at the offices of the Michigan Public Service Commission, 6545 Mercantile Way, Lansing, MI on April 11, 2006 at 10:30 AM, or as soon thereafter as counsel may be heard.

Dated: March 31, 2006

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 2004 and approval of net )  
stranded cost recovery charges. )  
\_\_\_\_\_ )

Case No. U-14526

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 31st day of March 2006 she served a copy of Energy Michigan, Inc. Motion To Strike The Entire Supplemental Testimony, Exhibit And Workpapers Of Charles F. Belknap, Jr. And Portions Of The Rebuttal Testimony Of Charles F. Belknap, Jr. and Notice of Hearing upon the individuals listed on the attached service list by e-mail at their last known addresses.

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

Subscribed and sworn to before me  
This 31st day of March 2006.

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

U-14526 SERVICE LIST

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