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July 23, 2009

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

Re: Case No. U-15645

Dear Ms. Kunkle:

Attached for paperless electronic filing is Energy Michigan's Reply Brief. Also attached is the original Proof of Service indicating service on counsel.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM

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 authority to increase its rates for )  
the generation and distribution of )  
electricity and for other relief. )  
\_\_\_\_\_ )

Case No. U-15645

REPLY BRIEF OF ENERGY MICHIGAN, INC.

July 23, 2009  
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Case No. U-15645

REPLY BRIEF OF ENERGY MICHIGAN, INC.

I. Introduction and Summary of Position

A. Introduction.

This Reply Brief is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") in response to positions in the Initial Briefs of Consumers Energy Company ("Consumers" or "Consumers Energy"), Michigan Public Service Commission Staff ("Staff" or "MPSC Staff"), the Attorney General of Michigan ("Attorney General" or "AG"), Kroger, Inc. ("Kroger") and Constellation NewEnergy, Inc. ("CNE" or "Constellation") by Varnum pursuant to the schedule adopted by Administrative Law Judge Sharon Feldman ("ALJ"). Failure to reply to any issue or position presented by a party may not be construed as agreement with such issues or positions.

B. Summary of Position.

1. Cost of Service Issues.
2. New Skewing Charges for ROA Customers Proposed By Consumers Energy.
3. Sales Tracking / Revenue Decoupling.
4. Extension of Residential Cancellation Periods to 14 Days.

A summary of the Energy Michigan position on these issues was included in the Energy Michigan Initial Brief in this matter which was filed July 9, 2009. Energy Michigan Brief, p. 1-3.

5. Reply to CNE: Energy Michigan Agrees That Restrictions On ROA Return To Service Should Be Eliminated.

The Commission should expand its decision in U-15245 to eliminate Return to Service ("RTS") restrictions on residential customers by eliminating similar restrictions on commercial and industrial ("C&I") customers. Any significant risk to Consumers from termination of C&I RTS provisions has been eliminated by 1) the fact that ROA service cannot exceed 10% of Consumers' retail load; 2) customers cannot "game" the system by shifting on a seasonal basis due to the Consumers seasonal rates which would penalize such activity; and 3) implementation of the ECIM mechanism which offsets the financial impact of ROA load shifts for Consumers. Elimination of RTS restrictions (except for the 45 day notice requirement which is discussed below) would also encourage the Choice program pursuant to MCL 460.10(2)(a) and (b).

6. Reply to CNE: Energy Michigan Agrees That Procedures For Termination Of ROA Service Should Be Specified.

The Commission should formally adopt procedures proposed by CNE which govern termination of ROA service at the end of a contract term.

CNE proposed a process whereby AES customers would be given 60 days notice of termination of service at the end of the AES contract term. This process would give the customer two weeks to find a new AES or notify Consumers that it wishes to return to utility service. Consumers would then have the 45 day customer notice contained in existing Consumers ROA tariff Section E2.5.

7. Reply to CNE: Energy Michigan Agrees That Customer Data Must Be Provided To AESs On A Timely Basis.

The Commission should require Consumers to adopt specific procedures and requirements which would ensure that AESs receive customer billing history and interval data on a timely basis in an electronic format. This data is not currently provided in a readily usable or timely manner by Consumers.

II. Reply to Consumers Energy

A. New Skewing Charges for ROA Customers Proposed By Consumers Energy Should Be Rejected.

1. The Consumers Proposal.

Consumers Energy proposed that so-called residential interclass subsidies (skewing) charges be calculated for the distribution portion of service and then be allocated to all full service and ROA customers. These new "skewing" charges would be limited to the distribution component of service. Consumers claims that it is unfair to assess these distribution charges only to full service customers and that failure to pay such charges gives ROA service an unfair competitive advantage compared to full bundled service. Consumers Brief, p. 107-08. Consumers also claims that the Commission has determined that ROA and full service distribution rates should be at parity. Id.

2. Position of MPSC Staff and CNE.

The MPSC Staff opposed the Consumers proposal citing several MPSC cases in which the Commission has specifically determined that ROA distribution rates should not include interclass subsidies but should remain at the cost to serve ROA customers. Staff

Brief, p. 96 citing two Commission Orders.<sup>1</sup> Staff also refuted the argument of Consumers Witness Stubleski that the Commission had expressly stated in its previous Orders that its intention was to bring ROA distribution rates into parity with full service distribution rates and the Company's proposal does this. Staff pointed out that "this argument should be rejected because to make such an assessment would cause the Commission to move away from its goal of having rates be based on the cost to serve customers since the distribution rates of ROA customers are already cost based." Id., and <sup>2</sup>

Finally, Staff opposed the Consumers ROA "skewing" charge because assessment of interclass subsidies to Choice customers would move these customers away from the goal of having rates be based on the cost to service customers since distribution rates of ROA customers are already cost based. Staff committed to move full service customers toward cost of service as a reasonable alternative to the Consumers proposal which would move ROA customers away from cost of service. Staff Brief, p. 96.

CNE cited many of the reasons listed by Staff for opposing ROA "skewing charges" including 1) the fact that the Consumers proposal would move ROA rates away from cost of service thus violating Section 11(1) of Act 286; and 2) that Consumers had provided no analysis of the impact of their proposal on ROA service and therefore the proposal was likely inconsistent with Sections 10(b)(1) and (2) of PA 286 which require the Commission to encourage, not discourage, competitive service. Finally, CNE pointed out that Consumers had given no reason to overturn four Commission Orders rejecting similar proposals. CNE Brief, p. 5-6.

The arguments listed above on behalf of MPSC Staff and CNE parallel those presented by Energy Michigan in its Initial Brief. See Energy Michigan Brief, p. 8-10.

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<sup>1</sup> Order U-14399, December 22, 2005, p. 40; and Order U-15245, June 10, 2008, p. 72-74.

<sup>2</sup> Order U-15245, June 10, 2008, p. 72; and Energy Michigan Ronald Carrier, 7 Tr 281-84; Staff Brief, p. 96.

3. Reply to Consumers: The Consumers Proposal To Impose Distribution Skewing Charges On ROA Customers Should Be Rejected.

Staff, CNE and Energy Michigan all agree that a long line of Commission decisions rejecting imposition of skewing charges on ROA customers should be upheld. They also agree that Consumers has presented absolutely no new reason for overturning this precedent. Moreover, the Consumers proposal is inconsistent with PA 286 in two material ways: First, the Consumers proposal would clearly move ROA rates away from cost of service at the same time that 2008 PA 286 § 11(1) mandates that rates be moved to cost of service. Second, the Commission has taken important steps to move "full service" rates toward cost of service in the prior Consumers Case U-15245 and is likely to do so in this case. This will eliminate any competitive advantage enjoyed by ROA. Even so, Consumers' claim that the status quo gives ROA service a competitive advantage is refuted by the current low levels of Choice service cited in the Energy Michigan Brief and the fact that the competitive imbalance complained of by Consumers has been and is being corrected by the Commission in prior cases as well as in this proceeding. Energy Michigan Brief, p. 9.

Finally, imposition of skewing charges on ROA customers would discourage not encourage electric competition in violation of PA 286 § 10(2)(a) and (b). Against all of these arguments, Consumers has presented no compelling or even substantial reason to change Commission policy. The Consumers proposal to impose new skewing charges on ROA customers should be rejected.

B. Consumers' Proposed Rates Ignore The PA 286 § 11(1) Mandate To Phase In Cost Of Service Rates Over Five Years.

1. The Consumers Position.



The Consumers Brief asks that the Commission find that its Cost Of Service Study and its proposed rates comply with PA 286 § 11(1). Consumers Brief, p. 94. In support of this request, Consumers explains that it has implemented the 50-25-25 allocation method but has used the MH4 CP method and disagrees with MPSC Staff proposal to use 50-25-25 allocation with a 12 CP. Id.

Consumers explains that in Case U-15245 the Commission determined that residential customers received a \$73 million subsidy when cost allocation was determined using the 25-50-25 method with MH4 CP. Consumers asks the Commission to agree that the remaining subsidy to residential customers is the same \$73 million determined in U-15245 and that remaining subsidy may be phased out at the rate of \$15 million per year. Consumers Brief, p. 11.

Consumers finally explains that the real difference between the Staff position and the Consumers position is that Staff would use the 50-25-25 allocation method with a 12 CP which shifts an additional \$20 million to residential customers above U-15245 levels and Consumers would use the MH4 CP which shifts an additional \$40 million to residential customers above the levels determined in U-15245. Consumers Brief, p. 102-103; Staff Brief, p. 73.

Thus, both Staff and Consumers appear to agree that Case U-15245 using the 25-50-25 method with MH4 CP allocation found \$73 million of so-called rate skewing. Both parties also agree that the Testimony in this case establishes that use of the 50-25-25 with 12 CP advocated by Staff would shift an additional \$20 million and the 25-50-25 method advocated by Consumers would shift an additional \$40 million. Staff Brief, p. 73; Consumers Brief, p. 102-03.

Energy Michigan takes no position on the merits of these arguments. Some business customers would be benefited by use of the MH4 CP and some would benefit from use of the 12 CP. It all depends on the load factor of the customer, not the rate class.

However, it is undeniable that Consumers has taken the position that neither the additional \$20 million of rate skewing resulting from use of the 50-25-25 with 12 CP nor the \$40 million of additional skewing created by use of the 50-25-25 with MH4 CP should be subject to any phase in whatsoever. See Energy Michigan Exhibit EM-2 and Testimony of Ron Carrier, 7 Tr 288.

2. Position of Intervenors.

The Attorney General takes the position that the Consumers rates do not comply with the PA 286 § 11(1) requirement to phase in cost of service changes including the 50-25-25 allocation over a period of five years. Attorney General Brief, p. 3-7. The Staff position is described above.

3. Energy Michigan Reply to Consumers.

The Testimony of Mr. Carrier was explained and supported in the Energy Michigan Brief which demonstrates that PA 286 § 11(1) in clear and unambiguous terms requires a phase in of cost of service rates over a period of five years and that phase in mandate includes switching to the 50-25-25 allocation method as opposed to the 25-50-25 method in effect prior to enactment of PA 286. Energy Michigan Brief, p. 5-7. Also, see Attorney General Brief, p. 3-7.

The amount to be phased in is the \$73 million determined by the Commission in Case U-15245 plus either the additional \$20 million of "skewing" caused by implementation of the 50-25-25 method with the 12 CP recommended by Staff or the additional \$40 million with the MH4 CP recommended by Consumers and other parties.

The two reasons advanced by Consumers in support of its position that phase in of the impact of the 50-25-25 allocation is not required are easily refuted. First, Consumers claims that the \$73 million of "subsidies" established in U-15245 may not be recalculated in light of the new 50-25-25 allocation method used in this case. Consumers argues that

only this \$73 million is subject to a five year phase in. This claim is wrong on its face. Case U-15245 was decided before the mandates of PA 286 § 11(1) became effective (January 1, 2009). Moreover, PA 286 § 11(1) specifically mentions implementation of the 50-25-25 allocation method as a new cost of service mandate that must be phased in over five years. It would be impossible to implement the 50-25-25 allocation unless the dollar value of this new mandate were recalculated in view of current legal requirements and then phased in over five years. In effect, Consumers is claiming that the lawful mandate for a five year phase in should be calculated using the old cost of service allocation methods (25-50-25) that are unlawful under PA 286.

The second Consumers argument is that the Staff position requiring recalculation of the total subsidy in view of the new law "...will not permit the Commission to have assurance that the residential subsidy will be eliminated within five years as required by PA 286." Consumers Brief, p. 102. This claim is also false because the Staff has proposed a five year transition method which would be equally applicable if Consumers' proposed MH4 CP were used albeit with different values for the surcharges or credits.

The clear mandate of PA 286 is that the shift to cost of service, as changed by the Section 11(1) mandate to implement the 50-25-25 cost allocation method, must be accomplished over five years. The Consumers proposal does not conform with this legislative mandate.

C. The Consumers Sales Adjustment Mechanism Should Be Rejected.

1. Consumers Position.

Consumers proposed a Revenue Decoupling Mechanism ("RDM") that would apply to all residential, secondary and primary customers and would adjust customer rates by class based upon a comparison of average consumption during a base case year with the actual consumption in each year. The change in percent would be used to adjust non-PSCR rates for each class as approved by the Commission in the most recent general rate case. A reduction (in percent) in sales would produce an equal increase (in percent) in rates.

Consumers would collect this amount through an equal per kWh surcharge applied to all customers in that class over the subsequent 12 months following Commission approval. Consumers Brief, p. 85.

The Consumers proposal does not differentiate between changes in sales volume due to Energy Optimization , economic conditions or unpredictable changes.

2. MPSC Staff Proposal.

MPSC Witness Robert Ozar proposed a sales adjustment mechanism which would adjust Consumers rates based on estimated and actual changes in sales volumes caused by implementation of Energy Optimization programs. The Staff plan adjusts rates according to class and provides adjustments even if the overall volume of Consumers Energy power sales exceeds projected levels. Finally, the Staff plan, unlike the Consumers plan, clearly states that separate adjustment mechanisms would be developed for ROA service and full service customers given the fact that ROA customers did not use generation service. Staff Brief, p. 57-59. On Rebuttal, Consumers Witness Stephen Stubleski agreed that separate adjustment mechanisms for ROA and full service customers should be provided. 7 Tr 729-30.

3. Position of Kroger and the Attorney General.

Kroger and the Attorney General opposed implementation of a sales adjustment mechanism or RDM. Kroger Brief, p. 6-7; Attorney General Brief, p. 27-29.

4. Energy Michigan Reply to Consumers and MPSC Staff.

In its Initial Brief, Energy Michigan urged the Commission to ensure that any sales adjustment mechanism provide separate adjustments for ROA service and full service customers. Based upon the Consumers Energy Rebuttal referenced above, Energy Michigan pointed out that the only parties proposing sales adjustment mechanisms

(Consumers and MPSC Staff) both agreed that their proposed sales adjustment mechanism should not charge ROA customers for generation related costs. Energy Michigan Brief, p. 11.

The Commission should exercise a great deal of caution regarding implementation of sales tracker mechanisms. In addition to the need to differentiate between ROA and full service customers, other difficulties are apparent with the approaches recommended by both Staff and Consumers.

Both Staff and Consumers recommend that rates be adjusted by class to account for reduced (or increased) sales. E.g. if class sales are reduced, class rates will increase. This adjustment mechanism works contrary to the rate case process in which sales reductions are taken into account by the cost of service study rate base allocation methods. If sales drop for one customer class, the proportion of rate base responsibility for that class is correspondingly reduced and rates fall. Given the provisions of PA 286 which mandate that the Commission respond quickly to utility rate case requests, changes between classes for cost responsibility or reaction to overall reductions in sales will happen in a very rapid timeframe. The need for additional sales volume adjustment mechanisms is not at all apparent in view of this fact. In any case, sales adjustments should use a single factor for all classes rather than adjusting by class. This approach would not conflict with normal operation of the allocation of costs of service.

Moreover, the adjustments proposed by Staff may not be necessary in many cases. It is quite possible that Consumers Energy sales projections contained in a rate case request could be exceeded due to changes in economic conditions. In such a case, the Staff adjustment mechanism would still grant Consumers rate increases for implementation of Energy Optimization even if the utility effectively over recovered their costs due to better than projected sales figures. This potential problem could be corrected by a provision which would limit or eliminate sales tracker upward adjustments if the utility's overall sales exceeded the projections used for ratemaking purposes.

## Conclusion

Any sales adjustment mechanism approved by the Commission should differentiate between ROA and full service customers. Also, adjustment should be on a total sales basis sales by class. Finally, a circuit breaker mechanism should prevent any adjustment if total utility sales exceed projected levels for any reason.

D. The Timeframe for Residential Customers To Rescind Their ROA Enrollment Should Be Limited To Five Days.

1. MPSC and Consumers Position.

The Consumers initial filing proposed that the timeframe for residential customers to rescind their ROA enrollment be expanded from the current three day time window to a 30 day time period. Consumers argued that the expanded timeframe was needed to allow residential customers to receive notification of their pending enrollment from Consumers and have sufficient time to contemplate their decision and take action to rescind the enrollment if they so chose. MPSC Staff Witness Sheila Cornfield proposed a 14 day rescission period which she stated would be consistent with the Commission's Order in Case U-15244. 10 Tr 1246. Staff Brief, p. 98-99. Consumers accepted the Staff proposal as a compromise stating that the change (to 14 days) would protect customers and alleviate Energy Michigan's concerns about MISO scheduling issues or a need for a risk premium for residential customers that exercised their right to cancel. Consumers Brief, p. 98.

MPSC Staff argued that the expansion of the rescission period from three days to five days which was urged by Energy Michigan Witness Carrier was an "insufficient amount of time to ensure that the notification of enrollment is processed by the Company, mailed to and received by the customer and provide the customer an opportunity if necessary to respond to the Company". Staff Brief, p. 99. Staff also argued that the rescission period of 14 days would address Energy Michigan concerns as summarized by Consumers and

that the decision would be consistent with the Commission Order in Case U-15244. Id., p. 99.

2. Energy Michigan Reply to MPSC Staff and Consumers.

The Testimony of Energy Michigan Witness Ronald Carrier effectively rebuts contentions by MPSC Staff and Consumers Energy that a 14 day rescission period is both necessary to allow residential customers to evaluate their power contracts and to determine that the AES contract was signed in error. The more likely outcome would be that the customer would lock in a price from one AES and then use the expanded timeframe to shop for a better price which is not appropriate to characterize as a "customer protection" measure. Moreover, this practice is unfair to the AES that has incurred an obligation to purchase power based upon the commitment of a customer to purchase that power as well as to other customers of the AES that may be affected by that purchase. 7 Tr 285-87. It is telling that Mr. Carrier is the only witness who has direct experience in the retail competitive electric markets. 7 Tr 280. Mr. Carrier's experience alone should entitle him to far greater deference on this issue than MPSC Staff or Consumers Energy witnesses on this competitive issue. No party to this case has demonstrated that a five day rescission period is not adequate for customers to discover errors and then cancel contracts on this basis. For these reasons, the MPSC Staff and Consumers proposal to expand the residential rescission period to 14 days should be rejected. The Energy Michigan proposal to expand the period to five days should be adopted. Energy Michigan Brief, p. 12.

III. Reply to Constellation NewEnergy.

A. 2008 PA 286 Makes Limitations on ROA Customers Returning to Consumers Full Service Unnecessary.

1. CNE Position.

CNE proposed that the existing requirement of fixed time deadlines for ROA customers to notify the utility of their desire to return to bundled service be eliminated. CNE offers four arguments in support of its position:

a. PA 286 § 10a(15) provides the Commission with flexibility to amend existing Return To Service requirements. CNE Brief, p. 8.

b. Concern that significant volumes of ROA customers will shift back and forth without notice to the Company have been virtually eliminated by PA 286 provisions which limit ROA service to 10% of the Company total. This drastic limitation of ROA percent of the total market also virtually eliminates the possibility that changes in ROA volumes will exceed single digit levels when compared to total Company service. Id.

c. The Commission has taken a step in the direction of eliminating RTS requirements in Case U-15245 by affirming the ALJ's recommendation that residential ROA customers should be exempt from all notice and minimum stay provisions. This precedent should be expanded to other customer classes. Id.

d. Any concern that ROA customers will "game" the ability to shift back and forth on a seasonal basis between regulated and unregulated service to take advantage of Consumers average rates has been eliminated by the adoption of seasonal rates for Consumers in Case U-15245. Id.

## 2. Consumers Position.

Consumers argues that current Return To full Service requirements have not been superseded by the passage of PA 286. Consumers states that, "Significant unanticipated business customers returning to full service during high load/high cost periods holds the potential for creation of significant added expense should the Company be forced into the 'spot' market for energy or capacity to serve that load." 7 Tr 551, Consumers Brief, p. 99.



3. Energy Michigan Reply to CNE and Consumers.

The only reason cited by Consumers for maintaining existing Return To Service notification requirements for C&I customers is that the return of "significant unanticipated business customers" to full service during high load periods could create significant added expense for the Company. Id.

The Consumers position is not credible. First, PA 286 limits ROA to 10% of the Consumers total market. The 10% ROA load will be spread over many suppliers and many different contract terms. From a statistical standpoint it is highly unlikely that a significant portion of this 10% will have the legal ability to return to Consumers service at any one time. Second, if ROA customers did return to Consumers during a high load period, typically during summer months, those customers would be subject to the high, Consumers seasonal rates which were formulated to recover all projected seasonal costs. If such costs are not fully recovered from existing tariffs, the PSCR process contains features which allow recoveries of additional, amounts exceeding projected costs.

Finally, Consumers obtained implementation of an ECIM mechanism in rate Case U-15245 on June 10, 2008. That mechanism adjusts Consumers rates to cover any increased (or decreased) cost associated with changes in the amount of ROA service. Therefore, as long as the ECIM mechanism remains in place, Consumers has absolutely no basis to claim that its fixed costs are unrecovered due to ROA service shifts. The PSCR mechanism performs the same functions for changes in fuel or power purchase costs due to ROA shifts.

PA 286 § 10(2)(a) and (b) provide that the purpose of PA 286 is both to ensure that all retail customers in this State have a choice of electric supplier and to require that the Michigan Public Service Commission foster competition. The Testimony of record from CNE Witness David Fein demonstrates that the existing restrictions on Return To Service for commercial and industrial customers inhibit competition and are no longer necessary

given passage of PA 286. Tr 492-93. While Consumers cites the possibility that shifts of ROA service without notice may create significant added expense, it provides no documentation of that assertion and no proof that increased costs would not be recovered from the same customers through seasonal rates or through the PSCR mechanism or ECIM mechanism.

If the Commission retains the ECIM mechanism, it should once and for all remove the onerous notice requirements (see below re the 45 day notice in Rule 2.5) for ROA customers returning to full service on the grounds that such requirements inhibit competition and serve no useful purpose in light of the restrictions of PA 286, the Consumers seasonal rates and the cost recovery mechanisms available to Consumers Energy.

B. AESs Should Be Allowed To Return Their Customers To Utility Service Upon Termination Of The Contracted Supply Period.

1. CNE Position.

CNE requested that the Commission revise Consumers tariff provisions regarding the requirement that only the ROA customer may initiate Return To Service by contacting Consumers. CNE Brief, p. 8; First Revised Consumers Tariff Sheet E-9.00.

CNE argues that Consumers has interpreted its tariff to require that an AES cannot return an ROA customer to utility service even if the contracted AES supply period has ended unless the customer has initiated the return. This concern is given substance by the fact that Consumers has taken the position that AES "drop" requests or AES requests that an ROA customer be returned to utility service not accompanied by written customer authorization will be rejected out of hand. Id.

CNE concedes that discussions with Consumers have produced a potential solution by stating that Constellation "may fulfill the obligation of the ROA tariff for customer notice of return to customer full service by either:

- a. Having a Letter of Agency in place with the contracted customers that enables the AES to make the decision to return the customer using the current Company process; or
- b. Implementing a process for notification of supply contract termination. This process should provide the customer with sufficient time to meet the notification of return to full service requirements as specified in Section E2.5 of the Company's ROA tariff. Consumers would expect the AES to document this process with each customer and produce this documentation upon request of the Company". CNE Brief, p. 10-11.

CNE acknowledges that the Consumers suggestion is a step forward but has requested that the Commission clarify that CNE could comply with the referenced Section E2.5 requirement by providing the customer with 60 days notice prior to termination of their current supply contract with Constellation given the fact that 60 days would provide the customer with approximately two weeks time in which to make a decision regarding future supply and to notify Consumers of any intent to return to full service. Consumers would then receive at least 45 days notice of the return. CNE Brief, p. 11.

## 2. Consumers Position.

The Consumers Initial Brief did not discuss the CNE request for clarification noted above. However, Consumers has taken the position that it does not believe that the Commission needs to review the Return To Service provisions adopted in Case U-15245 and specifically the requirement that only an ROA customer may initiate a return to Company full service. Consumers claims it is better that customers themselves provide

such notice to Consumers Energy to avoid instances where the customers return to full service without the customers' knowledge or agreement. Consumers Brief, p. 99-100.

### 3. Energy Michigan Reply.

It is illogical to allow a customer to remain on ROA service after the term of the power contract has expired, merely because the customer has not provided Consumers with a notice of its desire to return to utility service. Such an interpretation allows the customer to unilaterally extend an ROA contract service term and potentially places the AES in the position of being unable to predict future load or balance requirements.

CNE has advanced a proposal in its Initial Brief which provides a reasonable solution for an AES, its customers and Consumers. CNE proposes that Consumers and the Commission concur that an AES is in compliance with all Return To full Service requirements in Section E2.5 A and B of the Company's ROA tariffs if it gives a customer approximately 60 days notice prior to termination of their current supply contract. This 60 day period would allow the customer to acquire a new AES supply of power or decide that it wishes to return to Consumers Energy full service and so notify the Company during a two week period. This timing then would give Consumers the full 45 days of notice currently mandated by Section E2.5B.

Energy Michigan supports the CNE position and urges the Commission to adopt that position thereby giving the AES community the certainty they need to enforce supply contracts while giving Consumers the notice it requires for load shifts

### C. The Commission Must Require Consumers To Provide Data To AESs On A Timely Basis.

CNE has experienced significant delays and other difficulties in obtaining critical customer data from Consumers Energy. CNE Witness David Fein explained that AES access to customer data is essentially to fostering a competitive marketplace. Mr. Fein identified two specific problems:

1. AES requests for historical customer energy consumption information have been processed manually by Consumers, with delays of up to five weeks, before receiving the requested information. CNE Brief, p. 11. During these delays, market pricing may change significantly and the customer may be harmed by failing to lock in that pricing. Moreover, there is no Consumers business practices manual setting forth standards for processing of requests for customer information. Id., p. 12.

2. CNE has also experienced problems receiving or obtaining customer interval data. This situation affects the ability of a supplier to provide price quotations to customers and invoice on a timely basis. These problems inconvenience customers and increase supplier costs. CNE has proposed that the Commission require Consumers to provide customer account information within two business days of a request. CNE Brief, Id.

In an effort to resolve this issue, representatives of Consumers and CNE met and Consumers indicated that it was implementing a report of Consumers interval data for active ROA accounts that could be used by AESs. Consumers claims that such a report mechanism is currently in testing and that when it is implemented, AESs will receive a report via their "FTP server of interval information for the accounts that bill".

CNE believes this proposal is a step forward and that Consumers should be required to ensure that the provided data equal the billing data and that the data should be subject to "validation, estimation and editing (VEE) routines". CNE Brief, p. 13.

Regarding the provision of interval data, CNE reports that Consumers has indicated that it is testing a program to provide customer interval data via the Consumers web portal. That portal is claimed to allow customers to access 12 months of interval history and up to 24 months history for many accounts. Consumers further is reported to claim that customers interested in a proposal for service from an AES will be able to download their interval data and provide it directly to the AES.

CNE acknowledges that the Consumers proposal would be a step forward and suggests that this functionality be extended to enable AESs possessing appropriate information provided by the customer to retrieve interval data from Enerlink for prospective customers that do not have an online account. CNE Brief, p. 12-14.

3. Consumers Response.

While not discussing the specific proposals that it has made to CNE, Consumers Witness Hirsch did suggest that an AES may remedy the delay in obtaining customer information by contacting the customer directly. Hirsch Rebuttal, 7 Tr 554.

However, CNE points out that requiring customers to perform the data retrieval process negatively impacts the customer experience and that many customers do not have such information readily available. CNE notes that the Consumers Rebuttal Witness failed to demonstrate that Consumers provides customers with the referenced interval use data. CNE Brief, p. 12-13.

4. Energy Michigan Reply to CNE.

The ROA program cannot function effectively unless an AES can provide accurate quotations of pricing based on such a prospective customer's usage data. The potential for Consumers to frustrate the entire ROA program through failure to timely provide critical data is quite clear. What is not clear is why Consumers has not been able to deliver accurate, timely customer data to an AES more than eight years after implementation of PA 141.

The same thing is true regarding the timely provision of accurate interval data to an AES. As with customer billing history, accurate, timely provision of customer interval data is necessary to ensure that an AES can accurately supply the customer with needed power. Lack of accurate and timely interval data could result in an AES under delivering power to the Consumers system, causing power shortages and increased costs. Conversely, the

AES might over supply power thereby subjecting the AES to unnecessary costs in the form of excess power supply and penalties. The Commission should also ask how this situation can exist more than eight years after the passage of PA 141.

Consumers has identified technical solutions to its failure to provide both timely and accurate customer billing information and interval data. The Commission should insist that these solutions be implemented immediately. Failing timely implementation Consumers should be subjected to significant penalties for failure to fulfill basic but critical data functions more than eight years after implementation of competition in the State of Michigan.

#### IV. Conclusion and Prayer For Relief.

WHEREFORE, Energy Michigan respectfully requests that the Commission

- A. Order Consumers Energy to file tariffs which comply with PA 286 § 11(1) and (2) regarding the phase in and allowable annual rate increase impact of the 50-25-25 cost allocation mechanism.
- B. Reject the Consumers proposal to charge ROA customers distribution related skewing costs.
- C. Reject features of the Consumers adjustment mechanism that adjusts for sale volume by rate class rather than total sales. Mandate that any sales tracker mechanism adjust rates on a total Company basis and utilize a cap or circuit breaker that prohibits an adjustment when total sales levels exceed total projected volumes.
- D. Reject the MPSC Staff proposal to extend customer cancelation periods from three days to 14 days but rather adopt a five day cancelation period.

- E. Eliminate Return To Service requirements other than a 45 day notice to Consumers for commercial and industrial customers.
- F. Clarify that an AES may comply with termination notice requirements by giving the customer a 60 day notice of termination thereby allowing the customer time to secure an alternate supplier, notify Consumers Energy and still provide Consumers with 45 days notice of Return To Service.
- G. Mandate that Consumers adopt specified procedures to provide customer billing history information and interval data to AESs on a timely and accurate basis.

Respectfully submitted,

**V**ARNUM

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July 23, 2009

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the Matter of the application of )  
CONSUMERS ENERGY COMPANY )  
for authority to increase its rates for )  
the generation and distribution of )  
electricity and for other relief. )  
\_\_\_\_\_ )

Case No. U-15645

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 23rd day of July, 2009 she served a copy of Energy Michigan, Inc.'s Reply Brief 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 23rd day of July, 2009.

\_\_\_\_\_  
Eric J. Schneidewind, Notary Public  
Eaton County, Michigan  
Acting in Ingham County, Michigan  
My Commission Expires: April 24, 2012.

CASE NO. U-15645 SERVICE LIST

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