



201 N. WASHINGTON SQUARE • SUITE 810  
LANSING, MICHIGAN 48933

TELEPHONE 517 / 482-6237 • FAX 517 / 482-6937 • WWW.VARNUMLAW.COM

ERIC J. SCHNEIDEWIND

E-MAIL [ejschneidewind@varnumlaw.com](mailto:ejschneidewind@varnumlaw.com)

September 28, 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 to Exceptions. Also attached is the original Proof of Service indicating service on counsel.

Thank you for your assistance in this matter.

Very truly yours,

**V**ARNUM, <sup>LLP</sup>

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

Case No. U-15645

ENERGY MICHIGAN, INC. REPLY TO EXCEPTIONS  
OF MPSC STAFF AND CONSUMERS ENERGY

September 28, 2009

Eric J. Schneidewind, P20037  
Varnum LLP  
Counsel for Energy Michigan, Inc.  
201 N. Washington Square, Suite 810  
Lansing, MI 48933  
518/482-6237

TABLE OF CONTENTS

I. Introduction and Summary of Position.....1

    A. Introduction.....1

    B. Summary of Position.....1

II. Energy Michigan Reply to MPSC Staff Exception IV and Consumers Energy  
Exception Regarding Revenue Decoupling Mechanisms VII.A.1. ....3

    A. The PFD Rejected The Consumers and Staff RDM Proposals.....4

    B. Consumers Energy and MPSC Staff Exceptions. ....4

    C. Energy Michigan Reply: RDMs Should Assess Separate Charges (or  
Credits) For Production and Distribution Costs.....4

III. Reply to Consumers Exception X.A.1: Consumers Has Not Complied With The Five  
Year Phase. In Of Deskewing Required in MCL 460.11: .....5

    A. The PFD Rejected Consumers' Position. ....5

    B. Consumers Energy Exception.....5

    C. Energy Michigan Reply: Consumers' Proposed Rates Ignore the PA 286 §  
11(1) Mandate To Phase In Cost of Service Rates Over Five Years.....6

IV. Energy Michigan Reply To Consumers Exception X. A.2 New Skewing Charges For  
ROA Customers Proposed By Consumers Energy Should Be Rejected :.....7

    A. The PFD Rejected Consumers' Position. ....7

    B. Consumers Energy Exception.....7

    C. Energy Michigan Reply: The New Skewing Charges For ROA Customers  
Proposed By Consumers Energy Should Be Rejected.....8

V. Prayer for Relief.....10

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

ENERGY MICHIGAN, INC. REPLY TO EXCEPTIONS  
OF MPSC STAFF AND CONSUMERS ENERGY

I. Introduction and Summary of Position.

A. Introduction

The Energy Michigan, Inc. ("Energy Michigan") Replies to the Exceptions of MPSC Staff and Consumers Energy Company ("Consumers Energy") are prepared by Varnum, LLC. Failure to reply to Exceptions of other parties should not be construed as agreement with those Exceptions.

B. Summary of Position.

- 1. Reply to Staff Exception IV and Consumers Exception VII.A.1.: Revenue Decoupling Mechanisms Should Assess Separate Charges (Or Credits) For Production And Distribution Costs.

The Proposal For Decision ("PFD") issued by Administrative Law Judge Sharon Feldman ("ALJ") rejected the Revenue Decoupling Mechanisms ("RDM") proposed by Consumers Energy and MPSC Staff in this case.

The initial Consumers Energy proposal regarding an RDM did not clearly state that recovery of revenue related to lost sales should differentiate between lost generation revenue and lost distribution revenue. The MPSC Staff proposed an RDM that among other things calculates separate sales tracker adjustments for generation and distribution. Moreover, Staff recommended that ROA customers only be billed for distribution related sales losses. On Rebuttal, Consumers Energy agreed with the Staff position that would limit ROA RDM charges to only those revenue charges related associated with changes in distribution sales.

If the Commission adopts an RDM or "decoupling" mechanism, the RDM should calculate separate factors or adjustments for distribution service and generation service. ROA customer RDM charges (or credits) should be limited to distribution related adjustments.

2. Reply to Consumers Exception X.A.1.: The Rates Proposed By Consumers Do Not Comply With The PA 286 Requirement To Phase In Cost Of Service Over Five Years.

The PFD recommended rejection of the rates and tariffs filed by Consumers Energy. The ALJ found that Consumers' proposed rates did not comply with the requirements of 2008 PA 286 ("PA 286") Section 11(1) and (2) that Cost of Service changes be phased in over five years and not impact certain customer rates by more than 2.5% per year. Consumers excepts to this recommendation. However, by its own admission, the tariffs filed by Consumers Energy implement the 50-25-25 cost allocation method mandated in Section 11(1) in one year rather than in five years. Also, it is impossible to tell if the 2.5% per year overall limit on Cost of Service rate impact is violated. The Commission should uphold the PFD and order Consumers Energy to file tariffs which comply with PA 286 § 11(1) and (2) as recommended by the ALJ.

3. Reply to Consumers Exception X.A.2.: New Skewing Charges for ROA Customers Proposed By Consumers Energy Should Be Rejected.

Consumers Energy proposed to charge Retail Open Access ("ROA") customers for remaining interclass "skewing" subsidies to residential customers related to distribution service. The ALJ recommended rejection of the Consumers proposal. The Michigan Public Service Commission ("Commission") considered similar proposals by Consumers and Detroit Edison to charge both distribution and generation subsidies to ROA customers and rejected such proposals on at least four occasions.<sup>1</sup> The reasoning used by the Commission to reject proposals assessing skewing costs to ROA customers applies to the Consumers position in this case: ROA customers have finally been brought to Cost of Service for their distribution rates therefore the Commission rejects any attempt to move ROA rates away from Cost of Service.

The only new argument presented by Consumers on this subject is contained in their Exceptions and references the fact that a decision of the Commission in Case U-15744, August 11, 2009 requires full service customers to pay stranded cost charges. In view of that fact, Consumers claims that ROA customers should pay residential skewing charges as a matter of fairness. This argument should be rejected for the reasons stated above and because the record evidence (as opposed to Consumers new argument that was not contained on the record) demonstrates that ROA customers are currently subsidizing full service generation costs in the amount of more than \$4.6 million per year through securitization bond, tax and stranded cost charges paid by ROA customers who do not use the generation. The \$4.6 million paid by ROA customers to subsidize generation costs more than offsets any claimed inequity of assessing additional stranded costs to full service customers.

II. Energy Michigan Reply to MPSC Staff Exception IV and  
Consumers Energy Exception VII.A.1.  
Regarding Revenue Decoupling Mechanisms.

---

<sup>1</sup> U-14346, December 22, 2005; U-15245, June 10, 2008; U-14399, December 2, 2005; U-15244, December 23, 2008.

A. The PFD Rejected The Consumers and Staff RDM Proposals.

The PFD recommended that the decoupling mechanisms proposed by Consumers Energy and MPSC Staff in this case be rejected and that the parties proposing such mechanisms should file various studies analyzing the potential impact of RDMs. PFD., p. 140-49.

B. Consumers Energy and MPSC Staff Exceptions.

Consumers Energy claims that the RDM proposal filed by its Witness Steven Stubleski is the most comprehensive proposal and that the Staff plan filed by Robert Ozar is limited to only the impact of sales caused by Energy Optimization programs mandated in 2008 PA 295. Consumers Exceptions, p. 70-72. Consumers adds that the Staff RDM plan does not cover the impact of federal taxes, federal appliance standards or federal building codes on retail sales. It claims that Staff Witness Ozar agreed with this assessment. Id.

MPSC Staff supports the RDM sponsored by their Witness Robert Ozar but states that they would not oppose the Consumers Energy plan if Mr. Ozar's proposal is rejected by the Commission. Exception, # 3, p. 4-5. The Staff does claim that the Ozar plan is better than the Consumers plan. Id., p. 5.

C. Energy Michigan Reply: RDMs Should Assess Separate Charges (or Credits) For Production and Distribution Costs.

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.

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 only evidence of record supports structuring the RDM so that separate generation and distribution RDMs are calculated. For the reasons stated above, if the Commission adopts the MPSC Staff or the Consumers Energy RDM it should provide for separate RDM adjustments for full service customers and ROA customers.

III. Reply to Consumers Exception X.A.1.:  
Consumers Has Not Complied With The Five Year Phase  
In Of Deskewing Required in MCL 460.11

A. The PFD Rejected Consumers' Position.

The ALJ found that Consumers has failed to justify its five year rate change schedule in light of the rate impact limits of MCL 460.11 (1) and (2). The PFD adopted the Staff's COSS and residential rate design because, in part, the Staff deskewing proposal will be within statutory limits. PFD, p. 194.

B. Consumers Energy Exception.

Consumers complains that the ALJ's findings are in error because MCL 460.11(1) and (2) require a five year phase in with rate impacts not exceeding 2.5% per year for the \$73 million of "skewing" found in U-15245. Consumers Exceptions, p. 79. Consumers states that the Staff



found an additional \$20 million of subsidies by adopting a revised COSS. Consumers complains that the subsidy should be based upon the final rates determined by the Commission not based on a new COSS. Finally, Consumers states that its proposed method of deskewing is the only method that ensures the Commission that the residential subsidy will be eliminated within five years. *Id.*, p. 80.

C. Energy Michigan Reply: Consumers' Proposed Rates Ignore the PA 286 § 11(1) Mandate To Phase In Cost of Service Rates Over Five Years.

The Testimony of Energy Michigan Witness Carrier 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. *Id.*

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 PA 286 "...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 to this legislative mandate.

IV. Energy Michigan Reply To Consumers Exception X. A.2.:  
New Skewing Charges For ROA Customers Proposed By  
Consumers Energy Should Be Rejected.

A. The PFD Rejected Consumers' Position.

The PFD recommended rejection of the Consumers proposal to impose distribution skewing charges on ROA customers. The ALJ based her decision on the fact that the goal of the Commission both prior to PA 286 and as contained in PA 286 § 11(1) is to move toward cost based rates. She noted that the Commission has declined to move ROA rates away from Cost of Service principles for this reason. The ALJ also determined that Consumers Energy has not shown any compelling reason to change precedent set by the Commission in a series of cases including U-15245 (June 10, 2008), U-14346 (December 22, 2005), U-14399 (December 22, 2005) and U-15244 (December 23, 2008) which rejected proposals to assess skewing costs to ROA customers. PFD, p. 197.

B. Consumers Energy Exception.

Consumers Energy bases its Exception to the finding of the ALJ on two separate arguments: one old and one new.

The old argument of Consumers is that the sharing of responsibility for interclass subsidies would create "parity" between the distribution rates offered to ROA customers and full service customers. The new argument is that the Commission ordered full service customers to "help ROA customers" pay for stranded costs in Case U-15744 and that fairness requires that ROA customers pay their share of remaining rate subsidies. This argument was not presented by Consumers through Testimony or in pleadings. Consumers Exceptions, p. 81.

C. Energy Michigan Reply: The New Skewing Charges For ROA Customers Proposed By Consumers Energy Should Be Rejected.

A long line of Commission decisions has considered and explicitly rejected arguments of Consumers Energy and Detroit Edison Company that ROA customers should pay skewing charges as part of their distribution fee. U-15245 (June 10, 2008), U-14346 (December 22, 2005), U-14399 (December 22, 2005) and U-15244 (December 23, 2008). 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 PA 286 § 11(1) mandates that all rates be moved to Cost of Service. This inconsistency was noted by the ALJ as a reason for her decision. PFD, p. 197. Second, the Commission has taken important steps to move "full service" rates to Cost of Service in the prior Consumers Case U-15245 and is likely to do so in this case pursuant to the mandates contained in PA 286. This transition to Cost of Service will eliminate any competitive advantage enjoyed by ROA and will result in bringing ROA and full service rates into the so-called parity between distribution rates urged by Consumers Energy. Any competitive advantage or lack of parity claimed by Consumers has been or is being corrected by the Commission in prior cases as well as in this proceeding. Energy Michigan Brief, p. 9.

The only new argument on this subject presented by Consumers was unveiled in their Exceptions for the first time. The Consumers Exceptions claim that the Commission Order in Case U-15744, August 11, 2009 required full service customers to "help ROA customers pay for stranded costs associated with offering Electric Choice". Consumers goes on to state that fairness requires ROA customers to pay their share of remaining rate subsidies. Consumers Exceptions, p. 81.

Aside from the fundamental unfairness involved in making a brand new argument in this proceeding at a stage past the Briefing and evidentiary presentations, the assertion of Consumers Energy is simply not true. In fact, Testimony and evidence of record presented by Energy Michigan demonstrate that ROA customers already subsidize full service customers. ROA customers currently subsidize all full service customers through payment of securitization bond and securitization tax charges associated with the Palisades nuclear plant and stranded costs associated with all Consumers generating plants. These subsidized generating plants serve Consumers retail bundled service customers, not ROA customers. At levels of ROA service current with the Testimony, the securitization bond, tax and stranded cost charges paid by ROA customers were almost \$4.6 million per year. Exhibit EM-1. ROA securitization and stranded cost payments for generation facilities serving only retail full service customers actually offset costs related to the Consumers generating plants thereby lowering power costs for retail bundled customers with no benefit whatsoever to ROA customers. Carrier, 7 Tr 284.

If the Commission wishes to ensure that all rates gradually transition to Cost of Service status, this goal will be accomplished by the gradual implementation of rate deskewing which was commenced for Consumers Energy customers in Case U-15245 and which will continue in this case. As so-called skewing charges are reduced for bundled commercial and industrial customers, any alleged advantage enjoyed by ROA business customers will be eliminated. During this transition, ROA customers will continue to pay securitization, bonding and tax charges as well as stranded cost charges which benefit bundled service customers to the tune of more than \$4.6 million per year. This ROA "subsidy" of full service customers offsets any individual burden on full service customers to pay stranded costs which was statutorily mandated by PA 286. Energy Michigan Initial Brief, p. 8-10.

Sudden rate changes can be avoided for all customers if deskewing is accomplished through the gradual reduction of subsidies as regards retail bundled customers rather than driving ROA customers away from Cost of Service in violation of PA 286 while driving bundled customers rates toward Cost of Service. Id.

V. Prayer for Relief.

WHEREFORE, Energy Michigan respectfully requests that the Commission:

- A. Reject Consumers Exception VII.A.1. and Staff Exception, IV. Require that any RDM mechanism adopted by the Commission separate generation from distribution related charges or credits and subject ROA customers to only those credits or charges related to distribution service; and
  
- B. Reject Consumers Exception X.A.1. which objects to the finding of the ALJ that Consumers has not complied with PA 286 requirements to phase in Cost of Service rates over five years; and
  
- C. Reject Consumers Exception X.A.2. to the finding of the ALJ that ROA customers should continue to pay Cost of Service based distribution rates.

Varnum,<sup>LLP</sup>  
Attorneys for Energy Michigan, Inc.

September 28, 2009

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

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 28th day of September, 2009 she served a copy of Reply to Exceptions of Energy Michigan, Inc. 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 28th day of September, 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

**Administrative Law Judge**

Hon. Sharon Feldman  
Administrative Law Judge  
6545 Mercantile Way, Suite 14  
P O Box 30221  
Lansing, MI 48909  
[feldmans@michigan.gov](mailto:feldmans@michigan.gov)  
(Discovery - Proof of Service only)

**Consumers Energy Company**

Jon Robinson  
Ray McQuillan  
H. Richard Chambers  
John Shea  
M. Bryan Little  
One Energy Plaza Rm EP11-224  
Jackson, MI 49201  
[jrobinson@cmsenergy.com](mailto:jrobinson@cmsenergy.com)  
[hrcchambers@cmsenergy.com](mailto:hrcchambers@cmsenergy.com)  
[jcshea@cmsenergy.com](mailto:jcshea@cmsenergy.com)  
[mblittle@cmsenergy.com](mailto:mblittle@cmsenergy.com)  
[mpscfilings@cmsenergy.com](mailto:mpscfilings@cmsenergy.com)

**Michigan Public Service Commission  
Staff**

Michael Orris  
Patricia Barone  
Anne Uitvlugt  
Assistant Attorney General  
Public Service Division  
6545 Mercantile Way, Suite 15  
Lansing, MI 48911  
[orrism@michigan.gov](mailto:orrism@michigan.gov)  
[baronep@michigan.gov](mailto:baronep@michigan.gov)  
[uitvlugta@michigan.gov](mailto:uitvlugta@michigan.gov)

**Attorney General's Office**

Michael Moody  
525 W Ottawa St Fl 6  
PO Box 30212  
Lansing, MI 48909-7712  
[Moodyme@michigan.gov](mailto:Moodyme@michigan.gov)

**The Kroger Company**

Kevin Higgins  
Energy Strategies, LLC  
Parkside Towers  
215 S. State St., Ste. 200  
Salt Lake City, UT 84111  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)

Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)

**Hemlock Semiconductor Corp.**

Jennifer Utter Heston  
Fraser Trebilcock Davis & Dunlap, PC  
124 W. Allegan St., Suite 1000  
Lansing, MI 48933  
[jheston@fraserlawfirm.com](mailto:jheston@fraserlawfirm.com)

**Midland Cogeneration Venture Limited  
Partnership ("MCV")**

Richard Aaron  
Ross K. Bower, II  
Fahey Schultz Burzych Rhodes PLC  
4151 Okemos Rd  
Okemos, MI 48864  
[raaron@fsblawyers.com](mailto:raaron@fsblawyers.com)  
[rbower@fsblawyers.com](mailto:rbower@fsblawyers.com)

**Gerdau MacSteel**

Jennifer L. Copland  
Dickinson Wright, PLLC  
301 E. Liberty, Suite 500  
Ann Arbor, MI 48104  
[jcopland@dickinson-wright.com](mailto:jcopland@dickinson-wright.com)

**Constellation NewEnergy, Inc.**

John M. Dempsey, Esq.  
Dickinson Wright, PLLC  
301 E. Liberty, Suite 500  
Ann Arbor, MI 48104  
[jdempsey@dickinsonwright.com](mailto:jdempsey@dickinsonwright.com)

**MI Cable Telecommunications Assn**

David E. S. Marvin  
Fraser Trebilcock Davis & Dunlap, PC  
124 W. Allegan St., Suite 1000  
Lansing, MI 48933  
[dmarvin@fraserlawfirm.com](mailto:dmarvin@fraserlawfirm.com)

**MI State Utility Workers**

Steven D. Weyhing  
Kelley Cawthorne  
208 N. Capitol Avenue, 3rd Floor  
Lansing, MI 48933  
[sweyhing@kelley-cawthorne.com](mailto:sweyhing@kelley-cawthorne.com)

**MI Municipal League**

Leland R. Rosier  
Roderick Coy  
Clark Hill, PLC  
212 E. Grand River Avenue  
Lansing, MI 48906  
[rcoy@clarkhill.com](mailto:rcoy@clarkhill.com)  
[lrosier@clarkhill.com](mailto:lrosier@clarkhill.com)

**Phil Forner**

P.O. Box 296  
Allendale, MI 49401  
[ahat@altelco.net](mailto:ahat@altelco.net)

**MEC/PIRGIM**

Don Keskey  
Clark Hill  
212 E. Grand River Ave.  
Lansing, MI 48906-4328  
[dkeskey@clarkhill.com](mailto:dkeskey@clarkhill.com)