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May 14, 2009

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

Re: Case No. U-15744

Dear Ms. Kunkle:

Attached for paperless electronic filing is the Initial Brief of Energy Michigan, Inc. 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

c. 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 )  
pursuant to Section 10a(16) of )  
Public Act 286 of 2008 for Revisions )  
to Stranded Cost Recovery Surcharges )  
\_\_\_\_\_ )

Case No. U-15744

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. Introduction and Background

A. Introduction.

This Initial Brief is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by Varnum Riddering Schmidt & Howlett LLP pursuant to the schedule adopted by the Honorable Mark Eyster ("ALJ"). Failure to address any issue or position raised by a party to this matter should not be taken as agreement with that issue or position.

B. Background of Case.

On November 23, 2004, the Michigan Public Service Commission ("Commission") issued Orders U-13720 and U-14098 (the "Stranded Cost Orders") which established stranded costs of \$63,214,364 plus interest for Consumers Energy Company ("Consumers" or "Consumers Energy") for 2002 and 2003. The Stranded Cost Orders authorized Consumers to recover these costs "through use of a stranded costs recovery charge of 1.2 mills per kilowatt hour commencing with the company's next billing period and running until the 2002 and 2003 stranded costs are fully collected." The referenced stranded cost charge was to be assessed to Retail Open Access ("ROA") customers. Stranded Cost Orders, p. 14-15.

On October 6, 2008, Governor Jennifer Granholm signed 2008 PA 286 into law. ("Act 286"). This legislation included Section 10(a)(16) which states

The Commission shall authorize rates that will ensure that an electric utility that offered retail open access service from 2002 through the effective date of the amendatory act that added this subsection fully recovers its restructuring costs and any associated accrued regulatory assets. This includes but is not limited to,....stranded costs... The Commission shall approve surcharges that will ensure full recovery of all such costs within five years of the effective date of the amendatory act that added this subsection.

On January 16, 2009 Consumers Energy filed an Application for approval to implement surcharges that would recover uncollected amounts of the stranded costs authorized by Cases U-13720 and U-14098.

## II. Positions of the Parties.

### A. Consumers Position - Hubert Miller Direct Testimony.

Consumers Witness Hubert Miller testified that ROA sales were lower than projected in Rate Cases U-13720 and U-14098 therefore a continuation of the existing 1.2 mills surcharge would not recover the outstanding \$63 million plus interest within the statutorily mandated five year timeframe. 2 TR 18. Mr. Miller also stated that it would not be feasible to collect the entire outstanding stranded costs from ROA customers because the resulting charge of 1.48 ¢ /kWh would reduce the volume of ROA sales and therefore result in an inability to recover the full amount. Id, TR 20.

In view of these facts, Mr. Miller proposed that a charge of .666 mills/kWh be assessed to all customers resulting in ROA customers paying *both* the current charge of 1.2 mills/kWh *and* the new .666 mills/kWh charge – a total of 1.866 mills/kWh. This charge would remain in effect approximately four years with reconciliations and credits or additional charges assessed in the final year of the statutory five year timeframe. Id., TR 21.

B. Energy Michigan Witness Alexander J. Zakem.

Alexander J. Zakem presented Testimony on behalf of Energy Michigan. Mr. Zakem testified that a plan to recover the Consumers Energy stranded costs as mandated by PA 286 § 10(16) must be based on consideration of three rate design factors:

1. Main elements of rate design.
2. The fact that the current surcharge is proven to be unworkable in complying with PA 286; and
3. Given the factors cited in 1 and 2 above, equitable treatment of Consumers customers. 2 TR 45.

Mr. Zakem amplified on the requirements imposed by the main elements of rate design. The three elements to consider in terms of rate design are:

- a. Does the design or charge collect the required revenue?

As noted by Consumers Witness Miller, it is clear that the *current rate design does not and will not* collect the full amount of outstanding stranded costs and that a new surcharge must be developed which would include a reconciliation process. Thus, the current rate design is unworkable. 2 TR 45-46.

- b. Does the design or charge apportion the burden of payment reasonably fairly on the customers who benefit from the services?

In the case of stranded cost charges, fixed in 2002 through 2003 by Cases U-13720 and U-14098, the collection of money is not for services currently being

provided to current ROA customers but rather is just the collection of a fixed quantity of dollars. Thus the issue of fair cost apportionment is moot. Id., TR 46.

- c. Does the design or charge send the proper price signals that are consistent with economically justifiable but not uneconomic use?

In this situation of recovery of a fixed quantity of dollars, there are no energy use characteristics - incentives or disincentives - that the design of the surcharge is expected to achieve. Id.

Based upon the above rate design considerations, Mr. Zakem concluded that "in the absence of any basis to allocate costs or design price signals, the only concern is the equitable apportionment of monies to be collected. Given this fact, an equal surcharge spread over all Consumers customers is the most logical if not the only reasonable approach. There are no cost allocation principles to be followed and likely no production pricing incentives or disincentives to be considered. The controlling element of rate design is simply to collect the total dollars." Id.

Mr. Zakem concluded that the resulting surcharge could either be an equal per kWh charge or it could be an equal percentage adder to the distribution charge. Mr. Zakem rejected the percentage adder as being less accurately forecastable because the amount collected would be affected by not only the amount of energy used but also by any change in distribution rates over the five year period. Therefore, he recommended an equal per kWh surcharge. Id., TR 47.

Mr. Zakem rejected continuation of the current surcharge since it has proven to be unworkable and therefore a different method is required. The statutory language gives the Commission freedom to design an alternative that will work.

Mr. Zakem testified that based on the assumptions presented by Consumers Energy in Exhibit A-2 an estimated equal surcharge of .724 mills/kWh would collect the required revenue from all

customers compared to the Consumers proposal of .666 mills for bundled customers and 1.866 mills for ROA customers. Id., TR 48.

Mr. Zakem also opined that the Commission could determine that the current 1.2 mills/kWh stranded cost charge for ROA customers, previously ordered by the Commission, should continue as the "fair share" for ROA customers, and consequently develop a charge for other (non-ROA) customers that would produce the required amount of revenue in total. Id., TR 50-51.

C. MPSC Staff - William Kusiak.

Testimony on behalf of MPSC Staff was presented by William J. Kusiak.

Mr. Kusiak testified that the requirements of PA 286 § 10(a)(16) could be met with the lowest customer surcharge by implementing the additional surcharge as soon as possible and then continuing that surcharge until three months prior to the expiration of the statutory five year period or about June 2013. Consumers would then be requested to make a status report on collection by July 2011 which would give Staff a reasonable update on the recovery of the stranded costs and suggest what action is needed to be taken to meet the September 2013 deadline for full recovery. Mr. Kusiak testified that these actions would extend the recovery period and thus lower the amount of the surcharge. Kusiak, 2 TR 38.

Mr. Kusiak recommended that the current surcharge of 1.2 mills/kWh on ROA customers be continued and that a new surcharge of .873 mills/kWh be instituted for bundled customers. Mr. Kusiak specifically recommended that wholesale, Rate E-1, residential and street lighting bundled customers be excluded from this surcharge. Id. Mr. Kusiak justified his recommendation on the basis that it surcharged those customers (in addition to ROA customers) who "had the availability to choose an Alternate Electric Supplier". Id., TR 39.

Mr. Kusiak sponsored Exhibit S-1 which showed the calculation of the required surcharge for non-ROA customers, the projected end of the surcharges and a recommendation that Consumers

use the three months prior to the October 13, 2013 deadline to adjust surcharges to avoid over or under collection of costs. *Id.*

### III. Argument

There are three significant issues in this case: 1) the timing for the collection and reconciliation of stranded cost surcharges; 2) which customer classes will pay the surcharges; and 3) the differential, if any, between the charges assessed to various customer classes.

#### A. Timing of Surcharge Collection and Reconciliation.

In its Rebuttal, Exhibit A-3 and the Testimony of Witness Miller, Consumers appears to have agreed to the schedule for surcharge collection and reconciliation recommended by MPSC Witness William Kusiak in his Exhibit S-1. Energy Michigan Witness Zakem recognized that the required surcharge depends on among other things the time period of collection and did not render an opinion on the assumptions.

Energy Michigan recognizes and agrees with the Testimony of Mr. Kusiak that early implementation of the stranded cost surcharges resulting from this case and continuation of those charges until three months before expiration of the statutory period will produce the lowest possible surcharges. Kusiak, 2 TR 38. Energy Michigan agrees with the position of Staff on this point.

Therefore, it would appear that all parties agree that the surcharge resulting from this case be implemented as soon as possible and continue at least through June 2013 and then be subject to adjustment to ensure the statutorily mandated amounts are neither over nor under collected.

B. Which Customer Classes Should Pay Surcharges?

PA 286 § 10(a)(16) gives the Commission complete discretion regarding which customer classes will pay amounts necessary to ensure full recovery by Consumers of its restructuring and regulatory asset costs including stranded costs.

In terms of classic rate design, an equal charge assessed to all customers is supported by the fact that the statutory mandate is to collect a fixed sum of money from customers unrelated to any services provided. *Zakem*, 2 TR 48. Since the only mandate of the statute is to simply collect a fixed quantity of dollars, considerations regarding the fairness of charging various classes and the incentives or disincentives created by the charge are either moot or irrelevant. The mandate is statutory not economic. *Id.*

Based upon these considerations, an equal charge to all customer classes can be supported based on classic rate design elements.

Nonetheless, Energy Michigan recognizes the argument made by MPSC Staff: that collection of stranded costs should be limited to those customer classes that potentially benefitted from ROA service. If this concept is accompanied by a reasonable cost allocation (see III.C. below) Energy Michigan can accept the position of both MPSC Staff and Consumers Energy that collection of stranded cost should exclude residential, wholesale, street lighting and Rate E-1 customers.

Based on the record and the position set forth in this Initial Brief, it can be concluded that there is potential agreement of Staff, Consumers and Energy Michigan regarding the customer groups that should be subject to a stranded cost surcharge.

C. Surcharge Differential Between Customer Classes.

Energy Michigan has testified that the preferable rate design for a surcharge to fulfill the statutory mandate to collect stranded costs would be an equal surcharge for all subject customer



classes. However, Energy Michigan Witness Zakem also testified that it was possible that the Commission would wish to leave in place the current 1.2 mills/kWh stranded cost for ROA customers and determine the "fair share" of customers other than current ROA customers such that total 2002 and 2003 stranded costs are recovered in compliance with PA 286. Zakem, 2 TR 49-50.

Staff Witness Kusiak testified that the Commission should continue the current 1.2 mill stranded cost surcharge to ROA customers and apportion the remaining amounts be collected among non-ROA commercial and industrial customers (with the exclusions described in III.B. above) which would result in an estimated surcharge to those non-ROA customers of approximately .873 mills/kWh. Kusiak, 2 TR 38-39. Thus, while the Staff position is not consistent with the preferred alternative of Energy Michigan, it is consistent with the alternative position enunciated by Mr. Zakem which would be acceptable to Energy Michigan.

Consumers Energy disagrees with Staff primarily on the grounds that Witness Miller believes that the "differential" between ROA and full service customers of 1.2 mills should be maintained as consistent with his view that the Commission's decision in the Stranded Cost Orders was that ROA customers should pay 1.2 mills/kWh more than customers that did not participate in ROA. Miller Rebuttal, 2 TR 31.

Mr. Miller's position should be rejected as inconsistent with the classic rate design principles set forth by Mr. Zakem.

Specifically, the stranded costs involved are the subject of a statutory mandate for collection. This mandate has nothing to do with cost causation or service currently being rendered or economic signals which are designed to result in some behavior. Rather, the statutory mandate is simply that Consumers Energy be allowed to collect a certain sum of money over a certain period of time. Other than these basic mandates, the Commission is free to develop a charge which accomplishes this goal. In this respect, the situation regarding collection of stranded costs is completely different from other factual situations such as skewing or other current issues where the Commission may or may not have statutory guidance. Absent a statutory mandate to

the contrary, all affected customers (ROA and non-ROA commercial and industrial) should pay the exact same charge. Zakem, 2 TR 49-50.

Energy Michigan recommends that the Commission adopt the Energy Michigan proposal for equal surcharges or, if the Commission determines that the previously ordered surcharge of 1.2 mill/kWh for ROA customers represents the “fair share” of stranded costs for ROA customers, adopt the Staff proposal that ROA customers pay a 1.2 mill surcharge and that the balance be collected from C&I customers excluding wholesale, street lighting and E-1 customers by means of the surcharge recommended by Staff.

#### IV. Prayer for Relief

WHEREFORE, Energy Michigan respectfully requests that the Commission

- A. Establish a schedule to collect required surcharges commencing as soon as possible and concluding June 2013 with three months time to implement adjustments which will prevent over or under collection of statutorily required amounts; and
- B. Assess the surcharges necessary to collect stranded cost within the period described in A above to ROA customers and commercial and industrial customers excluding wholesale, street lighting and E-1 customers; and
- C. Assess the required surcharges equally to all the categories described in B above or assess a surcharge of 1.2 mills/kWh to ROA customers and the balance as an equal surcharge to the categories of commercial and industrial customers as described in B above.

Respectfully submitted,

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

May 14, 2009

By: \_\_\_\_\_

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STATE OF MICHIGAN

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Case No. U-15744

PROOF OF SERVICE

Monica Robinson, being first duly sworn, deposes and says that on this 14th day of May, 2009 she served a copy of Energy Michigan, Inc.'s Initial Brief upon those individuals by email and regular mail to those listed on the attached Service List.

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

Subscribed and sworn to before me  
this 14th day of May, 2009.

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

SERVICE LIST U-15744

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