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November 7, 2011

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

Re: Case No. U-16566

Dear Ms. Kunkle:

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

Thank you for your assistance in this matter.

Very truly yours,

VARNUM,^{LLP}

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 reconcile electric)
revenue pursuant to Pilot Revenue)
Decoupling Mechanism)
and for other relief.)
_____)

Case No. U-16566

REPLY BRIEF OF ENERGY MICHIGAN, INC.

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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") by Varnum and responds to the Initial Briefs of Consumers Energy Company ("Consumers" or "Consumers Energy") and the Michigan Public Service Commission Staff ("Staff"). Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

B. Summary of Position.

1. Summary of reply to Consumers Energy.

The Consumers proposal to surcharge or credit ROA customers for power costs is inconsistent with the Testimony of Consumers' own witness in Case U-15645 that ROA customers should only be assessed charges/credits for distribution service, not power service, in a decoupling proceeding. Consumers' own Initial Brief in this proceeding cites, with favor, Consumers' own Exhibit A-105 from Case U-15645 which illustrates operation of the proposed decoupling mechanism using separate charges for bundled

customers and ROA customers. The ROA customers only pay or are credited for distribution related costs.

The position of Energy Michigan advocating separate distribution only decoupling surcharges/credits is therefore totally consistent with the Consumers' description of the ruling of the Commission in Case U-15645.

Finally, Consumers literally admits that there is no Cost of Service Study allocating power supply costs to ROA customers. That being the case, MCL 460.11(1) prohibits assessment or crediting of power related decoupling charges to ROA customers because such charges are not supported by Cost of Service data.

2. Summary of reply to MPSC Staff.

Energy Michigan can support the PRDM approach of MPSC Staff as illustrated in Exhibit S-2. The methodology used by Staff to calculate decoupling surcharges/credits, among other things, recognizes that ROA customers should not be charged or credited for power supply costs in the applicable PRDM surcharges/credits. Energy Michigan opposes the Staff's less preferable alternative PRDM calculation method as illustrated in Staff Exhibit S-4. That exhibit merely uses the data and overall approach of Consumers Energy to calculate one PRDM surcharge/credit applicable to both full service and ROA service customers despite the fact that ROA customers do not use power supply.

II. Reply to Consumers Energy.

- A. The Consumers Proposal To Surcharge Or Credit ROA Customers For Power Costs Is Inconsistent With The Consumers Sworn Testimony And The Consumers Position That This Case Should Follow U-15645 Precedent.

1. Consumers position.

Consumers has made two related arguments that the Michigan Public Service Commission ("Commission") should follow the framework set forth in U-15645 for calculation of the Pilot Revenue Decoupling Mechanism ("PRDM") credit/surcharges and that any changes to the U-15645 method should be implemented in future cases, not in this case. Consumers Brief, p. 6, 17-19. Consumers' broad request for consistency between the methodology used in this case and the Order of the Commission in Case U-15645 also opposes what Consumers views as Staff's deviation from the U-15645 methodology.

2. Energy Michigan reply.

The Consumers request for consistency between the PRDM methodology formulated in Case U-15645 and the methodology used in this case is glaringly inconsistent with Consumers' own request in this case to implement a PRDM which credits or surcharges power costs to Retail Open Access ("ROA") customers.

In this case, Consumers has proposed two alternative means of collecting or crediting PRDM amounts to customers. See Exhibit A-9. Both Method A and Method B contained in that Exhibit A-9 combine bundled service and ROA service into three customer classes (residential, secondary and primary) to calculate and then collect or credit PRDM amounts which include both power supply and distribution adjustments. Thus, Consumers has taken the position in this case that ROA customers should be required to assume responsibility for either surpluses or shortfalls related to power supplies which they do not use. Consumers Brief, p. 11. Consumers justifies this position by claiming that it is impossible to segregate the impact of rapid increase in ROA service during the timeframe of this PRDM and that the Consumers proposal should be acceptable because it spreads responsibility across the broadest range of customers. Id.

The Consumers proposal to assess or credit ROA customers for power supply costs is in direct contradiction to the sworn Testimony of Consumers Energy in Case U-15645 where Consumers stated that it would have separate surcharges for ROA classes which reflected only delivery charges:

- Q. If the Commission ordered the implementation of the RDM, would it apply to ROA sales?
- A. Yes, the [P]RDM would apply to ROA sales as these customers are included in the Company's Energy Optimization programs. ROA sales would be included in their respective rate class but would have a separate charge that reflected only their delivery charges. U-15645, Rebuttal Testimony of Stephen Stubleski, 7 Tr 733, lines 12-16. (Emphasis added).

The Consumers proposal to charge or credit ROA customers for power supply costs is also in direct contradiction to Exhibit A-105 from Case U-15645 which is contained in the Consumers Initial Brief in this case and is cited with approval. In Exhibit A-105 from Case U-15645 Consumers separates the secondary and primary rate class into bundled and ROA customers. Consumers then calculates separate bundled customer power supply and distribution credits/surcharges and ROA distribution only supply surcharges/credits. Yet, while citing with approval, both Exhibit A-105 and the methodology contained in Exhibit A-105 at page 5 of their Initial Brief, Consumers turns around at pages 11-12 of their Brief and opposes use of separate distribution only surcharges/credits for ROA customers claiming that it is impossible to perform such a separation!! It is hard to imagine a more contradictory and damaging inconsistency.

If Consumers believes that the U-15645 methodology adopted by the Commission was essentially that of Consumers Energy as contained in Case U-15645 Exhibit A-105, then Consumers must admit that the referenced methodology mandates that ROA customers receive separate PRDM surcharges/credits based only on distribution costs.

Note that both the Attorney General and MPSC Staff have proposed methodologies or taken positions which would produce separate, distribution only surcharges/credits for ROA customers. Attorney General Brief, p. 17-18; Staff Exhibit S-2.

Conclusion

The position of Energy Michigan, the Attorney General, MPSC Staff and Consumers own exhibits from Case U-15645 demonstrate clearly that separate PRDM surcharges/credits for full service (power and distribution) and ROA customers (distribution only) are consistent with the Order of the Commission in Case U-15645, are technically feasible and adequately allocate and spread PRDM amounts over the broadest customer base.

B. The Consumers Proposal to Surcharge Or Credit ROA Customers for power costs is inconsistent with Commission precedent.

1. Consumers position.

As discussed above, Consumers Energy has proposed that ROA customers be surcharged or credited for PRDM amounts including both power supply and distribution costs. See Exhibit A-9.

2. Energy Michigan reply.

The Commission has recently considered a similar if not identical fact situation in Case U-16472 regarding implementation of a Revenue Decoupling Mechanism for Detroit Edison. In that case, MPSC Staff proposed a RDM similar to that proposed by Staff in this case which would calculate the RDM surcharges/credits assessable to ROA customers which only cover distribution costs. Power supply revenue shortfalls or surpluses related to non-fuel power costs would not be assessed to ROA customers.

In the Opinion and Order of the Commission ruling on the Detroit Edison RDM, the Commission specifically stated,

For full service customers, revenues reflected in the [RDM charge] calculation are equal to total class revenue less the customer charge, fuel and purchase power, and other surcharges. For Retail Open Access customers, revenues reflected in the [RDM charge] calculation are equal to total rate class revenue less customer charge revenue and other surcharges and shall not include revenue shortfalls in non-fuel power costs. Opinion and Order of the Commission, October 20, 2011, U-16472, p. 87 (emphasis supplied).

Thus, recent Commission precedent on this issue has very clearly stated that ROA customers should not be assessed RDM surcharges/credits related to power costs.

C. There is No Inconsistency Between the Position of Energy Michigan Requesting Separate ROA Distribution Only Surcharges/Credits and the Order in Case U-15645

1. Consumers position.

In its Initial Brief, Consumers claims that the Energy Michigan request for separate, distribution only PRDM surcharges/credits for ROA customers is inconsistent with the Order of the Commission in Case U-15645. Consumers claims that the Energy Michigan position is a modification of Order U-15645 and, as such, may only be considered and adopted in future cases. Consumers Brief, p. 28.

2. Energy Michigan reply.

As discussed in A. above, it is the Consumers position in this case regarding ROA customers that is inconsistent with the requirements of U-15645 and Consumers' own stated position in that case.

Consumers argues that the methodology presented in their own Exhibit A-105 in Case U-15645 was adopted by the Commission and must be followed in this case with any modifications adopted in subsequent cases. Consumers Brief, p. 10-11, 17-19. Yet that Exhibit A-105 specifically proposes that separate, distribution only PRDM surcharges/credits be calculated for ROA customers. Case U-15645, Consumers Brief, p. 5, Exhibit A-105. Also, as noted in II.A. above, Consumers' own witness presented sworn Testimony supporting separate, distribution only PRDM charges for ROA customers. Energy Michigan Brief, p. 8.

The position of Energy Michigan is clear: ROA customers should never be charged or credited for power supply costs. If indeed the Commission adopted the Consumers PRDM calculation methodology in Case U-15645, that methodology was stated in Exhibit A-105 and does indeed provide for separate ROA PRDM surcharges/credits which address only distribution costs. In distinction to the U-15645 methodology, the Consumers Energy Exhibits A-8 and A-9 result in surcharges/credits assessed to ROA customers which clearly and deliberately contain power supply costs. Thus the position contained in those exhibits must be rejected.

D. ROA Customers Cannot Be Required to Pay Power Supply PRDM Surcharges/Credits Because Power Supply Costs Have Not Been Allocated to ROA Customers.

1. Consumers position.

Consumers claims that it is desirable to spread the responsibility for costs across the broadest range of customers. Consumers Brief, p. 11-12. Consumers also questions the practicality of segregating the impact of ROA service on customer costs. *Id.* Consumers concludes by stating the cost allocation requirement set forth in MCL 460.11(1) are limited to use of the "50-25-25" method of allocation which, "...can easily be calculated for each customer class including full service and ROA customers and [if this is done] there would be no violation of the statute if that allocation procedure was applied to ROA customers". Consumers Brief, p. 29-30.

2. Energy Michigan reply.

The Consumers position cited above is a clear admission that there was no Cost of Service Study based allocation of power supply costs to ROA customers in Case U-15645 nor is such a study cited from succeeding rate case such as U-16191 nor the current Consumers Rate Case U-16794. The Commission cannot satisfy the requirements of MCL 460.11(1) by charging certain costs to customers and then retroactively manufacturing a Cost Of Service study or position that attempts to justify the unsupported allocation of costs. Either costs are or are not allocated to a customer class under a fully supported Cost of Service Study. There is no COS allocating power supply costs to ROA customers on the Consumers system therefore the requirements of MCL 460.11(1) have not been satisfied and such costs cannot be assessed to ROA customers. For a more thorough discussion of this issue please see Energy Michigan Initial Brief, pages 11-14.

III. Reply to MPSC Staff

A. The MPSC Staff PRDM Set Forth in Exhibit S-2 Is Acceptable To Energy Michigan

1. MPSC Staff position.

The preferred position of MPSC Staff is to implement a PRDM as set forth in Exhibit S-2. This method incorporates separate calculations and credits/surcharges for power and distribution by rate. Staff Brief, p. 11-15, Exhibit S-2.

2. Energy Michigan reply.

Because power and distribution PRDM surcharges/credits in Staff Exhibit S-2 are calculated separately by the Staff, the power rate would apply to full service customers and the distribution rate would apply to both full service and Choice [sic] customers. Staff Brief, p. 12-13.

The Staff preferred methodology as set forth in Exhibit S-2 results in PRDM surcharges/credits based on costs allocated by the Cost of Service Study and thus complies with PA 286 § 11(1). The PRDM position set forth in Exhibit S-2 is acceptable to Energy Michigan.

B. Energy Michigan Opposes the Staff Fallback Methodology Contained in Exhibit S-4.

1. Staff position.

In Exhibit S-4 MPSC Staff set forth a fallback position which was Staff's second choice compared to their preferred position as set forth in Exhibit S-2. Under the S-4 methodology, the Staff uses Consumers Energy data which combines both the ROA class and the bundled class for each rate schedule to calculate the variations in use per customer between base and study periods. Staff Brief, p. 18

2. Energy Michigan reply.

Energy Michigan opposes Staff's second choice alternative PRDM methodology as set forth in Exhibit S-4 because:

a. Under Exhibit S-4, ROA customers would be charged or credited for power costs that are not allocated in any Cost of Service Study approved by or used as the basis for MPSC approved rates. Assessment of power supply costs or credits to Choice customers is a violation of PA 286 § 11(1) as more fully set forth in the Energy Michigan Brief at pages 11-13.

b. The Staff use of one rate for both ROA service and bundled service does not properly account for the impact of Choice migration on use per customer. Therefore, in Staff's own words, such a methodology would not produce rates that were "just and reasonable". Staff Brief, p. 11.

c. Combining both ROA and full service customers violates the argument and position of Staff as set forth in their Brief that it is wrong to make one class or rate pay for costs more appropriately allocated to other rates or classes. Staff Brief, p. 19-20.

IV. Conclusion and Prayer for Relief

WHEREFORE, as more fully set forth above, Energy Michigan respectfully requests that the Commission:

A. Reject the PRDM methodology proposed by Consumers Energy which, in part, surcharges or credits amounts attributable for power supply to ROA customers who do not use power supply; and

B. Adopt the PRDM methodology as set forth by MPSC Staff in Exhibit S-2 or an alternative PRDM methodology which would surcharge or credit ROA customers only for costs associated with distribution service.

Respectfully submitted,

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November 7, 2011

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Case No. U-16566

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Monica Robinson, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 7th day of November, 2011, she served a copy of Energy Michigan, Inc.'s Reply Brief upon those individuals listed on the attached Service List by email at their last known addresses.

Monica Robinson

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