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 aid distribution of electrical and for other relief.	Case No. **U-17087** (Remand) (e-file/paperless)

_____/

MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
REPLIES TO EXCEPTIONS

I. Introduction

The modus operandi of the RCG in this proceeding is obfuscation. This is so because the Court of Appeals' April 30, 2015 remand order and the Commission's March 29, 2016 order commencing this proceeding are crystal clear as to the scope of this proceeding. Through deliberate confusion and repetition of subject matter that has already been stricken in this proceeding, not to mention argued and conclusively litigated in numerous previous Commission and Court of Appeals' cases, the RCG again seeks to argue issues that it has previously lost. The RCG pursued this tactic in the briefs requested by the Commission in its January 19, 2016 order, in initial and reply briefs in this proceeding, and now in its exceptions to the Proposal for Decision (PFD). Staff will endeavor to address all inaccuracies, both large and small, and each exception presented by the parties. However, Staff's failure to address any assertion by any party to this proceeding should not be construed as acquiescence with that party's position. Instead, Staff continues to

advance the positions articulated in its initial and reply briefs, testimony and exhibits.

II. Staff's response to inaccuracies presented in RCG's introduction to its exceptions to the PFD.

The RCG quotes footnote 3 of the Court of Appeals' remand order in error on page 1 of its exceptions by referring to the clarifying of "purposes" and nature of the opt-out tariff instead of the true wording of the order which only refers to "purpose," not the plural "purposes." RCG's exceptions, p 1. Given the RCG's initial brief which was rife with such inaccuracies, and the fact that RCG suggests these changes in the aggregate serve to support the inclusion of irrelevant and immaterial subject matter into this proceeding, it is difficult to not assume that the RCG is being willfully inexact.

Next, on the bottom of page 1 and the first sentence of page 2, the RCG quotes, phrase, and select sentences from the Court's opinion out of context in an attempt to support the erroneous notion that data privacy issues are within the scope of remand. The RCG' selective quotes provide "these issues were given only cursory analysis in the PSC lower court record" and "that the record on this issue is inadequate to support an informed decision by the Court." RCG Exceptions, p 1. On the next page, the RCG asserts "[t]he Court ordered a contested case remand "on this significant issue"…" RCG Exceptions, p 2. The RCG then states that "this significant issue" means the RCG's data privacy concerns. However, when read in their proper context as written in the Court's opinion below, it is plainly obvious

that the remand was narrowly tailored to address the costs associated with opting out of an AMI meter. The Court's opinion provides:

> Appellant customers argue that the PSC's approval of the tariffs requiring customers who opt-out of the AMI program to pay a one-time charge of either $69.39 or $123.91 and a monthly charge of $9.72 was unjust, unreasonable, and unsupported by evidence in the record. At oral argument before this Court, the parties raised numerous arguments regarding whether the tariff amounts approved by the PSC represented the actual costs associated with continued use of analog meters, and whether any of these costs were already accounted for in the utility's rates. Unfortunately, it appears that **these issues were given only cursory analysis in the PSC lower court record**. We conclude **that the record on this issue is inadequate to support an informed decision by the Court** at this time. Accordingly, we remand this issue to the PSC to conduct a contested case hearing **on this significant issue**. [*In re Application of Consumers Energy to Increase Electric Rates*, unpublished opinion per curiam of the Court of Appeals, issued April 30, 2015 (Docket Nos. 317434; 317456)(emphasis added highlighting the RCG's selective quotations.)]

Placed in their proper context within the Court's discussion of the one-time and monthly opt-out charges, the words in bold font in the quoted Opinion section above clearly do not indicate that the Court intended data collection and Michigan and US Constitutional issues pertaining to the right to privacy to be considered in this remand. Notably, the RCG and various appellants, some of whom are now members of the RCG, have previously litigated and lost on these issues in Commission cases and appeals to the Court of Appeals. Instead, the Court began the section of its opinion discussing the imposition of opt-out fees by expressly stating the one-time and monthly charges required by the tariff, then stating that the questions of whether these costs represented the cost to serve customers with analog meter when the Company is switching its default metering technology away

from analog meters, and finally, in footnote 3, providing the specific question to be answered in the remand to address the issue of whether the opt-out charges were cost-of-service based.[1] The Court essentially provided a specific roadmap for the Commission to follow to address the concerns expressed in the remand. There exists no rational, reasonable interpretation of this roadmap that would allow for the consideration of issues far afield, such as those put forth by the RCG, in this remand proceeding when the Court initiated its discussion by detailing the specific dollars and cents amounts of the opt-out charges, and based its subsequent statements and questions on what these dollar figures represent.

In the last paragraph of its introduction the RCG falsely states that the Company and Staff presented "old, repetitive evidence." RCG exceptions, p 2. In fact, Staff and the Company presented updated evidence from the Company's subsequent rate case, MPSC Case No. U-17735, exhibiting the calculation of the AMI meter reading costs, the presentation of the costs and cost-categories included in the opt-out charges, and detailed testimony by Staff's witness in U-17735 explaining the attribution of costs to certain members of a class of otherwise similarly situated customers causing those costs, thus obviating the need for a separate cost-of-service-study. In sum, the presentation made by Staff in this remand proceeding is anything but "old, repetitive evidence." It is new, updated, substantial evidence, the weight of which strongly disfavor the RCG's tenuous, tortured arguments which are outside the scope of this remand.

[1] The Court of Appeals' opinion is attached as Attachment A.

III. Staff's reply to RCG's first exception

The ALJ succinctly summarized the purpose of this remand, stating, "we're only looking at cost of service, looking at double collections, we're looking at whether this is a tax or a penalty. *These are all financially related issues."* 2 TR 39 remand. (Emphasis added.) Based on this analysis, the ALJ properly struck irrelevant portions of RCG's witness Crandall's testimony. In his PFD, the ALJ explained that the stricken portions of RCG's witness' testimony "clearly falls outside the scope of this remand proceeding as expressly defined by both the Court of Appeals and the Commission." PFD, p 22. The ALJ further explained "the Court specifically stated that, upon remand, the Commission was simply to clarify whether Consumers' AMI opt-out tariff was designed to recover the utility's cost-of-service for allowing customers to retain or re-install analog meters, as opposed to imposing some sort of tax, sanction, or penalty upon them for electing to do so." *Id.* Data privacy simply does not fit. It has nothing, whatsoever, to do with the purpose and scope of this remand proceeding. The ALJ's ruling to strike the testimony in question, and the ALJ's explanation for it in his PFD perfectly comport with the Court's instructions in its opinion remanding the case back to the Commission. At the core, the words of the Court's opinion are crystal clear and speak for themselves. The opinion presents no ambiguity as to what the scope of this remand proceeding is. Only by stripping specific phrases from their context in the opinion and presenting them alone, as the RCG does in the first paragraph under the heading "EXCEPTION 1" where it suggests that the phrase "nature and purpose" somehow mean the court intended to drastically widen the scope of the remand, can the RCG

even remotely attempt to justify its tortured analysis. RCG's exceptions, p 3. In any event, the RCG is incorrect. The scope of the remand, as explained by the ALJ in his PFD, is related to the financial issues of reimbursement for costs of service and tax, sanctions and penalties and does not contemplate data collection and constitutional right to privacy issues.

In attacking the ALJ's reasoning for striking the irrelevant testimony of its witness, the RCG repeats its collateral attack against the Commission's orders in U-17000 and U-17102. RCG's Exceptions, pp 3-4. The Commission rejected this argument in the Company's recent rate case U-17735. In its order, the Commission stated:

> [r]egarding the RCG's argument that long-standing judicial precedent provides that the Commission may only issue binding orders in contested cases, or in formal rulemaking proceedings in accordance with the Michigan Administrative Procedures Act, MCL 24.206 *et al*., the Commission simply notes that the Court of Appeals ruled otherwise when it held that the Commission could rely on its previous determinations in Case No. U-17000. *See, In re Application of Detroit Edison Company To Implement Opt Out Program*, unpublished per curiam opinion of the Court of Appeals, issued February 19, 2015 (Docket Nos. 316728 and 316781). Accordingly, the Commission rejects this argument. [MPSC Case No. U-17735, 11/19/2015 Order, p 131.]

Despite this, the RCG subsequently presented this same argument in the Company's very next electric rate case, U-17990. MPSC Case No. U-17990, RCG's Initial Brief, p 16. And, the RCG repeats this identical argument in this remand. The Commission orders in U-17000 and U-17102 were not appealed. Moreover, the Court of Appeals' decision in *In re Application of Detroit Edison Company to Implement Opt Out Program* affirms the Commission's ability to rely on its

determinations in U-17000 and U-17102 despite any supposed problems resulting from these not being contested cases, as argued by the RCG. Therefore, the ALJ properly rejected the RCG's inappropriate collateral attacks on these Commission orders. PFD, p 24.

The RCG again misconstrues the wording of the Court of Appeals' opinion near the bottom of page 4, and again near the bottom of page 5 of its exceptions. The RCG quotes footnote 3 of the Court's opinion and states that its witness presented testimony "pertaining broadly" to the Court's language. However, footnote 3 was not an invitation to the parties to present testimony and information "pertaining broadly," loosely, or in the case of the RCG, irrelevantly, to the Court's remand. As explained above, the Court identified the issue requiring the remand and the questions to be answered to properly address that issue. Again, the specific narrowly tailored scope of this remand which was accurately captured by the Commission in its March 29, 2016 order does not allow for the inclusion of the wide-ranging, irrelevant testimony of RCG's witness.

Lastly, the RCG again incorrectly attempts to suggest that Judge O'Connell's dissenting opinion in Staff's motion for reconsideration, where he advocates for the inclusion of health, safety, and privacy matters in this case, constitutes the bedrock reasoning of the Court's original April 30, 2015 opinion remanding this case back to the Commission. RCG's exceptions, p 5. RCG's assertion is belied by the simple fact that Judge Gadola wrote separately in the Court's July 22, 2015 order denying Staff's motion for reconsideration that the scope of the remand remained unaltered

from the original April 30 opinion, despite Judge O'Connell's dissent. Judge O'Connell's dissent has no precedential effect on this remand. The ALJ, therefore correctly found in his PFD that the RCG's appeal of the ALJ's granting of the motions to strike should be rejected.

IV. Staff's reply to the RCG's second exception.

The ALJ correctly found that the up-front and monthly opt-out fees are a cost-based reimbursement and not a tax, sanction or penalty. PFD, pp 26-27. However, the RCG predicates its exception on the erroneous notion that a separate cost-of-service study dealing with opt-out customers is essential and that the absence of one renders the opt-out charges baseless. The RCG is incorrect. Staff witness Revere stated:

> The nature of the opt-out tariff is a reimbursement for costs of service, and is in no way intended to be a tax, sanction, or penalty. As I testified in MPSC Case No. U-17735:
>
> > Costs are considered to be caused by a customer if they are incurred to serve that customer in a way that differs from other customers. In a cost of service study, customers are grouped into classes of similarly situated customers (e.g., customers served at secondary voltage levels). *The customers within these classes are considered to cause costs in a similar way. Sometimes, customers that would otherwise be considered similarly situated, but cause the company to incur specific costs differently from the other seemingly similarly situated customers, are not separated out into a different class (e.g., lighting customers with more expensive ornamental poles). In such a case, those costs which are incurred to serve a customer or group of customers differently are specifically assigned to those customers.* …[T]he costs included in the monthly opt-out charges are the costs that will remain only to serve those customers who have chosen not to receive the Company's AMI meters once AMI rollout is completed. Once rollout is complete, most customers will not require meter reading expenses to be incurred by the

> Company. Only opt-out customers will require meter readers and associated equipment and expenses, though they are otherwise similarly situated to other customers. These costs are then caused only by opt-out customers, and should rightfully be collected from them. Other customers should not have to pay for costs caused solely by opt-out customers, whether they are "new" or not, any more than a lighting customer who does not choose a more expensive pole should have to pay for the costs of those who do. (MPSC Case No. U-17735, 9 TR 15 1868-1869).
>
> These statements are based on the original calculation that resulted in the charges approved in U-17087. Those charges are still in effect. [2 TR 97-98.] (Emphasis added.)

Therefore, as described by the Staff witness, a separate cost of service study is unnecessary and redundant when a certain group similarly situated customers within a rate class are causing specific, identifiable unique costs. Furthermore, the choice of metering technology a utility chooses is wholly a management prerogative and if a utility chooses AMI as its default metering technology, it is absolutely reasonable to ascribe the incremental costs that result from a customer's choice delaying the default technology's full deployment in the utility's service territory to that customer. See *In re Application of Detroit Edison Company to Implement Opt Out Program,* unpublished opinion *per curiam* dated February 19, 2015, p 5.

Furthermore, embedded within the erroneous notion described above, the RCG makes oblique references to notice and customer authorization for meter installation, an opt-in approach, and total costs of full AMI deployment. In addition to being completely outside the scope and irrelevant to the issue to be addressed in the remand, it also constitutes yet another attempt to discuss issues that the ALJ already properly struck. Therefore, the Commission should disregard and reject any positions or assertions related to these irrelevant topics.

V. Staff's reply to RCG's third exception

The RCG seems to misunderstand that a meter is utility property and that the choice of metering technology rests with the utility. *Detroit Edison Co v Stenman,* ___ Mich App ___; ___ NW2d ___ (2015); *In re Application of Detroit Edison Company to Implement Opt Out Program*, *supra*. The utility has chosen to deploy a new metering technology as its default metering technology for its service area. The Commission ordered the Company to provide an opt-out option, stating that utilities "shall make available an opt-out option, based on cost-of-service principles, for their customers if or when the provider elects to implement AMI". *In re the Commission's own Motion*, Case No. U-17000, 9/11/12 Order, p 5. Directed at Consumers, the Commission continued, "the Commission directs the company to include a proposed opt-out-tariff." *Id.* Therefore, pursuant to the Commission's order, the Company implemented an opt-out tariff based on the costs to serve customers who insist on using a metering technology apart from the utility's default metering technology. As such, any notion presented by the RCG that these customers are not causing the costs required to serve them, essentially that they are not requesting "special services," is erroneous, false, and should be rejected.

VI. Staff's reply to the RCG's fourth exception

The RCG's fourth exception to the PFD is predicated on misdirection. The ALJ correctly found that AMI opt-out related costs are not being double-collected from opt-out customers. PFD, pp 27-28. To begin, the RCG again reiterates its erroneous claim that a lack of a cost-of-service study invalidates the opt-out

charges. Staff has addressed this false claim above. Next, the RCG presents a portion of the Company's witness Lincoln Warriner's cross examination transcript from the Company's rate case, U-17990. RCG Exceptions, p 11. The RCG presents this isolated small segment of cross examination testimony as its RCG-Exhibit 6 in this case. The RCG uses this portion of testimony to suggest that the opt-out customers, though choosing not to have an AMI meter, are paying AMI-related costs nonetheless. What the RCG conveniently omits is the immediately preceding cross examination question and answer from Consumers' witness Warriner:

> Q: Now, one of your responses in that discovery as updated is that the concept that the recovery of AMI investments and O&M costs are included in rates charged to all customers regardless of the type of meter used to measure customer usage; is that correct?
>
> A: So that statement is correct in the context of this response which indicates that customers that participate in manual meter reading do receive a credit in their monthly manual meter reading charge that offsets the investment and O&M costs associated with AMI. [MPSC Case No. U-17990, 7 TR 1506.] (Emphasis added.)

Mr. Warriner clearly explained in his answer above that no opt-out customer is paying for the Company's investment and O&M costs associated with AMI. The RCG's claim that AMI-related opt-out costs are already being collected in base rates is completely belied by the testimony of Mr. Warriner provided above. Furthermore, Staff witness Revere explained that the opt-out charges include offsets for both meter reading expenses and the cost of AMI infrastructure. 2 TR 99-100. As such, the RCG's claim in its fourth exception to the PFD that opt-out related costs are already being collected from all customers, including opt-out

customers completely ignores the credits offsetting AMI costs for opt-out customers. The Commission should reject this claim by the RCG.

VII. Staff's reply to RCG's fifth exception to the PFD

The RCG's fifth exception is devoted to repeating its argument for reducing the opt-out tariff drastically for customers who self-read the meters and report their energy consumption to the utility. RCG Exceptions pp 14-15. The ALJ correctly rejected this argument in his PFD noting that it was beyond the scope of this remand proceeding, and had already been considered and rejected by the Commission in its November 19, 2015 order in Case No. U-17735, p 128. The RCG presents nothing new in its exceptions and merely repeats its arguments. Therefore, the Commission should affirm the ALJ's rejection of this argument.

VIII. Staff's reply to the Attorney General's exceptions to the PFD

Staff simply notes that the ALJ properly dealt with the Attorney General's arguments in the "Miscellaneous Issues" section of the PFD. As the ALJ correctly noted, any assertions to alter the opt-out fees based on testimony from the Company's recent rate case, U-17990 must properly be dealt with in that case, and not in this remand. PFD, p 32. Those issues are beyond the limited, narrow scope of this remand proceeding. The ALJ further noted that the Attorney General's arguments related to amortization of exception processing, purported "excessiveness" of the opt-out charges compared to DTE, and the elimination of an up-front charge were convincingly rebutted by the Company's witness. PFD, pp 31-

32. The Attorney General merely presents these arguments again for another attempt at consideration by the Commission. The ALJ's reasoning was sound regarding these issues and should be adopted.

IX. Conclusion and relief requested

For all the reasons presented in these replies to exceptions, Staff's initial brief and reply brief, and testimony and exhibits, Staff respectfully requests the Commission reject the positions asserted by the RCG and the Attorney General. Furthermore, Staff respectfully requests the Commission adopt the ALJ's recommendations in his PFD in its entirety, finding that Consumers' AMI opt-out tariff represents a reimbursement for costs of service, as opposed to a tax, sanction or penalty, and that though the expenses are included in rates, the opt-out charges as approved contain a credit which offsets those costs, ensuring opt-out customers are not paying for them, thereby affirming its June 28, 2013 decision in Case No. U-17087.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

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Dated: February 17, 2017
17087/Reply to Exceptions

Attachment A

STATE OF MICHIGAN

COURT OF APPEALS

ATTORNEY GENERAL,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

CONSUMERS ENERGY COMPANY,

Petitioner-Appellee.

UNPUBLISHED
April 30, 2015

No. 317434
Public Service Commission
LC No. 00-017087

MICHELLE RISON, ANN DEROUIN, MITCHELL DEROUIN, BILLIE J. PREKLESIMER, JOYCE HORNESS, MARCUS HORNESS, MIKE KEMPF, SANDY KEMPF, DAN MARTIN MILLS, CHERYL MCKINNEY, GLORIA GARDNER, KERRY KRENTZ, HEATHER WITKOWSKI, CHRISTINE HUNT, SCOTT BRASPENNINX, and PAM DAZEY,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

CONSUMERS ENERGY COMPANY,

Petitioner-Appellee.

No. 317456
Public Service Commission
LC No. 00-017087

Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

PER CURIAM.

In these consolidated cases, the Attorney General and Michelle Rison, et al., appeal a June 28, 2013 order issued by the Michigan Public Service Commission (PSC) approving an application by Consumers Energy Company (Consumers Energy) for a rate increase to continue funding, among other things, its advanced metering infrastructure (AMI) program, and approving tariffs for customers who elect to opt-out of the AMI program. For the reasons below, we affirm the stipulation and order for the rate increases in Docket No. 317464, but because of the numerous issues raised on appeal in Docket No. 317456 concerning tariffs for customers who elect to opt-out of the AMI program, we remand those issues to the PSC and direct the PSC to conduct a contested case hearing on the opt-out tariff. We direct the PSC to issue a detailed opinion with sufficient facts and conclusions of law that allows this Court to review the entire scope of the unusual opt-out tariff.

I. BACKGROUND

Several years ago, Consumers Energy began implementing an AMI[1] program in Michigan. On November 4, 2010, the PSC issued an order in Case No. U-16191 that approved Consumers Energy's pilot AMI program, but required Consumers Energy to meet certain conditions, such as providing information on the benefits and costs of the program, before approving full deployment of the AMI program. In *In re Application of Consumers Energy Co to Increase Rates*, unpublished opinion per curiam of the Court of Appeals, issued November 20, 2012 (Docket Nos. 301318 and 301381), this Court affirmed the PSC's decision regarding Consumers Energy's pilot AMI program. On June 7, 2012, the PSC issued an order in Case No. U-16794 authorizing Consumers Energy to proceed with Phase 2 of its AMI deployment program. In that case, the PSC adopted $44.8 million in expenditures for the AMI program in Consumers Energy's rate base.

On September 19, 2012, Consumers Energy filed an application requesting rate relief in the case underlying this appeal, Case No. U-17087, to cover, among other things, its ongoing investments associated with the AMI program. In addition, Consumers Energy sought approval of opt-out tariffs for customers who did not wish to participate in the AMI program. On October 19, 2012, an administrative law judge (ALJ) granted intervenor status to the Attorney General.

On May 7, 2013, the parties filed a settlement agreement in which they agreed to an annual rate increase of $89 million. However, in the agreement, the Attorney General reserved two issues for future resolution, including (1) a request to the PSC "to direct Consumers Energy to suspend the [AMI] program," and (2) an objection "to the amount of the 'opt-out' fee." The

[1] An AMI meter, also known as a smart meter, is capable of collecting near-real-time data on a customer's energy usage and reporting the data to the utility at frequent intervals. *In re Applications of Detroit Edison Co*, 296 Mich App 101, 114; 817 NW2d 630 (2012).

PSC entered an order on May 15, 2013, approving the settlement agreement. Thereafter, the Attorney General challenged the PSC's continued support of Phase 2 of Consumers Energy's AMI program and challenged Consumers Energy's application for approval of its opt-out tariffs.

In response, Consumers Energy argued that it prepared an updated business case analysis for its AMI program in March 2012, and that the analysis indicated a 20-year positive net present value (NPV) of $42 million for the AMI program. Consumers Energy noted that the Attorney General also sought suspension of its AMI program in Case Nos. U-16191 and U-16794 on the ground that the cost/benefit analysis used in each case was flawed, but that the PSC rejected the Attorney General's request in each case. The Attorney General argued that the PSC should suspend Consumers Energy's AMI program until a cost/benefit analysis showed that the program would bring value to customers. The Attorney General asserted that its analysis showed that the AMI program had a negative NPV, and that Consumers Energy's testimony regarding savings from the AMI program was speculative.

On June 28, 2013, the PSC issued an order approving Consumers Energy's continuation of the AMI program and approving Consumers Energy's opt-out tariffs. The Attorney General (Docket No. 317434) and Michelle Rison, et al. (Docket No. 317456)[2] now appeal from the PSC's June 28, 2013, order.

II. STANDARD OF REVIEW

The standard of review for PSC orders is narrow and well defined. Pursuant to MCL 462.25, all rates, fares, charges, classifications and joint rates, regulations, practices, and services prescribed by the PSC are presumed, prima facie, to be lawful and reasonable. *Mich Consol Gas Co v Pub Serv Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its

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[2] Appellants in Docket No. 317456 were not parties to the proceedings below. These appellants claim entitlement to an appeal as of right under MCL 462.26(1), which states the following:

> Except as otherwise provided . . . any common carrier or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within 30 days from the issuance and notice of that order file an appeal as of right in the court of appeals. . . .

Appellants claim they are parties in interest under the statute because they are customers of Consumers Energy who will be required to pay tariffs under the opt-out program. The phrase "party in interest" in MCL 462.26(1) is undefined in the statute, and it is unclear whether this phrase permits any *person* with an interest in the proceedings to file an appeal as of right, or whether it requires that such a person first be a *party* to the proceedings to claim such an appeal. On remand, the PSC shall determine if these parties have standing to proceed below.

discretion in the exercise of its judgment. *In re MCI Telecom Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). An order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Pub Serv Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966).

A final order of the PSC must be authorized by law and must be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. A reviewing court gives due deference to the PSC's administrative expertise and is not to substitute its judgment for that of the PSC. *Attorney General v Pub Serv Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). "Whether the PSC exceeded the scope of its authority is a question of law that we review de novo." *In re Complaint of Pelland against Ameritech Mich*, 254 Mich App 675, 682; 658 NW2d 849 (2003).

III. DOCKET NO. 317434

In Docket No. 317434, the Attorney General argues that the PSC erred in approving the continuation of Phase 2 of Consumers Energy's $750 million AMI program because the record lacked competent, material, and substantial evidence demonstrating that the costs of the AMI program outweighed its benefits. The PSC first argues that the Attorney General lacks standing to challenge the June 28, 2013, order in this case. A party must be aggrieved by a lower court's decision in order to have standing to bring an appeal from that decision. MCR 7.203(A); *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290-291; 715 NW2d 846 (2006). "To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency." *Federated Ins Co*, 475 Mich at 291 (quotation marks and citation omitted).

MCL 462.26(1) provides that "any common carrier or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within 30 days from the issuance and notice of that order file an appeal as of right in the court of appeals." The Attorney General gave notice of intervention and was granted intervenor status in this case below. The Attorney General had the statutory right to intervene to represent the interests of the people of the state, MCL 14.28, and he stated that he intervened because the case would affect rates paid by Consumers Energy's customers. The June 28, 2013, PSC order approved, among other things, opt-out tariffs for Consumers Energy's customers. Thus, the Attorney General was a party in interest with standing to appeal the order under MCL 462.26(1).

Although the Attorney General has standing to bring this appeal, we conclude that the stipulation to the $89 million increase forecloses any objection that the Attorney General has to the rate increase.

As part of Case No. U-17087 underlying this appeal, the Attorney General was permitted to contest Consumers Energy's requested rate increase associated with the 2013 through 2014 portion of Phase 2 of its AMI program. See MCL 462.26(1). However, we determine that the Attorney General, on appeal, may not contest the rate increase because the parties stipulated in the May 7, 2013, settlement agreement to an $89 million revenue increase that covered, in part, Consumers Energy's ongoing investments in its AMI program. The agreement stated the following:

> The Attorney General has requested the Commission to direct Consumers Energy to suspend the Advanced Metering Infrastructure ("AMI") program, and in the event the program continues, has objected to the amount of the "opt-out" fee. These issues are not resolved as part of this settlement. The parties request the Commission to address these issues based upon the initial and reply briefs filed pursuant to the schedule established by the Administrative Law Judge in this case. *The parties agree that the $89.0 million annual revenue increase and associated rates specified in this Settlement Agreement shall not be affected by the Commission's ruling on this issue.* . . . [Emphasis added.]

Because the Attorney General stipulated to the $89 million rate increase that covered, in part, the 2013 through 2014 portion of Phase 2 of Consumers Energy's AMI program, the Attorney General has not presented any issues warranting relief.

IV. DOCKET NO. 317456

A. AUTHORITY TO APPROVE AMI OPT-OUT PROGRAM

Appellant customers contend that the PSC lacked the statutory authority to impose an opt-out program on customers who do not wish to participate in the AMI program, and that the PSC should have considered an opt-in program instead. Because this issue was not raised below, we review the unpreserved claim for outcome-determinative plain error. *In re Application of Consumers Energy Co*, 278 Mich App 547, 568; 753 NW2d 287 (2008).

The PSC possesses only those powers conferred upon it by the Legislature, and thus has no authority to make management decisions on behalf of utilities. *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 148-150; 428 NW2d 322 (1988) (holding that the PSC lacked authority to forbid the operation of a facility). However, under MCL 460.6(1), the PSC has broad authority to regulate reasonable rates for all public utilities. Within its ratemaking authority, "[t]he PSC has discretion to determine what charges and expenses to allow as costs of operation." *Ford Motor Co v Pub Serv Comm*, 221 Mich App 370, 375; 562 NW2d 224 (1997).

In this case, the PSC's June 28, 2013, order approved tariff rates for customers who elected either to retain a standard meter or to replace a transmitting AMI meter with a standard meter. The approved rates were based on the PSC's determination of the actual costs associated with maintaining equipment and services for customers with non-transmitting meters. A decision to impose charges and expenses based on a utility's costs of operation is well within the ratemaking authority of the PSC. *Ford Motor Co*, 221 Mich App at 375. Accordingly, the PSC did not exceed its statutory authority.

B. IMPOSITION OF FEES ON OPT-OUT CUSTOMERS

Appellant customers argue that the PSC's approval of the tariffs requiring customers who opt-out of the AMI program to pay a one-time charge of either $69.39 or $123.91 and a monthly charge of $9.72 was unjust, unreasonable, and unsupported by evidence in the record. At oral argument before this Court, the parties raised numerous arguments regarding whether the tariff amounts approved by the PSC represented the actual costs associated with continued use of analog meters, and whether any of these costs were already accounted for in the utility's rates.

Unfortunately, it appears that these issues were given only cursory analysis in the PSC lower court record. We conclude that the record on this issue is inadequate to support an informed decision by the Court at this time. Accordingly, we remand this issue to the PSC to conduct a contested case hearing on this significant issue.[3] The parties are entitled to present their positions, and the PSC shall issue a written opinion on its findings of fact and conclusions of law.

Docket No. 317434 is affirmed. Docket No. 317456 is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood
/s/ Michael F. Gadola

[3] On remand, the PSC should clarify the purpose and nature of the opt-out tariff by addressing whether the tariff represents a reimbursement for costs of service, or whether the tariff constitutes something more akin to a tax, sanction, or penalty imposed upon customers who choose to opt out of the AMI program.

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 electric and for other relief.

Case No. **U-17087 (Remand)**
(e-file/paperless)

_____/

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

PAMELA A. PUNG, being first duly sworn, deposes and says that on **February 17, 2017,** she served a true copy of **Michigan Public Service Commission Staff's Replies to the Exceptions** upon the following parties **VIA EMAIL ONLY**.

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Pamela A. Pung

PAMELA A. PUNG

Subscribed and sworn to before me
This **17th** day of **February, 2017**.

Tina L. Bibbs

Tina L. Bibbs, Notary Public
State of Michigan, County of Clinton
Acting in the County of Eaton
My Commission Expires: 11-13-2021