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November 13, 2013

Ms. Mary Jo Kunkle  
Michigan Public Service Commission  
4300 W. Saginaw Highway  
P.O. Box 30221  
Lansing, MI 48909

Re: Case No. U-17473

Dear Ms. Kunkle:

Attached for paperless electronic filing is Energy Michigan's Initial Brief. Also attached is a 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

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In the matter of the application of )  
CONSUMERS ENERGY COMPANY )  
for a Financing Order Approving the )  
Securitization of Qualified Costs )

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Case No. U-17473

INITIAL BRIEF OF ENERGY MICHIGAN

November 13, 2013

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INITIAL BRIEF OF ENERGY MICHIGAN

I. Introduction and Summary of Position

A. Introduction.

This Initial Brief is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by Varnum LLP. Failure to address any issues or positions advocated by other parties to this matter should not be construed as agreement with those issues or positions.

B. Summary of Position

1. The assets to be securitized are production related and therefore cannot apply to ROA customers.

All the assets to be securitized relate to seven coal fired generating plants. ROA customers do not take service from these plants and cannot and should not be allocated costs related to the plants under Michigan law. Therefore the proposed charges to ROA customers are not cost based and violate MCL 460.11.

2. Securitization is premature.

Securitization is premature because there is no guarantee that the referenced plants will ever be retired or, if so, when that retirement will take place. Consumers Energy Company ("Consumers") has refused to commit to a date certain for retirement of the seven coal fired power plants that are the subject of this Application.

3. Securitization charges cannot apply to ROA customers.

ROA customers do not benefit from the securitized assets therefore securitization does not produce any tangible and quantifiable benefits for these ROA customers. Under similar circumstances in Case U-13715, the Commission has excluded ROA customers from securitization charges.

4. There is no proof that the coal plant costs are unrecoverable in the current market.

Consumers has not proven that Michigan is a competitive market or that the coal plant costs, if included in total Consumers generating fleet costs, are unrecoverable in that market. Therefore, under precedent from Case U-13715, the costs cannot be securitized.

Perhaps most important, Consumers has not shown that pending Case U-17453 which asks for regulatory asset accounting treatment for exactly the same assets will not produce cost recovery for Consumers under current market conditions.

5. This is an illegal claim for stranded costs.

Consumers has essentially labeled the undepreciated cost of seven coal plants as unrecoverable in a competitive market. Therefore, Consumers is attempting to collect stranded costs in this case. However, changes to Michigan law in 2008

removed the power of the Commission to determine and collect new stranded costs after 2008. The Commission may only authorize recovery of stranded costs awarded before that date and even that recovery must terminate in 2013. Therefore the Commission has no authority to order collection of new stranded costs.

If the coal plant costs are not stranded, they cannot be securitized per Commission Order U-17315 issued October 14, 2004, p. 10.

6. Competitive impact.

The Consumers proposal to assess securitization charges to ROA customers would adversely impact competition. Attachment #1 which is Exhibit A-12 introduced by Consumers Witness Torrey illustrates this adverse impact on competition. Securitization actually reduces the bills of primary and secondary full service customers by about 1 mill/kWh (secondary full service) and .3 mills./kWh (primary demand full service). However, ROA customer bills are increased by about 1.2 mills/kWh for both primary and secondary voltage. The net impact on competitive margin therefore is over \$2/Mwh. This is a significant amount in the competitive energy area.

## II. Facts

### A. Assets to Be Securitized and Status of Those Assets

The assets to be securitized consist of undepreciated balances related to the Cobb 1-5, Weadock Unit 7-8 and Whiting Units 1-3 (the "Retired Plant"). Consumers has also requested securitization of the demolition costs related to these units. Kehoe, 2 Tr 198; Myers, 2 Tr 431; Zakem, 2 Tr 51. Thus all of the assets to be securitized consist of or are directly related to production costs.

Consumers claims that the projected retirement date for the Retired Plant is April 16, 2016 but bases this assessment on "current projections". Kehoe, 2 Tr 199.

B. Pending Case U-17453 Covers the Same Assets.

In the current securitization Application U-17473, Retail Open Access ("ROA") customers would be charged the same securitization fees as full service customers but the Retired Plant does not serve ROA customers. Zakem, 2 Tr 53; Myers, 2 Tr 431.

Currently Consumers has another Application, Case U-17453, which requests regulatory asset treatment of the costs described above for the Cobb, Weadock and Whiting Units as well as related demolition costs. In that Application, Consumers states (at ¶ 5) that it "may be uneconomic to install pollution controls on these units: and that the Application is based on "current projections" and at (¶ 6) that it is "likely" that operations as of April 15, 2016 would be uneconomical. Consumers Application U-17453, dated August 6, 2013, Attorney General Witness King and Sierra Club Witness Jester have concluded that Consumers Energy does not make a firm commitment to retire the referenced Cobb, Weadock and Whiting Units as of a date certain. King, 2 Tr 467; Jester, 2 Tr 96.

It is also important to note that Consumers' Application U-17453 requests regulatory asset treatment that would allow full recovery of the referenced undepreciated costs and demolition charges in the current market and under current market conditions. However, securitization is supposed to be used where the cost of assets cannot be recovered in a competitive market. Indeed, Consumers Energy has not introduced any proof whatsoever that current market conditions, or those likely to exist in 2016 or anytime thereafter, are competitive or will become competitive. Thus, Consumers has asked for securitization of these production assets without proving that the cost of these assets could not be recovered in a "competitive market".



If Application U-17453 is granted, that would tend to prove that the referenced assets could be recovered under current market conditions no matter whether those conditions are characterized as "competitive" or not.

C. Consumers Has Not Shown That Costs of the Retired Plants Are Not Competitive When Taken As Part of All Consumers Generation.

There is no proof on this record that costs of the undepreciated assets that are the subject of this Application could not be recovered in a competitive market if Consumers generation was taken as a whole rather than extracting the specific investments related to older coal fired power plants and characterizing those investments as non-competitive. Zakem, 2 Tr 62-63. Mr. Zakem points out that if the Consumers Application is granted, it would tend to prove that any asset possessed by Consumers including office buildings, distribution and other non-production items could be securitized on the theory that those costs could not be recovered in a competitive market. Id., 2 Tr 58. In plain terms, Consumers has not proven that the referenced assets are stranded.

D. ROA Customers Are Asked To Pay Twice For Impacts Of New Environmental Standards.

Finally, Mr. Zakem testified that ROA customers and their suppliers are subject to the same environmental requirements as Consumers Energy. Therefore if ROA customers are required to pay costs related to imposition of environmental requirements on Consumers Energy, those same ROA customers would still be required to pay similar costs as part of the energy price charged by their own suppliers. They would be paying twice for the same governmental requirements. Zakem, 2 Tr 53.

E. The Proposed Securitization Charges Adversely Impact Competition.

In Case U-13715 the Commission rejected a similar attempt by Consumers to impose production related securitization charges on ROA customers to be unfair because, in part, "such a proposal

would have a damaging impact on the development of customer choice in Michigan". U-13715, June 2, 2003, p. 59.

### III. The Securitization Application Does Not Meet the MCL 460.10i(2) Test to Provide Tangible and Quantifiable Benefits to ROA Customers.

#### A. The Law.

MCL 460.10i(2) lists the criteria that the Commission is to use in a financing Order.

Criterion 10i(2)(b) requires, "that [the Commission must ensure that] securitization provides tangible and quantifiable benefits to customers of the electric utility:"

Energy Michigan Witness Zakem testified that the Consumers securitization proposal will provide no benefits to ROA customers. ROA customers currently do not pay any of Consumers Energy power supply costs except for previous securitization charges. They purchase their power supply service from other providers. The practical effect of securitization, as proposed by Consumers Energy, is that ROA customers are asked to pay part of the cost of the Company's plants that not only do not serve ROA customers but are retired, no longer used and useful and cannot serve any customers at all. Further, since ROA customers have power suppliers that are subject to the same environmental requirements as Consumers, the securitization proposal would require ROA customers to pay twice for environmental requirements: Once to their own supplier and once to Consumers. Zakem, p. 2 Tr 53-57.

Consumers Rebuttal Witnesses Torrey and Kehoe attempted to rebut Mr. Zakem. Mr. Kehoe states that the retired coal plants provide reliability benefits to ROA customers in the form of voltage support as well as the fact that the production from these plants keeps wholesale prices down for purchases of power by ROA customers. Mr. Kehoe asserts that the reliability benefits are not reflected in the cost of transmission. Kehoe, 2 Tr 199. Contrary to Mr. Kehoe's

assertion, it is a well-known fact that Schedule 2 of the MISO tariff charges for “Reactive Supply and Voltage Control from Generation or Other Sources.” Further, Mr. Kehoe contradicts his rebuttal by admitting on the same page in his rebuttal testimony that “MISO has recently made the determination that continued operation of the generating units at issue in this case past April 2016 is *not necessary for reliability purposes.*” Kehoe, 2 Tr 199, emphasis added.

As support for his assertion that the capacity of the Retired Plants have kept wholesale capacity prices down, Mr. Kehoe cites the fact that the MISO Planning Resource Auction for 2013/2014 for MISO Zone 7 (lower peninsula of Michigan) cleared at \$380 per ZRC. However, he neglects to point out the publicly available fact that *all zones* in MISO cleared at the same price of \$380, which indicates that the Retired Plants had no effect on the clearing price in the MISO Planning Resource Auction.

Mr. Kehoe's reasoning would allow Consumers to request recovery of costs related to any retired power plant or existing power plant from ROA customers which would be an absurd result.

Mr. Torrey claims that the retired assets are not really environmental in nature and therefore ROA customers are not required to pay twice for environmental requirements. Torrey, 2 Tr 110.

It is clear that once retired, the coal plants will no longer provide any benefit to ROA customers in the form of reliability or suppression of prices. Moreover, to the extent that there is benefit from voltage support and reliability, it is equally true to say that any suppliers of power to ROA customers provide similar reliability and price suppression benefits to Consumers Energy customers. However, Consumers Energy customers are not required to pay securitization charges applicable to suppliers of power to ROA customers. Thus only the ROA customer is asked to pay twice, once for power they use and once from a non-operating Consumers power plant they do not use. Finally, even under Mr. Kehoe's speculative arguments, once retired, the coal fired power plants are going to be shut down because of the burden of costs related to environmental requirements. Given the fact that these environmental requirements are driving the entire need for retirement and cost recovery whether through conventional means or securitization, it is still true that the Consumers Application in Case U-17473 asks ROA

customers to pay twice for environmental related costs while Consumers customers only pay once.

B. Non-Bypassability and Competitive Impact.

1. Non-bypassability.

Consumers Witness Torrey claims that securitization must apply non-bypassable charges to all customers. Torrey, 2 Tr 110. This assertion is incorrect. In Case U-13715, June 2, 2003, the Commission approved a securitization financing for Clean Air Act modifications to Consumers' generating plants which applied to full service customers but not to ROA customers. Order U-13715, June 2, 2003, p. 58-60. The Commission noted that true up mechanisms and other reviews could ensure that a changing ROA market did not prevent recovery of full securitization costs. Today, with a law mandating a 10% restriction on ROA activity, Consumers Energy can implement securitization charges which apply to only full service customers without significant concern that these charges will not be recovered. Staff Witness Myers explains how this exemption mechanism could work or, in the alternative, that a mechanism to credit ROA customers for the full amount of securitization charges could achieve the same impact. Myers, 2 Tr 433-38. Ms. Myers specifically disagrees with Mr. Torrey's assertion that securitization charges applicable to all customers is required. Id., 435.

Consumers Rebuttal Witness Karantzoulis states that PA 142 requires securitization charges to be non-bypassable for all customers. He cites Internal Revenue Service procedures for the proposition that [securitization] charges must be non-bypassable and paid by customers within the utility service territory who receive utility goods or services through the utility's transmission and distribution system even if those customers obtain these goods or services through a third party. Rebuttal, 2 Tr 408-09.

However, the Commission has directly considered this argument and, ironically, as presented by the same Mr. Torrey who is testifying in this proceeding. In Case U-13715

the Commission stated, "The Commission also rejects Mr. Torrey's suggestion that placing the securitization charge on ROA customers at this time is crucial to the concept of non-bypassability. If the Commission is free to effect changes that would benefit ROA customers in Consumers' next rate case as Mr. Torrey suggests, why can't such a determination take place at any time, including at the outset of the securitization transaction?. . .But the Commission is not persuaded that Consumers' understanding of the concept of bypassability squares with the purpose underlying Acts 141 and 142." Order U-13715, June 2, 2003, p. 59. The Commission goes on to explain that, "In defining non-bypassable charge the Commission deems it important that the Legislature did not require that such charges be payable by *all* of the electric utility's customers regardless of the identity of the customer's electric generation supplier. Nor does the language require that all securitization charges be assessed on the same 'non-bypassable amounts' for all customers." *Id.*, p. 60, emphasis in original.

The Commission ultimately rejected the Consumers argument that ROA customers must pay a non-bypassable charge to securitize environmental retrofits to power plants on the basis that such a requirement was not contained in PA 141 or 142. The Commission also found that such a practice would frustrate the purpose of the above referenced laws to foster competition. The Commission finally noted that periodic true ups to the securitization charges would ensure that as the number of customers in the available pool shrinks or expands, the securitization charges are modified accordingly. *Id.*, p. 60.

This Commission finding also directly refutes the contention of Mr. Torrey that the current mechanisms used to mitigate the impact of securitization charges on E-1 customers could not be used for ROA customers. Torrey Rebuttal, 2 Tr 119-22.

The Consumers proposal to assess over \$450 million of retired units production costs to ROA customers places an unreasonable burden on those customers. Also, the concept, once approved, could be expanded to literally any production plant currently owned by Consumers that is operating or retired. It is difficult to escape the conclusion that these proposals are made as much with a view to suppressing competition as they are to

increasing the potential for collection of revenue. The Commission can avoid these unreasonable impacts and follow precedent from Case U-13715 by exempting ROA customers from production related securitization charges or by mitigating the impact of securitization charges with appropriate credits or rate reductions as currently utilized with Rate E-1 and explained by Staff Witness Meyers. 2 Tr 435-37.

## 2. Competitive impact.

Attachment #1 introduced in this case by Consumers Witness Torrey (Exhibit A-12) shows that the securitization proposal would both increase ROA bills by 1.187 mills/kWh to pay for production plant but also decreases current full service bills by roughly 1 mill/kWh for secondary and about .3 to .5 mills/kWh for primary customers. Thus on average the competitive margin between Consumers full service and competitive service is reduced by over 2 mills/kWh (\$2/Mwh) by this proposal.

When reviewing a similar Consumers proposal to securitize production related Clean Air Act equipment and assess securitization fees to ROA customers, the Commission rejected the proposal and found that it would be unfair and that it could have a "damaging impact on the development of customer Choice in Michigan." U-13715, June 2, 2003, p. 58-9.

The current law governing customer Choice was passed with the purpose of "ensuring that all retail customers in this state of electric power have a choice of electric suppliers" and "to allow and encourage the Michigan Public Service Commission to foster competition in this state in the provision of electric supply..." MCL 460.10(2)(a) and (b). The Commission should reject an attempt to assess full service, production related investment costs to electric Choice customers who do not use such investments because the result would be unfair and adverse to electric competition as found by the Commission in U-13715.

### C. Summary.

The securitization charge plan proposed by Consumers does not meet the MCL 460.10i(2)(b) test that all customers must be benefited. ROA customers would not be benefitted. Also, the 10% limit on ROA participation reduces the risk that securitization charges applying to 90% of the Consumers load that is full service would not result in full collection of securitized amounts. The securitization true up mechanism referenced by the Commission in Order U-13715 is a further guarantee that, if ROA customers are exempted, any significant changes in ROA participation could be taken into account through adjustments to authorized securitization charge levels.

Finally, the Order of the Commission in Case U-13715 is precedential in this case because it determined that securitization does not apply to Electric Choice customers if the assets to be securitized are production related, do not benefit or render service to ROA customers and are unfair and harm competition.

#### IV. There Is No Proof That The Undepreciated Costs Of The Seven Coal Plants Are Unrecoverable In The Current Market.

##### A. There Is No Proof That Case U-17453 Will Not Produce An Adequate Remedy For Consumers.

Consumers and other parties to this case agree that Case U-17453 requests recovery of the same undepreciated plant balances and demolition costs related to the seven coal plants that is requested in this case but does so under current market conditions. Kehoe, 2 Tr 197; Myers, 2 Tr 432; Zakem, 2 Tr 61-62. Full recovery under U-17453 is feasible because under current law, 90% of Consumers' customers are required to purchase power from Consumers Energy. Zakem, 2 Tr 61. Even if the 10% cap on competition is lifted, Consumers has not introduced evidence to show that their current power rates are not competitive with ROA rates.

Also, there is no proof that total costs of the Consumers generating fleet would be stranded if compared to current or projected market costs. Consumers has clearly isolated undepreciated costs relating to older coal fired power plants that would no longer be operating and declared that these assets could not be recovered in a competitive market. But the same would be true of other non-production assets owned by Consumers such as office buildings, distribution or equipment items on various fully competitive power plants. To determine if the assets of the seven coal plants subject to securitization are unrecoverable, Consumers must show that, taken as a whole, the Consumers production fleet is uncompetitive. It has not done this. Zakem, 2 Tr 61-62.

In Case U-13715, the Commission ruled that production plant related to environmental requirements could not be securitized if the plant is not stranded. Order, U-13715, October 14, 2004, p. 9-10. Consumers has not proven that the Retired Plant assets are stranded.

Absent specific proof from Consumers to the contrary, there is no reason to believe that the Application in Case U-17453 will not allow Consumers to recover all prudently incurred undepreciated costs related to the seven coal plants. Consumers failed to make such a showing

#### V. Securitization Fees For Production Assets Cannot Be Charged To ROA Customers Under Cost Of Service Requirements.

Energy Michigan Witness Zakem has proven that Costs Of Service principles would prohibit collection of production related securitization charges from ROA customers. This Testimony is based upon the fact that ROA customers do not use power produced by Consumers Energy production facilities. Zakem, 2 Tr 53; Myers, 2 Tr 431-32. Therefore, under Cost of Service principles, the cost of production assets including those assets proposed for securitization in the current Application, cannot be assigned to or collected from ROA customers who did not cause such costs to be incurred. Myers, Id; Zakem, 2 Tr 55. It then follows that any securitization charge used to recover power supply costs from ROA customers would not be based on Cost of Service principles. Under Michigan law the rates charged by Consumers Energy must be Cost of Service based as of October 2013. MCL 460.11. The proposed securitization charges recovering



production costs are not applicable to ROA customers under that principle and therefore would be illegal. Zakem, Id.

Consumers Rebuttal Witness Torrey argues that the undepreciated balances of seven coal fired generating plants cannot be considered a production cost once they have been redefined as regulatory assets. Then Mr. Torrey also explains that in his view, ROA customers still benefit from the Retired Plants in the form of reliability and because their output suppresses market prices. Here, Mr. Torrey is trying to have it several ways. On the one hand, he views the retired assets as no longer production plant simply because of a paper accounting change which defies the reality that these assets were indeed used for production. Next, inconsistently, Mr. Torrey argues that as production plant, these assets even though no longer in operation benefit ROA customers through reliability and suppression of market prices. Torrey Rebuttal, 2 Tr 124-26. The truth is that the assets to be retired are production related, never directly benefitted ROA customers or, at least, never created a benefit for which the power suppliers of ROA customers are not already charged for via the MISO tariff, as explained previously. If the plants are retired, they no longer produce benefits to any customer whatsoever despite the fact that the related securitization charges would continue for 14 years into the future.

The Consumers Rebuttal is mere sophistry. ROA customers do not buy production services from Consumers and therefore cannot be allocated production costs. Even accepting Mr. Torrey's argument that some reliability services were produced, MISO is already charging AES suppliers for such services. Yet, Mr. Torrey would charge the same securitization fee to ROA customers as would be paid by full service customers. None of this makes any sense, and all of it should be rejected.

The remedy for Consumers is clear: any securitization charges recovering production costs such as the undepreciated balances for the seven, old coal plants can only be recovered from full service customers. Zakem, 2 Tr 56.

VI. If The Coal Plants Are Securitized, There Are Lawful Means To Recover The Resulting Charges From Only Full Service Customers.

The rationale to charge only full service customers for coal plant securitized cost has been described above. The Commission has two options to lawfully collect coal plant related securitization charges:

1. The Commission can simply charge all securitization fees to full service customers and completely exempt ROA customers. See Order U-13175, June 2, 2003, p. 58-60. In the alternative,

2. The Commission could assess coal plant securitization charges to all customers including ROA customers but require a credit or other mechanism applicable to ROA that would offset the production related securitization charges on the bills of customers. Consumers' Witness Torrey showed how this has worked with Rate E-1 and the legal precedent supporting such an action. Torrey, p. 2 Tr 111-12.

The MPSC Staff also produced an example of how such a mechanism would work for both E-1 and ROA customers. Myers, p. 9-11. Under this mechanism, the Commission would authorize Consumers to issue a credit to both E-1 and ROA customers that would exactly offset the securitization charge assessed. This concept is currently in operation for Rate E-1 and therefore extension of the concept to ROA would pose no technical or legal difficulties.

Consumers presented Rebuttal claiming that exempting ROA customers from securitization fees or, as with Rate E-1 customers, mitigating any securitization charges assessed would be illegal since securitization charges must be non-bypassable. See Torrey Rebuttal, 2 Tr 119-20; Karantzoulis, Rebuttal, 2 Tr 407-09. As explained above, the Commission in Case U-13715 directly considered this issue when presented by Mr. Torrey in Case U-13715 and directly rejected Mr. Torrey's arguments. U-13715, p. 58-60, June 2, 2003. Moreover, in rejecting Mr. Torrey's argument the first time, the Commission found that the various true up mechanisms

used with the securitization mechanism could be used to adjust securitization charges so that changes in the level of Electric Choice or even E-1 could be accommodated. U-13715, Id. Thus, Consumers has failed to rebut the contention of Mr. Zakem that ROA customers can either be exempted from production related securitization charges or that those charges can be assessed but that the impact on ROA customers can be mitigated by using the techniques currently applicable to Rate E-1 which adjusts the E-1 tariff downward to reflect the imposition of securitization charges.

## VII. The Consumers Application is an Illegal Claim For Stranded Cost.

### A. The Consumers Application U-17473 Is A Request To Recover Stranded Costs.

These proposed retired coal plant costs should not be eligible for treatment as stranded costs. Energy Michigan Witness Alex Zakem has demonstrated that securitization of assets related to decommissioned, non-operating power plants opens the door to unlimited securitization. Almost any asset could be eligible taken in isolation such as an office building or distribution plant. Zakem, 2 Tr 58-60. Instead, only assets related to currently operating production facilities should be able to be securitized. Id.

The Commission has also found that in order for the purposes of PA 141 and PA 142 to be met the "qualified costs" under consideration must be shown to be stranded. U-13715, Order on remand, October 14, 2004, p. 10.

However, Consumers has not made a showing that the referenced coal plant costs are indeed stranded. Zakem, Id. Also, Consumers has not shown that, taken as a whole with other Consumers Energy generation costs, that the cost of the referenced assets would not be collectible in a competitive market. Zakem, Id. Note that the 10% cap on ROA service literally eliminates the potential for stranded costs. Zakem, Id., 61. Finally, in Case U-17453, Consumers has applied to collect the retired plant costs in the current market. If that Application is granted, it proves that the retired plant costs are collectible.

B. New Stranded Costs May Not Be Authorized For Recovery.

There is also the matter that the legal framework in Michigan has changed with enactment of 2008 PA 286.

When Act 141 of 2000 ("Act 141") was enacted, it directed the MPSC to provide utilities with full recovery for their net stranded costs resulting from choice migration and implementation:

No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.

Section 10a(1) of Act 141 of 2000.

An MPSC order provided a definition of stranded costs as, "costs incurred during the regulated era that will be above market prices and those costs necessary to facilitate the transition to competitive markets." Order in Case No. U-11290, June 5, 1997, p. 6. Thus, the intent was to provide for the recovery of costs that utilities incurred in a fully regulated and captive market, as Michigan's regulatory regime transitioned to one in which customer migration was permissible.

Act 141 authorized the MPSC to consider various methods for determining stranded cost recovery:

The commission shall consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:

- (a) Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.
- (b) Evaluating net stranded costs based on the market price of power in relation to prices assumed by the commission in prior orders.

(c) Any other method the commission considers appropriate.

Section 10a(10) of Act 141 of 2000.

Act 141 was subsequently amended by Public Act 286 of 2008 ("Act 286"). Act 286 substantially reversed direction from Act 141 on the issue of customer migration by prohibiting it for 90% of each utility's load, with only an exception for Upper Peninsula iron mining operations. *See* MCL 460.10a. The Legislature simultaneously established a terminus on the recovery of stranded costs by repealing the provisions of Act 141 dealing with stranded costs, including those referenced above, and setting new limits on when and how previously authorized stranded costs could be recovered going forward.

The Legislature ensured that any electric choice restructuring costs and any associated accrued regulatory assets, including stranded costs, authorized prior to the effective date of Act 286 would be fully recovered. Act 286 authorized the MPSC to approve surcharges that would fully recover any such costs within five years of the effective date of Act 286, that is by October 6, 2013. *See*, Section 10a(16) of Act 286, MCL 460.10(a)(16). However, the Legislature made no provision for recovery of stranded costs incurred subsequent to the enactment of Act 286 as a result of the limited customer migration still permitted. Thus, aside from the specific authorization for recovery of stranded costs provided for in MCL 460.10(a)(16), which expired on October 16, 2013, the Commission simply no longer has the authority to award electric choice restructuring costs, including stranded costs.

Even if the Commission could grant stranded costs, Consumers has not shown that when netted with all other generation assets the unrecovered coal plant costs would not be collectible in a competitive market. *Zakem*, 2 Tr 61-64.

## VIII. Conclusion and Prayer for Relief.

### A. Conclusion.

1. The Commission Should Use U-17453 To Address These Issues.

There is virtually no disagreement among any party that Case U-17453:

- a. Addresses recovery of the same assets as the current case.
  - b. Can proceed in the current market.
  - c. Has not been shown to be inadequate in any respect to achieve full recovery of the claimed regulatory assets in relation to the seven old coal plants.
2. Securitization should be rejected as inappropriate because:
- a. It is premature to securitize given the fact that Consumers has made no binding commitment to retire or decommission the seven old coal plants.
  - b. This case is in effect a request to collect stranded costs, which ignores the fact that the Commission no longer possesses legal authority to award a utility the right to collect new stranded costs. Nor has Consumers demonstrated that the current market is competitive or that its claimed costs could not be recovered in the current market given the fact that only 10% of customers have alternative power supply options and the total cost of Consumers production assets may well be competitive with other sources.
  - c. There is no reason to believe that the coal plant costs may not be collected under current market conditions applying current Cost of Service principles in Case U-17453.
3. If the Commission decides to securitize the referenced coal plant assets, it should:
- a. Exempt ROA customers from the securitization charges pursuant to Order U-13175. Otherwise, the result of securitization is unlawful because there is no Cost of Service relationship between the referenced assets and the ROA customers. The ROA customers already pay environmental related charges incurred by their own power suppliers; or

- b. Use an offset to hold ROA customers harmless from securitization charges. This concept is currently used with Rate E-1 by Consumers and could be applied to ROA customers as shown by Staff Witness Myers. P. 8-11.

B. Prayer For Relief.

WHEREFORE, Energy Michigan respectfully requests that the Commission:

1. Reject the Consumers request to securitize certain assets related to generating plants; or
2. Exempt ROA customers from the resulting securitization charges; or
3. Use an offset to hold ROA customers harmless from the approved securitization charges.

Respectfully submitted,

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Attorneys for Energy Michigan, Inc.

November 13, 2013

By: \_\_\_\_\_  
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Consumers Energy Company  
Coal Plant Securitization  
Illustration of Estimated Coal Plant Securitization Rate Impact by Rate Category

Case No.: U-17473  
Exhibit A-12 (MAT-2)  
Witness: MATorrey  
Date: September 2013  
Page 1 of 1

Line	Rate Class	Rate Schedule	After Coal Plant Securitization			
			Average Rate per kWh Before Securitization (1)	Credit (Base Rate Reduction) - Average Rate per kWh (2)	Initial Coal Plant Securitization Charge per kWh	Average Rate per kWh After Securitization
	(a)	(b)	(c)	(d)	(e)	(f)
						= c+d+e
	<b><u>Bundled Service</u></b>					
	Residential Class					
1		Residential Service RS	\$0.141351	(\$0.002100)	\$0.001187	\$0.140439
2		Residential Time-of-Day RT	\$0.127792	(\$0.001761)	\$0.001187	\$0.127219
3		Residential Electric Vehicle REV	\$0.113739	(\$0.001545)	\$0.001187	\$0.113382
	Secondary Class					
4		Secondary Energy-only GS	\$0.144909	(\$0.002214)	\$0.001187	\$0.143882
5		Secondary Demand GSD	\$0.122504	(\$0.002069)	\$0.001187	\$0.121622
	Primary Class					
		Primary Energy-only GP				
6		Voltage Level 1	\$0.091814	(\$0.001696)	\$0.001187	\$0.091305
7		Voltage Level 2	\$0.098185	(\$0.001791)	\$0.001187	\$0.097581
8		Voltage Level 3	\$0.104672	(\$0.001989)	\$0.001187	\$0.103870
		Primary Demand GPD (3)				
9		Voltage Level 1	\$0.069564	(\$0.001463)	\$0.001187	\$0.069288
10		Voltage Level 2	\$0.078851	(\$0.001597)	\$0.001187	\$0.078442
11		Voltage Level 3	\$0.095509	(\$0.001837)	\$0.001187	\$0.094860
12		Large Economic Development E-1 (4)	\$0.047361	\$0.000000	\$0.001187	\$0.047361
13		Lighting & Unmetered Class	\$0.160492	(\$0.001188)	\$0.001187	\$0.160491
	<b><u>ROA Service</u></b>					
	Secondary Class					
14		Secondary Energy-only GS	\$0.037849	\$0.000000	\$0.001187	\$0.039037
15		Secondary Demand GSD	\$0.030089	\$0.000000	\$0.001187	\$0.031277
	Primary Class					
		Primary Energy-only GP				
16		Voltage Level 1	NA	NA	NA	NA
17		Voltage Level 2	\$0.014510	\$0.000000	\$0.001187	\$0.015697
18		Voltage Level 3	\$0.015950	\$0.000000	\$0.001187	\$0.017137
		Primary Demand GPD				
19		Voltage Level 1	\$0.003194	\$0.000000	\$0.001187	\$0.004381
20		Voltage Level 2	\$0.007231	\$0.000000	\$0.001187	\$0.008419
21		Voltage Level 3	\$0.010869	\$0.000000	\$0.001187	\$0.012056

Notes:

- (1) U-17087 Rates
- (2) Based on U-17087 Final COS & Rate Design
- (3) Includes MMPP, GPTU, GSG
- (4) Direct testimony of MATorrey pp. 9-10



STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	
for a financing order	)	Case U-17473
approving the securitization of qualified costs	)	
_____	)	

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 13th day of November, 2013, she served a copy of the Energy Michigan's Initial Brief upon those individuals listed on the attached Service List by email at their last known addresses.

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

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