

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY for a)	
determination of net stranded costs and for)	Case No. U-13380
approval of net stranded cost recovery charges.)	
_____)	

At the December 20, 2002 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

History of Proceedings

On April 22, 2002, Consumers Energy Company (Consumers) filed an application pursuant to MCL 460.10a, seeking a determination of the company's net stranded costs in 2000 and 2001 and estimated net stranded costs in 2002 and approval of charges to recover those costs.

On June 4, 2002, Administrative Law Judge James N. Rigas (ALJ) conducted a prehearing conference and granted leave to intervene to the Association of Businesses Advocating Tariff Equity (ABATE); Energy Michigan, Inc.; Attorney General Jennifer M. Granholm (Attorney General); Kroger Co.; the National Energy Marketers Association (NEMA); Wolverine Power Marketing Cooperative (Wolverine); Midland Cogeneration Venture Limited Partnership; North American Natural Resources Inc.; Adrian Energy Associates LLC, Cadillac Renewable Energy LLC, Genesee Power Station Limited Partnership, Granger Electric Company, Grayling Generating Station Limited Partnership, Hillman Power Company LLC, Michigan Cogeneration

Systems Inc., Riverview Energy Systems, Sumpter Energy Associates Limited Partnership, Viking Energy of Lincoln Inc., and Viking Energy of McBain Inc. (Adrian Energy et al.); The Michigan Association of Broadcasters and the Michigan Petroleum Association/Michigan Association of Convenience Stores (MAB et al.); Dow Corning Corporation; Hemlock Semiconductor Corporation; Ontario Power Generation (Ontario Power); and Enbridge Energy, Limited Partnership (Enbridge). The Commission Staff (Staff) also participated.

On June 5, 2002, the Staff filed a motion to strike part of a proposed exhibit sponsored in Consumers' prefiled testimony. The Staff took the position that Consumers was improperly including costs associated with its obligations to comply with the federal Clean Air Act, 42 USC 7401 et seq. Although the ALJ denied the motion on June 12, 2002, the Commission issued an order on July 10, 2002 reversing the ALJ's ruling and finding that the costs incurred for Clean Air Act compliance are not eligible for stranded cost recovery, but are subject instead to the provisions of Section 10d(3) of 2000 PA 141 (Act 141), MCL 460.10d(3). To comply with the order, Consumers submitted supplemental testimony that reduced its computation of stranded costs from \$22.4 million to \$11.6 million in 2000, from \$42.7 million to \$8.4 million in 2001, and from \$126.1 million to \$76.0 million (on a projected basis) in 2002. Exs. A-9, A-10. These changes had the effect of reducing its proposed charge to recover the 2000 and 2001 stranded costs from \$0.030693 per kilowatt-hour (kWh) to \$0.009193 per kWh. Compare Ex. A-11 with Ex. A-7.

On September 9 through 11, 2002, the ALJ conducted evidentiary hearings. On September 27, 2002, the MAB et al., NEMA, Consumers, the Staff, the Attorney General, Adrian Energy et al., Enbridge, ABATE, Energy Michigan, Ontario Power, Kroger, and Wolverine filed briefs. On October 11, 2002, Energy Michigan, Consumers, ABATE, the MAB et al., the Staff, Ontario Power, and the Attorney General filed reply briefs. Kroger filed a late reply brief on

October 14, 2002. Because the Commission agreed to read the record, the ALJ did not issue a proposal for decision or make provision for the parties to file exceptions or replies to exceptions.

Case No. U-12639

The Commission previously addressed stranded costs in the December 20, 2001 order in Case No. U-12639, which accepted the Staff's methodology for determining those costs. The Staff approach computes net stranded costs as the difference between the utility's revenue requirement necessary to recover the year's fixed production costs and the contribution provided by the utility's yearly revenues toward the recovery of fixed production costs. The fixed cost revenue requirement sums the utility's return on net generation plant and regulatory assets, related depreciation and amortization, plant property taxes and insurance, and capacity charges incurred for purchased power. The contribution to fixed costs is the portion of revenues from sales to ultimate customers that is allocable to the recovery of fixed production costs, plus net revenues from third-party wholesale transactions. (In this context, sales to ultimate customers mean bundled sales subject to Commission jurisdiction.) See Case No. U-12639, Exs. S-23, S-25, S-27, S-29.

As applied to Consumers in calendar year 2000, the Staff computation in Case No. U-12639 produced a negative balance of \$97.2 million. Upon finding that both Consumers and The Detroit Edison Company (Detroit Edison) realized negative balances in 2000, the Commission determined that both utilities should assess a zero transition charge on their retail open access sales in 2002. In view of limitations in the record that precluded more definitive findings, the Commission indicated that the methodology was "an evolving process" and that the Commission would "defer[] the issues of refining the methodology, and recalculating net stranded costs for 2000, to the case where the transition charges for 2001 will be calculated." Order at 14.

Positions of the Parties

a. Consumers

Consumers used the methodology from Case No. U-12639, subject to modifications. It explained that a series of adjustments were necessary to accommodate the effects of the issuance of securitization bonds, as authorized in the October 24, 2000 order in Case No. U-12505. It also proposed to include seasonal capacity costs (incurred to serve peak load during summer months) in the stranded cost computation. It further excluded nuclear decommissioning costs from the fixed cost revenue requirement on the ground that it uses a separate surcharge to fund nuclear decommissioning.

In Exhibit A-9, Consumers used these adjustments to compute net stranded costs of \$10.8 million for 2000 and \$8.4 million for 2001 (after removal of Clean Air Act compliance costs). By dividing the 2000 and 2001 stranded costs, with carrying charges accrued at 7%, by projected 2002 retail open access load, it developed a proposed charge of \$0.009193 per kWh in Exhibit A-11.

Consumers accepted a further adjustment proposed by the Staff to exclude nuclear decommissioning surcharge revenues from the revenue contribution to fixed costs. Consumers' brief at 5-6. (This achieved equivalent treatment of both the revenues and expenses related to nuclear decommissioning.) According to Consumers, the Staff's adjustment reduced the computation of net stranded costs from \$10.8 million to \$7.3 million for 2000 and from \$8.4 million to \$4.1 million for 2001 and reduced the proposed transition charge from \$0.009193 per kWh to \$0.004914 per kWh. Consumers' brief, Attach. 1.

Consumers proposes to reduce further the charge it computed by excess securitization savings of \$0.002649 per kWh, contingent upon approval of its proposed accounting and ratemaking

treatment.¹ Consumers explains that its stranded cost computation removed the revenue requirement associated with the securitized assets, so that the stranded costs it computed in this case are independent of the effects of securitization. It therefore proposes to discontinue the securitization surcharge offset adopted in the October 24, 2000 order in Case No. U-12505, at 42, and reaffirmed in the December 20, 2001 order in Case No. U-12639, at 24-26. Its proposal to reduce stranded costs by the excess savings produces a net stranded cost transition charge of \$0.002265 per kWh (inclusive of the Staff's nuclear decommissioning adjustment). Consumers would assess this charge in addition to the non-bypassable securitization and tax surcharges, without offset.

b. Staff

The Staff used Consumers' stranded cost computation as a starting point for making adjustments. Once Consumers acceded to the Staff's treatment of nuclear decommissioning revenues (as noted above), their only remaining difference in the stranded cost computation related to third-party wholesale net revenues. The Staff computed net stranded costs of \$5.1 million in 2000 and \$2.8 million in 2001. Exs. S-20, S-21.

c. Attorney General

The Attorney General contended that none of Consumers' investment in generating plant made after the beginning of 2000 should be eligible for stranded cost recovery, that summer seasonal capacity costs should be excluded, and that all third-party wholesale net revenues should be treated as contributing to the recovery of fixed costs, without regard to the credit for the third-

¹The October 24, 2000 order in Case No. U-12505 authorized Consumers to issue securitization bonds pursuant to Public Act 142 of 2000, MCL 460.10h et seq. The order further designated 50% of the excess securitization savings (after accounting for the rate reduction under MCL 460.10d) to be applied to the reduction of stranded costs. Order at 32.

party revenues used in setting the power supply cost recovery (PSCR) component of Consumers' current rates.² The Attorney General computed negative balances, or net stranded benefits, of \$57.6 million for 2000 and \$63.0 million for 2001. Tr. 212.

d. ABATE

ABATE opposes Consumers' proposal to include summer seasonal capacity charges in computing stranded costs. ABATE further proposes to adjust the fixed cost contribution by imputing revenues that represent the difference between tariff rates and the actual charges collected by Consumers under special contracts. It computed net stranded benefits of \$34.5 million in 2000 and \$38.1 million in 2001. Ex. I-13.

e. Kroger

Kroger focuses on the increase in Consumers' fixed generation costs since the Commission approved current base rates in the February 5 and November 14, 1996 orders in Case No. U-10685. Kroger proposes to disallow the percentage of the increase that is attributable to bundled jurisdictional sales. Its theory is that retail open access customers should pay for only the percentage of increase in fixed generation costs that corresponds to unbundled sales load. According to Kroger, making this modification to Consumers' computation results in net stranded benefits of \$60.5 million in 2000 and \$62.6 million in 2001. Ex. I-17, at 2.

²The Commission established the PSCR component of Consumers' current frozen rates in the August 31, 1999 order in Case No. U-11180-R, which was the reconciliation for calendar year 1997 and was the last Consumers PSCR proceeding completed prior to the rate freeze imposed by 2000 PA 141. MCL 460.10d(1).

f. Energy Michigan

Energy Michigan proposes to compute stranded costs as the difference between total revenues from bundled jurisdictional sales and the total authorized revenue requirement used to set current rates. In Exhibit I-44, Energy Michigan determined that Consumers' bundled jurisdictional sales revenues exceeded the authorized revenue requirements in both 2000 and 2001, producing net stranded benefits of \$56.0 million and \$81.7 million, respectively.

Energy Michigan also proposed its own adjustments to Consumers' stranded cost computation, removing the summer seasonal capacity charges and imputing tariff revenues for special contract sales. As adjusted, the computation produced net stranded benefits of \$76.5 million for 2000 and \$91.8 million for 2001. Ex. I-49, at 1.

g. Wolverine

Wolverine supports continuation of a zero transition charge plus refund of the stranded benefits computed in Case No. U-12639. It also supports eliminating the uncertainty imposed upon the market if alternative electric suppliers and their customers are subject to a possibility of paying for large increases in transition charges by eliminating the annual trueup process.

h. Enbridge

Enbridge advocates structuring any transition charge into separate on- and off-peak rates, so that it sends a price signal that encourages retail open access customers to shift their usage from on- to off-peak hours.

i. Ontario Power

Ontario Power contends that any transition charge must be low enough to allow potential suppliers to pursue the market opportunity created by retail open access. It evaluates market

opportunity in terms of “headroom,” i.e., the margin between wholesale market prices and the marketer’s retail price, which must be adequate to enable the marketer to cover its costs and earn a profit. It says that Consumers’ proposal would eliminate the headroom or reduce it to the point that Ontario Power would not be in a position to enter the market. Ontario Power further proposes that any transition charge should be assessed equally against all of Consumers’ load, including its bundled sales. In the alternative, it proposes that the Commission redress the market uncertainty attributable to the possibility of future transition charge increases by imposing a cap on the charge.

j. MAB

The MAB et al. argue that Consumers failed to meet its burden of proving that it has incurred net stranded costs. They argue that Consumers’ stranded benefits should be offset against other requests for rate increases or surcharges.

k. NEMA

NEMA says that stranded costs should not include costs incurred by Consumers in fulfilling an obligation as a provider of last resort and that the mechanism for recovering any actual stranded costs should be competitively neutral.

l. Adrian Energy

Adrian Energy et al. maintain that the Commission has an obligation to allow Consumers to collect rates that recover capacity charges owed under contracts with qualifying facilities.

Methodology

The parties have proposed a number of modifications to the stranded cost methodology and computation based on Case No. U-12639. As noted, the difference between Consumers’ and the

Staff's positions narrowed when Consumers accepted the Staff's adjustment excluding revenues from the nuclear decommissioning surcharge. Consumers' brief at 5-6 & Attach. 1. (Energy Michigan and ABATE also sought this adjustment.³) The Commission finds that this adjustment is reasonable. It is further persuaded that the adjustment proposed by several parties regarding the treatment of special contract revenues is appropriate, as discussed below. Because the effect of these adjustments is to reduce the stranded cost computations for both 2000 and 2001 below zero (and thus supports a continuation of the zero transition charge for the upcoming year), the Commission finds that it is not necessary at this time to undertake an additional detailed examination of all of the other proposed adjustments that could conceivably affect the computation. Therefore, this order will not further address those issues. In resolving this case, the Commission is not indicating whether those adjustments would have validity in future cases.

Special Contracts

ABATE and Energy Michigan argue that Consumers' revenues should be increased to impute the dollar amount of the discounts off of tariff rates being granted to special contract customers. They compute adjustments increasing bundled jurisdictional sales revenues by \$33.8 million in 2000 and \$31.6 million in 2001. They argue that Consumers has failed to meet the demanding test for recovering the discounts from other ratepayers, as set forth in the October 25, 1995 order in Case No. U-10961 (approving Consumers' special manufacturing contract with General Motors Corporation). Energy Michigan further contends that Consumers has used special contracts to suppress competition and that recovering the discounts as stranded costs would effectively force retail open access customers to pay for Consumers' costs of keeping bundled customers from

³The dollar amount of the adjustments computed by the Staff, ABATE, and Energy Michigan differed, although not materially. The apparent reason is that the Staff computed the adjustment on a jurisdictionalized basis. Consumers' reply brief at 15 n.9.

switching to market-based suppliers. ABATE argues that allowing stranded cost recovery of the discounts would violate the prohibition in Section 10d against reallocating cost responsibility among different customer classes.

Consumers argues that the Commission's test for reallocating special contract discounts to other ratepayers applies only in a general rate case and that attempting to impute the discounts as revenues in a stranded cost computation would deviate from the methodology approved in Case No. U-12639. In any event, Consumers argues, it meets the test for recovering the discounts. With respect to justifying the contracts' cost of service, Consumers claims that most of the discounts compensate for rate skewing, i.e., the subsidization that the contract customer's tariff rate would have provided to other, primarily residential rate classes. It says that the Commission identified the effects of rate skewing in the May 16, 2002 order in Case No. U-12970, which approved Consumers' proposal to unbundle its commercial and industrial rates into their functional components, including one described as a regulatory adjustment. It adds that special contract customers have high load factors, making them even less costly to serve than the average customer. As a basis for showing ratepayer benefits, Consumers claims that a failure to retain the discounted revenue contribution provided by special contract customers would have stranded even more costs, to be paid through rates charged to a dwindling base of tariff customers.

Energy Michigan responds that providing a cost justification for the discounts requires a supporting cost of service study, which Consumers has never produced. Energy Michigan further contends that the safeguards established in Case No. U-10961 to prevent the use of special contracts for anticompetitive purposes mean that Consumers' shareholders should assume the cost of granting the discounts.

The Staff supports the principle of imputing revenues for special contract discounts, but it raises the question of whether the Commission can do so outside of the context of a rate case.

The Commission adopts the adjustments to impute the special contract discounts as sales revenues for purposes of computing stranded costs. To ignore this adjustment would shift the cost of the discounts to the transition charge.

The basis for the rates approved in Case No. U-10685 was a cost of service study that allocated Consumers' total cost of providing electric service to each of its rate classes, and the rates approved for each class were designed to recover each class's allocated share of costs. The cost of service study (based on a projected 1996 test year) predates Consumers' decision, beginning with Case No. U-10961, to offer special contracts as an inducement to retain the business of certain large customers.

Anticipating the potential consequences if Consumers were to seek to recover the discounts from other ratepayers, the Commission approved the special contracts subject to the same protective conditions that it had previously imposed on Detroit Edison's special contracts in the March 23, 1995 order in Case No. U-10646. Those conditions assigned presumptive responsibility for the revenue shortfall to the utility shareholders and further indicated that any attempt to reallocate the discounts to other ratepayer classes would require "a compelling showing" to overcome the "substantial burden" of the presumption. Order dated October 25, 1995, Case No. U-10961, at 4 (quoting the March 23, 1995 order in Case No. U-10646, at 21). It set forth the test for reallocating cost responsibility as follows:

This burden would require, at a minimum, a clear, convincing, and unequivocal demonstration either (1) that the contract prices and terms are justified on the basis of cost of service, or (2) that the benefits for other (non-participating) ratepayers are substantial and have a value that outweighs the costs that are not recovered from the contract customers. Either showing would require support from a cost-of-service study that identifies and quantifies all costs incurred under

the contracts. In addition, both showings would require [the utility] to demonstrate that its service provided in conjunction with the contracts has not, and will not in the future, impede the development of competition in its service territory.

Id. at 4-5 (quoting order in Case No. U-10646, at 21). Thus, Consumers' business decision to offer the discounts meant that it was voluntarily accepting the risk of foregoing part of the revenue requirement otherwise recoverable under the base rates established in Case No. U-10685.

Consumers contends that the test applies only in the context of a future rate case, but it does not adequately explain why shareholders should be fully insulated from the cost of the discounts in the meantime. Although the present mechanism for computing stranded costs was not known when the Commission approved the special contracts, the concerns regarding cost shifting were fully apparent, and the stranded cost computation implicates those concerns fully. If the discounts cannot be shifted to other bundled rates, it is also reasonable that they not be shifted to the transition charge.

On the record in this case, Consumers cannot meet the substantial burden of justifying a reallocation of the discounts to other rates, whether bundled or retail open access. The conditions imposed in approving the contracts call for a cost of service study that would provide a basis for comparing the special contract revenues with the costs allocated to those customers. As noted, the study used in Case No. U-10685 predates most or all of Consumers' current special contracts and did not account for them.

Although Consumers claims that all of its customers benefit from its success in preserving special contracts' revenue contribution to fixed costs, it does not quantify that benefit. The primary objective of the contract approved in Case No. U-10961 was to retain a customer that may have been considering competitive alternatives other than retail open access; for example, the construction of customer-specific generation facilities. The Commission deemed the possibility of

that load loss to be harmful to the interests of other ratepayers because it compromised the recovery of all of Consumers' fixed costs, not only its production costs. Since that time, Consumers has signed other contracts subject to the same conditions. It is doubtful that Consumers could continue to claim that retaining the generation load under those contracts provides legitimate benefits to its customer base if the effect of the discounts is to make alternative electric suppliers less attractive to prospective candidates for retail open access or to impede the development of retail markets for unbundled generation services.

Third-Party Wholesale Net Revenues

Consumers proposes to reduce the net revenue contribution from third-party wholesale transactions by the credit for third-party wholesale net revenues used to compute its 1997 PSCR costs in Case No. U-11180-R. (In PSCR reconciliation proceedings, the utility's net revenues from the year's third-party transactions are credited against power supply costs.) Consumers thus computes the revenue contribution as the difference between its actual third-party wholesale net revenues and the \$17.4 million credit used in Case No. U-11180-R. Ex. A-36. Absent this adjustment, it says, the stranded cost computation would double count third-party revenues, once in the revenue contribution from bundled sales (in which the PSCR component of rates is reduced by the credit) and a second time as a contribution from the third-party revenues.

The Staff accepts that it is necessary to make an adjustment for the credit in Case No. U-11180-R. The Staff started with the same \$17.4 million of third-party wholesale net revenues from 1997, but it allocated a percentage of those revenues to power sales that were not subject to Consumers' PSCR clause. Using a somewhat different approach than Consumers, it reduced the revenue contribution from third-party transactions by PSCR-related credits of \$16.1 million and \$16.3 million for 2000 and 2001, respectively. Ex. S-23.

The Attorney General opposes any adjustment that reduces the contribution from third-party revenues. The Attorney General argues that the revenues are actual dollars that mitigate above-market generating costs. Because the rate determinations in Case No. U-11180-R are frozen by statute, the Attorney General says, there should not be any offset to the revenue contribution. ABATE and Energy Michigan support the Attorney General's position.

Some adjustment is necessary to reflect the rate effect of the credit for third-party wholesale net revenues in Case No. U-11180-R. Otherwise, those revenues would be double-counted in the stranded cost computation. It is not necessary to decide between the Staff's and Consumers' somewhat different approaches to the same issue, as the computational effect of the difference is not material for purposes of this case and would not change the balance of net stranded costs to a positive amount.

Negative Stranded Cost Balance

The adjustments in this order produce negative balances of net stranded costs for both 2000 and 2001. In keeping with Case No. U-12639, the Commission approves a zero transition charge for retail open access service beginning on January 1, 2003. See order dated December 20, 2001, Case No. U-12639, at 19-20. The charge will remain in effect until modified by a future Commission order.

ABATE, Energy Michigan, and Kroger contend that any balance of net stranded benefits from 2000 and 2001 should be used to pay for any securitization charges otherwise billable to retail open access customers in 2003 or carried forward as a credit against any future years' stranded costs or deferred Clean Air Act compliance costs. The Staff opposes either a carryforward of negative balances or the issuance of stranded benefit billing credits to retail open access customers, asserting that the legality of these measures is doubtful and that the stranded cost

computation requires more certainty before the balances it produces can be accepted with confidence.

As the Staff indicates, the findings in this case are imprecise. Thus, this order goes no further than finding that 2000 and 2001 net stranded costs are negative. To the extent that any of the parties' proposals could affect the future recovery of potential stranded costs, the Commission is not persuaded that it should grant any further relief related to the stranded cost computations for 2000 and 2001.

Various parties offered proposals for structuring any rate necessary to collect a transition charge. In addition, others have offered testimony on the economic consequences for retail open access customers and alternative electric suppliers if the Commission were to approve a positive transition charge. These issues are moot in light of the Commission's continuation of a zero transition charge. In addition, Consumers made a proposal to self-implement a transition charge each April 1st to recover the prior year's stranded costs. The Commission declines to consider or approve this proposal on the basis of a record showing negative stranded costs.

Securitization

As required by the December 20, 2001 order in Case No. U-12639, Consumers is currently offsetting the securitization and tax surcharges on customers' bills⁴ with an equal credit, so that the net amount of the securitization-related surcharges and credits and the zero transition charge being paid by retail open access customers is currently zero. Consumers proposes to modify the rates applicable to retail open access by eliminating the securitization offset from those customers' bills and reducing its proposed transition charge by \$6.1 million, or 2.649 mills per kWh, which

⁴As adjusted in the November 7, 2002 order in Case No. U-12505, Consumers' current securitization surcharges are 1.328 mills per kWh for bond principal and interest and 0.418 mills per kWh for tax. The surcharges total 1.746 mills per kWh.

represents the 50% share of excess securitization savings that the Commission allocated for that purpose in the October 24, 2000 order in Case No. U-12505, at 31-32.

In response to Consumers' proposal, Kroger supports the continuation of an equal offset to the securitization surcharges. It observes that the issuance of Consumers' securitization bonds in November 2001 meant that the 2000 and 2001 stranded cost computations reflect the removal of securitized assets for only the last month of 2001. The Staff supports Consumers' proposal to eliminate the securitization surcharge offset and to bill retail open access customers for the net amount of the transition charge, the securitization and tax surcharges, and a credit for the excess securitization savings.

The Commission finds itself in agreement with Consumers' and the Staff's contention that the transition charge and securitization and tax surcharges payable by retail open access customers should be offset by a credit based on excess securitization savings pursuant to Section 10d(5) of Act 141. Consumers indicated that it began realizing excess securitization savings midway through 2001, after it recouped deferred revenues associated with the 5% residential rate reduction required by Section 10d(1) for the period from October 24, 2000 (the date of issuance of the financing order in Case No. U-12505) through December 31, 2000. Tr. 258. Beginning in 2003, the proceeds from 50% of the excess securitization savings should be applied as designated in the securitization financing order—i.e., to pay, in the absence of transition charges, for retail open access customers' responsibility for securitization and tax surcharges. This is consistent with Section 10d(5), which, as previously asserted by the Commission, allows the use of securitization savings "to reduce the level of any charges authorized by the commission to recover an electric utility's stranded costs." MCL 460.10d(5).

As indicated in Exhibit A-8, 50% of Consumers' annual excess securitization savings is \$6,160,591 and will produce a credit of 2.649 mills per kWh of retail open access sales. Because the credit is more than the sum of the upcoming year's transition charge (of zero) and expected securitization and tax surcharges,⁵ retail open access customers in Consumers' service territory will not pay any net charge related to stranded costs or securitization on their bills in 2003. The Commission further finds that the excess securitization savings allocated pursuant to Section 10d(5) to reduce stranded costs, but remaining after discharging retail open access customers' responsibility for the securitization and tax surcharges in 2003, should be deferred as a carryforward item in future stranded cost determinations.

Energy Michigan argues that if Consumers began to realize excess securitization savings in mid-year 2002 as it claims, then there are 1½ years of excess securitization savings available from mid-year 2001 through year-end 2002. Energy Michigan therefore proposes to increase the excess securitization savings for the half year, raising it from approximately \$6 million to \$9 million.

Consumers responds that the \$6.1 million of excess securitization savings is an annual allowance. ABATE questions the timing of Energy Michigan's adjustment and maintains that the rate effect of excess securitization savings should be concurrent with the year that Consumers attains the savings, and not prior years in which Consumers incurred the stranded costs.

The adjustment proposed by Energy Michigan is improper because it reflects a misunderstanding of the timing of the excess securitization savings, which Consumers will realize contemporaneously with its collection of the securitization and tax surcharges during 2003. However, the Commission directs Consumers in its next stranded cost case to file an accounting of the specific sources and applications of all excess securitization savings it has realized since the

⁵ See supra note 4.

issuance of its securitization bonds. The parties should address how to dispose of any excess savings that Consumers may have realized prior to 2003, but that it did not use in accordance with the purposes designated pursuant to Section 10d(5) in the October 24, 2000 order in Case No. U-12505 or subsequent orders.

Energy Michigan contends that Consumers' proposed rate structure would have the effect of assessing retail open access customers twice for costs related to securitized assets, once through the securitization surcharge itself and again through the provision for recovering the 2000 and 2001 revenue requirement of the same assets (there denominated as regulatory assets) in the transition charge. Energy Michigan proposes several possible solutions that have the effect of negating the securitization surcharges payable by retail open access customers.

The continuation of a zero transition charge, as approved in this order, should assuage at least some of Energy Michigan's concerns by relieving retail open access customers of the financial consequences of multiple years' recovery of costs associated with the same assets.

Collaborative

Several parties have expressed concerns that stranded cost determinations are not predictable from year to year. They say that potential changes in the costs create market uncertainty that undermines retail open access. The Commission shares some of these concerns, but it finds that it may be more effective to address them in an informal setting. It therefore directs the Staff to convene a collaborative that is open to the parties in this case as well as other interested persons. The collaborative should deliberate with the objective of identifying and making recommendations to the Commission.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.

b. Consumers' retail open access transition charge for 2003 should be zero

c. Consumers' retail open access customers should receive a credit for excess securitization savings that is equal to their securitization and tax surcharges in 2003 pursuant to Section 10d(5) of Act 141.

d. Excess securitization savings remaining after discharging retail open access customers' responsibility for securitization and tax surcharges in 2003 should be deferred as provided in this order.

THEREFORE, IT IS ORDERED that:

A. The retail open access transition charge authorized for Consumers Energy Company in 2003 shall be zero.

B. Consumers Energy Company shall issue credits to its retail open access customers for excess securitization savings that are equal to their securitization and tax surcharges in 2003.

C. Excess securitization savings remaining after discharging retail open access customers' responsibility for securitization and tax surcharges in 2003 shall be deferred as provided in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 20, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Commissioner

Commissioner

By its action of December 20, 2002

Its Executive Secretary

In the matter of the application of)
CONSUMERS ENERGY COMPANY for a)
determination of net stranded costs and for)
approval of net stranded cost recovery charges.)
_____)

Case No. U-13380

Suggested Minute:

“Adopt and issue order dated December 20, 2002 approving a zero transition charge for Consumers Energy Company in 2003, as set forth in the order.”