

A CMS Energy Company

October 20, 2000

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Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: In the Matter of the application of Consumers Energy Company for a Financing Order Approving the Securitization of its Regulatory Assets and other Qualified Costs; Case No. U-12505

Dear Ms. Wideman:

Enclosed for filing in the above referenced case are an original and four copies of the **Response of Consumers Energy Company to Michigan Public Service Commission Staff's Motion to Strike**. An original proof of service is also enclosed. This filing is also being sent electronically. Thank you for your attention to this matter.

Sincerely,



John C. Shea

CC: All parties on Attachment 1
to proof of service
Hon. George Schankler, ALJ

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
Consumers Energy Company for a)	
Financing Order Approving the)	Case No. U-12505
Securitization of its Regulatory Assets)	
and other Qualified Costs.)	
_____)	

**RESPONSE OF CONSUMERS ENERGY COMPANY TO MICHIGAN
PUBLIC SERVICE COMMISSION STAFF’S MOTION TO STRIKE**

Consumers Energy Company (“Consumers”) hereby responds to the Motion to Strike of the Michigan Public Service Commission Staff (the “Staff”) which seeks to strike a portion of the Reply Brief filed in this proceeding by the Michigan Chamber of Commerce (the “Chamber”).

The Staff’s argues that the Chamber has improperly attempted to “present evidence in the brief and circumvent the hearing process,” Staff Motion at ¶ 1, by “present[ing] a position with no record support.” Staff Motion at ¶ 7. However, in its Reply Brief, the Chamber is **not** presenting evidence. Rather, the Chamber is providing its legal analysis of how Act 141, §10d(4), provides for the recovery by Consumers of the costs caused by the difference in the timing between the 5% rate reduction and the eventual sale of securitization bonds. These costs are set forth on Exhibit CE-7 (FAE-4), Section F, line 4 (“Section F Qualified Costs”).

The fact that parties have addressed in their briefs whether or not the Legislature intended for recovery of these costs does not affect the evidentiary record below and is every bit as appropriate as arguing that certain appellate cases or decisions of the Commission support the view expressed in a party’s brief. The attempt to interpret the legislative intent is especially warranted where, as here, the statute is of very recent origin and many (if not all) of the parties

were participants in one form or another, in the legislative debate out of which the statute was enacted.

Exhibit CE-7 (FAE-4) is clearly a part of the record of this proceeding along with a great deal of testimony concerning Section F Qualified Costs. See, e.g., 3 TR 259 (Testimony of Mr. Ernst). At 3 TR 322-328, counsel for Staff conducted extensive cross examination of Mr. Ernst concerning the Section F Qualified Costs, including this exchange:

Q: What's the basis for you belief that this dollar amount is a qualified costs?

A: It's a part and parcel of doing the entire securitization, and the legislation, Acts 141 and 142, tie-bar the residential rate reduction to the issuance of securitization bonds. Without the issuance of securitization bonds, which generates the savings associated with the retirement of securities, there is no residential rate reduction that goes on. So we believe it is part of the legislation and therefore part of qualified costs under that definition. 3 TR 325.

Commenting on or analyzing this record evidence is exactly what ought to be done in a party's brief. The right to argue policy such as legislative intent is specifically guaranteed by Section 72 of the Michigan Administrative Procedures Act:

(3) The parties [to a contested case] shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact. MCL 24.271(3).

Thus, the Chamber's interpretation of the legislative intent that accompanied the enactment of Act 141 and Act 142 is perfectly appropriate.

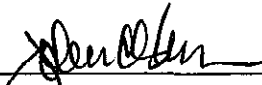
Staff's position is all the more inexplicable upon consideration that Staff, as it admits in its motion at ¶ 4, also addressed the intent of the Legislature in arguing **against** recovery of the Section F Qualified Costs in its own initial brief: "Staff does not believe that the intent of PA 141 and 142 is to require the recipients of the 5 percent rate reduction to repay that

reduction over an extended time.” Initial Brief of Michigan Public Service Commission Staff at 18. Staff also addresses the intent of the Michigan Legislature concerning the recovery of these costs in its reply brief in a discussion starting at page 11. Likewise, other parties have briefed the issue of legislative intent concerning the recovery of Section F Qualified Costs. See Initial Brief of Consumers Energy Company at pages 73-83 and Reply Brief of Consumers Energy Company at 49-50; see also Attorney General’s Reply Brief at pages 11-13; see also Michigan Environmental Council and the Public Interest Research Group in Michigan’s Reply Brief at pages 1-2.

Given that these parties – including Staff – have argued the legislative intent concerning the statutory section in question, and given that this legal analysis is not a factual presentation but rather a lawful “argument on issues of law and policy,” Michigan Administrative Procedures Act, supra, it is not clear how Staff could be correct in arguing that the Chamber has attempted to “circumvent the hearing process.”

WHEREFORE, Consumers respectfully requests this Honorable Commission to **deny** Staff’s Motion to Strike.

Dated: October 20, 2000



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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

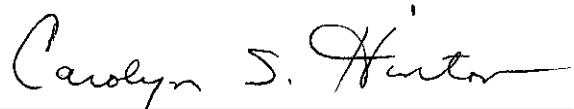
In the Matter of the Application of)
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Securitization of its Regulatory Assets)
And Other Qualified Costs)

Case No. U-12505

PROOF OF SERVICE

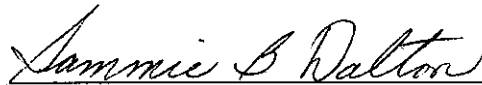
STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Carolyn S. Hinton,, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that she served copies of: the **Response of Consumers Energy Company to Michigan Public Service Commission Staff's Motion to Strike** upon the persons listed in Attachment 1 hereto, by electronic mail at the e-mail addresses listed therein and by first-class mail at the addresses listed therein by depositing the same on **October 20, 2000**, in the United States mail in the City of Jackson, Michigan with first-class postage thereon fully paid.



Carolyn S. Hinton

Subscribed and sworn to before me this 20th day of October, 2000.



Sammie B. Dalton
Notary Public, Jackson County, Michigan
My Commission Expires: 01/04/04

Attachment 1 to Case No. U-12505

Administrative Law Judge

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