

A CMS Energy Company

December 28, 2007

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

**Re: Case No. U-15245 – In the Matter of the application of Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief.**

Dear Ms. Kunkle:

Included in this electronic file is the **Response of Consumers Energy Company to Phil Forner's Motion to Show Cause**. I have also enclosed a Proof of Service showing electronic and hard copy service upon the parties.

This is a paperless filing and is therefore being filed only in a PDF format.

Sincerely,

John C. Shea

CC: Hon. Mark E. Cummins  
Parties per Attachment 1 to Proof of Service

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 )  
electricity and for other relief )  
\_\_\_\_\_ )

Case No. U-15245

**RESPONSE OF CONSUMERS ENERGY COMPANY**  
**TO PHIL FORNER'S MOTION TO SHOW CAUSE**

NOW COMES Consumers Energy Company ("Consumers Energy" or the "Company") by its attorneys and, pursuant to Commission Rule 335, 1992 AACRS R 460.17335, Commission Rule 317, 1992 AACRS R 460.17317, the applicable provisions of the Michigan Court Rules and other applicable law and regulation, and hereby responds to Phil Forner's Motion to Show Cause dated December 20, 2007, stating as follows:

1. This is the third attempt by Mr. Forner to extract information in discovery from Consumers Energy that simply does not exist. In each of the discovery requests at issue in this matter (as modified by the ALJ), Mr. Forner has requested "all costs" attributable to the ASP Program for the Call Center and the 800 number (Discovery Request 15245-PF-CE-506), "all costs" relating to bill processing attributable to the ASP Program (Discovery Request 15245-PF-CE-507) and "all direct and indirect costs" relating to the call center (Discovery Request 15245-PF-CE-508).

2. In response to these requests, the Company provided the response to 15245-PF-CE-506, showing the following information: The total direct and indirect costs for 2006 for the Call Center was \$16,877,631 including the line items identified in that response and in the response to 15245-PF-CE-42 Bates-stamped page 24500915. Similarly, the costs for the bill processing was also provided in the response to 15245-PF-CE-506 (\$18,485). This factual information is **directly responsive** to the questions asked.

3. Dissatisfied with these responses, and apparently attempting to turn this electric general rate case into a Code of Conduct compliance proceeding, Mr. Forner has amended his requests to recite the provisions of MCL 460.10a(7).

4. As noted in the second supplement to Discovery Response 15245-PF-CE-506, the Company has provided all factual information in its possession concerning the costs charged to the ASP Program as shown on Discovery Response 15245-PF-CE-42. No further information is available.

5. Discovery in Michigan, while broad, is not unlimited. MCR 2.302(A)(1) indicates that “parties may obtain discovery by any means provided in subchapter 2.300 of these rules [*i.e.*, Rule 2.301-2.316].” Included in the specified chapter are the following methods approved for discovery: depositions (Rules 2.303-2.308), interrogatories to parties (Rule 2.309), requests for production documents and other things; entry onto land (Rule 2.310), mental and physical examination (Rule 2.311), Request for admissions (Rule 2.312) and provisions for sanctions, medical discovery, and ultimate disposition of discovery materials (Rules 2.313-2.316). All of these methods of discovery concern themselves with factual matters within the knowledge of the person responding to the discovery. Relevant to this matter are Rules 2.309 and 2.310.

6. Under MCR 2.309, answers to interrogatories “must include such information as is available to the party served or that the party could obtain from his or her employees, agents, representatives, sureties, or indemnitors.” As indicated in the supplemental response to 15245-PF-CE-506, all of the available information has been provided with respect to the Call Center expense: “As the year 2007 has not ended, information concerning 2007 and 2008 is not yet available.” Response to 15245-PF-CE-506 – Supplemental Response. The same is true for information concerning bill processing: “No further information concerning the 2006 costs is available.” *Id.*

7. Similarly, MCR 2.310 authorizes a request “to produce and permit the requesting party . . . (1) to inspect and copy designated documents.”

8. Consumers Energy has complied with these two discovery rules in providing all existing responsive documents.

9. Since the hearings in this proceeding have concluded, it is difficult to see how discovery at this time can possibly assist the ALJ in his consideration of the Company’s request in this proceeding as set forth in its application and the supporting testimony and exhibits. At best these discovery requests constitute a “fishing expedition” by Mr. Forner in his ongoing efforts to enforce the Commission’s Code of Conduct as he sees it. However, that is not an issue for this case.

10. In summary, the Company has provided all of the information currently in its possession concerning the costs of the Call Center and the bill processing costs related to the ASP Program in compliance with the relevant discovery rules. Questions attempting to elicit information concerning compliance with the Commission's Code of Conduct are not proper for this proceeding and seek information that is beyond the scope of this proceeding as well as beyond the scope of discovery.

FOR ALL OF THESE REASONS, Consumers Energy respectfully requests the ALJ to DENY the Motion to Show Cause.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

December 28, 2007

By \_\_\_\_\_  
John C. Shea

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STATE OF MICHIGAN

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Case No. U-15245

PROOF OF SERVICE

Sharon K. Davis, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on December 28, 2007 she served an electronic copy of the **Response of Consumers Energy Company to Phil Forner's Motion to Show Cause** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein. She further states that she also served a hard copy of the same document to the addresses listed in Attachment 1 by depositing the same in the United States mail in the City of Jackson, Michigan with first-class postage thereon fully paid.

\_\_\_\_\_  
Sharon K. Davis

Subscribed and sworn to before me this 28th day of December, 2007.

\_\_\_\_\_  
Mary K. Polack, Notary Public  
State of Michigan, County of Jackson  
My Commission Expires: 09/09/12  
Acting in the County of Jackson

**ATTACHMENT 1 TO CASE NO. U-15245**

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