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-15645 - remand** (**e-file paperless**)

The Michigan Public Service Commission Staff's Reply Brief

The Michigan Public Service Commission Staff files the following brief in reply to the brief of the Attorney General. Staff's failure to respond to any particular assertion does not reflect agreement with that assertion. Instead, Staff continues to maintain its position as articulated in its testimony and briefs filed in this case.

I. The purpose of this remand proceeding is for the Commission to determine whether it should make any adjustment to the rates it approved in Case No. U-15645.

At the outset, Staff notes that the Attorney General misstates what the Commission did in U-15645 with respect to the utility's meters. The Attorney General claims that the Commission "ultimately approved a rate increase in the amount of $139,411,000 along with an Advanced Metering Infrastructure (AMI) pilot program." Attorney General's Initial Brief, page 1. Actually, the Commission approved a rate increase in the amount of $139 million part of which, $2.3 million, was attributable to the utility's meter expense. This is an important distinction because the Court of Appeals remanded this 2009 rate case to the Commission to reconsider its ***rate*** decision regarding AMI meters. The Commission approved rates which included the costs of the meters; it did not approve a ***program***. This distinction is significant because the Commission, in response to a rate application, approves rates, and an appeal of a rate order to the Court of Appeals must allege and show by clear and satisfactory evidence that the order of the Commission complained of is unlawful or unreasonable. MCL 462.26(8). In this remand proceeding, the Commission must consider whether to make an adjustment in the rates that it previously approved, not whether it should order a remedy that would affect and undo subsequent rate orders. This remand is confined to an assessment of the lawfulness of the rate order that was appealed.

The Attorney General also makes a significant misstatement when he alleges that this remand proceeding involves hundreds of millions of dollars of customer money. Attorney General's Initial Brief, page 9. Again, this claim demonstrates that the Attorney General is attempting to go far beyond the reach of the remand order by attempting to analyze "a program." Instead, the Court of Appeals simply requested the Commission to create a record that would permit the Commission to make an informed assessment that supported "*whatever decision*" the Commission would make with respect to the AMI costs included in the U-15645 rate case. *In re Application of Consumers Energy Company to Increase Rates*, an unpublished opinion per curiam, issued October 30, 2012 (Docket Nos. 295287, 296625, 296633, 296640, 298476), Slip opinion, page 10; emphasis added; opinion attached to Staff's Brief on Remand.[1]

II. The original and remand testimony in support of the utility's meter expense is not "merely aspirational" but supports inclusion of costs that are actual and tangible costs of providing utility service.

In addition to misstating what the Commission did in its rate order, the Attorney General's overall theme in his brief that Consumers' "testimony supporting the program is still simply aspirational testimony at best" is erroneous. The question arises, what is aspirational testimony? The Merriam-Webster Dictionary lists one definition of an aspiration as: "a strong desire to achieve something high or great." It has a list of synonyms, one of which is: "over ambitiousness." Presumably, that is the type of usage that the Court had in mind when it issued its remand order.

In answering the question of whether Consumers' (and the Staff's) presentation in the original rate case and the record on remand "is still simply aspirational" it is important to recognize two things. First, when a utility files a rate case and requests recovery of its projected costs that it asserts it will need to incur in order to provide safe and reliable utility service, a utility is projecting or estimating what those costs will be. In other words, the utility is asserting that it

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[1] The Court of Appeals also mentioned that it understood the rate increase associated with AMI meters to involve *millions* of dollars. In fact, the revenue requirement in this case for AMI meters was $2.3 million, an amount that the Attorney General does not dispute. See testimony of Staff witness Daniel Birkam. (The Attorney General's reference to *hundreds of millions of dollars* on page 9 of his brief presumably refers to all expenditures for meters from 2009 until the present time.)

will—future tense—need to have meters to carry out certain functions and these are the costs associated with these meters. The fact that the meters would provide these benefits in the future, hence the use of the future verb tense, is of no consequence because the witness had to be speaking of a future time when the new rate order was issued and in effect. Consequently, aspirations have nothing to do with the functions that these meters can clearly provide customers.

In addition to the fact that every rate case involves the use of the future tense, i.e., the utility projecting its costs and the purpose it intends to accomplish with these amounts being included in rates, this remand proceeding involves a review of the results of the utility's pilot program. Both the utility and Staff presented testimony regarding the results of the pilot program. These meters were used to provide utility service, and the record does not support a finding that the meter expenses were unreasonable or imprudent so as to support removal of these costs from the U-15645 rate order as advocated by the Attorney General.

Second, the fact that the utility carried out a pilot program to explore the use of the new meters (and subsequently continued installation of these meters) is clearly not "merely aspirational" as the remand record reveals. While it has taken some period of time to install the meters and associated software to carry out the full functionality of the meters, the testimony of Staff and the utility does show that significant progress has been made and that full functionality is within sight.

In sum, the approval of the pilot program costs was not aspirational on the part of the Commission, but rather, the testimony in the original and remand proceeding reflects what the meters could do to provide utility service upon their installation. The fact that the meters can also do other things to improve the overall electric grid as more and more meters are installed and the grid is improved in other ways is simply another justification for the Commission approval of Consumers' pilot program costs. The Commission is justified in approving such costs in order to allow the utilities to begin to install the necessary components to utilize data to better manage the operation of the grid, improve efficiencies to lower costs, and maximize the value of the energy and capacity delivered to end users, as the Attorney General's own witness (Mr. McGarry) acknowledged in Case No. U-15768-remand.

In fact, to the extent that the Attorney General's claim that the utility's decision to install new meters is merely aspirational is based upon the notion that some of the improvements associated with the new meters have not yet occurred, that claim is not well-founded in utility ratemaking principles. To suggest this would be analogous to saying that the Commission could not lawfully approve costs in rates for the utility to buy bricks to build a new office building because it would also need to buy heating and cooling equipment before the building could be occupied. Similarly here, to suggest that the utility cannot and should not recover the costs of its pilot program because it may need to buy additional software or make other improvements before the full value of the investment can be realized is illogical when the meters as installed can read customer usage and permit the utility to detect outages as soon as the meters are installed.

III. The Commission may find that its original rate order was just and reasonable regardless of the merits of the cost-benefit analysis, although Staff submits that the cost-benefit analysis results in a positive benefit for customers.

It is also important to note that, contrary to the Attorney General's position, there is no one required test, such as a cost benefit test, to be met before an item of plant may lawfully be included in rates. Neither Consumers, nor any other utility, has ever had a legal requirement that it meet a "net benefits" test before the expense is considered a reasonable cost of the utility doing business. *Residential Ratepayer Consortium v Public Service Comm*, 239 Mich App 1, 6; 607 NW2d 391 (1999), *lv den* 483 Mich 857; 617 NW2d 690 (2000); *ABATE v Public Service Comm*, 208 Mich App 248, 258; 527 NW2d 533 (1994), *lv den* 450 Mich 890; 539 NW2d 507 (1995).

Therefore, while determining whether an expense results in a "net benefit" may be helpful in determining whether it is a reasonable cost of doing business (see Order, Case No. U-16472, October 20, 2011, page 24), the determination of whether a cost is a cost of doing business is not confined to being determined by such a "test."

The United States Supreme Court articulated this principle in the case of *Federal Power Comm v Hope Natural Gas,* wherein the Court rejected the idea that commissions could only lawfully use certain types of methodologies to determine utility rates:

> We held in *Federal Power Commission v. Natural Gas Pipeline Co.* 315 US 575, 86 L Ed 1037, 62 S Ct 736, *supra*, that the Commission was not bound to the use of any single formula or

> combination of formulae in determining rates. Its rate-making function, moreover, involves the making of "pragmatic adjustments." And when the Commission's order is challenged in the courts, the question is whether that order "viewed in its entirety" meets the requirements of the Act. Under the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. [*Federal Power Comm v Hope Natural Gas Co*, 320 US 591, 602; 64 S Ct 281; 88 L Ed 333 (1944).]

Consequently, the Attorney General's position that, until there is sufficient evidence that a cost-benefit analysis shows that undertaking such a project (replacing meters) is beneficial to customers, no rate recovery should be allowed and should be rejected. Attorney General's Initial Brief, page 32. There is no need for the Commission to determine whether so-called "net benefits" have been proven because sufficient evidence and reasoning supports the notion that the costs included for meters and associated software reflect reasonable costs of doing utility business.

IV. Even though the Commission is not required to find that a positive cost-benefit test result exists, Staff submits that the cost-benefit analysis results in a positive benefit for customers.

In any event, Staff concluded that the net benefits test does reveal a positive value to the utility's installation of the new meters. The Attorney General claims the Company's cost-benefit analysis is faulty due to an unorthodox approach in determining the NPV of its AMI project. This approach discounts the cash flows to be received by the annual revenue requirement billed to the Company's customers. Attorney General's Initial Brief, page 29. Mr. Coppola makes the argument that the project becomes uneconomical when using his approach because even without including the numerous adjustments he makes in his direct testimony the NPV changes from a favorable $53 million to $19 million unfavorable. 1 TR 222.

However, Staff agrees with the Company's approach, the Present Value Revenue Requirement (PVRR), and finds the Attorney General's approach inappropriate for evaluating the AMI project. The AG Approach does not take into account the fact that the Company will pass along AMI savings to customers due to cost-of-service ratemaking (Staff's Brief on Remand, page 34), and the fact that AMI capital expenditures will be placed into rate base and recovered from ratepayers through the rate of return on, and through depreciation together with return on rate base. Staff's Brief on Remand, pages 35, 39. The AG Approach is not an analysis from the perspective of the customer, as the Company's PVRR Approach is.

Furthermore, the approach Mr. Coppola suggests is the same rejected approach that Detroit Edison submitted in the initial phase of Case No. U-16472. The Commission rejected this approach after both Staff and the Administrative Law Judge found it to not be from a "customer-only" perspective. Staff's Brief on Remand, pages 36-37. Staff asserts that the PVRR Approach that the Company uses is appropriate in calculating the NPV of its AMI investment, as it calculates the net benefits or net costs of the project from the customers' perspective. Staff's Brief on Remand, page 38.

In addition, based on Commission decisions in Case Nos. U-16794, U-17087, and U-15768-Remand, the Commission has approved of and relied upon a PVRR

Approach to calculate the net benefits of AMI. Staff recommends the Commission to continue to do so. Staff's Brief on Remand, page 41. Finally, the Commission should note that the PVRR Approach is not unorthodox, as it was used to calculate the cost-effectiveness of building the Thetford generating plant, which was proposed by Consumers in Case No. U-17429 in 2013. The Attorney General did not object to the use of the PVRR Approach in that case. Staff's Brief on Remand, page 40.

V. In addition to the fact that a positive cost-benefit test result exists, Staff submits that the Commission may rely upon the meters very important benefits that are not part of the cost-benefit analysis as a basis for independently concluding that the original rate order was just and reasonable.

Finally, very important non-quantified benefits exist with respect to these meters that the Attorney General does not even address. Regardless of the NPV approach taken, a cost-benefit analysis is just one tool at the Commission's disposal to help judge whether or not a utility investment is reasonable and prudent. As stated by Staff witness Shannon Whiton, there are a number of benefits of this AMI investment that cannot be quantified in the NPV calculation. She noted:

> For example, the new meters are able to immediately detect an outage which enables the utility to know immediately that service is out and where it is out. That permits the utility to more quickly determine the cause of the outage and therefore shorten the time needed to restore electricity to customers whose power is out. Vulnerable customers, such as the elderly or those using in-home medical equipment, greatly benefit from these meters' ability to detect outages. In addition, the new meters almost entirely eliminate estimated bills and incorrect meter reads, improving customer service, especially for customers with hard-to-access meters. [1 TR 310.]

The AMI investment provides customers with safety and reliability that the existing system cannot, and the Commission may rely upon that fact alone to affirm the justness and reasonableness of its originally-approved rates.

Conclusion

A review of recent history reveals that many instances have arisen in which technological advances have permitted improvements to the quality of life. These include the invention of the motorized vehicle, the invention of the telephone, and the invention of computerized systems that carry out various functions.

Similarly here, the AMI meters, that are capable of being remotely read, provide a transition from a system that required meter readers to walk the streets and through backyards, encounter aggressive dogs, and possibly face being robbed. The AMI meters permit going from a system of having to have a meter reader come to your home when you move or when you start new service to simply calling and informing the utility of your move in or out to get a beginning or final read. And perhaps most importantly, the new meters immediately inform the utility of the location of each outage when they occur and the location of each restoration of service when that is accomplished. Such information can literally be life-saving to vulnerable individuals who may be harmed by a lack of electricity in their home.

Yet despite these existing and tangible benefits, the Attorney General has advocated that all costs associated with Consumers' 2009 pilot program that sought to install and test these new meters be removed from rates. Staff submits that such a position is an ill-advised one that runs contrary to even the position regarding the importance of AMI infrastructure expressed by the Attorney General's own witness in Case No. U-15768-remand who indicated that smart grid and AMI meters are new and improved technologies that allow utilities to utilize data to better manage the operation of the grid, improve efficiencies to lower costs, and maximize the value of the energy and capacity delivered to end users.

In sum, Staff urges the Commission, after reviewing the original rate case record and the record on remand, to decide that the rate order in Case No. U-15645 as originally approved was lawful and reasonable.

Respectfully submitted,

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15645/A Remand Proceeding – Reply Brief

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PROOF OF SERVICE

STATE OF MICHIGAN)
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Pamela A. Pung, being first duly sworn, deposes and says that on **June 25, 2014**, she served a true copy of the **The Michigan Public Service Commission Staff's Reply Brief** upon the parties on the attached Service List **VIA E-MAIL and upon the Administrative Law Judge via e-mail and I.D. mail.**

Pamela A. Pung

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Pamela A. Pung

Subscribed and sworn to before me
this **25th** day of **June, 2014**.

Corinna C. Swafford

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Corinna C. Swafford, Notary Public
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