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March 9, 2009

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

Re: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for CONSUMERS ENERGY COMPANY to fully comply with Public Acts 286 and 295 of 2008.
MPSC Case No. U-15805

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for CONSUMERS ENERGY COMPANY to fully comply with Public Acts 286 and 295 of 2008.
MPSC Case No. U-15889

E-File/Paperless (Consolidated)

Dear Ms. Kunkle:

Enclosed for filing in the above-captioned consolidated cases please find the Association of Businesses Advocating Tariff Equity's **MOTION TO DISMISS PORTIONS OF APPLICATION**. Proof of Service upon the Parties of Record is also included. These documents are being filed electronically, in paperless format, on the Commission's Electronic Case Filing System.

Very truly yours,

CLARK HILL PLC

Digitally signed by
Roderick S. Coy

Roderick S. Coy

RSC:met
Enclosures

cc: Parties of Record

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for **CONSUMERS ENERGY COMPANY** to fully comply with Public Acts 286 and 295 of 2008.	)	Case No. U-15805
In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for **CONSUMERS ENERGY COMPANY** to fully comply with Public Acts 286 and 295 of 2008.	)	Case No. U-15889

MOTION TO DISMISS PORTIONS OF APPLICATION

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill PLC, hereby brings this Motion to Dismiss Portions of Consumers' Application in the above referenced dockets. In support of its Motion, ABATE states as follows.

I. INTRODUCTION

On October 6, 2008, 2008 PA 295, MCL 460.1001 et seq., took effect. Pursuant to Section 191 of the Act, MCL 460.1191, the Commission was required to issue a temporary order to, among other things, direct formats for renewable energy plans for various categories of electric providers. On December 4, 2008, the Commission issued the required temporary order, docketed as Case No. U-15800. An amendatory Order was issued on December 23, 2008. Pursuant to Sections 21 and 71, Consumers was required to file both its Renewable Energy Plan ("REP") and Energy Optimization Plan ("EOP") within 90 days after issuance of the Temporary

Order (*i.e.*, some 6 months after enactment of Act 295). Sections 21(5) and Section 73 require a decision by the Commission on the plans within 90 days.

Thus, Act 295 provides for an extremely expedited proceeding to authorize plans in limited, statutorily delineated areas for both the REP and the EOP. As the Commission stated in the Temporary Order, "[t]he 90-day timeframe required for processing applications is so tight that litigants cannot reasonably expect the full panoply of activities ordinarily associated with the conduct of contested case proceedings at the Commission."[1]

In the six months it has had to build this filing, Consumers has taken this proceeding and decided to load it down with requests for a decoupling mechanism, long term accounting approvals, and other requests with the obvious purpose to overwhelm parties and the Commission in the expedited, 90-day proceeding. These long term changes in regulatory treatment, the decoupling proposal, and other requests must be removed from this proceeding and proposed elsewhere. Consumers should not be permitted to take such obvious advantage of the accelerated schedule placed on the other parties.

II. ARGUMENT

A. Use Of This Proceeding For Authorization Of An Electric Decoupling Mechanism Is Improper.

At paragraph 14 of its application, in describing its proposed EOP, Consumers claims it is not proposing to spend up to the specific targets because of the "disincentive for pursuing greater energy savings" to the Company, and goes on to indicate that it is pursuing a Revenue Decoupling Mechanism to eliminate its own disincentive.

[1] *In the matter, on the Commission's own motion, to implement 2008 PA 295 through issuance of a temporary order as required by MCL 460.1191*, Case No. U-15800, Temporary Order, December 4, 2008, pp. 17-18.

Initially, it is important to note that the express purpose of the EOP is to "reduce the future costs of provider service to customers." (Section 71(2), Emphasis added) Under Consumers' proposal, reducing the costs to customers takes a back seat to insuring the revenues of the provider.

Second, it is clear from the prefiled testimony of Benjamin Ruhl, at page 10, that Consumers wants approval in this expedited proceeding of a rate decoupling mechanism to apply to all retail electric and gas customers. Including electric customers in a plan in a 90-day expedited proceeding is contrary to Act 195 and to this Commission's prior orders.

1. Act 295 Does Not Provide ForDecoupling In The EOP.

Act 295 provides that the EOP shall do the following:

> (3) An energy optimization plan shall do all of the following:
>
> (a) Propose a set of energy optimization programs that include offerings for each customer class, including low income residential. The commission shall allow providers flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of their service territory.
>
> (b) Specify necessary funding levels.
>
> (c) Describe how energy optimization program costs will be recovered as provided in section 89(2).
>
> (d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy optimization programs for that rate class.
>
> (e) Demonstrate that the proposed energy optimization programs and funding are sufficient to ensure the achievement of applicable energy optimization standards.
>
> (f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.
>
> (g) Demonstrate that the provider's energy optimization programs, excluding program offerings to low income residential customers, will collectively be cost-effective.
>
> (h) Provide for the practical and effective administration of the proposed energy optimization programs. The commission shall allow

providers flexibility in designing their energy optimization programs and administrative approach. A provider's energy optimization programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

(i) Include a process for obtaining an independent expert evaluation of the actual energy optimization programs to verify the incremental energy savings from each energy optimization program for purposes of section 77. All such evaluations shall be subject to public review and commission oversight.

(4) Subject to subsection (5), an energy optimization plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (2).

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (1) and that provide additional customer benefits.

The Act does not mention decoupling mechanisms in conjunction with the expedited EOP proceeding, for either gas or electric. Section 89(4) authorizes the Commission to approve a rate decoupling mechanism for gas customers only, but approval of it is not provided for in the EOP expedited proceeding under Section 71, which only provides for a description of the cost surcharges from Section 89(2) in the 90-day proceeding.

Consumers also overreaches with its proposal to include an electric rate decoupling mechanism, especially when the Commission has no statutory authority to approve such a mechanism. Decoupling mechanisms on the electric side are expressly provided for in Section 97(4), which provides:

(4) Not later than 1 year after the effective date of this act, the commission shall submit a report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates. The report shall be submitted to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The commission's report shall review whether decoupling would be cost-effective and would reduce the overall consumption of fossil fuels in this state. [Emphasis added.]

In other words, the Legislature wants a report before deciding whether to authorize the Commission to approve rate decoupling on the electric side, and whether it would be cost effective and reduce consumption. Consumers wants to bypass the required report, and the Commission securing statutory authority, and have a full-fledged rate decoupling mechanism in place before the Legislature can even consider the Commission's required report, and to do so on an expedited basis, when the Commission should be focused on its EOP. This is precisely contrary to Act 295.

2. The Commission's Orders Provide For Analysis Of Decoupling Outside Of The EOP Process.

Adding an electric rate decoupling mechanism to this proceeding is also contrary to the Commission's prior actions regarding decoupling. On October 21, 2008, the Commission opened a docket, Case No. U-15898, expressly to address its report to the Legislature regarding electric rate decoupling mechanisms. Then, in its Order in Detroit Edison's electric rate case on December 23, 2003 (after the issuance of the Temporary Order in Case No. U-15800), the Commission acknowledged Section 97(4), and could have directed Detroit Edison to provide for a sample mechanism in its EOP, but it did not do so. Instead, the Commission provided for testimony and proposals to be filed in the next general rate case.

Consumers had this information on December 23, nearly two months before it filed its EOP, and while it had its own general rate case, Case U-15645, in the early stages. If Consumers did not believe waiting for another general rate case was practical, it had plenty of time to amend the current rate case where the proposals could have been reviewed in the manner required in the Detroit Edison case. Consumers chose not to do so, instead choosing to try to overwhelm the parties and process in this proceeding. Consumers should be required to remove its rate decoupling proposal from this EOP proceeding.

B. Long Term Accounting Approvals Are Not Part Of The EOP Process.

Similar to its position regarding decoupling, Consumers also pursues long term regulatory approvals beyond the program's 20-year term, including:

(1) In paragraph 9 of its application, Consumers seeks advance regulatory approval of power purchase agreements beyond the 20-year term of the REP.

(2) Consumers also seeks advance approval to recover costs of the renewable assets beyond the 20-year period.

As with decoupling, these accounting approvals are not included in Section 21 or Section 71 of the Act. Such changes are beyond the scope of the programs to be financed by the surcharges, and may even involve recovery beyond the surcharge limits. This proceeding should be strictly limited to the REP and EOP structure and the resulting surcharges, and should not be expanded in this expedited 90-day proceeding.

C. Consumers' Proposal for 900 MW Renewable Capacity Is Excessive At This Time And May Be Used To Circumvent The Certificate Of Need Requirement.

Consumers' Application asks for approval of a renewable energy plan whereby it seeks approval to add 900 MW of renewable capacity. This is excessive. Under Section 27, Consumers is only required to propose 500 MW by the end of 2015. The additional 400 MW is beyond the scope of the REP under the statute.

Moreover, the costs are not established, and specific contracts for the additional capacity are not in a form for approval. It is very possible that Consumers' plans for the additional purchased power may exceed the requirements for the Certificate of Need process set forth in 2008 PA 286; MCL 460.6s.

Again, this proceeding has been expedited, and should only deal with what is required under the Act. Approval of a plan calling for 400 MW in additional capacity is excessive and

should be removed from the proceeding, with directions to limit the proceeding to the statutory required capacity.

WHEREFORE, ABATE requests that the Commission grant its Motion and Dismiss the above listed portions of Consumers' Application.

Respectfully submitted,

CLARK HILL PLC

By: Digitally signed by Roderick S. Coy

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Date: March 9, 2009

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for **CONSUMERS ENERGY COMPANY** to fully comply with Public Acts 286 and 295 of 2008.	Case No. U-15805
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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Mary E. Turney, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on March 9, 2009, in the above-captioned consolidated proceedings, a copy of the Association of Businesses Advocating Tariff Equity's **MOTION TO DISMISS PORTIONS OF APPLICATION** and this Proof of Service, was served upon:

SEE ATTACHED SERVICE LIST

Service was accomplished by depositing in a U.S. Mail receptacle with fully prepaid postage and via electronic mail.

Digitally signed by Mary E. Turney

Mary E. Turney

Subscribed and sworn to before me
this 9th day of March, 2009.

Digitally signed by Tema L. Crowell

Tema L. Crowell, Notary Public
Gratiot County, Michigan
Acting in Ingham, Michigan
My Commission Expires: November 16, 2012

SERVICE LIST
MPSC Consolidated Case Nos. U-15805 & U-15889

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