

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-16191**
(e-file paperless)

**THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
ANSWER TO ENERGY MICHIGAN'S PETITION FOR REHEARING**

In accordance with Rule 403(2) of the Michigan Public Service Commission's
(Commission or MPSC) Rules of Practice and Procedure,¹ the MPSC Staff (Staff) files the
following Answer to Energy Michigan's Petition for Rehearing in the above-referenced case.

Rule 403's Grounds for a Rehearing

Rule 403 of the Commission's Rules of Practice and Procedure sets forth the
requirements that a Petitioner must meet when seeking a rehearing before the Commission.²

Rule 403(1) provides:

A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.³

¹ Mich Admin Code R 460.17403(2).

² Mich Admin Code R 460.17403.

³ Mich Admin Code R 460.17403(1).

Through its orders, the Commission has interpreted this procedural rule. With respect to the requirements of MPSC Rule 403, the Commission has indicated on multiple occasions that “...an application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission’s decision.”⁴ Additionally, the Commission has stated that “[u]nless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.”⁵

Answer to Energy Michigan

In this proceeding, Staff and Consumers Energy both proposed to continue eliminating the approximate \$92.3 million residential subsidy through equal annual steps.⁶ Energy Michigan disagreed with the residential subsidy amount and argued that the residential subsidy should be recalculated. According to Energy Michigan, “the Staff’s current COSS shows that the real subsidy is \$131 million, and the amount that should be phased-out in this proceeding is \$32.9 million.”⁷ After reviewing the evidence, the Commission found:

The Commission finds that the residential subsidy figures calculated in Case No. U-15645 should continue as the starting point for calculating the subsidy in this proceeding. ...Energy Michigan’s suggestion that the subsidy be recalculated in every rate case is inconsistent with the Commission’s findings in Case No. U-15645.⁸

In response to the Commission’s Order, Energy Michigan filed its Petition for Rehearing asserting that the language in the Commission’s Order conflicts with the Commission’s previous decision in Case No. U-15645. Specifically, Energy Michigan asserted that “...it is the

⁴ MPSC Case No. U-13917, Order, August 1, 2005, p 4.

⁵ MPSC Case No. U-13716, Order, October 14, 2004, p 2.

⁶ See MPSC Case No. U-16191, Order, November 4, 2010, p 71.

⁷ MPSC Case No. U-16191, Order, November 4, 2010, p 72.

⁸ MPSC Case No. U-16191, Order, November 4, 2010, p 73.

Commission's refusal in Case U-16191 to recalculate the residential subsidy which is completely inconsistent with the clear language of the Commission in Case U-15645 that residential subsidies were to be recalculated in every rate case."⁹

At the onset, Energy Michigan has failed to meet the necessary requirements to obtain rehearing regarding the issues raised in its Petition for Rehearing. Energy Michigan's Petition has not established that the Commission's Order is based on error, newly discovered evidence, or that unintended consequences will result from the Commission's decision. Instead, review of the Petition demonstrates that Energy Michigan simply reiterates its prior argument, which the Commission has fully considered.¹⁰

Further, the Commission's Order in this case does not conflict with its past decision. In Case No. U-15645, Consumers Energy's previous rate case, Staff recommended that the Commission determine the subsidy amount by using the 12CP 50/25/25 methodology, and under the Staff's proposal, the residential subsidy was calculated to be approximately \$92.3 million. In its Order in Case No. U-15645, the Commission adopted Staff's proposal and indicated that the residential subsidy would need to be recalculated until it is eliminated.¹¹ In this case, Case No. U-16191, the Commission adopted Staff's and the Company's position as a means to continue reducing the residential subsidy. In doing so, the rates were designed in a manner that did not further skew the revenue deficiency, thus not increasing the residential subsidy amount. After reviewing the evidence, the Commission stated that "...the residential subsidy figures calculated in Case No. U-15645 should continue as the starting point for calculating the subsidy in this proceeding."¹² In making this decision, the Commission determined that in this case, the

⁹ Energy Michigan's Petition, p 2.

¹⁰ See Energy Michigan's Initial Brief, pp 3-7; Energy Michigan's Reply Brief, pp 2-7,

¹¹ MPSC Case No. U-15645, Opinion and Order, November 2, 2009, p 77.

¹² MPSC Case No. U-16191, Order, November 4, 2010, p 73.

residential subsidy amount did not need to be recalculated. Therefore, the Commission authorized Consumers Energy to “...continue the 20% reduction of the \$92.3million subsidy consistent with the Commission’s findings in Case No. U-15645.”¹³ Thus, the Commission’s Order recognized its past determination and rendered a decision that was consistent with its previous decision.

Moreover, Energy Michigan’s recalculation of the residential subsidy amount is flawed. Energy Michigan argues for the annual elimination of \$32.9 million – which over the remaining deskewing period totals a residential subsidy amount of \$131.5 million — and asserts that this subsidy amount was calculated in the cost of service study. But, a cost of service study does not calculate the residential subsidy; rather it calculates the total revenue requirement and total revenue deficiency for the residential class (as well as all the other classes). While the residential subsidy amount could change due to a change in usage characteristics, this did not occur in this proceeding. A unique aspect of this case is that the Company maintained the sales, billing determinants, and allocation factors from its previous rate filing. 5 TR 1244-1245. As these factors were unchanged, it can be determined that there are no significant shifts in revenue responsibilities that are not attributable to new costs from this rate case. This very fact led Staff to review the mathematical approach it had previously supported and determine that the residential subsidy amount did not need to be recalculated. 5 TR 1245-1248. Thus, Energy Michigan’s proposed recalculation of the residential subsidy would be inappropriate.

Accordingly, no error has resulted from the Commission’s Order and no unintended consequences have arisen from the Commission’s decision. The arguments that Energy Michigan raises were previously addressed over the course of the proceeding and rejected by the

¹³ MPSC Case No. U-16191, Order, November 4, 2010, p 73.

Commission. As such, Energy Michigan has failed to meet the Commission's rehearing requirements as specified under Rule 403¹⁴ and its Petition for a Rehearing should be denied.

Relief

Therefore, Staff respectfully requests that the Commission deny Energy Michigan's Petition for Rehearing.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

Kristin M. Smith (P46323)
Anne M. Uitvlugt (P71641)
Assistant Attorneys General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

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¹⁴ Mich Admin Code R 460.17403.

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Pamela A. Walters, being first duly sworn, deposes and says that on December 27, 2010, she served a true copy of the Michigan Public Service Commission Staff's Answer to Energy Michigan's Petition for Rehearing upon the parties as indicated on the attached Service List **VIA E-MAIL ONLY**.

Pamela A. Walters

Subscribed and sworn to before me
this 27th day of December, 2010.

Linda S. Andreas, Notary Public
State of Michigan, County of Ingham
My Commission Expires: 3-22-2012

MPSC Case No. U-16191
SERVICE LIST

Consumers Energy Company

Jon R. Robinson
H. Richard Chambers
Raymond E. McQuillan
John C. Shea
M. Bryan Little
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201
jrobinson@cmsenergy.com
hrchambers@cmsenergy.com
remcquillan@cmsenergy.com
jcshea@cmsenergy.com
mblittle@cmsenergy.com
mpscfilings@cmsenergy.com

Energy Michigan

Eric J. Schneidewind
Varnum, Riddering, Schmidt & Howlett
201 N. Washington Sq., Suite 810
Lansing, MI 48933
ejschneidewind@varnumlaw.com

**Michigan State Utility Workers Council,
Utility Workers Union of America, AFL-
CIO**

Steven D. Weyhing
Kelley Cawthorne, PLLC
208 N. Capitol Ave., 3rd Floor
Lansing, MI 48933-1356
sweyhing@kelley-cawthorne.com

Attorney General

Michael E. Moody
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Div.
G. Mennen Williams Bldg., 6th Floor
525 W. Ottawa St.; P.O. Box 30755
Lansing, MI 48909
moodym2@michigan.gov

Municipal Coalition

Roderick S. Coy
Leland R. Rosier
Clark Hill
212 East Grand River Avenue
Lansing, MI 48906
rcoy@clarkhill.com
lrosier@clarkhill.com

ABATE

Robert A. W. Strong
Clark Hill
151 S. Old Woodward Ave., Suite 200
Birmingham, MI 48009
rstrong@clarkhill.com

Constellation NewEnergy, Inc.

John M. Dempsey
Christina Pina Flint
Dickinson Wright PLLC
215 S. Washington Sq., Suite 200
Lansing, MI 48933
jdempsey@dickinsonwright.com
cflint@dickinsonwright.com

MCAAA

Don L. Keskey
Public Law Resource Center PLLC
505 N. Capitol Ave.
Lansing, MI 48933-1209
donkeskey@publiclawresourcecenter.com

**Mich. Cable Telecommunications Ass'n;
Hemlock Semiconductor Corporation**

David E.S. Marvin
Jennifer Utter Heston
Fraser Trebilcock Davis & Dunlap
124 W. Allegan St., Ste. 1000
Lansing, MI 48933
dmarvin@fraserlawfirm.com
jheston@fraserlawfirm.com

Kroger

Anthony J. Szilagyi
Law Offices of Anthony J. Szilagyi, PLLC
110 S. Clemens Ave.
Lansing, MI 48912
szilagylaw@sbcglobal.net

**Michigan Environmental Council (MEC);
Natural Resources Defense Council
(NRDC) and Environmental Law &
Policy Center (ELPC)**

Christopher M. Bzdok
Olson Bzdok & Howard, PC
420 E. Front St.
Traverse City, MI 49686
chris@envlaw.com

MCV

Richard J. Aaron
Warner Norcross & Judd, LLP
120 N. Washington Sq., Ste. 410
Lansing, MI 48933
raaron@wnj.com

Administrative Law Judge (ID MAIL)

Sharon L. Feldman
Administrative Law Judge
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
P.O. Box 30221
Lansing, MI 48909
feldmans@michigan.gov

Kroger

Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, OH 45202
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com

Kroger

Kevin Higgins
Energy Strategies, LLC
Parkside Towers
215 S. State St., Ste. 200
Salt Lake City, UT 84111
khiggins@energystrat.com

Michigan Environmental Council (MEC)

James Clift
Michigan Environmental Council
119 Pere Marquette Dr., Ste. 2A
Lansing, MI 48912
james@environmentalcouncil.org

MCV

Gary B. Pasek
Michigan Cogeneration Venture
Limited Partnership
100 Progress Place
Midland, MI 48640
gbpasek@midcogen.com