

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and conditions)
for retail customers of **CONSUMERS ENERGY**)
COMPANY to choose an alternative electric supplier.) Case No. U-12488
_____)

At the December 20, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On June 5, 2000, the Customer Choice and Electricity Reliability Act (Act), MCL 460.10 et seq., took effect. Among other things, it authorizes the Commission to establish the rates, terms, and conditions under which all retail customers of an electric utility will be permitted to choose an alternative electric supplier (AES or retailer). On June 19, 2000, the Commission initiated this contested case proceeding to approve retail open access (ROA) tariffs for Consumers Energy Company (Consumers). The Commission noted that it had previously approved Rate DA for Consumers, under which some customers were permitted to choose another supplier of generation services, and a full-scale customer choice program. The order required Consumers to file proposed tariffs based on its existing tariffs, with any revisions that were appropriate to comply

with the Act or necessary to remedy problems that customers had experienced with the existing tariffs. Consumers filed its proposed tariffs on September 20, 2000.

A prehearing conference was held on October 25, 2000 before Administrative Law Judge James N. Rigas (ALJ). He granted the petitions for leave to intervene filed by Energy Michigan, the Association of Businesses Advocating Tariff Equity (ABATE), Exelon Energy Company (Exelon) (formerly known as Unicom Energy, Inc.), Midland Cogeneration Venture Limited Partnership, and Michigan Municipal Risk Management Authority. He subsequently granted the petitions filed by First Power, L.L.C., Packaging Corporation of America, Borgess Hospital, Cannon-Muskegon, and Martin Marietta. The Commission Staff (Staff) also participated in the case.

On April 17, 2001, the parties stipulated to bind in the testimony and exhibits without cross-examination. The record consists of 197 pages of transcript and 15 exhibits.

Consumers, the Staff, ABATE, Energy Michigan, and Exelon filed briefs and reply briefs. On July 30, 2001, the ALJ issued a Proposal for Decision (PFD). Consumers, the Staff, and Energy Michigan filed exceptions on August 13, 2001. ABATE filed its exceptions a day late. Consumers, ABATE, and Energy Michigan filed replies to exceptions on August 24, 2001. Also on August 24, 2001, the National Energy Marketers Association (NEMA), although not a party to the case, filed a letter about the reciprocity provision in the proposed tariffs.

II.

DISCUSSION

During the course of the proceedings, the Staff asked Consumers to develop a set of tariffs based on the format used by The Detroit Edison Company (Detroit Edison) for its proposed ROA tariffs in Case No. U-12489. Consumers provided the reformatted tariffs in a discovery response,

which was admitted as Exhibit S-15. That exhibit became the basis for the parties' discussion of the issues and the ALJ's PFD.

Except as discussed below, the Commission adopts the tariff provisions on which the parties have reached agreement and the ALJ's recommendations to which no party excepted. In addition, some of the parties raised issues that they did not pursue. Except as discussed below, the Commission views those issues as abandoned. The discussion that follows retains the numbers that the ALJ assigned to the issues.

2. Rate DA – Rule D8

Consumers proposed to close Rate DA and to require the two customers on the rate to take service under the ROA tariffs, although without going through the bidding process required by the current tariffs. It said that this would avoid customer confusion and the unnecessary administrative burden of administering two customer choice tariffs.

ABATE argued that Rate DA should continue through the end of 2001, with the customers allowed to return to full service or to take ROA service when it became available to all retail electric customers on January 1, 2002. ABATE maintained that this transition would be less burdensome and confusing than requiring the customers to switch to the existing ROA tariffs and then the revised ROA tariffs within a short time.

The ALJ recommended that Rate DA customers be required to transfer to the existing ROA tariffs, without bidding, at the beginning of the first month after the issuance of an order in this case.

ABATE excepts.

The Commission agrees with ABATE. Whatever the merits of Consumers' proposal when there might have been a period of months between the issuance of this order and the availability of

ROA service to all customers on January 1, 2002, there can be little or no reason to require two customers to switch from Rate DA to Consumers' current ROA tariffs and then to switch to the revised tariffs in a few weeks. Accordingly, Consumers shall permit the customers on Rate DA to remain on that rate until the first billing cycle that begins on or after January 1, 2002. As of that date, the customers shall take service pursuant to the tariffs approved by this order or shall return to full service.¹

4. Reciprocity – Rule F1.6

In its reply brief, the Staff proposed a modified definition related to reciprocity:

“Comparable” Retail Open Access Service is one which (i) provides for Retail Open Access Service in an amount of retail Customer load relatively equivalent to that provided by the Company, and (ii) specifies rates, terms and conditions that have been approved by all applicable regulatory authorities for use in Retail Open Access Service transactions.

The ALJ found that the Staff's modified definition was reasonable, and should be adopted.

NEMA filed a letter objecting to the requirement of reciprocity.

The Commission approves the provision as recommended by the ALJ. The requirement of “load relatively equivalent” is to be judged by a comparison of the percentage of the retailer's (or its affiliate's) customer load that is available to be served by retail open access and the percentage of the total load connected to Consumers' distribution system that is served by the retailer (or its affiliate). As for NEMA's request that the Commission not require reciprocity or at least adopt a provision patterned after an Illinois statute, a letter from a non-party that is filed on the date for filing replies to exceptions cannot serve the same function as a timely exception filed by a party. Events subsequent to the imposition of the reciprocity requirement in connection with the limited

¹“Full service” is used in this order, as it is used in the tariffs, to mean the provision of distribution and supply service by Consumers.

ROA program may have obviated the need for reciprocity. Accordingly, the Commission will re-examine the reciprocity requirement in light of experience with the expanded ROA program.

6. Capacity Bidding – Rule F4

The Staff proposed to delete a phrase that Consumers argued could create confusion about who is to pay the transition surcharge through December 31, 2001.

The ALJ agreed that deleting the phrase would create confusion, and recommended that the Commission reject the Staff's proposal.

Energy Michigan excepts, and argues that the ALJ erroneously adopted language that requires retailers to pay the transition surcharge.

The Commission concludes that the issue is moot because the tariffs approved by this order take effect on January 1, 2002, and the tariffs are clear that customers pay the transition surcharge as of that date.

The Staff also recommended adding a provision that would require Consumers to return unused bid deposits by March 31, 2002, although without interest.

Energy Michigan supported the Staff's proposal for the return of bid deposits, but argued that interest should be included to prevent a windfall to Consumers.

The ALJ found that the Staff's proposal to return deposits without interest was reasonable, and should be adopted.

Energy Michigan excepts to the ALJ's failure to recommend that interest be included.

The Commission agrees that Consumers should return the deposits associated with unused bid capacity. It does not agree that Consumers should return the deposits as late as March 31, 2002. If Consumers returns the deposits by February 1, 2002, it may do so without including interest. If the return is delayed beyond that date, it shall include interest from the date it received the

deposits. Any interest shall be at 7%, the rate most recently approved for carrying costs on ROA implementation costs.

8. Retailer Obligations – Rule F3.1

The Staff proposed that customers have a right to cancel an ROA enrollment within 10 days for any reason. Consumers stated that it was uncertain when that 10-day period was to begin.

The ALJ found that the 10-day period should begin when Consumers received the enrollment from the retailer.

Energy Michigan excepts, and argues that customers should be permitted to cancel within 10 days only when there has been slamming. It says that permitting customers to cancel within 10 days may leave the retailer having entered into a supply contract for customers who have cancelled and also permits Consumers or another retailer to undercut the first retailer's offer. As an alternative, it suggests that the Commission shorten the period to three days and then permit cancellation only by nonaggregated residential customers, as it had suggested in Case No. U-12487.

Consumers responds that it does not wish to be in the position of being asked to determine whether a customer has been slammed before deciding whether the enrollment can be cancelled.

The Commission shares Energy Michigan's concern that providing a right to cancel all contracts is not appropriate. Among other things, it provides an opportunity for the utility or its affiliate to try to win back the customer. Furthermore, the prevention of slamming does not require that customers have an unrestricted right to cancel contracts. The prevention of slamming, and the remedies for customers, should be addressed through procedures approved in Case No. U-12640 rather than by granting customers an unrestricted right to cancel contracts into which they have voluntarily entered.

The Commission concludes that when commercial or industrial customers choose to take ROA service, they should not have a right to cancel except in accordance with the terms of the contract. Consistent with the policies behind consumer protection statutes, the Commission concludes that residential customers should have three days to cancel, regardless of whether the provisions of such a statute would apply to a particular contract. As the ALJ recommended, the cancellation period shall begin when Consumers receives the enrollment from the retailer.

9. Standby Service – ROA-SB

ABATE criticized the standby rate provision. It argued that the Commission should determine the market price for electric generation service, upon which standby service is priced, rather than permit each utility to define a methodology. In addition, it argued that it is not appropriate to price standby service at 110% of the market price.

Energy Michigan argued that (1) the tariffs should clearly state that standby service is provided either under tariffs approved by the Federal Energy Regulatory Commission (FERC) or ROA-SB, but not both, (2) the 10% markup should be deleted as inconsistent with the Act, and (3) the incremental cost used to price standby service should be calculated for the total amount of standby service used, not the single most expensive megawatt-hour (MWh) used.

The ALJ found that Consumers' ROA-SB proposal, as modified by the Staff, was reasonable, and recommended its adoption. He also found Energy Michigan's pricing proposal to be unworkable and administratively burdensome.

Energy Michigan excepts, and argues that the 10% adder violates MCL 460.10b(4), which it interprets to require that standby service be provided at market cost. It also argues that it is unfair to permit Consumers to charge a standby price based on the single most expensive megawatt-hour

used during an hour when some standby power provided in the same hour may be provided at a much lower cost. ABATE also excepts to the ALJ's recommendations.

Consumers responds that Energy Michigan's proposal would require the calculation of incremental costs on a MWh-by-MWh basis and each hourly schedule of each retailer would have to be prioritized so that generation costs could be determined. It says that this would be an extreme administrative burden, if it could be done at all. It also responds that the 10% adder is consistent with the statute.

The Commission adopts the ALJ's recommendation, with the qualification that ROA customers are not required to purchase standby service from Consumers, but may purchase it from others as well. The Commission concludes that the pricing provision is consistent with the statute. "The methodology for identifying the retail market price for electric generation service to be applied under this section shall be determined by the commission based upon market indices commonly relied upon in the electric generation industry, adjusted as appropriate to reflect retail market prices in the relevant market." MCL 460.10b(4). The Act clearly does not require that retail standby service be provided at wholesale rates. It is therefore appropriate to include a markup, and 10% is usual and reasonable. Further, Energy Michigan's proposal that the cost be calculated on a MWh-by-MWh basis is likely to be difficult if not impossible to implement and is unwarranted when ROA customers have the right to purchase standby service from other sources.

10. Optional Billing Services – Rule F3.5B(4)

Consumers proposed to offer optional billing services (such as billing and remittance processing, credit and collections) at negotiated prices. The Staff proposed that the services and prices be stated in the tariffs.

Energy Michigan argued that including the prices in the tariffs would give Consumers an advantage over its competitors. Energy Michigan also argued that the pricing supported by the Staff had no factual basis.

The Staff responded that its intent was to place a basic billing option in the tariffs to eliminate the delays and problems that could arise if each retailer had to individually negotiate for billing services. It says that it did not intend to preclude the negotiation of different services and prices.

The ALJ found that a billing option should be included in the tariffs, structured and priced in accordance with the optional billing services offered by Consumers. He also recommended that the option to negotiate different services and prices be retained.

Energy Michigan excepts, and argues that inclusion of the services and prices in approved tariffs gives Consumers a competitive advantage.

The Commission agrees with the ALJ that a billing option, including prices, should be included in the tariffs. Doing so provides an option that any retailer may use without the time and expense of negotiation and does not eliminate the right to negotiate other services and prices. The Commission does not agree with Energy Michigan that competition in the provision of billing services requires that prices not be disclosed in the tariffs.

11. Customer Shut-off – Rules F2.7 and F3.5C

The Staff proposed to modify the provisions governing the shut-off of service for non-payment. Consumers opposed the changes, which it said would require it to shut off service to ROA customers who were current on charges owed to Consumers but delinquent on charges owed to a retailer, if the retailer requested the shut-off. Consumers argued that there is a contractual relationship between retailers and ROA customers and that disputes between them should be resolved without involving the distribution utility.

The ALJ found that the Staff's proposed changes should be rejected because Consumers should not be placed in the position of resolving disputes between retailers and their customers.

In its exceptions, the Staff agrees that Consumers should not be placed in the position of resolving disputes between retailers and their customers, but says that retailers can have Consumers shut off service or retailers can effectively shut off customers by not scheduling power for them. The Staff says that the latter outcome leads to uncertainty, controversy, and conflict.

Consumers responds that the Commission must decide whether to require retailers and distribution utilities to follow the same or similar provisions when seeking to terminate service or should leave the issue to negotiation between retailers and ROA customers.

Energy Michigan excepts, and argues that the tariffs require retailers to give 30 days' notice to terminate service to delinquent ROA customers, while Consumers is not required to give comparable notice to full service customers. It says that Consumers' proposal forces retailers to provide service even when customers do not pay their bills. It says that the Staff properly proposes to extend to retailers the right that Consumers has to shut off service to customers who do not pay their bills. As an alternative, it proposes that retailers be permitted to return delinquent customers to full service immediately, not with 30 days' notice.

The Commission agrees with Consumers that it should not be required to shut off service to customers who fail to pay their retailers' charges, but the Commission cannot agree that retailers should have no recourse except to terminate service under a procedure that takes longer than the procedure available to Consumers. Rather, the Commission concludes that retailers should be permitted to return delinquent customers to full service on the same timetable and under the same conditions as Consumers can terminate service to delinquent customers. Consequently, the Commission does not agree with Energy Michigan that retailers should be permitted to "shut off"

customers (by returning them to full service) faster than Consumers is legally permitted to shut off service by physically terminating service. Therefore, retailers shall comply with the billing rules that govern the shut-off of service, R 460.2101 et seq. and 460.3901 et seq., except that instead of providing a notice of termination, they shall provide a notice of return to full service. Upon compliance with those procedures, retailers shall provide notice to Consumers that the customers have been returned to full service. When retailers return customers to full service, the customers will pay the tariff rate or the market-based rate as determined by the provisions discussed in the next section. Under the Act, retailers will be unable to return qualifying low-income and senior citizen customers to full service pursuant to the provisions of MCL 460.10t. The normal 30-day termination provisions should therefore not apply.

12. Return to Service – Rule F2.5C

Consumers first proposed that customers who wished to return to full service be required to give nine months' notice. Consumers argued that it needed that time to secure adequate resources to serve the returning customers' load and that a lengthy notice requirement would encourage customers to select reliable retailers. Consumers also proposed that customers who returned to full service be required to remain on full service for at least 12 months. Consumers argued that this requirement would create stability for planning and would prevent customers and retailers from gaming the ROA program by switching back and forth between full service and ROA service depending upon the market price of power. For customers who returned to full service without providing the required notice, Consumers proposed that they be required to pay the greater of the full service tariff rate or a market-based rate.

As an alternative, in its reply brief, Consumers proposed that customers who wished to return to full service during the May-August period be required to provide notice no later than February 1

and that customers who wished to return to full service during the September-April period be required to provide one month's notice. It said that this alternative would be feasible at modest levels of participation in the ROA program.

The Staff countered that one month's notice was sufficient in all circumstances, although it did agree that customers who returned to full service should be required to remain for 12 months.

Energy Michigan argued that after there has been an increase of 2,000 megawatts (MW) in annual firm transmission capability into the Consumers/Detroit Edison control area, consistent with MCL 460.10v, Consumers' proposal should be approved, except that customers would be required to provide only 15 days' notice to return to ROA service. Until there has been an increase of 2,000 MW, Energy Michigan argued that customers should be able to return to full service with 15 days' notice prior to the end of the current billing cycle and that customers who returned should be required to remain on full service for only 3 months.

ABATE argued that Detroit Edison's current tariff provision, which offers two options, should be adopted. Thus, it proposed that customers should be permitted to return to full service at tariff rates if they remained on full service for at least 12 months or should be permitted to return to full service for not more than three months at a market-based rate.

The ALJ found that the Staff's proposal was reasonable. He said that the current notice requirement of 30 days was straightforward and easy to administer. He concluded that the Staff's proposal adequately balanced the risks between ROA customers and Consumers, although future review of the ROA tariffs would provide an opportunity to revisit this issue if the facts warranted.

ABATE excepts, and argues that a modified version of the Detroit Edison provision would be appropriate for both utilities.

Consumers excepts, and argues that the ALJ's recommendation would result in shareholders subsidizing ROA customers and their retailers during the rate freeze and later would result in full service customers subsidizing ROA customers and their retailers. It asserts that notice shorter than nine months is inadequate, given the potential effects on cost and reliability if a substantial number of ROA customers were to seek to return to full service at approximately the same time. It notes that it does not propose to deny service to those customers who provide shorter notice, only that those customers pay the higher of the tariff rate or the market-based rate. It also argues that the Staff's proposal is not supported by any competent, material, and substantial evidence, and notes that the Staff supported a different proposal for Detroit Edison in Case No. U-12489. It says that ABATE's proposal is inadequate because it fails to specify a notice period.

Energy Michigan excepts. It says that shortages of transmission capacity have made it impossible for competitors to provide continuous service to ROA customers, which has forced those customers to return to full service. It therefore argues that until transmission capacity has been increased by 2,000 MW, customers should be permitted to return to full service with 15 days' notice, with a minimum stay of 3 months (rather than the 12 month proposed by the Staff). It says that when transmission capacity has increased, the Staff's proposal should take effect.

Consumers responds that it is unreasonable to allow retailers to return customers to full service with little or no notice. It says that Energy Michigan's proposal reflects an unreasonable view of how a competitive market should work by placing little or no risk on retailers and their customers and by requiring Consumers to provide service at any time with little or no notice. It also points out that Energy Michigan's filed testimony proposed that once there was an increase in transmission capacity, Consumers' return to service provision, not the Staff's, would take effect.

The Commission does not find any of the proposals to be entirely satisfactory, although it is possible to fashion an appropriate provision from the best aspects of the proposals offered by the parties. In the early stages of ROA service, there is no substantial risk that Consumers' ability to provide reliable service and maintain its financial health will be impaired by large numbers of customers choosing ROA service and then seeking to return to full service at approximately the same time. The Commission is therefore not persuaded that Consumers needs nine months' notice or even notice by February 1 for a return to full service during the summer months. Likewise, the Commission is not persuaded that it is necessary at this time to require customers returning to full service to remain for 12 months.

The Commission concludes that customers should be required to provide 30 days' notice to return to full service. Returning customers may pay any tariff rate for which they qualify, if they agree to remain on full service for 12 months. Returning customers who do not commit to remain on full service for 12 months must pay the higher of the tariff rate or market-based rate. Returning customers who do not commit to remain on full service for 12 months may later agree to do so and may prospectively pay any tariff rate for which they qualify.

The Commission recognizes that as a larger number of customers choose ROA service, Consumers may need additional notice from returning customers. Therefore, when more than 10% of the customer consumption (i.e., kilowatt-hours) for any of the three rate classes—residential, commercial, and industrial—is taking ROA service, customers in that class must provide 60 days' notice. The Commission will consider further modifications to these provisions as necessary to allow Consumers to provide reliable service and maintain its financial health.

When customers return to full service because of a retailer default and do not provide 30 days' notice, the customers must pay the higher of the tariff rate or the market-based rate until

Consumers has had the benefit of 30 days' notice. At that time, the customers have the option to pay the tariff rate by agreeing to remain on full service for 12 months. If the customers do not agree to remain on full service for 12 months, the customers must pay the higher of the tariff rate or the market-based rate. When customers return to full service for a reason other than a retailer default and do not provide 30 days' notice, Consumers' obligation to serve those customers until it has received 30 days' notice is subject to its ability to supply the customers' requirements.

Finally, as an alternative to returning to full service, customers may choose to take service from another retailer and, unless they have committed to take full service for 12 months, may choose another retailer at any time after having returned to full service.

13. Dispute Resolution Procedures – Rule F3.6

Consumers proposed that dispute resolution procedures be added to the tariffs. The Staff agreed, but offered its own proposal. Consumers accepted the Staff's proposal with minor modifications.

Energy Michigan supported Consumers' initial proposal. It asserted that having the Commission serve as the first level of dispute resolution after discussions between retailers and Consumers was preferable to the use of arbitration, which would be more expensive.

Exelon argued that any mandatory dispute resolution process that requires a lengthy negotiation period could severely inhibit retailers' ability to respond to changing market conditions. Exelon said that retailers currently have the ability to bring disputes to the Commission at any appropriate time, and argued that the Commission should reject another dispute resolution process as unneeded to comply with the Act or should at least shorten the time frame to 10 days, after which the parties could seek redress from the Commission.

The ALJ agreed with Exelon. He said that the record did not support the need for dispute resolution procedures and that the Act did not require such a process.

The Staff excepts, and argues that dispute resolution procedures should be adopted as an efficient and effective means of resolving disputes without burdening the Commission's limited resources.

The Commission finds merit in the use of dispute resolution procedures between Consumers and retailers. The Commission therefore adopts the Staff's proposal. The tariff provision is not mandatory and, when used, does not require that an unresolved dispute be arbitrated rather than being brought to the Commission.

16. Third-Party Costs – Rule F1.7

The Staff recommended deleting the provision that requires customers and retailers to compensate Consumers for third-party costs incurred as a result of the failure by customers and retailers to meet their obligations under the ROA tariffs. Consumers responded that this provision is in the Rate DA and current ROA tariffs. It said that the provision was intended to provide some protection in the event that, for example, a retailer's failure to deliver power to the company's system caused service disruptions to other customers.

The ALJ found that the provision was an appropriate allocation of responsibility that should not be deleted.

Energy Michigan excepts, and argues that the provision may create broad and unpredictable claims for damages, without holding Consumers to the same standard of liability to retailers.

The Commission finds some merit in Consumers' proposal, although there is no apparent reason not to extend the same provision to Consumers' conduct as well. The provision should

therefore be modified to require Consumers to compensate retailers and their customers for third-party costs caused by Consumers' failure to perform its duties.

17. Termination of Service – Rules F2.1 and F3.11

The Staff proposed to add language to clarify that retailers should not have the right to terminate any contract between ROA customers and Consumers and that any contract between Consumers and retailers and between retailers and ROA customers should not be subject to termination by a third-party.

The ALJ found these clarifications to be appropriate.

Energy Michigan excepts, and argues that, as discussed above, a customer's failure to pay a retailer's bill should be an exception to the 30-day notice requirement. In addition, it argues that the phrase "for good cause shown" should be added as a limit to Consumers' right to shut off service to retailers.

The Commission agrees with Energy Michigan that termination of Consumers' contracts with retailers should be for good cause. Otherwise, the Commission adopts the Staff's proposal. As discussed above, the Commission has concluded that customers should be permitted to return to full service with 30 days' notice and that retailers should not be permitted to return delinquent customers to full service without providing notice.

18. Meter and Billing Errors and Payment Allocation – Rules F1.9, F2.6, and F3.5B(3)

Energy Michigan argued that Consumers should be required to compensate retailers for imbalance penalties and additional power costs caused by inaccurate meter readings rather than limiting its liability to repair or replacement of a meter and preparation of revised bills.

The ALJ agreed with Energy Michigan.

Consumers excepts, and notes that Energy Michigan did not raise this issue until its reply brief, and, as a result, there is no evidence to support Energy Michigan's proposal and no proposed tariff language. Further, it says that it is difficult to see how additional power costs that allegedly result from inaccurate meter readings could ever be accurately measured.

Energy Michigan responds that calculating the amount owed a retailer for delivering too much power due to a meter error is simply the difference between the amount paid by the retailer for that power and the amount that Consumers paid the retailer for the excess power (which Consumers is required to purchase).

The Commission agrees with Consumers that Energy Michigan's proposal is not well supported because this proposal was raised late in the case and is likely to be difficult to implement. The Commission therefore rejects Energy Michigan's proposal.

Energy Michigan also argued that the tariffs should be modified to address situations where customers withhold a portion of the payment due because of a billing dispute with Consumers.

The ALJ found that this proposal was reasonable.

Consumers excepts, and argues that Energy Michigan and the ALJ have not specified how the provision should be modified. In addition, it points out that this is an issue only when the retailer elects to have Consumers do the billing and collection. Consumers suggests that if its optional billing services are burdened with Energy Michigan's proposal, it will likely cease offering the services.

Energy Michigan responds that it should be simple for Consumers to allocate payments when the customer disputes the amount owed to Consumers because Consumers has already developed a methodology for allocating payments.

The Commission adopts Energy Michigan's proposal. Consumers apparently, and unreasonably, argues that it should be permitted to allocate partial payments to disputed charges for its services before remitting to the retailer payment for undisputed charges for services provided by the retailer. The provision should be modified to require payments to be allocated first to undisputed charges in each of the four categories and then to disputed charges in each of the four categories.

19. Meter Reading – Rule F2.2

Consumers objected to the Staff's proposal to establish a \$12 fee for the manual reading of a meter that cannot be electronically accessed. Consumers said that the \$12 fee does not reflect the cost of the service, which it asserted is currently \$45. Consumers took the position that it would be preferable not to specify any fee so that there is flexibility to permit it to recover the actual cost of providing the service. It said that this would be consistent with the practice in Rule B14.3 with respect to meter relocations.

The ALJ agreed with Consumers that a charge should not be specified so as to permit an annual review of the cost. He also concluded that the record did not support a finding that \$12 is the current cost.

The Staff excepts, and argues that the charge should be specified before Consumers imposes it. It therefore recommends that Consumers file an application to establish the charge.

Consumers responds that the filing of an application is not warranted. It says that this is an issue for only those customers with time-of-use meters and then only if something interferes with the company's ability to obtain electronic access to the meter. It says that this limited issue should be handled in the same manner as meter relocations.

Energy Michigan excepts, and argues that telemetry should not be required for customers with a demand of less than 1,000 kilowatts (kW) and that, for those customers, the current manual meter reading procedures should be followed at no additional charge. In its replies to exceptions, it offers a compromise under which telemetry would be waived for up to six months; during that six months, manual meter readings would be provided at no additional cost; and by the end of the six months, telemetry would be installed.

The Commission rejects the proposal to establish any charge for manual meter readings or to approve a provision that permits Consumers to impose such a charge. Consumers currently reads all of its customers' meters, whether manually or electronically, and its rates were set in a manner that permits it to recover the cost of reading meters. As to Energy Michigan's proposal to waive telemetry, the Commission concludes that the proposal creates additional issues for which Energy Michigan does not offer a solution, such as the scheduling of power deliveries by retailers.

23. Curtailment Procedures – Rules F2.11 and F3.7(D)

Consumers stated that, in the event a retailer fails to have power delivered to the system, Consumers should be able to curtail service. Consumers objected to the Staff's proposal, which it said would require it to provide (on a best-efforts basis) backup service pursuant to the terms of the Staff's proposed standby rate. Consumers asserted that this would create significant problems for it and would impair its ability to continue providing service. Consumers maintained that it is fair for it to have the right to curtail service to customers whose suppliers fail to deliver power to Consumers' system and who have not made alternative contractual arrangements or have not contracted for backup service under ROA-SB. Consumers acknowledged that due to the system configuration, the size of some customers, or their locations on the system, it might not be able to target and curtail service to some individual customers. It said that, under those circumstances, the

customers would be subject to energy imbalance charges under the FERC-approved Open Access Transmission Tariff (OATT).

Energy Michigan said that Consumers' proposal is too subjective and ignores the fact that Consumers lacks the ability to interrupt service to many individual ROA customers. It proposed a solution similar to that of the Staff:

1. When a retailer is out of balance but Consumers has sufficient supplies of capacity, the retailer would be billed for the necessary power at current OATT Schedule 4 penalty rates.

2. When energy supplies are not sufficient to serve all customers, Consumers would use the mechanisms for dealing with imbalances that currently exist between utilities and are technically enforceable. The out-of-balance party would be notified of the problem and required to resolve the imbalance within two hours or less. If the imbalance were not resolved, Consumers could invoke economic penalties under the OATT and move to revoke the retailer's license.

The ALJ found that Energy Michigan's curtailment procedures provided a workable solution, while Consumers' proposal relied upon an unenforceable curtailment mechanism and allowed it to curtail its competitors' service without any objective standards.

Consumers excepts, and argues that the first paragraph of Energy Michigan' proposal is a reasonably accurate statement of what now happens, although it allows retailers to game the system by consistently delivering less than the scheduled amount of power. It says that, under those circumstances, it should be permitted to bill the higher of the standby service charges or the OATT Schedule 4 imbalance charges. It says that the second paragraph highlights the principal problem with Energy Michigan's proposal, which is that it requires Consumers to interrupt service to non-ROA customers when a retailer fails to deliver sufficient power to meets its customers' demand. It says that it must have the right to interrupt service to those ROA customers whose retailer has defaulted, when it is possible to interrupt their service, rather than interrupting service

to other ROA and non-ROA customers. It also argues that two hours' notice is unreasonable because the company is required to take the actions needed to maintain the integrity of the system.

The Commission concludes that Consumers shall give ROA customers the same priorities in curtailment as it gives full service customers. These curtailment provisions are designed to address situations in which the electric grid is jeopardized. In such situations, the responsibility to maintain the integrity of the system is one shared by all customers, regardless of whether they are full service or ROA customers. Conversely, situations in which a supplier fails to deliver the appropriate amount of power are addressed through tariff provisions, such as imbalance charges.

29. Aggregation by Marketers – Rules F3.1F and G

Energy Michigan argued that Consumers, unlike Detroit Edison, prevents marketers from combining loads of more than one retailer. Energy Michigan said that this restriction limits flexibility and could prevent efficient utilization of transmission services. Energy Michigan proposed that a marketer be permitted to purchase transmission services that it would sell to retailers in combination with generation service. The retailers, in turn, would resell the generation and transmission services to retail customers. Energy Michigan maintained that this would permit marketers to combine the loads of multiple retailers to achieve a higher load factor, resulting in the more efficient use of transmission services.

Consumers stated that the ROA program allows aggregation, although at the retail customer/retailer level rather than at the transmission level as Energy Michigan proposes. Further, Consumers said that because of the provisions of the OATT, the transmission customer would still have to choose between point-to-point service and network service and that if the customer selected point-to-point service, it would have to designate specific retail customer meters as the

point or points of delivery. It said that if Energy Michigan is dissatisfied with those provisions of the OATT tariff, it must seek changes from the FERC.

Energy Michigan responded that Consumers' proposed tariffs do not permit a marketer to serve multiple unassociated competing retailers and to combine their loads.

The ALJ was persuaded that Energy Michigan's proposal should be rejected. He concluded that Consumers had shown that its program allows aggregation at the retail customer/retailer level to achieve higher load factors.

Energy Michigan excepts, and argues that Consumers requires aggregation of retail loads under ROA-R and ROA-S for service to customers without demand meters but inconsistently refuses to permit retailers to aggregate other customer loads. It says that Detroit Edison, unlike Consumers, permits retailers to aggregate all of their retail load for scheduling point-to-point transmission service under the OATT. It argues that because Consumers requires retailers to contract for distribution service, a service that is under the Commission's jurisdiction, the Commission, not the FERC, has jurisdiction over aggregation at the distribution level. It says that this practice was followed for Rate DA and that unless the Commission does likewise with the ROA tariffs, it is unlikely retailers will serve customers who have demand meters.

Consumers responds that it is inaccurate to say that retailers are required to contract for distribution service because the only distribution cost that retailers are required to pay is the transition surcharge, which they will not pay after December 31, 2001. It says that ROA customers purchase all necessary distribution services directly from Consumers.

The Commission agrees with Energy Michigan that retailers should be permitted to purchase transmission service from marketers, who can aggregate the load of multiple retailers. ROA service does not inherently require that each retailer have its own transmission contract, although

each retailer must arrange for the transmission service needed to deliver power to the distribution system for its customers. Because aggregation furthers the efficiency of ROA service, the Commission adopts it.

30. Aggregated Point-to-Point Transmission Service – Rules F1.4 (p) and (q)

Energy Michigan stated that Consumers permits retailers to aggregate multiple customer loads into a single combined transaction for transmission scheduling only when using network transmission service. As a result, Energy Michigan argued, retailers cannot use point-to-point transmission service for aggregated customer loads but must use uneconomic 1,000 kW blocks of point-to-point transmission service for individual small loads. Energy Michigan asserted that the inability to make economic use of point-to-point transmission service is a problem because the alternative, network transmission service, requires retailers to demonstrate that they have procured firm generation service and firm transmission service from the point of generation to Consumers' transmission system. Energy Michigan said that it can be difficult or impossible to procure firm transmission service. Energy Michigan requested that the Commission require Consumers to allow retailers to serve aggregated loads with point-to-point transmission service.

Consumers responded that the OATT offers two types of transmission service, network service and point-to-point service. Point-to-point service requires the transmission customer to designate a specific point of delivery on the system for each transaction. Network service, on the other hand, allows a transmission customer to have multiple points of receipt and delivery. Consumers stated that what is not available under the OATT is the aggregated point-to-point service that Energy Michigan says should be available. Consumers asserted that it would be inconsistent with the OATT to offer such a service and would be discriminatory to offer the

service only to retailers. Consumers said that the OATT is a FERC-approved tariff and if Energy Michigan is dissatisfied with the tariff, it must seek changes from the FERC.

The ALJ was persuaded that Energy Michigan's proposal should be rejected. He noted that network service is an option under the OATT, and concluded that Energy Michigan had not demonstrated that network service would not be available. He also found that there was no discrimination because Consumers purchases transmission service pursuant to the same OATT that retailers use to participate in the ROA program.

Energy Michigan excepts, and argues that Consumers requires aggregation of retail loads under ROA-R and ROA-S for service to customers without demand meters but inconsistently refuses to permit retailers to aggregate other customer loads. As a result, it says, Consumers has implemented the OATT in a manner that is inconsistent with the practice it is trying to force on retailers. It says that Detroit Edison permits retailers to aggregate all of their retail load for scheduling point-to-point transmission service under the OATT. Because the aggregation occurs at the distribution level, Energy Michigan argues that the Commission, not the FERC, has jurisdiction. It says that this practice was followed for Rate DA and that unless the Commission does likewise with the ROA tariffs, it is unlikely that retailers will serve customers who have demand meters.

Consumers responds that it purchases transmission service under the OATT just as retailers do and that it purchases network service, not some form of aggregated point-to-point service that Energy Michigan wishes were available. Further, it says that all profiled load is served pursuant to OATT network service. It also says that all Rate DA customers, except one, have used network transmission service, and the one used point-to-point service with a single delivery point.

The Commission is sympathetic to Energy Michigan's proposal, but is not persuaded that Energy Michigan has offered a proposal that can be implemented in this case consistent with federal law. As discussed above, each retailer requires transmission service, although not necessarily its own, and must purchase that service under the OATT. The Commission encourages Energy Michigan to pursue this matter before the FERC.

31. Enrollment Deadline

Energy Michigan proposed that Consumers be required to switch customers to ROA service within 15 days of submission of the enrollment and that if enrollment were not completed within 15 days, retailers should be allowed to commence energy deliveries on the 16th day. Energy Michigan said that Consumers' inability to process even tiny volumes of enrollment transactions after spending millions of dollars on business systems that do not work is scandalous. Energy Michigan also proposed to waive the requirement of telemetry for meters serving loads of less than 1,000 kW as a way to address Consumers' concern with enrollment delays that arise from problems with having telephone lines installed. Energy Michigan maintained that the Commission must provide a definitive deadline for ROA enrollments or Consumers would be left to complete them at its own pace.

Consumers opposed the proposal to establish a deadline. It stated that it could meet a 15-day deadline for customers who do not require the installation of a telephone line or a new time-of-use meter, except for small customers who must be switched from one internal billing system to another. Consumers stated that the only practical means of accomplishing a switch for the latter is to do it at the customers' normal meter reading date, which could be anywhere from one day to approximately 30 days later. With respect to customers who require the installation of a telephone

line, Consumers stated that the time required to accomplish the switch to ROA service depends on how long it takes customers to obtain the installation of the telephone line.

With respect to Energy Michigan's proposal to waive the requirement of telemetry, Consumers stated that a telephone line must be installed before the time-of-use meter is activated. It argued that if the time-of-use meter is activated before installation of the telephone line, frequent manual meter readings would be required for data to be meaningful.

The ALJ recommended that Energy Michigan's proposal to establish an enrollment deadline should be rejected. He said that Consumers had demonstrated that sometimes its ability to comply with a deadline would be beyond its control and that, in those cases, the solutions offered by Energy Michigan would be impractical. Furthermore, the ALJ concluded that the need for a deadline had not been demonstrated because it had not been shown that the time required to switch customers to ROA service had been troublesome.

Energy Michigan excepts, and argues that there cannot be any doubt that Consumers is having serious problems completing enrollments on a timely basis and that the requirement for telemetry will continue to be a major obstacle to predictable and timely completion of enrollments. It says that a deadline, with sanctions under the Act, would provide the incentive needed for timely completion of enrollments. It also says that a waiver of the telemetry requirement for ROA customers with demand meters and loads of less than 1,000 kW would place them in the same position as full service customers. Further, it says that a waiver of the telemetry requirement would remove the only reasonable objection to a mandatory enrollment deadline.

The Staff excepts, and argues that there is merit to establishing an enrollment deadline, such as the one it proposed in Case No U-12270, which would require that 90% of new service installations be completed within 15 business days.

Consumers responds that the standard offered in Case No. U-12270 applies to a different activity and is not substantial evidence in this case. Further, it says that the Staff issued a report after the record closed, which concludes that the company has improved its enrollment performance. It also notes that the Staff report states that enrollments should be completed in 45 days or less under normal circumstances. It concludes that the imposition of any deadline at this time would be arbitrary, premature, and unnecessary.

With respect to waiving the telemetry requirement, Consumers responds that implementation of the proposal would require load profiling for all customers with loads under 1,000 kW or manual meter readings for those customers. It says that the first would significantly impair the ability to match customer usage and power deliveries and the second would not be feasible because it would require that all of the affected meters be read on one day each month.

The Commission concludes, as discussed above, that the requirement of telemetry should not be waived, but does find that an enrollment deadline is appropriate to provide a standard against which to judge the enrollment process. Accordingly, Consumers shall complete all enrollments within 45 days, which provides sufficient time to account for billing cycles and other requirements of the process. It is therefore not arbitrary or capricious. The deadline does not require that customers actually commence service within 45 days, only that Consumers have completed the activities required of it to permit the customers to commence ROA service. Further, Consumers is, of course, not responsible for delays occasioned by the customers' inability to obtain the timely installation of a communications link with the meter. Consumers shall report to the Staff each week on the time it takes to complete the enrollment process. Finally, the Commission reminds Consumers that recovery of its implementation costs depends on developing systems that work. It should not view compliance with the 45-day standard as sufficient to demonstrate the

reasonableness and prudence of its expenditures on enrollment systems. Rather, it is an interim standard against which to judge Consumers' performance. Recovery of the millions of dollars spent on implementation processes requires the delivery of systems that are capable of routinely completing enrollments in a prompt manner.

32. Profile Management Service – ROA-R and ROA-S

Energy Michigan proposed to reduce the profile management service charge or, if that is not possible with the rate freeze, to expand the energy imbalance bands or to impose the charge based on the actual cost of the imbalances rather than estimated costs. It said that the current charge is based on an estimate of the cost to Consumers that results from any difference between the forecasted load profile and actual energy use. Energy Michigan argued that an alternative would be to use the actual cost as determined from month to month. It said that this would not constitute a rate reduction but rather a change from using estimates to using actual values to calculate a cost incurred by Consumers. Energy Michigan also recommended that Consumers be required to provide load profiles for residential and small secondary customers with managed loads.

Consumers objected to these proposals. It argued that existing rates, including the profile management service charge, are frozen pursuant to the Act, which it argued prohibits administrative changes that have the same effect as a rate change. Consumers also noted that the Commission cannot change the energy imbalance bands in the OATT. With regard to the proposal to use actual costs, Consumers maintained that hourly customer load data would be needed and that customers taking service under load profiles do not have the meters necessary to assemble such data because avoiding the installation of time-of-use meters is the whole point of the load profile management system. As a result, Consumers asserted that the reconciliation process would be impossible to use. Finally, Consumers asserted that it would be inappropriate to modify the load

profile management system for customers who engage in “managed” load. It said that any ROA customer who thinks it would be beneficial to install a time-of-use meter can do so at any time. Consumers argued that to require it to construct a load profile for a specific customer would effectively require it to install a time-of-use meter to obtain the data necessary to construct the profile.

The ALJ found that Energy Michigan’s proposals should be rejected. The ALJ noted that the Act had frozen existing rates and that the OATT is a FERC-approved tariff that the Commission cannot modify. The ALJ was also persuaded that the use of actual costs was impractical and that development of profiles for specific customers was inappropriate.

Energy Michigan excepts, and argues that, first, it is possible to develop usage profiles for managed load without using expensive time-of-use meters. It says that the result would be to encourage small customers to increase their efficiency. Second, it argues that Consumers’ profile charge vastly overrecovers costs and that, without a reasonable charge, ROA service will not be economic for small residential customers served on an individual basis.

The Commission is concerned about the effect of the current tariff provisions on the success of ROA service. On the other hand, it recognizes Consumers’ legal argument in opposition to changing the rate for this service and will not do so at this time. The Commission will review this matter in six months, and directs the Staff to evaluate the effect of this proposal based on data from 2001. The Commission will examine alternatives if the effect of the current tariff provisions is to discourage participation by small customers.

33. Implementation 120 Days After Approval

Consumers proposed that implementation of the changes to the ROA tariffs be deferred for at least 120 days after the date of an order in this case. The Staff and Energy Michigan objected.

The ALJ agreed with the Staff and Energy Michigan that the changes were not a reason to delay the implementation of customer choice for all of Consumers' customers beyond January 1, 2002, as required by the Act.

In its exceptions, Consumers says that it does not seek to delay the implementation of the new tariffs, but only wants the Commission to know that some provisions may take time to implement. It says that it will do its best to expeditiously implement the changes.

ABATE responds that Consumers should be required to implement all changes simultaneously to prevent it from picking and choosing, to its benefit, when to implement each change.

The Commission will require that Consumers implement all of the tariff changes effective January 1, 2002. The changes are not so significant and the number of current ROA customers not so great that Consumers should require any significant time to place them in effect.

34. Settlement of Energy Imbalances at the Retail Level

ABATE proposed that the Commission require Consumers to settle retail energy imbalances at the distribution level. ABATE asserted that individual retail customer loads are less predictable than wholesale customer loads and that application of the OATT balancing provisions would therefore be inappropriate for retail customers. It also asserted that those provisions would discourage participation by customers with relatively unpredictable loads, while allowing Consumers to overcollect penalty charges. ABATE recommended that Consumers be required to cash out all retail energy imbalances with each retailer in each hour based on Consumers' incremental or decremental cost in that hour. It proposed a 50,000 kWh minimum before any penalties would apply, with the initial retail bandwidth set at 20% and nonconforming customers permitted to purchase a bandwidth up to 80%. As an alternative, ABATE proposed that energy imbalances be settled at the transmission level if Michigan Electric Transmission Company

(METC) were to file for retail energy imbalance service additions to its OATT. ABATE acknowledged that ultimately energy imbalance problems would disappear with the advent of a real-time balancing market.

Consumers countered that ABATE's proposal would be a major change to the way in which imbalance charges are settled with retail customers, with significant new administrative burdens and implementation costs. Consumers also said that implementation of ABATE's proposal would require that the Commission either assert jurisdiction over a service that the FERC currently regulates or order METC, a non-jurisdictional company, to file with the FERC an application to modify the current balancing provisions. It asserted that a case pending at the FERC would likely result in lower imbalance charges. In addition, it stated that the transfer of operational control of METC's transmission assets to the Alliance RTO would result in the establishment of a real-time balancing market and ultimately the disappearance of energy imbalance problems. Consumers concluded that it would be extremely complex and costly to adopt ABATE's proposal as an interim measure, only to have it superseded by a more desirable alternative in late 2002.

The ALJ agreed with Consumers, and recommended that ABATE's proposals be rejected. He said that Consumers had demonstrated that the FERC regulates the balancing service. In addition, with the establishment of a real-time balancing market, he said that energy imbalance problems would disappear. Consequently, the ALJ found that it would be ill-advised to proceed with ABATE's proposal at this time.

ABATE excepts, and asserts that the Commission has authority, under the Act and its general statutes, to establish a necessary service associated with ROA service.

The Commission agrees with ABATE that several factors support netting energy imbalances at the distribution level. Nevertheless, practical issues exist concerning the feasibility of such an imbalance program.

Thus, the Commission directs the Staff to convene, no later than January 15, 2002, a meeting of the parties in this case and other interested persons to develop concepts and tariffs necessary to implement a distribution imbalance service. The parties should give consideration to the issues surrounding distribution imbalance service such as the interaction between OATT transmission and retail distribution imbalance mechanisms, the design of a distribution imbalance service and appropriate charges, the steps to implement the service, and other relevant matters. The parties should attempt to resolve the issues surrounding this service and reach agreement on its implementation. The Staff shall report to the Commission on the progress of these discussions to ensure that they are consistent with the Commission's desire to implement this service. Further, the Staff is directed to file a report by April 1, 2002 with specific recommendations and proposed tariffs related to a distribution imbalance service. If the Staff believes as a result of its activities in this matter that a distribution imbalance service is either impractical or unnecessary, it should report its justifications for such a conclusion.

From the date of this order until the Commission issues an order on the Staff recommendations, no imbalance charges or penalties shall be incurred by participants in Michigan's ROA program for actions within the jurisdiction of this Commission related to supply imbalances.

Default Transition Surcharge – ROA-R, ROA-S, and ROA-P

Energy Michigan asked that the Commission approve zero as the default transition charge to be in effect from January 1, 2002 until the Commission approves a charge. The Staff recommended a default of 0.5¢ per kWh.

The Commission finds this issue to be moot due to today's order in Case No. U-12639.

Tariffs

The tariffs required by this order are attached to this order as Exhibit A, and are based on Exhibit S-15. They reflect changes required by the discussion above, changes made for consistency, and changes needed for clarity. Consumers, if it finds it administratively convenient, may eliminate from the tariffs that it files those provisions that do not apply as of January 1, 2002, such as the provisions on bidding. The Commission will continue to monitor the effect of the ROA tariffs, and modify the tariffs as needed.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.
- b. Consumers' ROA tariffs should be modified as discussed in this order.

THEREFORE, IT IS ORDERED that:

- A. The retail open access tariffs, attached to this order as Exhibit A, are approved for Consumers Energy Company, effective January 1, 2002.
- B. Within 30 days, Consumers Energy Company shall file tariffs consistent with Exhibit A.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of December 20, 2001.

Its Executive Secretary

In the matter of the rates, terms, and conditions)
for retail customers of **CONSUMERS ENERGY**)
COMPANY to choose an alternative electric supplier.)
_____)

Case No. U-12488

Suggested Minute:

“Adopt and issue order dated December 20, 2001 approving tariffs for the provision of retail open access service by Consumer Energy Company, as set forth in the order.”