

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
CONSUMERS ENERGY COMPANY for a )  
financing order approving the securitization of )  
certain regulatory assets and other qualified costs. )  
\_\_\_\_\_ )

Case No. U-12505

At the January 4, 2001 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

On October 24, 2000, the Commission issued its order in this case (referred to as the financing order) authorizing Consumers Energy Company (Consumers) to securitize up to \$468,592,000 of its after-tax qualified costs, pursuant to certain terms and conditions. Among other things, that order, issued pursuant to the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141) and 2000 PA 142 (Act 142), allowed the utility to (1) create one or more special purpose entities for use in issuing its securitization bonds, (2) apply appropriate accounting and amortization methodologies, (3) implement and collect securitization and tax charges, and (4) use the cost savings from securitization to reduce the rates charged to its bundled sales and retail open access customers. Furthermore, it required Consumers to file its “express written acceptance of all conditions and limitations that the order places on the utility.” Financing order, p. 68.

On November 9, 2000, Consumers submitted a written acceptance in which the utility stated that it “fully accepts the terms and conditions” of the financing order “based upon certain interpretations and understandings” set forth in that acceptance. Specifically, the utility’s acceptance letter listed, as paragraphs A through D, four areas where Consumers seeks confirmation that it has correctly interpreted the financing order. Consistent with that letter, Consumers filed a petition seeking rehearing or clarification of those four issues. On November 30, 2000, Attorney General Jennifer M. Granholm (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, and the Michigan Chamber of Commerce filed responses to Consumers’ petition.<sup>1</sup>

Rule 403 of the Commission’s Rules of Practice and Procedure, 1992 AACRS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission’s decision. Unless 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.

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<sup>1</sup> In addition to addressing the requests set forth in Consumers’ petition, some of these responses effectively seek rehearing of other issues discussed in the financing order. However, MCL 460.10i(7); MSA 22.13(10i)(7), which was adopted as part of Act 142, specifically precludes any party other than “the applicant for securitization”--Consumers, in this case--from requesting rehearing of a financing order. The Commission is therefore prohibited from addressing any issues beyond the four raised in Consumers’ petition, and has thus disregarded all discussions set forth in the responses that concern other issues. The Commission is further prohibited from addressing the issue of the constitutionality of Section 10i(7) of Act 142, an issue raised by the Attorney General and ABATE. See, Universal Am-Can Limited v Attorney General, 197 Mich App 34, 37-38; 494 NW2d 787 (1992).

### Periodic True-ups

The financing order issued in this case, as well as that provided for The Detroit Edison Company (Detroit Edison) by the Commission's November 2, 2000 order in Case No. U-12478, established a system for periodically adjusting securitization and tax charges. In each instance, the Commission approved a true-up methodology that differed slightly from the respective utility's initial proposal. The changes adopted in both cases were designed to alleviate various parties' concerns regarding the frequency, scope, and potential complexity of future true-up proceedings.

In paragraph A of its acceptance letter, Consumers expresses its belief that the Commission intended the true-up mechanisms approved for itself and Detroit Edison to be the same. Nevertheless, Consumers notes, the language used by the Commission differs from one case to the other. The utility therefore contends that, assuming the Commission wanted these two utilities to use identical true-up methodologies, language like that found on pages 37 and 38 of Detroit Edison's order should be substituted for that found on page 49 of the financing order issued in Consumers' case.

The Commission agrees with this contention. It was, as Consumers correctly assumes, the Commission's intention to establish identical true-up procedures for use by both of these utilities. The Commission therefore finds that it should resolve any and all potential confusion on this issue by adopting the language proposed on pages 1 and 2 of Consumers' acceptance letter, albeit with one small correction. Specifically, the revised language to be included as part of Consumers' financing order should reflect that, as discussed in the financing order, some other entity may ultimately succeed Consumers as the servicer of its securitization bonds. Thus, the language set forth on page 49 of the financing order, lines 5 through 16, as well as in footnote 16, should be revised to read as follows:

For this reason, the Commission finds that Consumers' proposal for a true-up mechanism should be approved, but with two relatively minor changes. First, the servicer (whether Consumers or a successor servicer) should be limited to undertaking no more than one routine true-up per year until 12 months prior to the last expected maturity date of the securitization bonds. Moreover, during the period from the beginning of those 12 months prior to the last expected maturity date, routine true-ups shall be limited to no more than one per quarter. Second, the servicer of the securitization bonds should initiate each routine true-up pursuant to Section 10k(3) of Act 142 by filing a request for adjustment that (1) explains how its proposed revision of the securitization and tax charges will ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds, (2) shows the computation of the proposed adjustments to the securitization charge and the tax charge currently in place, and (3) seeks Commission review and approval--on an expedited basis--of the arithmetic computations contained in the proposed adjustments before they can be implemented. All reviews conducted by the Commission of the computations shall be consistent with the requirements of Section 10k(3) of Act 142 for a true-up mechanism. This review must be completed regarding the servicer's request for adjustments to the securitization charge and the tax charge pursuant to a routine true-up within 45 days after the servicer files its request for adjustment.<sup>16</sup> The determination of the Commission in response to a request for adjustment shall be provided by the Commission to the servicer within the aforementioned 45-day period. The adjustments by the Commission will be to the securitization charge and the tax charge in effect prior to the filing of the request for adjustment and those charges shall remain in place until the adjustments have become effective and are being billed to customers.

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<sup>16</sup> As mentioned in Consumers' proposal, a dramatic and unforeseen change in circumstances could result in a request for a non-routine true-up. The Commission is approving Consumers' request for the availability of a non-routine true-up process to a servicer of securitization bonds. Because it, unlike a routine true-up, would have a scope that goes beyond verification of arithmetic computations and would necessitate a complex contested case proceeding, resolution of a request by a servicer for a non-routine adjustment to the securitization charge and the tax charge would not be subject to the 45-day deadline.

### The Mandatory 5% Residential Rate Cut

Section 10d of Act 141 required Consumers and Detroit Edison to reduce by 5% the rates in effect for their residential rate classes as of May 1, 2000. It also provided those utilities an oppor-

tunity to use at least a portion of any savings arising from securitization to offset that 5% residential rate reduction. However, noting that a significant amount of time would likely elapse between the implementation of that rate cut (during the summer of 2000) and the issuance of Consumers' securitization bonds (which the utility estimated would not occur before the start of 2001), Consumers requested authority to treat as a regulatory asset the entire year 2000 revenue reduction arising from that 5% residential rate cut. In the financing order, the Commission rejected Consumers' request on the grounds that, among other things, "securitization cannot be applied retroactively to fund that rate reduction." Financing order, p. 35.

In paragraph B of its acceptance letter, Consumers states that it understands the Commission's ruling disallowing the retroactive application of securitization to mean that although the revenue reduction occurring prior to the October 24, 2000 issuance of the financing order cannot be recovered, the same is not true with regard to any portion of the revenues lost between that date and the actual issuance of Consumers' securitization bonds. In support of this interpretation, Consumers cites statements in Detroit Edison's financing order to the effect that "the Legislature did not intend that the cost of the residential rate reduction prior to [a] financing order be securitized" and that Commission rejection was required for any utility's "proposal to treat the rate reduction as a regulatory asset prior to the issuance of [a financing] order." Consumers' acceptance letter, p. 2; citing the Commission's November 2, 2000 order in Case No. U-12478, pp. 13 and 27. Consumers therefore requests that the Commission specifically confirm its understanding regarding its ability to recover, through the operation of the utility's securitization program, all revenues lost on and after October 24, 2000, and to concurrently authorize treatment of those lost revenues as a regulatory asset.

The Commission finds that it should grant Consumers' request, in part. It is the Commission's intention that Consumers have an opportunity to recover from its securitization savings the full cost of the residential rate reduction beginning with the date that the financing order was issued (namely, October 24, 2000). To rule otherwise, and thus forever preclude recovery for rate reductions provided prior to the actual issuance of the utility's securitization bonds, would merely give the other parties to this case an incentive to delay--through unwarranted appeals and other means--the initiation of Consumers' securitization program. Any such delays would conflict with the Legislature's intent that securitization be implemented in whatever reasonable manner provides the maximum cost savings. The Commission therefore confirms Consumers' understanding that the utility is authorized to recover, through its securitization program, all reductions in its revenues beginning October 24, 2000. Nevertheless, the Commission finds no compelling reason at this time to formally declare those lost revenues a regulatory asset. As ABATE notes, making a declaration of regulatory asset at this time would imply a "full funding" of the rate reduction, contrary to the terms of the financing order.

#### Offsets for All Securitization and Tax Charges

Consumers notes that, on page 42 of the financing order, the Commission required the utility to reflect an offset on the bills of its bundled sales and retail open access (ROA) customers alike equal to the sum of each customer's securitization and tax charges for the billing period in question. The utility further notes that the reason given for imposing that requirement, namely to ensure that Consumers' bundled sales rates or ROA transition charges do not include costs that are duplicative of those recovered through the issuance of securitization bonds, is valid.

Nevertheless, in paragraph C of its acceptance letter, Consumers seeks to clarify whether that requirement should continue indefinitely or whether (as the utility believes) the offset is intended to remain in effect only until certain actions are taken by the Commission to remove those potentially duplicative costs from the base rates paid by bundled sales customers and from the transition charge paid by ROA customers. Consumers therefore seeks confirmation that, for bundled sales customers, the offset would be in effect only from the date of issuance of the securitization bonds to the conclusion of a rate case that “removes from bundled sales rates the revenue requirement associated with the assets approved for securitization.” Acceptance letter, p. 3. As for its ROA customers, Consumers wants to confirm that the offset would be discontinued immediately following either the Commission’s issuance of a decision in Case No. U-12639 establishing the methodology for computing the utility’s transition charge or the completion of any proceeding establishing a revised transition charge for use beginning January 1, 2002, whichever occurs first.

The Commission finds that Consumers’ request for clarification should be granted with regard to the term of the securitization and tax charge offset. In issuing the financing order, the Commission assumed (as it still does) that the offset for ROA customers would become unnecessary beginning January 1, 2002. This assumption is based on the Commission’s belief that, before that date, an order will be issued in Case No. U-12639 from which a transition charge can be derived that recognizes the effect of securitization on Consumers’ total stranded costs. However, in the event that no such transition charge is in place for Consumers by January 1, 2002, the Commission will impose a temporary transition charge equal to the sum of the then-effective securitization and tax charges. The offset would continue to be applied to this charge to ensure equality between bundled sales and ROA customers until such time as a revised transition charge is adopted. This

will ensure the collection of all revenue necessary to pay the securitization bond holders and should, in turn, enhance the marketability of the bonds.

### Creation of Lien and Security Interest

Section 10m(1) of Act 142 establishes the requirements for creating a valid and enforceable lien and security interest in a utility's securitization property. Specifically, this section states that they "may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds." MCL 460.10m(1); MSA 22.13(10m)(1). According to paragraph D of its acceptance letter, Consumers interprets ordering paragraph R on page 67 of the financing order to mean that the Commission has taken all of its necessary steps with regard to approving the utility's request for securitization and that, as a result, Consumers now only needs to execute and deliver the applicable security agreement. The utility seeks confirmation that its interpretation is accurate.

The Commission finds Consumers' interpretation to be correct. Ordering paragraph R states that "[a]ll regulatory approvals within the jurisdiction of the Commission that are necessary for the securitization of the qualified costs identified in this financing order, and all related transactions, are granted." Financing order, p. 67. The Commission's use of such broad language was intended to advise all interested parties (and, particularly, the financial markets) that, following Consumers' submission of an unconditional acceptance letter, the utility will be deemed to have satisfied all state-imposed prerequisites to the execution of a security agreement. Thus, pursuant to Act 142, a valid and enforceable lien and security interest in the securitization property will be created following the execution and delivery of the applicable security agreement.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. Consumers' petition for rehearing or clarification should be granted in part and denied in part, as discussed in this order.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's November 9, 2000 petition for rehearing or clarification is granted in part and denied in part, as discussed in this order.

B. If Consumers Energy Company desires to undertake securitization, it shall file, within 7 days following issuance of this order, a document expressing its unconditional acceptance of all conditions and limitations imposed on the utility by this order and the October 24, 2000 financing order.

C. All amortization, accounting, and ratemaking approvals, as well as all other authorizations, provided for in the Commission's October 24, 2000 financing order and clarified in this order shall be tolled pending Consumers Energy Company's unconditional acceptance of all conditions and limitations that those orders place on the utility.

D. Following Consumers Energy Company's unconditional acceptance of all conditions and limitations established by the Commission's October 24, 2000 financing order and clarified in this order, these orders--and each of their terms--shall be irrevocable. Consumers Energy Company's

acceptance likewise shall be irrevocable and, therefore, shall survive bankruptcy or any other changes in the utility's legal structure.

E. This order and its anticipated unconditional acceptance by Consumers Energy Company shall be incorporated by reference into the Commission's October 24, 2000 financing order, shall be deemed to relate back to the date of issuance of that financing order, and shall be treated as being in full force and effect as of that date.

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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

( S E A L )

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner, concurring in a separate opinion.

By its action of January 4, 2001.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner, concurring in a separate opinion.

By its action of January 4, 2001.

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Suggested Minute:

“Adopt and issue order dated January 4, 2001 granting in part and denying in part the petition for rehearing or clarification filed by Consumers Energy Company, as set forth in the order.”

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_____	)	

**CONCURRING OPINION OF COMMISSIONER ROBERT B. NELSON**

(Submitted on January 4, 2001 concerning order issued on same date.)

I issued a separate opinion on October 24, 2000 when the majority approved a financing order in this case. I concluded at that time that a financing order should not be issued because Consumers Energy Company (Consumers) had not met the requirements of 2000 PA 142. I stand by that opinion today. However, I am compelled to review the motion for rehearing on its merits, taking the financing order as I find it. In this context, I concur with the majority's decision to continue the offsetting adjustment detailed on page 42 of the October 24 order on the bills of retail access customers after 2001. I believe that, in the absence of the establishment of a revised transition charge, continuation of this adjustment beyond 2001 is critical in the Commission's efforts to foster a competitive retail market.

I also concur with my colleagues in concluding that the October 24 order did not create a regulatory asset, a creation that may depend on a timely issuance of securitization bonds in accordance with the overall intent of Act 142 to expedite the securitization process.

MICHIGAN PUBLIC SERVICE COMMISSION

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Robert B. Nelson, Commissioner