

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 of its qualified costs. )  
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Case No. U-13715

At the June 2, 2003 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 March 4, 2003, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, seeking a financing order authorizing the issuance of securitization bonds covering approximately \$1,084,087,000 in qualified costs.<sup>1</sup> The application was filed pursuant to the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141) and 2000 PA 142 (Act 142), that amended 1939 PA 3, MCL 460.1 et seq., and that, among other things, allows certain utilities<sup>2</sup> the option of reducing their costs through the use of securitiza-

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<sup>1</sup> Subsequently, Consumers reduced the amount of its securitization request by \$648,000 to account for a reduction in its retail open access (ROA) implementation costs during 2003, which lowers the total amount it seeks to securitize to \$1,083,438,000.

<sup>2</sup> As noted in Section 10h(c) of Act 142, the only entities eligible for securitization are those falling within the definition of “electric utility” in Section 2(d) of the Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.562(d). Consumers satisfies that definition.

tion.<sup>3</sup> The application further requested authority to (1) create one or more special purpose entities (SPEs) to which it could transfer securitized property for the purpose of minimizing bankruptcy risks and maximizing the ratings on its securitization bonds, (2) implement securitization charges--and related tax charges--to be collected from its customers, as well as a mechanism for undertaking periodic true-ups of those charges, (3) proceed, at its sole discretion, with the sale of the securitization bonds authorized in this case, and (4) employ appropriate methodologies to account for these transactions and to eventually refund or retire any or all of its securitization bonds.

Pursuant to due notice, a prehearing conference was held on March 21, 2003 before Administrative Law Judge James N. Rigas (ALJ). In the course of the prehearing conference, the ALJ granted intervenor status to Attorney General Michael A. Cox (Attorney General); the Association of Businesses Advocating Tariff Equity (ABATE); Energy Michigan; the Michigan Environmental Council and the Public Interest Research Group in Michigan (collectively, MEC); The Kroger Company (Kroger); The Dow Corning Corporation and Hemlock Semiconductor Corporation (collectively, Dow); Midland Cogeneration Venture Limited Partnership; the Michigan Electric and Gas Association (MEGA); the National Energy Marketers Association (NEMA); Enbridge Energy, Limited Partnership; the Residential Ratepayer Consortium (RRC); and Cadillac Renewable Energy LLC, Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, Hillman Power Company LLC, Viking Energy of Lincoln Inc., Viking Energy of McBain Inc., and Tondu Corporation (collectively, Cadillac). The Commission Staff (Staff) also participated in the proceedings. The ALJ also established a schedule for this case that,

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<sup>3</sup> Securitization is the process by which a utility--following the issuance of a financing order by the Commission--replaces relatively high-cost debt and equity with lower-cost debt in the form of securitization bonds.

as mandated by Section 10i(6) of Act 142, would result in the completion of all proceedings and the issuance of the Commission's order within 90 days after the filing of the application.

Evidentiary hearings were conducted on April 21-24, 2003. The record consists of 1032 pages of transcript and 81 exhibits, all of which were received into evidence.

Consumers, the Attorney General, ABATE, Energy Michigan, MEC, Kroger, and the Staff filed briefs on May 5, 2003. Reply briefs were filed by Consumers, the Attorney General, ABATE, Energy Michigan, MEC, and the Staff on May 12, 2003. The Commission has read the record, which dispenses with the need for a Proposal for Decision, exceptions, and replies to exceptions.

## II.

### **BACKGROUND AND OVERVIEW OF CONSUMERS' PROPOSAL**

This proceeding involves Consumers' second application for a financing order pursuant to Act 142. Consumers' initial application was filed July 5, 2000 in Case No. U-12505 and resulted in an October 24, 2000 order that authorized Consumers to securitize up to \$468,592,000 of its after-tax qualified costs.

As noted in that order, securitization involves the "delinking of the credit quality of the issued bonds from that of the utility in order to achieve higher credit ratings and lower financing costs." Order, Case No. U-12505, p. 5. To accomplish this Consumers must sell the securitization property and other collateral to a bankruptcy remote SPE in what constitutes a "true sale" for bankruptcy purposes. A "true sale" sale insulates the collateral from the credit risk of the utility.<sup>4</sup>

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<sup>4</sup> Pursuant to Section 10l(2) of Act 142, this designation as a "true sale" applies regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' sales agreement, including the seller's retention of an equity interest in the securitization property, the

The SPE then issues bonds backed by the underlying collateral to various investors<sup>5</sup> and an indenture trustee (trustee) is appointed to (1) act as a representative on behalf of the investors, (2) remit payments to these bondholders, and (3) ensure that their rights are protected in accordance with the terms of the financing documents. In addition to the bankruptcy remote status of the SPE “credit enhancements, such as capital contributions, overcollateralization, and a true-up mechanism” are used to obtain the desired “AAA” rating for the securitization bonds. Order, Case No. U-12505, p. 5.

The securitization property that is sold to the SPE is the right to impose, collect, and receive amounts necessary to pay principal and interest on the securitization bonds, as well as other amounts, including the ability to receive adjusted amounts of securitization charges through the periodic use of a true-up mechanism.<sup>6</sup> The term “other amounts” refers to qualified costs related to the issuance of securitization bonds that will be payable from the securitization charge collec-

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fact that Consumers may act as the collector of securitization charges, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

<sup>5</sup> As stated in Section 10n(1) of Act 142, these bonds are not a debt or obligation of the state, and do not constitute a charge on its full faith and credit or taxing power.

<sup>6</sup> As stated in Section 10j(2) of Act 142, securitization property shall constitute a present property right even though the imposition and collection of securitization charges depends on further acts of the electric utility or others that have not yet occurred. Moreover, pursuant to Sections 10m(2) and 10m(4) of that act, the lien and security interest created by this financing order and held by the SPE shall attach automatically once value is received for the bonds, shall constitute a continuously perfected lien and security interest, and shall not be impaired by any later modification of the order or by the commingling of funds arising from securitization charges with other funds. Moreover, as stated in Section 10n(2) of the act, the State of Michigan pledges not to take or permit any action that would impair the value of the securitization property or that would reduce or alter--except as allowed in the context of a true-up procedure undertaken pursuant to Section 10k(3) of the act--or otherwise impair the revenue stream produced by any securitization charges approved in this order. Finally, as set forth in Section 10m(8), any changes in either the order or the securitization charges do not affect the validity, perfection, or priority of the security interest.

tions over the life of the financing transaction, including credit enhancement expenses, servicing fees, trustee fees, legal fees, administrative fees, rating agency fees, independent manager fees, and other operating expenses incurred by the SPE. With regard to Consumers' proposal, these anticipated fees and expenses are set forth on Exhibit A-58.

When put into effect, Consumers' proposal is designed to establish nonbypassable securitization charges expressed in cents per kilowatt-hour (kWh). These securitization charges, which Consumers proposes be applied and billed to all customers taking service over its system, will be stated as a separate charge on customers' bills. Prior to January 1, 2006, each customer's otherwise applicable rate will be reduced by an amount equal to the securitization charge and any tax charge. After that date, there will be no such reduction on the customers' bills. Thus, the imposition of the securitization charge and tax charge will neither increase nor decrease the total amount of the bill until January 1, 2006.

The securitization process also includes periodic true-ups intended to ensure that the dedicated revenue stream from the securitization charge is adequate to pay, in a timely manner, the principal and interest on the securitization bonds, as well as all related costs before and after January 1, 2006. At least initially, Consumers will act as the servicer for the SPE. In that capacity, the utility will bill and collect the securitization charge, perform the periodic true-ups and calculate any necessary adjustment to that charge, and undertake related activities.

As noted in the October 24, 2000 order in Case No. U-12505, a securitization order must specifically reserve to Consumers the sole discretion as to whether and when to issue securitization bonds, which is critical to the utility's achieving the lowest financing cost possible because receptive market conditions do not always exist. Likewise, the Commission recognized that Consumers should be allowed to seek Commission authority to refinance outstanding securitization bonds if

interest rates fall sufficiently in order to allow for the creation of additional savings. Additionally, the finality and irrevocability of the financing order should be affirmed subject to Act 142 with regard to true-ups to assure bondholders that their rights and benefits will be upheld. Finally, the financing order should reaffirm the state's pledge--as set forth in Section 10n(2) of Act 142--that it will neither take nor permit any action that would impair the value of the securitization property authorized in that order nor, except as permitted by Section 10k(3) of that act, reduce, alter, or impair the securitization charges.

For the most part, Consumers' second securitization application closely resembles its initial application. However, there are some notable differences. Whereas the property securitized as a result of the initial application primarily consisted of assets reflected in its rate base, in this proceeding it is undisputed that none of the amounts to be securitized have ever been in the company's rate base. Another important difference involves the structuring of the repayment of principal amounts to the bondholders. Unlike the initial application, in this proceeding Consumers does not intend to immediately begin repaying principal to the bondholders. Rather, Consumers proposes to postpone the first two to three years of principal payments, which contributes to another difference. As explained by Jack Kattan, Executive Director in the Securitized Products Group of Morgan Stanley & Co., Inc., due to the contemplated structure of the securitization with respect to principal amortization, there will be a liquidity subaccount, which will be funded upfront from transaction proceeds to serve as temporary liquidity protection to cover any shortfalls in the interest payments on the securitization bonds.

### III.

#### DISCUSSION

##### Preliminary Issues

1. The MEC contends that Consumers' application should be rejected because the Legislature intended that each of the utilities authorized to securitize assets be limited to a single securitization proceeding. Although the MEC concedes that Section 10i(9) of Act 142 expressly authorizes a utility to seek a financing order from the Commission to retire and refund securitization bonds, the MEC insists that Act 142 is silent with regard to whether a utility may ask for a second financing order that is unrelated to its first. According to the MEC, the statutory scheme adopted by the Legislature, which tied securitization to the advent of customer choice, seems to suggest that an additional opportunity to securitize assets is both inappropriate and anticompetitive. Moreover, citing Consumers Power Co v Public Service Comm, 460 Mich 148; 596 NW2d 126 (1999), the MEC contends that the Commission lacks common law power to act in the absence of specific statutory authority conferred by the Legislature.

ABATE also argues that the Legislature intended securitization to be "a one time financing tool." ABATE's brief, p. 3. According to ABATE, because securitization is not available to developers of merchant plants, allowing Consumers to use securitization more than once gives Consumers an unfair advantage over its competitors and could allow the utility to put into effect rates so low that competitors will be driven from the marketplace.

In response, Consumers maintains that the Commission has authority to act on its second securitization request because Section 10i(9) of Act 142 empowering the Commission to issue financing orders was not limited as claimed by the MEC. According to Consumers, it would be

inappropriate for the Commission to place a restriction on its right to seek a second financing order because the Legislature failed to place such a limitation on the Commission.

The Commission finds that the MEC's and ABATE's contention that Consumers is entitled to only one financing order should be rejected. Section 10i of Act 142 authorizes the Commission to issue financing orders. In passing Act 142 the Legislature chose not to specifically limit a utility to a single opportunity to securitize its assets. The Commission is persuaded that it should not read such a provision into Act 142.

2. Several parties suggest that the Commission should peremptorily reject Consumers' request for authority to securitize certain of its assets because the assets are neither stranded costs nor regulatory assets within the meaning of Act 141 and Act 142.

The Commission disagrees. In its October 24, 2000 order in Case No. U-12505, the Commission rejected similar arguments. In footnote 7 on page 8 of the October 24 order, the Commission stated that "[a]lthough there is significant overlap between 'stranded costs' and 'qualified costs,' the terms are not synonymous." Additionally, with regard to the argument that the Commission's approval of Consumers' treatment of a certain cost as a regulatory asset must have preceded the filing of the securitization application, the Commission stated that "nothing in Act 142 precludes contemporaneously ruling on (1) whether something is a regulatory asset and (2) whether, and to what extent, that regulatory asset should be included in the determination of qualified costs." October 24 order, p. 12. See, Attorney General v Public Service Comm, 247 Mich App 35; 634 NW2d 710 (2001).

3. Kroger contends that Consumers' securitization application should be rejected simply because the concept of securitization is not available to Consumers' competitors and that allowing

Consumers to securitize expenses is patently anticompetitive. ABATE also contends that the unavailability of securitization to developers of merchant plants is harmful to ROA competition.

The Commission finds that these arguments are not well taken. The Legislature set up the securitization process through passage of Act 142. It is not for the Commission to second-guess the wisdom of the Legislature. Rather, the Commission must implement the policy determinations embodied in Act 142 to carry out the Legislature's intentions.

### Consumers' Second Securitization Application

Act 141 sets forth the general authority and duties of the Commission with regard to helping convert Michigan's electric industry from one that is based on intensive regulation to one that relies, in many aspects, on competition. The range of activities covered by Act 141 runs from the general (i.e., issuing orders, making reports, holding contested case proceedings, and protecting ratepayers from unfair business practices) to the specific (i.e., addressing utilities' requests for stranded cost recovery, approving annual true-up adjustments for each utility's transition charge,<sup>7</sup> imposing temporary rate freezes and caps, and establishing an immediate 5% rate reduction for all residential customers in Consumers' service territory).

In contrast, Act 142 deals with a narrower set of issues. Specifically, it is limited to establishing the legal framework by which the Commission may authorize the issuance of securitization bonds.

Consumers' application raises seven significant issues to be resolved by the Commission. First, it must determine what (if any) amount of Consumers' proposed qualified costs should be

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<sup>7</sup> In the context of this order, "transition charge" refers to the fee or fees imposed by a utility to recover stranded costs arising from ROA, other than those that are recovered through securitization. Securitization charges are designed to recover qualified costs, which may include some stranded costs.

deemed recoverable through securitization. Second, it must decide whether the utility's proposal satisfies the statutory requirements of Act 142. Third, it must rule on the reasonableness of Consumers' proposals regarding the use to which all securitization-related savings will be put. Fourth, it must decide whether the various amortization, accounting, and ratemaking approvals requested by the utility to effectuate the proposed securitization of its qualified costs are reasonable and should be approved. Fifth, it needs to determine whether the utility's proposed securitization and tax charges (namely, the fees Consumers seeks to impose on customers to fund repayment of the securitization bonds and any related tax liability, respectively) are reasonable both in amount and rate design. Sixth, it must rule on whether the utility's proposed securitization charge true-up mechanism is reasonable and should be approved. Seventh, the Commission must rule on the reasonableness of Consumers' proposals regarding the timing of placing incremental securitization and tax charges on customer bills for service rendered on and after January 1, 2006. These issues will be addressed seriatim.

### Qualified Costs

Key to the issuance of a financing order like that requested by Consumers is the Commission's determination of the amount of qualified costs to be recovered. Qualified costs are defined in Section 10h(g) of Act 142 as follows:

“Qualified costs” means an electric utility’s regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility’s existing debt and equity securities in connection with the issuance of securitization bonds. Qualified costs include taxes related to the recovery of securitization charges.

MCL 460.10h(g).

According to Francis A. Ernst, Jr., Consumers' Executive Director of Rates and Electric Strategic Business Unit Planning, the qualified costs that the utility seeks to securitize consist of (1) unsecuritized Palisades Nuclear Generating Plant (Palisades) capital costs through December 31, 2003 (\$113,279,000), (2) capital expenditures related to Consumers' compliance with the requirements of the federal Clean Air Act<sup>8</sup> through December 31, 2003 (\$587,106,000), (3) certain electric restructuring implementation costs through December 31, 2003 (\$96,791,000)<sup>9</sup>, (4) the amount that would be an offset to the electric portion of the additional minimum pension liability through December 31, 2003 (\$226,595,000), and (5) the cost of issuing, supporting, and servicing the securitization bonds, along with the cost of retiring and refunding Consumers' existing debt and equity securities in connection with the issuance of the securitization bonds, including a liquidity subaccount (\$60,315,000).

According to Mr. Ernst, because none of the costs to be securitized have ever been included in Consumers' retail electric rates, it would not be appropriate to reduce them by any deferred federal income taxes. Consumers is requesting that the total amount of \$1,083,438,000 be securitized in order that Consumers may be afforded an opportunity for full recovery of these costs, which would occur if Consumers were to receive timely and adequate rate relief with respect to them.

In addition to the initial securitization issuance costs, the debt retirement costs, and the liquidity subaccount, which collectively comprise \$48,545,000 of the \$60,315,000, Consumers notes that other qualified costs will be incurred throughout the life of the securitization bonds.

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<sup>8</sup> 42 USC 7401 et seq. and 42 USC 7651 et seq.

<sup>9</sup> Ronald T. Carrier, Consumers' acting Electric Customer Choice Program Manager, testified that Consumers' 2003 budgeted implementation expenditures were reduced by \$648,000, as noted in footnote 1 of this order.

These ongoing costs include an annual servicing fee of up to 0.25% of the principal amount of all outstanding securitization bonds if Consumers acts as the servicer, or up to 1.5% of that amount if some other entity is designated to be the servicer. They also include, among other things, the payment of all operating expenses incurred by the SPE and contributions to the overcollateralization subaccount. The utility estimates that although these ongoing expenses will total approximately \$3.3 million per year at the onset of securitization, the annual total will decline each year as ratepayers pay down the principal amount owed on the securitization bonds. See, Exhibit A-8, columns (g) and (h). Consumers seeks to recover these qualified costs through its securitization charge, but not as a part of the amount to be securitized. Specifically, it proposes that the actual amount of ongoing costs be recovered through the securitization charge by means of operation of the true-up mechanism for which Consumers is seeking approval in the financing order.

#### 1. Palisades Nuclear Plant Capital Costs

In Case No. U-12505, the Commission authorized the securitization of approximately \$405 million of net investment at Palisades. In so doing, the Commission determined that Consumers' investment in Palisades constituted a regulatory asset and was properly considered a "qualified cost" pursuant to MCL 460.10h(g). Consumers contends that the same result should be reached in this proceeding.

The details of Consumers' request to securitize the capital costs at Palisades were provided by Stephen T. Wawro, Consumers' Director of Nuclear Assets. According to Mr. Wawro, his company's total investment at Palisades amounts to \$113,279,000 from January 1, 2000 through December 31, 2003, and includes \$8,576,000 of previously unsecuritized inventory at the plant. He also stated that this amount includes \$5,514,000 in remaining book value at the end of 2000 that was not covered by the original securitization proceeding. Mr. Wawro stated that Consumers'

annual capital expenditures at Palisades for 2001 and 2002 were \$59,157,000 and \$25,214,000, respectively. For 2003, Mr. Wawro stated that Consumers intended to spend \$23,394,000.

According to Mr. Wawro, all of these expenditures were appropriate and reasonably incurred.

In arguing for approval of the Palisades investment for inclusion in the financing order, Consumers maintains that the Commission “has consistently expressed its commitment to allowing recovery of nuclear capital costs as part of its ROA program.” October 24, 2000 order, Case No. U-12505, p. 12. Consumers also notes that, when faced with a nearly identical situation involving The Detroit Edison Company’s (Detroit Edison) Fermi 2 Nuclear Generating Plant, the Commission granted that utility’s request to remove that facility from plant-in-service and to book it as a regulatory asset. According to Consumers, its Palisades investment represents capital costs that have been incurred to provide continuing service to its customers. Consumers argues that Palisades is an unlikely candidate for sale at or near its existing book value. Consumers also stresses that no witness in this proceeding provided any testimony that the qualified costs incurred at Palisades were unreasonable or imprudent. Therefore, Consumers insists that there is no justification to treat such investment differently from what was accorded the investment at issue in Case No. U-12505.

Susan Crimmins Devon, Manager of the Rate Section within the Commission’s Energy Operations Division, testified that she performed a review of the books and records of the company to verify the amounts Consumers requested for securitization. Ms. Devon further indicated that she reviewed prior orders issued by the Commission to ensure that the ratemaking treatment underlying Consumers’ proposed level of qualified cost securitization was reasonable and consistent with those orders. According to Ms. Devon, the Staff traced the unsecured balance at year-end 2002 to supporting plant, construction work in progress, and inventory reports provided by

Consumers. She also testified that although the Staff requested documentation supporting the 2003 Palisades construction budget, Consumers was unable to provide any information beyond that included in its filings in this proceeding.

Brian L. Ballinger, Supervisor of the Market Monitoring and Enforcement Section in the Commission's Energy Operations Division, recommended that the Commission not approve Consumers' request to securitize any of its 2003 budgeted capital expenditures, including those at Palisades. According to Mr. Ballinger, Consumers' financial situation is so poor that there is a significant possibility that the company might need to curtail spending on its capital projects before the end of 2003. In addition, Mr. Ballinger testified that the Commission should place conditions on Consumers with regard to the potential sale of Palisades. He urged the Commission to safeguard customers from having to pay twice for the capital costs by conducting a hearing, if the Palisades plant is ever sold, to consider this issue and other relevant issues such as use of the net proceeds from the sale of such assets.

ABATE's position was presented by James T. Selecky, a consultant knowledgeable in public utility regulation. According to Mr. Selecky, because the Commission held in its December 20, 2002 order in Case No. U-13380 that Consumers did not have any stranded costs in either 2001 or 2002, the Commission should not approve Consumers' request to securitize the capital investments in the Palisades plant because these costs should be recoverable in a competitive market. In the alternative, Mr. Selecky proposed that if the Palisades investment is to be securitized, the amount should be limited to the known and measurable expenses incurred prior to January 1, 2003, which would reject Consumers' request to include the entire \$23,394,000 investment at Palisades budgeted for 2003.

The Attorney General's position regarding Palisades was presented by Charles W. King, President of an economic consulting firm. It was Mr. King's opinion that Consumers would have incurred the investment in Palisades whether or not electric restructuring had taken place. Additionally, Mr. King stated that Consumers' Palisades's capital costs do not meet the statutory definition of qualified costs because they were not prudently incurred. According to Mr. King, the operating costs at Palisades are excessive. However, he also reasoned that if it were to be determined that Consumers reasonably and prudently invested in the Palisades plant, it must follow that such costs will be recoverable in a competitive marketplace.

Energy Michigan presented its position through the testimony of Richard A. Polich, an independent consultant in regulatory matters. Mr. Polich testified that Consumers' capital expenditures at Palisades should be characterized as operational costs, not fixed costs. According to Mr. Polich, these investments indicate that they relate to the general wear and tear associated with the normal operation of a nuclear plant, not long-term capital investment. According to him, such expenditures are typically classified as other operation and maintenance expenses that should be included in Consumers' rates. For that reason, he believed that securitization of Consumers' capital costs at Palisades would constitute a double recovery.

The MEC argued that the Commission should reject Consumers' request to securitize its actual and projected capital costs at Palisades. According to the MEC, so long as Consumers' revenues increase as much or more than its expenses increase (including recognition of and return on capital), then Consumers is inherently collecting for all its costs in its present rates. Because Consumers' earnings apparently have not fallen below the company's authorized rate of return, the MEC contends that securitization of the Palisades capital costs is not justified. Moreover, the MEC insists that there is a likelihood that Consumers may double recover its spent nuclear fuel

(SNF) costs. Citing the fact that Consumers has a pending damage claim for additional SNF costs before the United States Court of Claims, the MEC argues that there is a potential double recovery of these costs. Therefore, the MEC asserts that the Commission must condition any grant of securitization authority for the Palisades' capital costs by either removing those costs from this proceeding or by requiring Consumers to refund the amount of such recovery or properly adjust its securitization charges to account for any amounts received from its federal damage claim.

Kroger argues that allowing Consumers to securitize its Palisades capital costs harms the ROA program because the stated purpose of such investments was to enhance the generating capabilities and safety of the plant. Kroger argues that other suppliers must bear these same types of expenses, but have no similar opportunity to securitize such costs.

The Commission finds that Consumers' request to include the unsecuritized \$113,279,000 of capital costs at Palisades in a financing order should be rejected. Section 10h(g) places the determination of whether a cost is subject to treatment as a regulatory asset within the Commission's discretion. Considering all of the circumstances, the Commission is not persuaded that it should find Consumers' Palisades's capital costs to be a regulatory asset.<sup>10</sup> Unlike the assets at issue in Case No. U-12505, the expenditures at issue in this proceeding have never been placed into Consumers' rate base or subject to a prudence review in a rate case proceeding. The Commission views financing orders to be a form of extraordinary relief created by the Legislature to foster competition in the context of the transition to a competitive marketplace. Nothing in Act 142 indicates that the Commission must forego traditional ratemaking and cost recovery procedures if the Commission determines that it is not in the public interest to do so. The traditional mechanism

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<sup>10</sup> Nor is the Commission persuaded that Palisades' capital costs should otherwise be deemed "qualified costs", i.e., "unlikely to [be] collect[ed] in a competitive environment."

for Consumers to recover its capital costs is through the filing of a rate case proceeding.<sup>11</sup> The Commission does not consider the quality of review and the degree of scrutiny available in a securitization proceeding to be equivalent to that available in the context of a fully contested rate case proceeding. Further, the Commission is concerned that a significant portion of those costs (\$23,394,000 or 20%) are simply budgeted expenses for calendar year 2003, which is less than half over. The Commission finds that the current proceeding is simply not an appropriate vehicle for the review of such levels of capital expenditures that are binding on all concerned for up to 15 years. This is particularly true because of the likelihood that Palisades may have significant market value. Indeed, in approving Consumers' initial financing order, the Commission imposed certain conditions on the potential sale of Palisades that have been proposed for inclusion in the financing order to be issued in this proceeding (and agreed to by Consumers). Moreover, the marketability of Palisades, as opposed to the lack of marketability of Fermi 2, distinguishes Consumers' request for regulatory asset treatment of its capital improvements at Palisades from the similar request regarding Fermi 2 capital additions, which was approved by the November 2, 2000 order in Case No. U-12478.

## 2. Clean Air Act Compliance Costs

Scott D. Thomas, Consumers' Director of Staff-Electric Regulation, testified regarding his company's request to securitize \$444,981,000 of Clean Air Act plant investment compliance costs. According to Mr. Thomas, the costs at issue represent investment made by Consumers at its fossil-fired generating plants to meet the emissions requirements of Title I of the federal Clean Air Act. Mr. Thomas provided details concerning the Clean Air Act requirements, the specific actions

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<sup>11</sup> While Consumers' rates will remain frozen through the end of 2003, commencing January 1, 2004, Consumers' rates for smaller commercial and manufacturing customers and residential customers will be subject to caps that expire on January 1, 2005 and January 1, 2006, respectively.

taken by Consumers to achieve compliance with those requirements, and the amount of investment necessary to achieve compliance. He also explained that Consumers followed a plan that relies upon modifications to its fossil fuel plants, including both combustion and post-combustion facilities. He stated that the units selected for post-combustion controls involve the largest coal facilities owned by Consumers, which assures significant economies of scale and minimizes total expenditures. Mr. Thomas also stated that Consumers chose from a limited number of manufacturers and vendors capable of doing the work after evaluating their experience and soliciting competitive bids.

Mr. Ernst provided testimony on the recovery of the 1999-2003 return on investment for the Clean Air Act compliance costs as shown on Exhibit A-10 of \$142,125,000. The total request to securitize Clean Air Act compliance costs is \$587,106,000.

Glenn P. Barba, Vice President, Controller, and Chief Accounting Officer for both Consumers and its corporate parent, CMS Energy Corporation, also provided information regarding the Clean Air Act compliance costs. Mr. Barba indicated the Clean Air Act compliance costs were originally included in Consumers' stranded costs filing in Case No. U-13380. According to Mr. Barba, in an order issued on July 10, 2002 in that proceeding, the Commission directed that Consumers' Clean Air Act compliance costs be excluded from the stranded cost calculation on the ground that these costs were otherwise recoverable by Consumers through another cost recovery mechanism.

Based on the testimony of Mr. Thomas and Mr. Barba, Consumers maintains that its Clean Air Act compliance costs should be considered a regulatory asset and qualified costs pursuant to MCL 460.10h(g). According to Consumers, to the extent that the Commission believes that some further determination is necessary to classify these investments as a regulatory asset, the record in

this proceeding fully supports such a determination. Moreover, because securitization is the least expensive means of accomplishing recovery of its Clean Air Act expenditures, Consumers urges the Commission to authorize inclusion of these costs in the financing order.

The Staff urges the Commission to exclude projected 2003 Consumers' Clean Air Act expenditures and the 1999-2003 return on investment for the Clean Air Act expenditures from the financing order. Citing the testimony of Mr. Ballinger, the Staff maintains that the Commission has already ruled that recovery of Consumers' Clean Air Act return on investment is governed by Section 10d(3) of Act 141, MCL 460.10d(3). The Staff contends that the Commission made that ruling on July 10, 2002 in Case No. U-13380 when it granted the Staff's motion to strike testimony about Consumers' Clean Air Act compliance costs from its 2001 and 2002 stranded cost case. In any event, the Staff opposes inclusion of any Clean Air Act related expenditures from 2003 due to the possibility that Consumers could choose not to spend all of the budgeted amounts.

ABATE also opposes Consumers' efforts to securitize its Clean Air Act compliance costs. According to Mr. Selecky, Clean Air Act compliance expenditures should not be treated as a regulatory asset. Rather, he insisted that such costs should be recovered in a competitive market because all suppliers will have to build these costs into the price of their power. Further, he stressed that the Commission has yet to view any costs related to a fossil fuel plant as being a potential stranded cost.

Mr. Selecky pointed out that the Clean Air Act compliance costs at issue have not been scrutinized for prudence before this proceeding, which he maintained was an inadequate venue for such determination. He also maintained that the Commission should not classify any cost as a regulatory asset that does not also qualify as a stranded cost. Mr. Selecky joined the Staff in opposing consideration of any 2003 Clean Air Act expenditures, which he characterized as

speculative. Finally, Mr. Selecky criticized Consumers' use of its pre-tax rate of return of 10.63% as the carrying charge for its Clean Air Act compliance costs. Instead, Mr. Selecky argued that a more appropriate rate would be 7%, which is the rate applicable to implementation costs.

The Attorney General argues that the Clean Air Act compliance costs are not appropriate for inclusion in a financing order because they are attributable to enforcement of federal law, not electric restructuring. Moreover, he asserts that if such costs were reasonable and prudent expenditures, they should be recoverable in a competitive market. Finally, the Attorney General contends that the Commission should not permit Consumers to circumvent the requirements of Section 10d(3) of Act 141, MCL 460.10d(3), which the Commission stated in its July 10, 2002 order in Case No. U-13380 applies to Clean Air Act compliance costs.

Energy Michigan also opposes treating Consumers' Clean Air Act compliance costs as a regulatory asset. According to Energy Michigan, Consumers' position is flawed because the installation of Clean Air Act equipment resulted in the utility's ability to use less expensive fuels. Energy Michigan insists that Consumers should be required to use the anticipated fuel savings to offset the cost of the capital improvements. Energy Michigan also contends that the costs of complying with the Clean Air Act should be recoverable in a competitive market because Consumers' fossil fuel plants remain competitive.

Although expressing support for expenditures that reduce toxic emissions, the MEC asserts that Consumers' Clean Air Act compliance costs are covered by its current rates or reviewable in the company's next rate case. The MEC also maintains that authorizing Consumers to recover these costs through use of a financing order would be anticompetitive because other suppliers do not have access to a similar cost recovery mechanism. Finally, the MEC insists that Consumers' inability to establish the existence of stranded costs during 2000, 2001, or 2002 obviates the need

to act on its securitization request with an urgency that precludes the regulatory safeguards of a rate case proceeding.

Kroger contends that an examination of Consumers' Clean Air Act projects reveals that much of the expenses incurred relate to boiler modifications that allow Consumers' coal plants to burn less expensive coal. According to Kroger, Consumers spent nearly \$210 million for boiler modifications at its Campbell 1 and 3 facilities in order to reduce toxic emissions and to lower fuel costs. Kroger stresses that the fuel cost reduction at Campbell 1 alone will approximate five mills per kWh or about 25%. For these reasons, Kroger insists that the Commission should deny Consumers request to include its Clean Air Act projects in the financing order.

Based on the testimony and exhibits submitted by Consumers, the Commission finds that it should authorize Consumers to treat its pre-2003 Clean Air Act plant investment compliance costs (\$405,309,000) and the associated return on that investment (\$139,120,000) in the total amount of \$544,429,000 as a regulatory asset within the meaning of Section 10h(g) of Act 142. In so doing, the Commission finds that Consumers' 2003 budgeted expenditures for Clean Air Act compliance costs in the amount of \$39,671,000, which includes both the present value of this amount in 2003 and the revenue requirement for 2003, are simply too speculative and unreviewable in this proceeding to qualify for consideration as a regulatory asset. However, the Commission is persuaded that Consumers has established by a preponderance of the evidence that its remaining Clean Air Act compliance costs should be designated a regulatory asset.

Neither Act 141 nor Act 142 define "regulatory asset." However, Mr. Ballinger offered the following explanation in his testimony:

In regulatory accounting a "regulatory asset" means those costs that in a nonregulated industry would be expensed, but by virtue of FAS 71, can be capitalized by a regulated utility.

4 Tr. 67.

In addition, the Commission has frequently addressed utility requests to declare a variety of unrecovered costs to be regulatory assets. For example, in Case No. U-10083, the Commission conducted a contested case hearing to determine whether regulated electric and gas utilities should be granted general authorization to use specified accounts for temporary book/tax-timing differences and to use deferred tax accounting pursuant to Statement of Accounting Standards (SFAS) 109. In granting the requested authorizations, the Commission indicated that affected utilities were “assured of continued recovery of regulatory assets... .” Order dated February 8, 1993, in Case No. U-10083. Additionally, in Cases Nos. U-10040 and U-10040-A, the Commission required Michigan utilities to begin accounting for post-retirement benefits (other than pensions) and to employ SFAS 106. In so doing, the Commission found that a utility should be allowed to recover “its reasonable and prudent SFAS 106 costs through rates... .” Order dated December 8, 1992 in Cases Nos. U-10040 and U-10040-A, p. 7.

The Commission finds that Mr. Thomas’ testimony and exhibits provide an adequate basis for determining that Consumers’ pre-2003 Clean Air Act plant investment compliance costs constitute a regulatory asset. According to Mr. Thomas, Consumers followed a balanced strategy designed to achieve compliance in the most cost-effective manner. He explained that although significant capital expenditures were required, the plan also relied on the use of emissions allowances to ensure full compliance with the State of Michigan’s overall emissions budget. However, he was careful to stress that it would have been extremely imprudent to rely solely upon the purchase of allowances.

According to Mr. Thomas, Consumers’ capital expenditures were arranged to take advantage of recent technological advances in areas where new developments were likely to be highly bene-

ficial. For example, Consumers chose to do the more proven combustion projects early, delaying the post-combustion controls to learn from industry experience, and supplementing the compliance plan with acquisition of offsets from others. By use of this strategy, Consumers managed to avoid problems encountered by other utilities that leapt into the early installation of post-combustion controls that did not live up to expectations. Mr. Thomas provided details regarding the reasonableness and prudence of Consumers' selection of contractors and the consideration given by the company to maximizing economies of scale.

Finally, the Commission notes that Mr. Thomas' testimony was not refuted in any significant manner by any of the parties. Indeed, in its brief, the MEC indicated support for investments made to comply with the Clean Air Act.

In approving Consumers' request to treat its pre-2003 Clean Air Act compliance costs as a regulatory asset, the Commission finds that its initial regulatory response to Consumers' attempt to recover its Clean Air Act 1999-2003 return on investment compliance costs should be clarified. Consumers maintains that the Commission's July 10, 2002 order indicated the Commission's approval of those costs, but rejection of Consumers' selection of a vehicle (stranded cost proceeding). On the other hand, the Staff and the Attorney General insist that the July 10, 2002 order, which established that Consumers could not pursue recovery of its Clean Air Act return on investment compliance costs in a stranded cost proceeding, also established that Consumers could not seek to securitize those costs through issuance of a financing order. The Commission finds that both parties have read too much into the July 10, 2002 order.

The issue resolved by the July 10, 2002 order was limited to the appropriateness of Consumers' inclusion of its Clean Air Act compliance costs in Case No. U-13380, which pertained to its 2000 and 2001 stranded costs. The Staff's position was that such costs did not belong in the

stranded cost calculation because the Legislature had provided a specific mechanism<sup>12</sup> for the recovery of the “annual return of and on capital expenditure in excess of depreciation levels incurred” during the time that a utility’s rates are frozen or capped. While the language used by the Commission in granting the Staff’s motion to strike evidence concerning Consumers’ Clean Air Act compliance costs is broad enough to suggest that the Commission had also determined that Section 10d(4) of Act 141 also precludes Consumers’ attempt to securitize such costs, the Commission never addressed that precise issue in Case No. U-13380. Therefore, because the Commission never considered the evidence regarding Consumers’ Clean Air Act compliance or the issue of whether such costs could be recovered through a financing order if determined to be a regulatory asset, the Commission finds that the efforts of the parties to have the Commission resolve a crucial issue in this proceeding on the basis of dicta from an interlocutory order in Case No. U-13380 is not appropriate.

Likewise, the Commission dismisses the arguments of ABATE, the Attorney General, and Energy Michigan that regulatory asset status should be denied because Consumers may be able to recover its Clean Air Act compliance costs in a competitive market. In defining “qualified costs” in Section 10h(g) of Act 142, the Legislature did not indicate that an electric utility’s regulatory assets must be deemed unrecoverable in a competitive market to be a qualified cost. Interpreting Section 10h(g) to require every regulatory asset to also be an unrecoverable cost as contended by

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<sup>12</sup> See, Section 10d(4) of Act 141, MCL 460.10d(4), which provides: “Beginning January 1, 2004, annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time period described in subsection (2), and expenses incurred as a result of changes in taxes, laws, or other state or federal governmental actions incurred by electric utilities during the period described in subsection (2), shall be accrued and deferred for recovery. After notice and hearing, the commission shall determine the amount of reasonable and prudent costs, if any, to be recovered and the recovery period, which shall not exceed 5 years, and shall not commence until after the expiration of the period described in subsection (2).”

ABATE, the Attorney General, and Energy Michigan would render a portion of Section 10h(g) surplusage, which is not appropriate under the rules of statutory construction.<sup>13</sup>

The Commission also finds that the MEC's argument that Consumers is fully recovering the Clean Air Act compliance costs at issue in this proceeding in its current rates should be rejected. Consumers' current electric rates were set by the November 14, 1996 and April 10, 1997 orders in Case No. U-10685, which clearly predates these expenditures.

Finally, the Commission rejects Kroger's contention that the reduction in fuel expenses at several of Consumers' coal-fueled facilities constitutes a reason to deny regulatory asset status for the Clean Air Act expenditures. Due to the passage of 1982 PA 304, as amended, MCL 460.6h et seq., Consumers' customers will recognize the benefits of such reduced costs through the power supply cost recovery process.

### 3. Pension Costs

Consumers' position regarding inclusion of its \$226,595,000 of pension costs in the financing order was presented by Mr. Barba and Robert J. Leone, a consulting actuary with Hewitt Associates. Mr. Barba explained that corporations are required by SFAS No. 87 to account for pension benefits on an accrual basis during the working lives of employees. Annual determinations are required of the assets and liabilities of the company's pension fund. In so doing, the company must evaluate the benefits earned by each participant, the earnings of the plan assets, and any changes in plan design. As a result of this annual review process, Mr. Barba testified that SFAS No. 87 requires Consumers to recognize, as of December 31, 2002, an additional minimum pension liability on its balance sheet of \$325 million, \$226,595,000 of which is attributable to its electric utility business.

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<sup>13</sup> Benedict v Dep't of Treasury, 236 Mich App 559; 601 NW2d 151 (1999).

Mr. Leone, who is responsible for performing the actuarial study described by Mr. Barba, presented a forecast of qualified pension plan cash funding, expense, additional balance sheet liabilities, and equity charges. He sponsored Exhibit A-52, which is a forecast of pension plan cash funding requirements under two different scenarios. The first scenario assumes that Consumers makes contributions sufficient to exempt itself from the Pension Benefit Guaranty Corporation (PBGC) variable premium insurance requirements. The second scenario assumes that Consumers makes only the minimum required contribution and therefore incurs the PBGC variable premium insurance cost. According to Mr. Leone, while the necessary 2003 and 2004 contributions are smaller under the second scenario, SFAS No. 87 pension expense and the PBGC premium will be greater under the second scenario.

The Staff offered two observations regarding Consumers' request to recover its pension costs through use of a financing order. Mr. Ballinger noted that Section 10i(2)(a) of Act 142 precludes using securitization proceeds to fund pension expense. Rather, he stated that Consumers would have to use funds from internal sources or borrow funds from an outside source to fund its pension liability. Ms. Devon testified that there is no requirement under securitization for Consumers to actually make any cash contribution to the pension plan. Moreover, she stated her opinion that Consumers is under no obligation to make a minimum pension contribution until 2004.

ABATE, the Attorney General, Energy Michigan, the MEC, and Kroger urge rejection of Consumers' request to securitize its pension contributions. According to them, myriad reasons, including Consumers' lack of stranded costs in 2000 and 2001, the uncertainty of 2003 contributions, the ability to recover these costs in a competitive market, the current inclusion of pension costs in the company's rates, Consumers' failure to make adequate contributions, and the negative effect on competition, should cause the Commission to deny this request.

The Commission agrees that Consumers' request to securitize its electric pension costs should be rejected. It is readily apparent that a significant reason that Consumers is facing a significant pension liability is the general economic downturn, which has depressed stock prices. The record reflects some criticism of Consumers for its pension fund management and its reliance on equity investments. Without judging the wisdom of the utility's investment decisions, the Commission notes that a rebounding economy and rising stock prices could reverse recent losses and restore Consumers' pension fund to better circumstances. Moreover, the Commission finds that Consumers' pension costs are not typically included in financing orders. Indeed, Consumers' securitization expert, Mr. Kattan, acknowledged during cross-examination that there has never been a securitization of a pension expense like the one proposed by Consumers.

#### 4. Implementation Costs

There is no dispute that implementation costs satisfy the definition of "qualified costs" in Section 10h(g) of Act 142. There is also no dispute that full recovery of electric restructuring implementation costs "as determined by the Commission" is mandated by Section 10a(1) of Act 141. Citing these provisions and the testimony of Mr. Ernst and Ronald T. Carrier, its Acting Electric Customer Choice Program Manager, Consumers insists that it is entitled to full unconditional recovery of ROA implementation costs and authorization to issue securitization bonds to recover \$96,143,000 at this time.

Consumers' ROA implementation costs are summarized by year and by docket number on Exhibit A-66. Consumers argues that in its final orders in Cases Nos. U-11955, U-12358, and U-12891, the Commission approved deferred recovery of a total of \$60,119,000 of implementation costs incurred by the utility from 1998 to 2000. The company also notes that its request for recovery of \$7,947,000 of implementation costs for 2001, which is currently pending in Case

No. U-13340, has not been objected to by any of the parties to that proceeding. It places its 2002 and 2003 implementation costs at \$2,221,000 and \$898,000, respectively. It also seeks recovery of \$4,893,000 in expenditures made in an effort to comply with Section 10w of Act 141, MCL 460.10w, which requires Michigan electric utilities to either join an approved transmission organization or to divest themselves of all interest in their transmission assets.<sup>14</sup>

Consumers argues that most of the implementation costs have been approved for deferred recovery by the Commission and that virtually all of the remaining costs have been audited or verified by the Staff. Citing the June 5, 1997 order in Case No. U-11290, Section 10a(1) of Act 141, and Section 10h(g) of Act 142, Consumers insists that both the Commission and the Legislature have clearly indicated that its recovery of prudently incurred implementation costs is appropriate. Consumers asserts that all of its implementation costs were prudently incurred. It also asserts that its implementation efforts have been successful. According to Consumers, Mr. Carrier's testimony and exhibits demonstrate that its ROA program is fully functioning, efficient, and workable. Indeed, Mr. Carrier indicated that Consumers is actively serving 620 customers and 547 megawatts (MW) of load through its ROA program. Moreover, he stated that in the past two years customer participation has increased by 1,775% while the load served increased by 575%.

In its brief, the Staff indicates that the Commission has repeatedly stated that it has not been prepared to determine that Consumers has an unconditional right to recover its implementation costs in the absence of a review that permits the Commission to examine the success of Consumers' implementation efforts. Citing the November 7, 2002 order in Case No. U-12891 as an example, the Staff contends that the Commission's avowed policy is to conduct a thorough

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<sup>14</sup> The \$96,143,000 amount requested by Consumers includes carrying costs calculated at a 7% rate of interest. See, Exhibits A-6 and A-9.

investigation of Consumers' implementation costs in accordance with strict procedures outlined in that order. The Staff also expresses reservations about securitizing Consumers' ROA implementation costs based on the presentation on the record in this case. The Staff states that it is not convinced that current participation levels permit the definitive evaluation necessary to validate the conditions set forth by the Commission in Case No. U-12891. According to the Staff, much of Consumers' supporting documentation is predicated upon speculation regarding the ability of Consumers' electric customer choice systems to effectively accommodate a much larger number of participants. Additionally, the Staff suggests that it would be appropriate to exclude Consumers' \$4,893,000 expenditure related to the effort to join the Alliance Regional Transmission Organization (RTO). Finally, the Staff notes that both Mr. Ballinger and Ms. Devon testified that Consumers' 2002 ROA implementation costs should be reduced by \$818,438 related to incremental labor expenses to be consistent with past Commission precedent.

ABATE notes that its witness, Mr. Selecky, testified that if the Commission were persuaded to allow Consumers to securitize any costs, the financing order should be limited to \$78.5 million. According to him, while the Commission has reviewed Consumers' pre-2001 implementation costs for prudence and approved most of such costs for deferred recovery, the implementation costs for 2001 to 2003 should be excluded because the Commission has not yet ruled whether those expenditures were reasonable and prudent.

The Attorney General joins the Staff in urging the Commission to reject Consumers' request for inclusion of the Alliance RTO expenditures in this proceeding. The Attorney General also contends that the Commission should not abandon the recovery approach for Consumers' other ROA implementation costs that has evolved in Cases Nos. U-11955, U-12358, U-12891, and U-13340.

Energy Michigan also opposes allowing Consumers to include any of its ROA implementation costs in this proceeding. According to Energy Michigan, the Commission should carry through with the review process outlined in its July 23, 2002 order in Case No. U-12358. Moreover, citing the testimony of its witness, Mr. Polich, Energy Michigan insists that there is evidence upon which the Commission may conclude that implementation of Consumers' ROA program has not produced successful results. For example, Energy Michigan notes that Mr. Polich testified that Consumers' telemetry requirements pose unworkable power supply requirements, line location instructions are incomprehensible and result in numerous delays, and Consumers' field technicians either do not understand installation or come without proper supplies to accomplish installation. Energy Michigan also maintains that Consumers has problems regarding data transfer and processing of ROA enrollment.

The MEC contends that Consumers' ROA implementation costs should be excluded from the financing order because they should be reviewed in separate dockets or in the context of a rate case.

Kroger argues that, to the extent that the Commission determines that Consumers' ROA implementation costs were prudently incurred and that its ROA program has been and will continue to be successful, then the Commission should authorize Consumers to securitize such costs. However, Kroger notes that the implementation costs may be "wasted if the Company's securitization plan to double charge ROA customers for generation is approved as this would likely kill the ROA program." Kroger brief, pp. 5-6.

The Commission finds that Consumers' request to securitize its ROA implementation costs should be granted in part and denied in part. In the October 24, 2000 order in Cases Nos. U-11955 and U-11956, the transition cost true-up cases for Consumers and Detroit Edison, respectively, the

Commission announced a policy calling for close scrutiny of implementation costs to determine whether such costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the ROA progress. The rationale for imposing conditions on the deferred recovery of implementation costs in Cases Nos. U-11955 and U-11956, was stated as follows:

[T]he Commission would emphasize that simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. Expenditures associated with the implementation of the retail open access programs must produce results. Procedures, policies, methods, or electronic data interfaces that prove to be ineffective, inefficient, or unworkable may not entitle the company to recover the costs of those systems.

The Commission reaffirmed this determination in the July 11, 2001 and July 23, 2002 orders in Case No. U-12358 as well as the July 23, 2002 order in Case No. U-12892 (Detroit Edison's 2000 implementation costs).

The Commission provided the rationale for imposing conditions on the deferred recovery of implementation costs in Cases Nos. U-11955 and U-11956, as follows:

[T]he Commission would emphasize that simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. Expenditures associated with the implementation of the retail open access programs must produce results. Procedures, policies, methods, or electronic data interfaces that prove to be ineffective, inefficient, or unworkable may not entitle the company to recover the costs of those systems.

Because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Consumers' and Detroit Edison's implementation programs at this time. The Commission notes, however, that it expects Consumers and Detroit Edison to file information in their 2000 and 2001 true-up cases from which the Commission can determine the effectiveness of the implementation costs that the companies seek to recover.

Order at 4-5.

Neither Michigan public utility statutes nor prior Commission orders have recognized an unqualified right on the part of a utility to recover any or all of the costs related to ROA

implementation. However, the Commission did approve Detroit Edison's request to securitize previously reviewed implementation costs in the November 2, 2000 order in Case No. U-12478. Specifically, Detroit Edison was permitted to securitize non-incremental implementation costs for 1998 and 1999 that had been reviewed and conditionally approved in the October 24, 2000 order in Cases Nos. U-11955 and U-11956. Detroit Edison was not permitted to securitize any estimated costs or any actual costs that had not yet been adequately scrutinized by the Commission.

While the Commission remains committed to reviewing the effectiveness of a utility's implementation of its ROA program, the Commission finds that Consumers should be permitted to securitize the implementation costs that have been previously reviewed and approved by the Commission's final orders in Cases Nos. U-11955, U-12358, and U-12891, wherein the Commission approved deferred recovery of Consumers' non-incremental implementation costs incurred from 1998 to 2000. The Commission approved \$15,376,000 for 1998, \$25,156,000 for 1999, and \$19,587,000 for 2000.<sup>15</sup> With carrying costs at 7%, the total amount is \$64,108,000. By approving these costs for securitization, the final order in this proceeding will be consistent with the outcome in Case No. U-12478. However, the Commission cautions Consumers that the approval of its recovery of additional implementation costs rests not only on the annual review process, but also on its continuing efforts to successfully implement its ROA program, which the Commission intends to judge on the basis of future proceedings. In particular, the Commission intends to pay close attention to the absence or presence of systemic complaints by ROA customers.

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<sup>15</sup> The Commission's ruling rejects Consumers' request for authority to securitize its 2001, 2002, and 2003 implementation costs as well as the \$4,893,000 it spent in an effort to form the Alliance RTO.

## 5. Issuance Costs

No one seriously disputes that if Consumers is authorized to securitize some assets, the company will incur issuance costs that are recoverable pursuant to Section 10h(g) of Act 142. However, the amount and the necessity of some of the issuance costs have been questioned.

Unlike the previous securitization proceeding, in this case Consumers has proposed funding a liquidity subaccount, which it maintains is critical for providing the rating agencies and the potential bondholders with sufficient assurance of Consumers' ability to fully pay all principal and interest due on the securitization bonds.

Several parties, including the Staff, the Attorney General, and the MEC, question the need for the liquidity subaccount, especially when the cost of that subaccount is \$32,523,000 (assuming Consumers were to be allowed to securitize \$1,084,087,000). The Staff seems to doubt that the feared payment shortfall could occur as Consumers failed to provide any support for the request, and its securitization expert, Mr. Kattan, was not aware of a similar provision in any other securitization transaction. Indeed, the Staff characterized the liquidity subaccount as nothing more than an attempt by Consumers to increase its borrowing to make future principal payments.

Attorney General witness King believed that the liquidity subaccount would increase costs to ratepayers, and he cited the existence of the liquidity subaccount as justification for determining that the securitization proposal fails the Section 10i(2)(c) test.

The MEC argues that the Commission's order provides sufficient security to provide for a reasonably highly rated bond issuance.

Consumers responds by arguing that the liquidity subaccount is protection for forecasted sales levels that can never be estimated with 100% accuracy. According to Consumers, between

periodic true-ups, the liquidity subaccount will provide a source of funds to ensure timely interest payments.

The Commission finds that the liquidity subaccount is an integral part of the securitization transaction and that it should be retained. Mr. Kattan explained the purpose of the liquidity subaccount as follows:

In short, the Liquidity Subaccount is a form of credit enhancement that the rating agencies will likely require for the securitization transaction being undertaken by Consumers at this time. Contrary to Mr. King's contention and conclusions, the existence of a Liquidity Subaccount does not increase the cost of the securitization to customers. Consumers' revenue stream is not being increased prior to January 1, 2006 under its securitization proposal in this proceeding. A portion of Consumers' existing revenues is simply being reclassified and dedicated to buyers of securitization bonds from Consumers' SPE. Thus, Consumers is decreasing its own revenue stream prior to January 1, 2006 so as to avoid electric customers paying incremental securitization charges prior to that date. In addition, the \$32.5 million required amount of the Liquidity Subaccount is targeted to be used to repay principal on the bond payment date immediately after January 1, 2006 and before the next securitization true-up adjustment date so as to again avoid electric customers being required to pay any extra securitization charges on the Liquidity Subaccount. In fact, the use of the Liquidity Subaccount ensures we obtain the highest possible ratings on the securitization bonds and therefore the lowest costs. His criticism is incorrect and should be ignored by this Commission.

4 Tr. 366

Given this explanation, the Commission is persuaded that the liquidity subaccount is reasonable and should remain part of the securitization transaction.

Due to the findings expressed above, Consumers' Clean Air Act compliance costs of \$544,429,000 and the 1998-2000 implementation costs of \$64,108,000 may properly be included in the computation of qualified costs that may be securitized, along with the other class of qualified costs that expressly meet the statutory definition of qualified costs, e.g., the initial securitization issuance costs, debt retirement costs, and the liquidity subaccount. The Commission further concludes that it should approve Consumers' request to recover through its securitization

charge (but not as a part of the amount to be securitized) the ongoing expenses of securitization, including the maximum 0.25% servicing fee per annum paid to Consumers or the maximum 1.5% fee per annum paid to a third-party servicer. Such ongoing expenses shall be recovered through the initial securitization charge and as that charge is changed as a result of the true-up process that will occur in accordance with the terms of this financing order. Accordingly, the Commission calculates the maximum amount of Consumers' securitization request that can be approved to be \$644,389,000, which is comprised of pre-2003 Clean Air Act compliance costs of \$544,429,000, 1998-2000 implementation costs of \$64,108,000, and issuance costs of \$35,853,000.<sup>16</sup> However, before issuing authority to Consumers to securitize any amount of its assets, the Commission must determine that Consumers' application satisfies all of the requirements of Act 142.

#### Satisfaction of Statutory Criteria

Act 142 establishes several criteria that must be satisfied before the Commission may grant a utility's request for authority to issue securitization bonds. These criteria are set forth in Sections 10i(1) and 10i(2) of Act 142, which read as follows:

- (1) Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.
- (2) In a financing order, the commission shall ensure all of the following:
  - (a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.
  - (b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.
  - (c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.

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<sup>16</sup> These numbers do not foot due to rounding.

- (d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

MCL 460.10i(1) and (2).

Consumers' witnesses described the manner in which they believed that the utility's securitization proposal satisfied these criteria. For the sake of consistency, these criteria will be referred to as "statutory tests," as they are in the parties' briefs and reply briefs and on the evidentiary record. Technically, however, they are not "tests" in the strict sense of the word. Rather, they provide various statutory criteria that must be properly taken into account by the Commission when issuing its financing order. For example, Section 10i(1) directs the Commission that it "shall issue" a financing order if it is capable of making the prescribed finding, and Section 10i(2) directs the Commission that the financing order when issued "shall ensure" that certain results prescribed by the Legislature are obtained.

a. Section 10i(1)

Mr. Ernst described how the utility's proposal satisfies the statutory requirements set forth in Section 10i(1) of Act 142. With respect to this statutory requirement, Mr. Ernst's testimony and exhibits addressed Consumers' claim that the total amount of qualified costs to be securitized passed the statutory requirement set forth in section 10i(1). He also provided evidence that each of the four major components of the total separately satisfied this statutory requirement. Mr. Ernst began by examining costs to be securitized and pointing out that due to the timing of their incurrence by Consumers, none of those costs have ever been included in the electric cost of service or electric rates paid by customers. Then, with respect to the total of the costs to be securitized he computed the net present value of the annual revenues to be collected with and without the issuance of the securitization bonds. Pursuant to conventional financing methods that

do not involve the issuance of securitization bonds, he computed the net present value of the revenue stream necessary for the rate recovery of the total costs to be securitized to be \$937,988,000.<sup>17</sup> He then computed the net present value of the revenue stream associated with the total amount of securitized bond payments for principal, interest, and all expenses that electric customers would make if highly rated securitization bonds were sold pursuant to a financing order along the lines proposed by the utility. This resulted in a figure of \$670,293,000. Consumers therefore asserts that because Mr. Ernst's analysis shows that the present value of the revenues to be collected under the financing order is less than the net present value of those that would be recovered under conventional financing, its proposal satisfies the statutory test set forth in Section 10i(1) of Act 142. When the same calculation was done for each of the four major components separately, Mr. Ernst showed for each component that the net present value was less when the securitization bonds were sold. Thus, Consumers concludes that it has passed the statutory requirement contained in Section 10i(1).

The Staff concurs in Consumers' assessment. According to the Staff, one of its witnesses, Mr. Ballinger, performed a similar analysis (set forth on Exhibit S-35) and reached the same conclusion as Mr. Ernst. Namely, Mr. Ballinger found that the net present value of the revenue requirement arising under Consumers' securitization proposal would be significantly less than that arising from conventional financing over the remaining lives of the qualified costs. See, 4 Tr. 576.

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<sup>17</sup> Because the Commission has rejected Consumers' request to securitize its Palisades and pension expenses, the numerical calculations of the witnesses have value only in providing evidence of the appropriate methodology to be followed. The Commission has performed calculations using the values approved by this financing order. The details of these calculations appear on Attachment A.

Energy Michigan argues that the Clean Air Act compliance costs and implementation costs<sup>18</sup> cannot meet the financial test contained in Section 10i(1). According to Energy Michigan, the Clean Air Act costs have not been reviewed in a rate case for prudence and a rate of return has not been established for them. Energy Michigan insists that absent rate case treatment, the Commission has no basis to compare the net present value of the revenues under securitization with those that would be collected using conventional financing. Energy Michigan also maintains that authority to recover or securitize Consumers' ROA implementation costs should be denied until Consumers' ROA program is proven to be successful.

The Attorney General also maintains that Consumers' presentation fails the Section 10i(1) test. The Attorney General first questions the consistency of the calculations that appear on Exhibits A-7 and A-11. He next contends that Mr. Ernst did not justify using Consumers' overall rate of return as his cost of conventional financing, i.e., his discount rate for conventional financing. The Attorney General also criticizes Mr. Ernst for failing to identify the useful life of the assets to be securitized, and, therefore, the Attorney General contends that Mr. Ernst has erroneously assumed that the cost of conventional financing would not be longer than the time over which the securitization bonds will be amortized. The Attorney General also complains that two different discounts appear to have been used on Exhibits A-7 and A-11 and that the issuance and liquidity subaccount costs were included in the calculations on Exhibit A-11 despite the fact that such costs are not components of conventional financing. The Attorney General asserts that Consumers' securitization request fails the Section 10i(1) test because it is improper to include either the \$249 million of pension expenses or the \$60 million of issuance costs in the calculations. If these amounts are removed, the Attorney General contends that Consumers' securitization

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<sup>18</sup> Because the Commission has rejected the other two categories of expenses, the Commission will not discuss any party's arguments pertinent to those expenses, which are now moot.

request falls short of complying with the requirements of Section 10i(1) by over \$41 million even if the corrections presented on Exhibit A-12 are taken into consideration.

ABATE states that assets that are not in rate base do not have a revenue requirement based on conventional financing. Therefore, ABATE contends that, with the exception of Consumers' implementation costs, the securitization request should be denied.

Consumers responds by arguing that its justification for using its overall rate of return as the cost of conventional financing was the Commission's order in Case No. U-12505, which approved this discount rate for the purposes of Section 10i(1). Additionally, Consumers notes that Staff witness Ballinger found that using the company's overall rate of return was reasonable. Consumers next maintains that the Attorney General incorrectly criticizes Mr. Ernst for failing to identify the useful lives of the assets to be securitized. According to Consumers, Mr. Ernst identified the lives of the assets in Exhibit A-14, his workpapers, and in his rebuttal testimony. Finally, Consumers asserts that the Attorney General is simply wrong in criticizing Mr. Ernst for using two discount rates. Consumers insists that Mr. Ernst used only one discount rate, and that this fact was acknowledged by Staff witness Ballinger.

The Commission finds that the methodologies supported by Consumers and the Staff are appropriate and should be used for determining Consumers' compliance with Section 10i(1). Because Consumers' and the Staff's methodologies show that the net present value of the revenue requirement resulting from securitization of the Clean Air Act implementation costs will be significantly less than that arising from conventional financing, the Commission concludes that the statutory test set forth in Section 10i(1) is satisfied. See, Attachment A to review the calculations that support the Commission's conclusion.

b. Sections 10i(2)(a) and 10i(2)(c)

As noted above, Section 10i(2)(a) of Act 142 requires that the proceeds derived from the sale of Consumers' securitization bonds be used solely for the purposes of refinancing or retiring the utility's existing debt or equity. Moreover, Section 10i(2)(c) requires that the securitization bonds be structured and priced in a manner that will result in the lowest securitization charges possible. Consumers asserts that, based on information provided by two of its witnesses, both of these statutory tests should be deemed satisfied.

Consumers cites testimony offered by John J. Murphy, the Executive Director of Corporate Finance at CMS Enterprises Company, as showing that appropriate use will be made of all securitization bond proceeds, as demanded by Section 10i(2)(a). According to Mr. Murphy, the utility will utilize those proceeds solely to pay down Consumers' debt. He went on to state that, in deciding precisely when and in what proportion to refinance Consumers' current debt, the utility will consider, among other factors:

[T]he cost of each of its debt instruments and securities outstanding at the time that it receives the proceeds from the sale of the securitization property . . . , the mandatory cost of retiring each of those existing securities, market conditions which might impact tender offer opportunities for existing securities, and near-term new capital requirements, including environmental capital expenditure requirements.

5 Tr. 836.

Mr. Murphy concluded by stating that Consumers would support the imposition by the Commission in the financing order in this proceeding of substantially the same reporting requirements on use of proceeds that were put into place after the first sale of securitization bonds, which were stated as follows:

Thus, Consumers must file its first report regarding its use of securitization bond proceeds within 30 days of the bonds' initial issuance (or any portion of their issuance), and quarterly from that date until all bond proceeds have been disbursed.

Second, the reports should be structured to also include information detailing CMS's use of those proceeds. Third, in the event that a decline in interest rates leads Consumers to refinance any of its securitization bonds, the utility should file--within 7 days of that refinancing--a report notifying the Commission of that fact. Following completion of the refinancing and receipt of the report, the Commission will initiate a hearing to determine the appropriate use of all cost savings arising from that refinancing. Fourth, to ensure continued adherence to the requirements set forth in Section 10i(2)(c) of Act 142, Consumers should file--again, within 7 days--a report (1) notifying the Commission of any reduction in applicable interest rates or other charges in the bond market that might make refinancing economically advantageous, and (2) advising the Commission of what, if any, steps the utility intends to take in light of that reduction or change.

Order, Case No. U-12505, p. 22.

Mr. Murphy believed that these were reasonable reporting requirements when applied only to Consumers.

With regard to satisfying the requirements of Section 10i(2)(c), Consumers relies on a detailed description of the securitization bond marketing plan provided by Mr. Kattan. Specifically, Mr. Kattan indicated that, among other things, the following steps would be used to minimize Consumers' securitization charges: (1) All securitization bonds will be rated by at least two rating agencies. (2) No legal maturity of any series or class of securitization bonds will exceed 15 years from the date of issuance, and all tranches<sup>19</sup> will have expected maturities of less than 15 years. (3) Several tranches of bonds will be developed to present offerings across a wide spectrum of potential demand. (4) An extensive investor education program will be provided by the utility and the bonds' underwriters. (5) A minimum of two experienced underwriters will be used to market the bonds, each having wide experience in the marketing of asset-backed securities and specific experience in the marketing of stranded cost securitization bonds. (6) The book-running underwriter, exercising professional judgment based on the amount in orders received and with

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<sup>19</sup> "Tranches" refers to individual classes of bonds having different maturity dates and average lives.

Consumers' express concurrence, may adjust the bond prices and coupon rates as necessary to ensure maximum distribution of the bonds at the lowest possible bond yields. (7) The underwriters will purchase the bonds for their own portfolios at specified prices and coupon rates in the event that one or more tranches of Consumers' securitization bonds generates insufficient investor orders. See, 4 Tr. 346-349.

The Staff expressed its opinion that any determination whether the securitization transaction satisfies the requirements of Sections 10i(2)(a) and 10i(2)(c) can only be evaluated after issuance of the bonds. However, to ensure that Consumers adheres to all prudent and efficient practices concerning the actual issuance of securitization bonds and the use of those bonds' proceeds to reduce the utility's overall capital costs, Staff witness Ballinger recommended requiring Consumers to implement the same reporting requirements that were required in Consumers' first securitization proceeding.

The Attorney General contends that Sections 10i(2)(a) and 10i(2)(c) have not been satisfied. According to the Attorney General, Consumers' proposal fails the test in Section 10i(2)(a) because Mr. Ballinger testified that compliance with the test could only be determined after issuance of the bonds. Accordingly, the Attorney General reasons that one of the prerequisites for the issuance of the bonds is missing and Consumers' request for issuance of a financing order must be denied.

With regard to Section 10i(2)(c), the Attorney General states that Mr. King believed that certain elements in the structure of the securitization transaction, namely the two-year moratorium on principal payments and the inclusion of the liquidity subaccount, would result in higher than necessary securitization charges.

Energy Michigan also asserts that Consumers' proposal fails to meet either of these tests. According to Energy Michigan, given Consumers' financial condition, there is no assurance that

Consumers will put the securitization proceeds to use as proposed in its application. Energy Michigan also contends that Mr. Murphy's testimony at 5 Tr. 847 indicates that lower cost financing is now available to Consumers than proposed in the application. For these reasons, Energy Michigan insists that the tests contained in Sections 10i(2)(a) and 10i(2)(c) have not been met.

Notwithstanding the Attorney General's and Energy Michigan's assertions to the contrary, the Commission finds that Consumers' securitization proposal satisfies Sections 10i(2)(a) and 10i(2)(c) of Act 142. Through the testimony provided by Mr. Murphy, Consumers states that all of the proceeds from the sale of the securitization bonds will be used to refund or retire Consumers' existing debt, which should reduce the utility's capital costs. That is sufficient to meet the requirements imposed by Section 10i(2)(a). Similarly, the detailed marketing plan developed by the utility and described by Mr. Kattan shows that Consumers plans to take reasonable steps to achieve the lowest possible securitization charges to repay the bonds. Thus, the utility's proposal satisfies Section 10i(2)(c).

Finally, the Commission finds that the reporting schedule adopted in Case No. U-12505 should be retained and expanded.<sup>20</sup> Thus, Consumers must file its first report regarding its use of securitization bond proceeds within 30 days of the bonds' initial issuance (or any portion of their issuance), and quarterly from that date until all bond proceeds have been disbursed. These reports shall provide a comparison of the company's budgeted electric utility capital expenditures with its actual electric utility capital expenditures. Second, in the event that a decline in interest rates leads

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<sup>20</sup> In addition to filing the required reports with the Commission, Consumers shall simultaneously provide a copy of each required report to the Governor, the Attorney General, the Majority Leader of the Michigan State Senate, the Minority Leader of the Michigan State Senate, the Speaker of the Michigan House of Representatives, and the Minority Leader of the Michigan House of Representatives.

Consumers to refinance any of its securitization bonds, the utility should file--within 7 days of that refinancing--a report notifying the Commission of that fact. Following completion of the refinancing and receipt of the report, the Commission will initiate a hearing to determine the appropriate use of all cost savings arising from that refinancing. Third, to ensure continued adherence to the requirements set forth in Section 10i(2)(c) of Act 142, Consumers should file--again, within 7 days--a report (1) notifying the Commission of any reduction in applicable interest rates or other charges in the bond market that might make refinancing economically advantageous, and (2) advising the Commission of what, if any, steps the utility intends to take in light of that reduction or change. Finally, all reports shall provide information regarding how Consumers' use of securitization proceeds directly or indirectly affects the balance sheet and financial condition of CMS or any of its subsidiaries and affiliates. These reports shall specifically identify all dividends paid by Consumers to CMS and shall include a detailed description of how CMS uses such dividends to stabilize its financial condition.

c. Section 10i(2)(b)

Section 10i(2)(b) demands that Consumers' securitization proposal be shown to provide tangible and quantifiable benefits to the utility's customers. In satisfaction of this requirement, Consumers cites Exhibit A-6, a chart developed by Mr. Ernst for this proceeding in the same format used in Consumers' initial securitization proceeding to show the effect of securitizing \$1,084,087,000 in qualified costs (as Consumers proposed to do in this case). According to that exhibit, the utility would use proceeds derived from the sale of its securitization bonds to retire over \$1,023,000,000 of its most expensive debt. The chart goes on to indicate that those reductions will serve to reduce Consumers' weighted average cost of capital from its current level of 10.13% to a post-securitization level of 9.43%. Exhibit A-6, lines 13 and 30.

According to Mr. Ernst, that reduction from 10.13% to 9.43% in the utility's weighted average cost of capital demonstrates that his company's issuance of the securitization bonds meets the test described in Section 10i(2)(b). Specifically, he maintained that the utility's cost of capital will be decreased and, under traditional ratemaking principles, will be flowed through to electric customers in the form of reduced electric rates, all other things being equal. Based on this evidence, Consumers asserts, the Commission should find this statutory test to be satisfied.

The Staff states that the Commission should carefully weigh Consumers' position on this issue. According to the Staff, Consumers' presentation is inconsistent when analyzing compliance with Sections 10i(2)(b) and 10i(2)(d). Specifically, the Staff indicates that it is uncomfortable with Mr. Ernst's method of demonstrating compliance with Section 10i(2)(b). Additionally, the Staff notes that during cross-examination, Consumers witness Murphy provided testimony that appears to undermine Consumers' need to securitize over \$1 billion in assets.

The Attorney General, Energy Michigan, and the MEC contend, among other things, that the benefits claimed as a result of securitization are speculative and, as a result, can be deemed neither tangible nor quantifiable. These parties further contend that the benefit identified by Mr. Ernst, which was limited to a reduction in the utility's weighted average cost of capital, will only materialize if the utility files a rate case. They express concern that the testimony of Attorney General witness King demonstrates that Consumers' weighted average cost of capital will actually be increased by the securitization transaction. They also point to deficiencies in Consumers' calculations discovered by William A. Peloquin, an independent expert in utility matters, and Staff witness Ballinger. Finally, Energy Michigan argues that high-load factor customers will be harmed by Consumers' proposal.

The Commission disagrees with the Staff, the Attorney General, Energy Michigan, and the MEC and finds adequate support in the record for concluding that the statutory test set forth in Section 10i(2)(b) is satisfied. The stated goal of securitization, and one that several witnesses--including Mr. Kattan--view as achievable in this case, is to issue bonds with a AAA rating and a correspondingly low interest rate. As reflected on numerous exhibits, the expected interest rate for the utility's securitization bonds (which Consumers predicted to be 5.08%) will be significantly lower than the utility's current overall rate of return (which presently stands at 10.63%) and cost of capital for future ratemaking purposes. (Moreover, given Mr. Murphy's rebuttal testimony regarding the recent decline in interest rates, it is very possible that Consumers could achieve even greater savings than originally anticipated.) Due to this significant differential, it is clear that by using even a portion of its securitization bond proceeds to retire debt, Consumers' proposal will produce quantifiable and tangible benefits if the Commission requires Consumers to use the actual cost savings arising from securitization for electric utility purposes only and to refrain from paying any extraordinary dividends<sup>21</sup> to CMS.

d. Section 10i(2)(d)

As noted above, the last of these statutory tests requires the Commission to find that the amount securitized does not exceed the net present value of the revenue requirement for those qualified costs over the life of the securitization bonds. Based on computations performed by Mr. Ernst, Consumers concludes that the various components of the \$1,084,087,000 amount it seeks authority to securitize meet this requirement collectively and individually. Mr. Ernst computed the net present value of the 14-year revenue requirements to be \$1,260,458,000 when discounted at 5.08% and he also contended that the requirement would be fulfilled at 7.5% from a

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<sup>21</sup> For the purposes of this order, an extraordinary dividend shall be considered to be any amount over and above Consumers' earnings.

break-even scenario. On this showing, Mr. Ernst stated that the statutory test spelled out in Section 10i(2)(d) of Act 142 has been satisfied.

The Staff does not agree with Consumers' conclusion. Specifically, Staff witness Ballinger stated that the 5.08% discount rate used by Mr. Ernst was not appropriate for purposes of this statutory test. Instead, he suggested using a discount rate of 10.63%, which is Consumers' pre-tax cost of capital. Because this figure produces a result that fails to demonstrate that the amount securitized does not exceed the net present value of the revenue requirement for those qualified costs over the life of the securitization bonds, the Staff asserts that the requirements of Section 10i(2)(d) have not been satisfied if Section 10i(2)(d) is viewed as a test. However, the Staff maintains that Section 10i(2)(d) could be viewed as a statutory cap instead of a test. In that context, the Staff determined that Consumers should be allowed to securitize \$937,988,000 out of the \$1,084,087,000 set forth in its original proposal by using the 10.63% discount rate proposed by Mr. Ballinger. See, Exhibit S-35.

The Attorney General contends that the utility's proposal fails to pass this statutory test. Citing the testimony of both Mr. King and Mr. Ballinger, the Attorney General argues that Mr. Ernst used the wrong discount rate in trying to establish that Consumers' proposal satisfies the test. The Attorney General also maintains that Mr. Ballinger's recommendation that the test in Section 10i(2)(d) should be treated as a cap is circular and flawed because, as the amount securitized in column (b) of Exhibit A-8 decreases, then the revenue requirement shown in column (q) will also decrease proportionately.

Consumers responds by arguing that Mr. Ernst appropriately rebutted the arguments raised by the Staff and the Attorney General against his use of a 5.08% discount rate. According to Consumers, Section 10i(2)(d) calls for a comparison between a revenue requirement and a

proposed securitized bond amount. Because the bond has a carrying cost of 5.075%, Mr. Ernst maintained that it is only appropriate to use the bond's carrying cost as the discount rate. He also criticized Mr. Ballinger's use of the company's pre-tax rate of return of 10.63% as the discount rate for both the Section 10i(1) and Section 10i(2)(d) tests, which would mean that two of the four statutory tests would involve measuring the cost of conventional financing.

The Commission finds that Mr. Ballinger's methodology, discount rate, and treatment of Section 10i(2)(d) as a cap instead of a test are appropriate and should be adopted. Section 10i(2)(d) provides, in pertinent part:

In a financing order, the commission shall ensure all of the following:

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(d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

MCL 460.10i(2)(d).

The Commission agrees with Mr. Ballinger and Mr. King that because the test in Section 10i(2)(d) involves discounting revenue requirements, it is only appropriate to use Consumers' pre-tax rate of return as the discount rate, which is consistent with Mr. Ballinger's position in Case No. U-12505 and the positions taken by both the Staff and Detroit Edison's witnesses, which were approved by the Commission's November 2, 2000 order in Case No. U-12478. As shown on Attachment A, application of Section 10i(2)(d) in the manner supported by Mr. Ballinger results in a determination that Consumers may securitize up to a total of \$554,323,000 as a result of this financing order.

Based on the findings set forth above, the Commission finds that Consumers' proposal has met each of the criteria established by Section 10i(1) and 10i(2) of Act 142. The Commission

therefore concludes that the utility's request for authority to issue securitization bonds should be granted, but limited to \$554,323,000 as computed on Attachment A.

#### Proposed Use of Securitization Cost Savings

The next issue to be addressed is the utility's proposed use of the cost savings from securitization. Consumers' position on this issue appears in the testimony of Mr. Ernst.

According to Mr. Ernst, none of the qualified costs being securitized have been included in Consumers' electric cost of service or electric rates, which is unlike the situation in Consumers' first securitization proceeding where all of the qualified costs securitized were already reflected in electric rates and were being paid for by electric customers. Thus, Mr. Ernst maintained that there are no securitization cost savings to be distributed prior to January 1, 2006, because customers will not pay an incremental securitization charge before that date. Mr. Ernst testified that he would expect that the savings would be reflected in the electric cost of service established by the Commission in Consumers' next electric rate case because the cost of the securitization bond financing would be built into the cost of capital determined for ratemaking purposes at that time. Thus, the savings would be automatically passed to electric customers in their base electric rates established in Consumers' next rate case and, according to Mr. Ernst, there remains nothing regarding distribution of securitization cost savings that could or should be done in this proceeding. Mr. Ernst concluded by saying that because electric customers are not currently paying any of the costs related to the qualified costs being securitized, and because Consumers proposal would not require customers to begin paying an incremental securitization charge until January 1, 2006, it would be unfair and unreasonable for any of the savings from the sale of securitization bonds to be passed through to electric customers at this time.

The Commission finds that the applicable statutory language and the first financing order for Consumers do not address the situation where the qualified costs to be securitized are not in the utility's current electric rates. Additionally, the Commission notes that Consumers has structured its securitization transaction to have no net effect on either ratepayers or ROA customers until January 1, 2006. Given this structure and as previously noted, the Commission is persuaded that Consumers should be authorized to use the actual cost savings arising from securitization for its general electric utility purposes, but to refrain from using such proceeds either directly or indirectly to pay an extraordinary dividend to CMS. This ensures that the savings brought about by a securitization transaction will initially stay with Consumers. Moreover, the Commission agrees that the issue of how to distribute future savings from the sale of securitization bonds should be resolved in the context of Consumers' next general electric rate case. Finally, to ensure that ratepayers realize the benefits of securitization in a timely manner, the Commission directs that Consumers shall file its next general electric rate case no later than April 1, 2005.

#### Proposed Amortization, Accounting, and Ratemaking Approvals

According to its accounting witness, Mr. Barba, Consumers' request for a financing order specifically seeks authorization to establish an amortization schedule on the same basis as the recovery of the principal amounts of the securitized qualified costs. In addition, the utility seeks the authority necessary to record on Consumers' books all financial transactions necessary to undertake securitization, including those between the utility and the proposed SPE. As testified to by Mr. Barba, this set of authorizations was requested by Consumers and granted by the Commission in the first securitization proceeding. It forms the basis for the accounting currently done by Consumers. The same authority requested once again would permit, among other things, all accounting entries needed to record (1) the securitized qualified costs on Consumers' books,

including the establishment of regulatory assets for the costs being securitized, (2) the issuance of the securitization bonds, (3) the use of the securitization bond proceeds to retire existing debt, (4) the receipt of revenues arising from Consumers' proposed securitization charge and tax charge, (5) the payment of principal, interest, and expenses relating to the bonds, (6) the retirement or refunding of the securitization bonds and (7) the amortization of securitized qualified costs.

According to Mr. Barba, as with the first sale of securitization bonds, the amount securitized in connection with the second sale of securitization bonds will be recorded as a financing of the SPE for financial reporting purposes and, because the SPE will be consolidated with Consumers for financial reporting purposes, the amounts financed will also appear as a financing in the utility's consolidated financial statements. Mr. Barba made it clear that no reductions in securitization charges shall be caused by the amortization of regulatory assets on Consumers' books pursuant to the accounting being proposed by him.

In its brief, Consumers clarified that, to the extent that the Commission authorizes an amount that is different than the amount proposed by Consumers, the accounting entries contained on Exhibit A-37, which was sponsored by Mr. Barba, should be considered necessary even if the amounts set forth on Exhibit A-37 are rendered illustrative.

The authority requested by Mr. Barba on behalf of Consumers is appropriate and the Commission finds it should be granted with regard to the pre-2003 Clean Air Act compliance costs, the 1998-2000 ROA implementation costs, the issuance costs (including the liquidity subaccount), and the securitization bond transactions to the extent that these items have been approved by this order and reduced through operation of Section 10i(2)(d) of Act 142. However, if Consumers elects not to pursue securitization due to its failure to prevail on some issue addressed in this order, the basis for granting the utility's myriad requests for amortization,

accounting, and ratemaking authority disappears. The Commission thus concludes that its grant of all such authority shall not become effective until Consumers submits a written acceptance of the Commission's financing order. Upon the filing of that acceptance with the Commission, the financing order and the securitization charges approved in the order shall be considered irrevocable as directed under Section 10i(4) of Act 142--except as provided under Section 10k(3) of that act.

### Securitization and Tax Charge Rate Design, Billing, and Related Issues

Due to its earlier finding that Consumers' request for authority to issue securitization bonds should be granted, the Commission must also rule on how costs relating to those bonds shall be recovered, which involves several highly contentious issues.

#### 1. Fees and Charges

Consumers proposes to recover the qualified costs to be securitized by imposing a uniform cents per kWh securitization charge and tax charge on each customer's energy usage. It also states that the securitization charge and tax charge will not be combined with the securitization charge and tax charge related to the November 2001 sale of securitization bonds, but will be separately stated on the customer's bill. According to Consumers, its proposal in this case mirrors that approved by the Commission in Case No. U-12505. Indeed, Consumers gives the same three reasons in support of this approach in this proceeding as were presented to the Commission in the last securitization proceeding. First, it notes that this is consistent with the Commission's decision--set forth in numerous orders in Case No. U-11290 et al.--to collect ROA transition charges through the application of a uniform energy surcharge. Second, it points out that structuring its securitization and tax charges in this manner makes them easier to track for true-up purposes and promotes cross-collateralization among rate classes, which makes the bonds more

marketable. Third, Consumers contends that this avoids creating complex administration and implementation issues with regard to its billing systems.

Although the actual per kWh charges will change over time depending on the principal balance of the outstanding bonds and the composite interest rate on such bonds, among other things, Consumers computed the maximum securitization and tax charge rates that it originally proposed to impose beginning with the first billing cycle after securitization bonds are sold by the SPE. According to Mr. Ernst, these maximum rates, for which Consumers sought Commission approval in this order, were \$0.002328 per kWh for the securitization bond charge and \$0.000029 per kWh for the tax charge. However, because (1) the computation of these charges (which is shown on Exhibit A-8) was based on an assumed aggregate bond yield of 7.5%, (2) the average expected yield for the various tranches of Consumers' securitization bonds was projected by Consumers to be only 5.08%, (3) interest rates have declined from the time Consumers filed its application in this proceeding, and (4) the amount that Commission has approved for securitization (\$554,323,000) is only 51.13% of the amount originally sought by Consumers (\$1,084,087,000), the actual rates charged to Consumers' customers should be significantly below the ceiling rates set forth in Mr. Ernst's testimony and on Exhibit A-8. Therefore, for the purpose of issuing this financing order, the Commission finds that it should reduce the maximum securitization bond charge and maximum tax charge initially collectible by Consumers to reflect the change in the amount to be securitized. Multiplying the maximum initial securitization bond charge and maximum initial tax charge proposed by Mr. Ernst by 0.5113 results in a new maximum initial securitization bond charge of \$0.001190 and a new maximum initial tax charge of \$0.000015. Further, these maximum initial charges will need to be apportioned between Consumers' customers in accordance with the rate design approved later in this order.

## 2. Tariff Changes

Consumers proposes changes to its existing electric tariff, designated as Rule B-18, and the addition of a new tariff provision, designated as Rule B-19. Mr. Torrey explained that the proposed tariff changes to Rule B-18, which are set forth on Exhibit A-65, “merely identify the initial securitization charges as securitization I to simply differentiate these charges from the securitization II charges.” 5 Tr. 876. He also explained that the addition of Rule B-19 is necessary to describe “the process [that] the Company will use to initially implement and adjust periodically the securitization II charges and securitization II tax charges during the term of the securitization II bonds.” 5 Tr. 876. The Commission finds that these tariff revisions are reasonable and should be approved.

## 3. Rate Design-Billing ROA Customers

Mr. Torrey also described Consumers’ proposals for billing the securitization charge and tax charge to all customers, including ROA customers. In summary, he proposed that ROA customers should be treated just like full service, bundled sales electric customers of Consumers with respect to billing of these charges, which means that the securitization charge and the tax charge would appear as separate lines on their bills beginning with the first billing cycle after the securitization bonds authorized in this financing order are sold. The charges shown on the bills would receive an offsetting credit at another location on the bill. That credit would continue to appear for service rendered through December 31, 2005. At that future time, the securitization charge and tax charge for this issuance of securitization bonds will appear on the bills of ROA customers for service rendered beginning on January 1, 2006 with no offsetting credit. This billing protocol is necessary, according to Mr. Torrey, in order to make the securitization charge and tax charge nonbypassable. In addition, Mr. Torrey emphasized that the Commission would be free in the next

major rate case order to allocate the savings from the sale of securitization bonds in the context of the rate design adopted in that proceeding.

Consumers' justification for requiring ROA customers to pay for generation assets, such as the Clean Air Act compliance costs, is that ROA customers may choose to return to bundled service at some point in the future and Consumers must incur costs to be prepared for that possibility. Indeed, Consumers insists that the right to return to bundled service is a substantial safety net that encourages switching by customers that might otherwise be unwilling to take that risk. Because these customers rely on the right to return, Consumers believes that they should pay a share of the cost of the generation resources that support that right.

Consumers also contends that the Clean Air Act compliance costs were mandated by federal law and by the public policy goal of improving air quality for all citizens. Because ROA customers also benefit from clean air, Consumers argues that they should contribute to the payment of these costs.

Moreover, Consumers maintains that, in the absence of its Clean Air Act expenditures, it would have had to close or limit its use of a number of its generating facilities, which would have required the company to buy more power on the wholesale market. Consumers reasons that its increased participation in the wholesale market could have driven up the demand and price of wholesale power to the detriment of the ROA customers.

With respect to the implementation expenditures, Consumers insists that cost responsibility is clearly assignable to ROA customers because incurring these costs made the ROA program possible, and allowed ROA customers to choose to receive generation service from an Alternative electric supplier (AES). Indeed, while disclaiming the position, Consumers indicated that an argument could be made that ROA customers should be assigned 100% of the implementation

costs because ROA customers are the only customers that benefit from the ROA implementation expenditures.

Consumers modified its position through the rebuttal testimony of Mr. Ernst, who presented an alternative proposal. According to Mr. Ernst, if the Commission wishes to address rate design issues in this case, it should do so in a manner that avoids unnecessary billing expense and administrative complications. His suggestion was to calculate a uniform charge based on total sales, and then set the non-residential securitization charge at 80% of that uniform level. All commercial and industrial and ROA customers would pay the 80% charge. The remaining 20% would be incorporated into the residential charge, thus making them slightly higher than the uniform charge. His approach is illustrated on Exhibit A-28, and described at 4 Tr. 301-303. In summary, if the uniform charge for the first year was \$0.001585 per kWh, 80% of that charge would be \$0.001268 per kWh. The dollar amount that would need to be added to the residential charge would increase that charge to \$0.002233 per kWh. Consumers contends that Mr. Ernst's alternative approach is simple, avoids unnecessary complications that could impair the ability to obtain the highest possible rating for the securitization bonds, and addresses the objections of the interveners. Most importantly, Consumers argues that Mr. Ernst's alternative proposal assures nonbypassability in compliance with Act 142.

Energy Michigan maintains that Consumers' rate design proposal to charge ROA customers for generation-related assets would destroy competition. According to Energy Michigan, the possibility that the Commission could consider future offsets for ROA customers in a future rate case is unacceptable. Energy Michigan insists that relief in the form of such offsets must be immediate because the charges to be imposed by this financing order are established and unavoidable for 15 years whereas other types of relief do not share the same degree of

permanence. Energy Michigan argues that competition will be destroyed if the promise of offsets does not materialize in Consumers' next rate case. Moreover, Energy Michigan contends that just the threat of imposing securitization charges on ROA customers will be a deterrent to long-term participation by some retail customers.

Energy Michigan suggests that Consumers' rate design should be modified to give ROA customers relief from the uniform securitization and tax charges. Arguing that there is no legal prohibition on differential securitization charges, Energy Michigan contends that the Commission should craft an exemption from generation-related securitized costs that should not be allocated to ROA customers.

While the Attorney General expresses concern that imposing securitization charges for generation-related costs could destroy electric competition in Michigan, he believes that Sections 10h(f) and 10h(i) of Act 142 require ROA customers to bear these costs. Accordingly, the Attorney General insists that Energy Michigan's proposal to exempt ROA customers from paying the Clean Air Act compliance costs or otherwise to create an offset that would benefit ROA customers would violate Section 10h(f) of Act 142.

ABATE contends that the suggestion by Consumers that the Commission will be able to adjust the retail rate design as it sees fit in the next general rate case is insufficient to avoid the destruction of ROA competition as of December 31, 2005. According to ABATE, ROA participants will not know what their costs will be after that date, but will be saddled with an irrevocable, nonbypassable charge to collect the principal and interest associated with the securitization bonds from customers. ABATE is also concerned that any offset is purely speculative and could not be legitimately used in financial analysis.

Kroger argues that Consumers' securitization request may no longer be necessary given the decline in interest rates. Moreover, Kroger insists that it should not affect customers like itself, that have already left Consumers' system. In any event, Kroger contends that Consumers' proposed rate design will doom the ROA program.

Kroger's position was presented by Mr. Kevin C. Higgins, a principal in the firm of Energy Strategies, LLC. Mr. Higgins recommended a special securitization offset credit applicable only to current ROA customers for generation-related costs incurred after January 1, 2001. Without such an offset, he maintained that the Commission should not approve any securitization related to \$729 million in generation-related costs because that would require an unfair and unwarranted cross subsidy from ROA customers. In the alternative, Mr. Higgins stated that any generation-related charge to ROA customers should be mitigated by stranded benefits. Mr. Higgins also proposed a \$465,987,000 offset related to Clean Air Act compliance costs and \$115,239,649 related to Consumers' labor costs.

The Commission finds that Mr. Torrey's proposal for billing ROA customers should be rejected. The Commission is persuaded that although all of Consumers' bundled customers, special contracts customers, and ROA customers should share the costs of securitizing the 1998-2000 ROA implementation costs and the associated issuance expenses, only its bundled customers and special contracts customers should be made responsible for the pre-2003 Clean Air Act compliance costs. ABATE and Energy Michigan offered compelling arguments that imposition of a securitization surcharge based on costs that are entirely generation-related would be unfair to ROA customers and AESs. Even Attorney General witness King testified that because the "securitization charges that come out of this proceeding are imposed not only on Consumers' customers, but also on the customers of Consumers' competitors ... the outcome of this

proceeding could have a damaging impact on the development of customer choice in Michigan.” 5 Tr. 771. According to Mr. King, imposing the Clean Air Act compliance costs on ROA customers would mean that “retail electric customers electing open access service would have to pay for those costs twice, once for their suppliers and again for Consumers through the securitization charges.” 5 Tr. 774-775. For this reason, Mr. King stated that placing securitization charges for generation-related costs on ROA customers would likely “seriously suppress, if not kill, electric competition in Michigan.” 5 Tr. 775.

The Commission also rejects Mr. Torrey’s suggestion that placing the securitization charge on ROA customers at this time is crucial to the concept of nonbypassability. If the Commission is free to effect changes that could benefit ROA customers in Consumers’ next rate case as Mr. Torrey suggests, why can’t such a determination take place at any time, including at the outset of the securitization transaction?

The Commission agrees that the concept of nonbypassability refers to the assurance that the bondholders will not see their revenue stream interrupted, which could occur due to the departure of customers from Consumers’ system. But the Commission is not persuaded that Consumers’ understanding of the concept of nonbypassability squares with the purpose underlying Acts 141 and 142.

In passing Act 142, the Legislature defined the terms “nonbypassable charge” and “securitization charges” as follows:

“Nonbypassable charge” means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer’s electric generation supplier.

Section 10h(f) of Act 142.

“Securitization charges” means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing

order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

Section 10h(i) of Act 142.

In defining “nonbypassable charge” the Commission deems it important that the Legislature did not require that such charges be payable by *all* of the electric utility’s customers regardless of the identity of the customer’s electric generation supplier. Nor does the language require that all securitization charges be assessed on the same “nonbypassable amounts” for all customers. Rather, the language used by the Legislature leaves room for the determination of the customers that will be required to pay the securitization charges to be made by the Commission to carry out two of the purposes underlying Acts 141 and 142, namely, to ensure that all retail customers in this state of electric power have a choice of electric suppliers [MCL 460.10(2)(a)] and to allow and encourage the Commission to foster competition in this state in the provision of electric supply and maintain regulation of electric supply for customers who continue to choose supply from incumbent electric utilities. [MCL 460.10(2)(b)].

In any event, as the Commission understands Consumers’ proposal, the purpose of the periodic true-ups is to ensure a sufficient revenue stream through the adjustment of the surcharge amount among the pool of customers paying the surcharge. To the extent that the number of customers in the pool expands or shrinks, the surcharge will decrease or increase to ensure a constant revenue stream. This being the case, nonbypassability exists without regard to the composition of the pool at the outset of the securitization transaction.

In reaching its determination on the rate design issues, the Commission rejects Kroger’s position that current ROA customers should receive a special securitization offset for generation-related costs that were incurred after January 1, 2001. Not only does the Commission’s rate design

determination render Kroger's position moot with regard to generation-related assets, the Commission is persuaded that Mr. Higgins' solution involves a complex offset mechanism that could be administratively burdensome.

#### 4. Uniform Cents per kWh Securitization and Tax Charges

The Commission considered and approved uniform cents per kWh securitization charges and tax charges in the prior securitization proceeding. Citing the simplicity and administrative ease of applying such charges, Consumers proposes to assess similar uniform cents per kWh securitization charges and tax charges on each customer's energy usage in this proceeding.

The Staff and the Attorney General support the use of uniform cents per kWh securitization and tax charges. According to them, the Commission should approve the same type of securitization and tax charges that it authorized in Cases Nos. U-12478 and U-12505.

ABATE objects to the utility's proposal to recover its securitization-related costs through the use of uniform per kWh charges. According to ABATE, applying per kWh charges would be disadvantageous to high load factor customers. As a result, ABATE contends that Consumers' proposal will result in an overallocation of securitization-related costs to industrial customers and an underallocation to residential customers. ABATE asserts that the Commission has consistently allocated costs like those to be recovered by the securitization charge through the application of a 12 coincident peak, 75% demand/25% energy allocation factor and should apply that formula in this proceeding.

The Commission finds that Consumers' proposal should be adopted. The Commission considered and rejected ABATE's proposal in Case No. U-12505. A similar situation arose in Case No. U-11290, where the Commission had to determine the best method for recovering stranded costs. Due, in large part, to the fact that it would help expedite the true-up of all

transition and implementation charges imposed on ROA customers, the Commission authorized the use of a uniform per kWh charge. Because Section 10k(3) requires that securitization charges “be reviewed and adjusted by the Commission at least annually,” ease of administration likewise weighs heavily in favor of applying per kWh charges in the present case. Moreover, the utility’s proposal promotes the concept of full cross-collateralization between and among customers regardless of rate class and may help ensure the highest possible rating for Consumers’ securitization bonds. Moreover, the Commission finds that use of uniform per kWh securitization and tax charges will not change existing cost allocations among customer classes because a corresponding reduction in each customer’s distribution or transition charge will be made, which assures that no customer pays more as a result of securitization until January 1, 2006. This is in contrast to the demand-based allocation methodology proposed by ABATE, which would likely result in a reallocation of cost responsibility in violation of Section 10d(5) of Act 141.

For these reasons, the Commission concludes that the utility’s proposal to recover its securitization-related costs through the use of uniform per kWh securitization and tax charges should be approved.

#### 5. Allocation of Partial Payments

Mr. Kattan proposed that partial payments of bills by customers should be allocated ratably among the securitization and tax charges authorized pursuant to the financing order in Case No. U-12505, the securitization and tax charges authorized by this financing order, and other billed amounts based on the ratio of each component of the bill to the total bill. The Commission finds that this suggestion should be adopted.

## Periodic True-ups

Periodic true-ups are necessary to provide the certainty needed to obtain the sought-after AAA bond rating. They allow Consumers to analyze the past period's actual revenues and expenses, maintain the appropriate amount in the overcollateralization subaccount, roll over any over- or underrecovery to the upcoming period, compute new levels for its securitization and tax charges, and automatically begin implementing those charges at their revised levels.

In Case No. U-12505, the Commission approved Consumers' use of a true-up mechanism for conducting routine annual securitization and tax charge true-up proceedings, except that starting 12 months prior to the last expected maturity date of the securitization bonds true-ups could be undertaken on a quarterly basis. Order, Case No. U-12505, pp. 47-49. The Commission also directed that Consumers should initiate each routine true-up by filing an application that (1) explains the basis for its proposed revision of the securitization and tax charges, (2) shows the computation of its revised charges, and (3) seeks Commission approval--on an expedited basis--of those new charges before they can be implemented. Finally, the Commission indicated that all routine true-up proceedings were to be completed and a final Commission order regarding the utility's request for a routine true-up issued within 45 days after Consumers filed its application.

Mr. Kattan testified that Consumers' proposed true-up mechanism is virtually identical to the mechanism approved by the Commission in Case No. U-12505 and "represents the most fundamental component of credit enhancement to investors." 4 Tr. 353. Further, Mr. Kattan identified the two most important features of a true-up mechanism as (1) adjustments that may be implemented on a regular basis over a specified short period of time and (2) the limitation of the proceeding to a simple review of Consumers' mathematical calculations. He recommended that the Commission adopt the true-up procedures described in the testimony of Consumers witness

Torrey, which contain one change over the true-up procedures adopted in Case No. U-12505. He explained that instead of allowing quarterly true-ups in the final 12 months prior to the last expected maturity date of the securitization bonds, true-ups should be permitted to be undertaken on a monthly basis at that time.

The utility's proposed change to monthly true-ups was opposed by the Staff. According to Mr. Ballinger, Consumers has not shown a need for monthly true-ups in the final year of bond maturity. Additionally, Mr. Ballinger contended that the Commission should not permit Consumers to seek any non-routine true-ups.

In response, Consumers contended that the Staff's opposition to non-routine true-ups is misplaced. According to Consumers, the Commission allowed for possible non-routine true-ups in Case No. U-12505 and should do so in this proceeding.

The Commission finds that Consumers should be authorized to conduct exactly the same periodic true-ups in this proceeding as in Case No. U-12505. Accordingly, the Commission rejects both Mr. Kattan's modification, which would have allowed monthly true-ups in the final year of bond maturity, and Mr. Ballinger's modification, which would have banned all non-routine true-ups.

#### Miscellaneous Issues

In addition to those discussed above, several additional miscellaneous concerns have been raised by the parties.

1. ABATE's brief contained seven proposed findings of fact. The Commission's responses to the proposed findings of fact are contained on Attachment B.

2. ABATE's brief contained a request that the Commission take official notice of information that does not appear in the record. Consumers opposes that request. The Commission finds that ABATE's request should be denied.

3. The MEC insists that Consumers' proposal is flawed because it has no provision for funding of the Low Income and Energy Efficiency (LI/EE) fund described in Section 10d(6) of Act 141.

The Commission explained its position on a similar contention that was rejected in Consumers' initial securitization order as follows:

Similarly, the MEC and MCAAA are mistaken in their belief that Act 142 requires a mandatory contribution to the LI/EE fund at this time. By its own terms, the mandatory contribution provision set forth in Section 10d(6) does not take effect until "securitization savings exceed the amount needed to achieve a 5% rate reduction for all customers," rather than just those customers taking service on the utility's residential rates. MCL 460.10d(6). [Emphasis added.] Thus, because several classes of customers on this utility's system have not received rate cuts of at least 5%, the MEC and MCAAA cannot yet lay claim to the excess savings produced by Consumers' proposed securitization.

Order, Case No. U-12505, p. 31.

The statutory requirement in Section 10d(4) of Act 141 that "any savings resulting from securitization shall be used to reduce retail electric rates for those authorized as of May 1, 2000 as required under subsection (1)" refers only to the residential rate reduction required by that subsection.

4. Because the Commission has determined that only Consumers' bundled customers and special contract customers should have the securitization and tax surcharges associated with the pre-2003 Clean Air Act compliance costs appear on their bills, but that all customers, including Consumers' ROA customers, should have the securitization and tax surcharges associated with the 1998-2000 ROA implementation costs appear on their bills, the Commission is concerned that Consumers could attempt to structure the issuance of the securitization bonds to achieve a different ratio of

contributions from the various customer groups than that inherent in the Commission's order.

Therefore, the Commission expressly conditions Consumers' authority to issue any securitization bonds to require that in assessing any securitization charge the company adhere to the ratio of pre-2003 Clean Air Act compliance costs to 1998-2000 ROA implementation costs established by this order. However, nothing in this condition is intended to otherwise deny Consumers the sole discretion regarding (1) whether or when to assign, sell, or otherwise transfer the securitization property or other rights and interests created by this financing order, or any interest therein, or (2) the issuance of any securitization bonds authorized by this order.

5. On May 28, 2003, Consumers submitted a letter to the Commission along with a copy of a the Federal Energy Regulatory Commission (FERC) order in Docket No. ER03-574-000.

On May 29, 2003, the Attorney General submitted a letter objecting to the Commission's consideration of Consumers' letter.

The Commission has not considered either of these letters in reaching its determinations in this proceeding.

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 AACS, R 460.17101 et seq.

b. Consumers is an electric utility as defined by Section 10h(c) of Act 142, and it had 1,000,000 or more retail customers in this state as of May 1, 2000.

c. Consumers' complete application was filed on March 4, 2003, thus requiring issuance of this financing order by June 2, 2003, pursuant to Section 10i(1) of Act 142.

d. Consumers' pre-2003 Clean Air Act compliance costs in the amount of \$544,429,000 constitute a regulatory asset as determined by the Commission and, therefore, those Clean Air Act compliance costs constitute qualified costs, as defined in Section 10h(g).

e. Consumers' pre-2003 Clean Air Act compliance costs for which recovery was sought in the application, constitute qualified costs that may be recovered through a securitization charge, together with a related tax charge, assessed against all of Consumers' bundled sales customers through Commission-approved rate schedules and against customers on existing Commission-approved special contracts. These latter customers will be treated just like bundled sales customers until the expiration of their existing special contracts.

f. Consumers' 1998-2000 ROA implementation costs in the amount of \$64,108,000 constitute a regulatory asset as determined by the Commission and, therefore, the 1998-2000 ROA implementation costs constitute qualified costs, as defined in Section 10h(g) of Act 142. Consumers' 1998-2000 ROA implementation costs may be recovered through a securitization charge, together with a related tax charge, assessed against all of Consumers' customers.

g. Consumers should be allowed to establish one or more SPEs, capitalize and direct the administration of each such SPE, and sell (directly or indirectly) to each SPE some or all of the securitization property discussed in this order. Each SPE will be an assignee as defined in Section 10h(a) of Act 142 once an interest in securitization property is transferred to the SPE.

h. Consumers' and any SPE's up-front other qualified costs identified in this financing order, including the liquidity subaccount and Consumers' costs of retiring existing debt securities and the Commission's costs of financial and legal services to assist in the issuance of this financing order, are all qualified costs pursuant to Section 10h(g) of Act 142 and are therefore recoverable by Consumers through securitization.

- i. The holders (otherwise known as the purchasers) of the securitization bonds and their respective trustees will each be a financing party as defined in Section 10h(e) of Act 142.
- j. The SPE may issue securitization bonds in accordance with this financing order and may pledge all of its interest in the securitization property and related assets to secure those bonds.
- k. The securitization transaction approved in this financing order satisfies the requirements of Section 10i(2)(a) of Act 142 because the proceeds of the securitization bonds shall be used solely for the purposes of the refinancing or the retirement of debt.
- l. The securitization transaction approved in this financing order satisfies the requirements of Section 10i(2)(b) of Act 142 because it provides tangible and quantifiable benefits to customers of the electric utility.
- m. The SPE's issuance of securitization bonds in compliance with this financing order will satisfy the requirements of Section 10i(2)(c) of Act 142 because the expected structuring and pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of this order.
- n. The amount of qualified costs approved for securitization in this financing order does not exceed the net present value of the revenue requirement over the life of the securitization bonds associated with the qualified costs sought to be securitized, as required by Section 10i(2)(d) of Act 142, which caps Consumers' securitization proposal at \$554,323,000.
- o. The securitization transaction approved in this financing order satisfies the requirements of Section 10i(1) of Act 142 because the net present value of the revenues to be collected under this order will be less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods.

p. This financing order adequately details the amount of qualified costs to be recovered (\$554,323,000) and the period over which Consumers will be permitted to recover nonbypassable securitization charges (not more than 15 years), as required by Section 10i(3) of Act 142.

q. The tax charge does not constitute securitization property within the meaning of Section 10j of Act 142.

r. As provided in Section 10i(4) of Act 142, the securitization charges authorized by this financing order are irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission, except for adjustments accomplished by use of the true-up procedures approved in this order.

s. The methodology set forth in Rule B-19 and approved in this financing order to implement the initial securitization and tax charges, and the methodology set forth in Rule B-19 and approved as modified by this order to implement adjustments to the securitization and tax charges through use of an expedited true-up mechanism, each satisfy the requirements of Section 10k(3) of Act 142.

t. As proposed by Mr. Kattan, partial payments of bills by customers should be allocated ratably among the securitization and tax charges authorized pursuant to the financing order in Case No. U-12505, the securitization and tax charges authorized by this financing order and other billed amounts based on the ratio of each component of the bill to the total bill.

u. Consumers should be allowed to establish securitization property, including a nonbypassable securitization charge, from which the utility's securitization bonds are to be paid.

v. Consistent with Section 10j(1) of Act 142, the securitization property established by Consumers should be deemed to include without limitation (1) the right to impose, collect, and receive securitization charges in an amount necessary to allow for the full recovery of all qualified

costs, (2) the right to obtain periodic adjustments of securitization charges through the true-up mechanism, and (3) all revenue, collections, payments, money, and proceeds arising out of those rights.

w. Consistent with Section 10j(2) of Act 142, all securitization property arising as a result of this financing order should be deemed to constitute a present property right even though the imposition and collection of securitization charges depends on further acts by Consumers or others.

x. Consistent with Section 10m(2) of Act 142, any lien and security interest created in the securitization property (through the execution and delivery of a security agreement with a financing party) should be deemed to attach automatically from the time that value is received for the bonds and, further, should be deemed a continuously perfected lien and security interest in the securitization property.

y. The priority of any lien and security interest in the securitization property arising from this financing order should not be considered impaired by any later modification of this order or by the commingling of the funds arising from securitization charges with any other funds, consistent with Section 10m(4) of Act 142.

z. Any SPE created by Consumers pursuant to the authority granted in this financing order should be authorized to enter into hedge or swap arrangements when issuing securitization bonds having a variable rate of interest.

aa. Consistent with Section 10i(2)(a) of Act 142, all securitization bond proceeds arising from the authority granted in this financing order shall be used solely for the purpose of retiring or refinancing debt.

bb. Except as otherwise provided for in this order, the general structure of the securitization transactions, the expected terms of the securitization bonds, and the use of the securitization bond proceeds, as proposed by Consumers, are reasonable and should be approved.

cc. If and when Consumers transfers the securitization property to the SPE, including the right to impose, collect, and receive the securitization charges, the servicer will be authorized to recover the securitization charges only for the benefit of the SPE in accordance with the servicing agreement.

dd. If and when Consumers transfers the securitization property to the SPE under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the “true sale” provisions of Section 10l(1) of Act 142, that transfer will constitute a “true sale” and not a secured transaction or other financing arrangement, and title (both legal and equitable) to the securitization property will immediately pass to the SPE. As provided by Section 10l(2) of Act 142, this “true sale” shall apply regardless of whether the purchaser has any recourse against the seller, or any other term of the parties’ agreement, including the seller’s retention of an indirect equity interest in the securitization property by reason of its equity interest in the SPE, the fact that Consumers acts as the collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

ee. As provided in Section 10m(5) of Act 142, if the servicer defaults on its obligation to remit revenues arising with respect to the securitization property, on application by or on behalf of the financing parties, the Commission or a court of appropriate jurisdiction shall order the sequestration and payment to those parties of revenues arising with respect to the securitization property.

ff. Pursuant to Section 10n(2) of Act 142, the State of Michigan pledges, for the benefit and protection of all financing parties and Consumers, that it will not take or permit any action that would impair the value of the securitization property, or reduce or alter, except as allowed under Section 10k(3) of Act 142, or impair the securitization charges to be imposed, collected, and remitted to the financing parties, until the principal, interest, and premium, as well as any other charges incurred and contracts to be performed in connection with the securitization bonds, have been paid and performed in full. The SPE, when issuing securitization bonds, is authorized, pursuant to Section 10n(2) of Act 142 and this financing order, to include this pledge in any documentation relating to the securitization bonds.

gg. The financing order, as well as Consumers' written acceptance of all conditions and limitations imposed by the order, will remain in effect and unabated notwithstanding the bankruptcy or insolvency of Consumers, its successors, or its assignees, as required by Section 10k(1) of Act 142.

hh. Subject only to the conditions contained in this financing order, Consumers retains sole discretion regarding whether or when to assign, sell, or otherwise transfer the securitization property or other rights and interests created by this financing order, or any interest therein, or to cause the issuance of any securitization bonds authorized by this order.

ii. Any securitization bonds issued pursuant to the authority granted in this financing order are not a debt or obligation of the State of Michigan and are not a charge on its full faith and credit or taxing power.

jj. As required by Section 10m(8) of Act 142, any subsequent changes in this financing order or in the customer securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

kk. As required by Section 10j(2) of Act 142, the financing order shall remain in effect and all securitization property shall continue to exist until the securitization bonds authorized for issuance by this order, as well as all expenses related to those bonds, have been paid in full.

ll. The securitization charges authorized in this order shall be billed, collected, and delivered to the trustee by Consumers, as the initial servicer, or any successor servicer pursuant to a servicing agreement. Any payment of the securitization charge by a customer to the SPE, or to the servicer on behalf of the SPE, will discharge the customer's obligations regarding that charge to the extent of that payment, notwithstanding any objection or direction to the contrary by Consumers.

mm. As required by Section 10k(2), the imposition and collection of the securitization charges authorized in this financing order are nonbypassable charges.

nn. Consumers should file a report, within 30 days following the receipt of any proceeds from the sale of its securitization bonds and quarterly thereafter until all bond proceeds have been disbursed, specifying (1) the gross amount of proceeds arising from the sale of those bonds, (2) any amounts expended for payment of initial other qualified costs relating to that sale, (3) the amount of proceeds remaining after payment of those costs, (4) the precise type and amount of debt that was retired through use of those proceeds, (5) a comparison of the company's budgeted electric utility capital expenditures with its actual electric utility capital expenditures, (6) information regarding how Consumers' use of securitization proceeds directly or indirectly affects the balance sheet and financial condition of CMS or any of its subsidiaries and affiliates, and (7) an identification of all dividends from Consumers to CMS including a detailed description of how CMS uses such dividends to stabilize its financial condition. In addition to filing the required reports with the Commission, Consumers should be ordered to simultaneously provide a copy of

each required report to the Governor, the Attorney General, the Majority Leader of the Michigan State Senate, the Minority Leader of the Michigan State Senate, the Speaker of the Michigan House of Representatives, and the Minority Leader of the Michigan House of Representatives.

oo. In the event that a decline in interest rates or other change in market conditions leads Consumers to refinance any of its securitization bonds, Consumers should file, within 7 days, a report disclosing the details of that refinancing.

pp. Consumers should continually monitor the bond market and notify the Commission, within 7 days, of (1) any reduction in applicable bond rates or other change in market conditions that might make refinancing its securitization bonds economically advantageous, and (2) what permissible steps available under the bond covenants, if any, Consumers intends to take as a result of that reduction or change.

qq. All amortization, accounting, and ratemaking approvals, as well as all other authorizations, provided for in this financing order should be tolled pending Consumers' express written acceptance of all conditions and limitations that the order places on the utility.

rr. This financing order is final and is not subject to rehearing by this Commission, except as provided in Section 10i(7) of Act 142, and is not subject to review or appeal, except as expressly provided in Section 10i(8) of Act 142.

THEREFORE, IT IS ORDERED that:

A. With the modifications provided for in this order, the general structure of the securitization transactions, the expected terms of the securitization bonds, and the use of the securitization bonds' proceeds, as proposed by Consumers Energy Company, is approved, and Consumers Energy Company is authorized to proceed, at its sole discretion, with the sale of securitization bonds as set forth in this order.

B. Consumers Energy Company is authorized to treat \$544,429,000 of its pre-2003 Clean Air Act compliance costs as a regulatory asset and a qualified cost that may be securitized up to the limit established in this order pursuant to Section 10i(2)(d).

C. Consumers Energy Company is authorized to treat \$64,108,000 of its 1998-2000 retail open access implementation costs as a qualified cost that may be securitized up to the limit established in this order pursuant to Section 10i(2)(d).

D. Consumers Energy Company is authorized to treat \$35,853,000 of “up front” costs incurred by it and any special purpose entity in connection with the approved securitization transaction, including the liquidity subaccount and costs of retiring any debt securities and the Commission’s costs of financial and legal services, as a qualified costs that may be securitized.

E. Subject to the condition that Consumers Energy Company maintain the balance between the pre-2003 Clean Air Act compliance costs and the 1998-2000 retail open access implementation costs in assessing any securitization charge as required by this order, Consumers Energy Company is authorized to proceed with securitization for up to \$554,323,000 of its qualified costs, as detailed in this order.

F. Consumers Energy Company, or any successor servicer, shall impose and collect from customers, in the manner provided by this financing order, securitization charges and tax charges in amounts sufficient to provide for the full and timely recovery of the amount securitized, the ongoing other qualified costs of the special purpose entity, and federal, state, and local taxes related to the securitization charge.

G. Consumers Energy Company shall include, as part of its electric tariffs and before any securitization bonds are issued, new language like that found in its proposed Rule B-19, as approved by this order. Consumers Energy Company shall also file, no less than seven days prior

to the initial imposition and billing of its securitization and tax charges, revised tariff sheets reflecting all other changes required by this order, including the securitization and tax charge offset provisions.

H. Consumers Energy Company, and any successor servicer, is authorized to bill to its customers, following the sale of securitization bonds, an initial securitization charge of not more than \$0.001190 per kilowatt-hour and an initial tax charge of not more than \$0.000015 per kilowatt-hour. These maximum initial charges shall be apportioned between Consumers Energy Company's customers in accordance with the rate design approved by this order. Such charges shall remain in effect until changed pursuant to the true-up mechanism approved in this financing order. The procedure described in the testimony and exhibits of Michael A. Torrey shall be used to determine the precise securitization charge and tax charge to be billed initially by Consumers Energy Company and the billing protocols described by Michael A. Torrey in his testimony and exhibits, as amended and approved by this order, shall be employed by Consumers Energy Company in connection with this securitization transaction. Following that determination, the initial securitization charge and the initial tax charge shall be placed on customers' bills beginning with the first billing cycle after the sale of the securitization bonds and shall be subject to subsequent true-ups in the manner directed in this order.

I. The securitization and tax charges related to Consumers Energy Company's securitization bonds shall be billed to each customer for recovery over a period of not greater than 15 years after the beginning of the first complete billing cycle during which the securitization and tax charges were initially placed on any customer's bill. However, Consumers Energy Company may continue to collect any billed but uncollected securitization charges or tax charges after the close of this 15-year period. Amounts of the securitization and tax charges remaining unpaid after the

close of this 15-year period may be recovered through use of collection activities, including the use of the judicial process.

J. True-ups of the securitization charges and the tax charges shall be conducted periodically, in accordance with the schedule and the methodology approved in this order and set forth on Rule B-19 in Consumers Energy Company's electric tariff.

K. Partial payments shall be allocated ratably among the components of the bill as provided in this financing order.

L. Consumers Energy Company is authorized to create one or more special purpose entities to which it may transfer securitized property. In turn, each special purpose entity is authorized to issue securitization bonds in the manner specified in this financing order. All securitization bonds shall be binding in accordance with their terms, regardless of whether this order is later vacated, modified, or otherwise held to be invalid, in whole or in part. Each special purpose entity shall be funded with sufficient capital to carry out its intended functions and to obtain the desired ratings for the securitization bonds that it issues.

M. Consumers Energy Company is authorized to initiate and complete the refinancing of its securitization bonds when justified by financial market conditions and permitted by the bond covenants.

N. All securitization property and other collateral shall be pledged by the special purpose entity to the indenture trustee for the benefit of the holders of the securitization bonds and the other parties specified in the indenture.

O. Consumers Energy Company is authorized to enter into a servicing agreement with each special purpose entity that it creates and to perform the servicing duties contemplated by this financing order in return for an annual servicing fee not to exceed 0.25% of the principal amount

of all outstanding securitization bonds. If some other entity is selected to serve in place of Consumers Energy Company, that replacement servicer shall perform the servicing duties in return for an annual fee not to exceed 1.5% of the bonds' outstanding principal amount. The servicer shall remit all collections of the securitization charges to the indenture trustee for the special purpose entity's account, in accordance with the terms of the servicing agreement.

P. Upon the issuance of securitization bonds, the special purpose entity shall pay the proceeds from the sale of the securitization bonds (after payment of the special purpose entity's up-front other qualified costs) to Consumers Energy Company as the purchase price of the securitization property. The proceeds from the sale of the securitization property (after payment or reimbursement of all up-front other qualified costs) shall be applied to retire Consumers Energy Company's existing debt.

Q. Consumers Energy Company has the continuing, irrevocable right to cause the issuance of securitization bonds in one or more series (in accordance with the terms of this financing order) for a period of two years following the later of the date upon which this order becomes final and no longer appealable or, if appealed, is no longer subject to further judicial review.

R. If any such rulings are requested, immediately upon its receipt, Consumers Energy Company shall deliver to the Commission a copy of each private letter or other ruling issued by the Internal Revenue Service with respect to the proposed securitization transaction, the securitization bonds, or any other related matter. Similarly, Consumers Energy Company shall provide the Commission with a copy of each registration statement, prospectus, or any other closing documents filed with the Securities and Exchange Commission as part of its securitization transaction immediately following the filing of the original document.

S. This financing order, together with the securitization charges authorized by the order, shall be binding upon Consumers Energy Company and any of its successors or affiliates that provide distribution service directly to customers in Consumers Energy Company's service area as of the initial date of issuance of the securitization bonds, as well as any other entity that provides distribution services to customers within that service area. This order is also binding upon any servicer or other entity responsible for billing and collecting securitization charges on behalf of the owners of securitization property, and upon any successor to the Commission.

T. Subject to compliance with the requirements of this financing order, Consumers Energy Company and each special purpose entity that it creates shall be afforded flexibility in establishing the terms and conditions of the securitization bonds, including the final structure of the special purpose entity as either a business trust or limited liability company, repayment schedules, including the initial start date of principal amortization, term, payment dates, maturity dates, collateral, credit enhancement, interest rate swaps, other hedging arrangements, required debt service, reserves, interest rates, indices, other reasonable and necessary financing costs, and the ability of Consumers Energy Company, at its option, to cause the special purpose entity to issue one or more series of securitization bonds. Consumers Energy Company and each of its special purpose entities are authorized to issue securitization bonds having a variable rate of interest and to use interest rate swaps and other hedging arrangements to obtain the best rates possible for the securitization bonds. In that case, the resulting securitization charge shall be converted to, and billed as, a fixed charge subject to true-up in the manner approved by this order.

U. All 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 and a valid and enforceable lien and security interest in the securitized property will be created following the execution and delivery of the applicable security agreement.

V. Consistent with the terms of this financing order, Consumers Energy Company shall first use the actual cost savings arising from securitization for general electric utility purposes and shall refrain from paying any extraordinary dividends to CMS until further order of the Commission. The Commission anticipates making determinations in a general rate case proceeding involving all electric rate classes regarding the appropriate use of such savings.

W. Consumers Energy Company shall file a report, within 30 days following the receipt of all or any portion of the proceeds from the sale of its securitization bonds and quarterly thereafter until all bond proceeds have been disbursed, specifying (1) the gross amount of proceeds arising from the sale of those bonds, (2) any amounts expended for payment of initial other qualified costs relating to that sale, (3) the amount of proceeds remaining after payment of those costs, (4) the precise type and amount of debt retired through use of those proceeds, (5) a comparison of the company's budgeted electric utility capital expenditures with its actual electric utility capital expenditures, (6) information regarding how the company's use of securitization proceeds directly or indirectly affects the balance sheet and financial condition of its corporate parent or any of the parent's subsidiaries and affiliates, and (7) an identification of all dividends from the company to its parent including a detailed description of how the parent uses such dividends to stabilize its financial condition. The initial report filed following each receipt of securitization bond proceeds shall include a copy of the closing documents (generally referred to as the "closing transcript") arising from the sale of those bonds. In addition to filing the required reports with the Commission, Consumers shall simultaneously provide a copy of each required report to the Governor, the Attorney General, the Majority Leader of the Michigan State Senate, the Minority

Leader of the Michigan State Senate, the Speaker of the Michigan House of Representatives, and the Minority Leader of the Michigan House of Representatives.

X. In the event that a decline in interest rates or other change in market conditions leads Consumers Energy Company to refinance any of its securitization bonds, Consumers Energy Company shall file, within 7 days, a report disclosing the details of that refinancing.

Y. Consumers Energy Company shall continually monitor the bond market and shall notify the Commission, within 7 days, of (1) any reduction in applicable bond rates or other change in market conditions that might make refinancing its securitization bonds economically advantageous, and (2) the permissible steps available under the bond covenants, if any, Consumers Energy Company intends to take as a result of that reduction or change.

Z. All amortization, accounting, ratemaking approvals, and other authorizations provided for in this financing order shall be tolled pending Consumers Energy Company's express written acceptance of all conditions and limitations that the order places on the utility.

AA. Following Consumers Energy Company's express written acceptance of all conditions and limitations established by this financing order, the order--and each of its terms--shall be irrevocable. Consumers Energy Company's acceptance likewise shall be irrevocable and, therefore, shall survive bankruptcy or any other change in the utility's legal or economic structure.

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 June 2, 2003.

/s/ Robert W. Kehres  
Its Acting 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 June 2, 2003.

\_\_\_\_\_  
Its Acting Executive Secretary

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** for a )  
financing order approving the securitization of )  
certain of its qualified costs. )  
\_\_\_\_\_ )

Case No. U-13715

**Concurring Opinion of Commissioner Robert B. Nelson**  
(Submitted on June 2, 2003)

I concur with the decision of the Commission today to authorize Consumers Energy Company (Consumers) to proceed with the issuance of securitization bonds covering up to \$554,323,000. I write separately for two reasons: (1) to distinguish my decision to join this opinion with my decision to dissent, in part, in Consumers' first securitization case (U-12505) and (2) to distinguish the authorization of Clean Air Act expenditures as qualified costs from the decision not to allow such authorization for the capital improvements at the Palisades plant.

With respect to my opinion concurring in part and dissenting in part in U-12505, I indicated that "the Commission has consistently required approval of the necessary accounting changes before 'determining' regulatory assets." I was referring to the statutory requirement in Section 10h(g) of Act 142 that, regulatory assets of a utility, before they can be deemed "qualified costs" and eligible for securitization, should be "determined" to be so by the Commission. My contention was that, unlike other costs that the Commission may "determine" to

be unlikely to be collected in a competitive market, the use of the past tense with regard to regulatory assets required some previous approval by the Commission. The Michigan Court of Appeals, in Attorney General v PSC, 247 Mich App 35 (2001) specifically rejected this contention. The Court indicated, at p. 42 of its opinion:

“Thus, because the plain language of the statute expressly authorizes the PSC to determine whether a particular item is a qualified cost under sub-section 10h(g), our inquiry is at an end. Contrary to appellant’s contentions, the statute does not indicate that there is a time limit requirement on this determination . . . .”

The Court thus affirmed this Commission’s decision to authorize the securitization of the pre-2001 investment in Palisades, even though there was no previous determination that the plant was a regulatory asset. I am bound by this opinion and therefore recognize that the Commission can, in the context of the proofs provided in this proceeding, make regulatory asset determinations.<sup>1</sup> However, it is important to emphasize, as the financing order issued today does, that Act 142 provides the Commission with broad discretion to make these determinations. In exercising our discretion, we should look at Acts 141 and 142 in concert. When this is done, it is clear that pre-2003 Clean Air Act costs incurred by Consumers should be classified as qualified costs<sup>2</sup> and capital improvements at Palisades should not be so classified.

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<sup>1</sup> Act 142 is unique among Commission statutes in authorizing regulatory asset determinations by the Commission. My opinion in this case should not be construed to address the process for recognizing regulatory assets outside of Act 142. See my separate opinion In Re Mich Con U-13060, December 20, 2001.

<sup>2</sup> The authorization of recovery of Clean Air Act compliance costs under PA 142 is not dispositive of whether the Commission should permit the recovery of stranded costs incurred after the enactment of PA 141.

When we examine Acts 141 and 142, we find specific reference to implementation costs and costs "incurred as a result of . . . federal governmental actions". We find no such reference to capital improvements at nuclear plants, which tells me that the Legislature preferred that these costs should be dealt with in the traditional ratemaking process. In fact, some of the Palisades improvements may be eligible for recovery under another process, the one dictated by 2002 PA 609.

In my view, Consumers has demonstrated on this record that it incurred costs, prior to 2003, that were necessary to meet the emissions requirements of Title I of the Clean Air Act. In contrast, the record does not demonstrate that the Palisades investment after 2000 was mandated by federal law. Although the record in this case was limited by the constraints of the statute, the Commission's interpretation of Section 10i(2)(d) that the amount securitized is capped at a level below that sought by Consumers provides further assurance that only reasonable and prudent Clean Air Act expenses are being securitized.

Finally, the fact that the Commission has previously foreclosed Consumers from seeking recovery of Clean Air Act compliance costs in stranded cost proceedings distinguishes them from the Palisades capital improvements. Consumers is free to demonstrate in this proceeding, or in a stranded cost case, that because of these capital improvements, power generated at Palisades is not marketable. It has failed to do so. In my separate opinion in Detroit Edison's securitization case, U-12478, November 2, 2000, where I disagreed with the

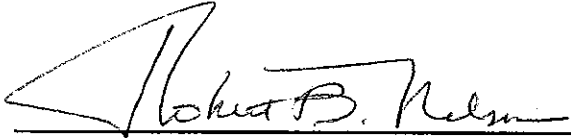
majority's finding that capital improvements at Fermi II should be securitized, I indicated that Detroit Edison had also failed to do so and stated:

"Moreover, Edison has made no attempt to demonstrate that these capital additions would be costs it would be unlikely to 'collect in a competitive market', per the test in Section 10h(g) of Act 142."

The Commission has authorized the securitization of those portions of the investments in Fermi II and Palisades that were thoroughly audited and reviewed in rate case proceedings. The post-2000 capital investments in those plants have not been thoroughly audited and reviewed.

Accordingly, I concur with the opinion issued today.

MICHIGAN PUBLIC SERVICE COMMISSION

  
Robert B. Nelson, Commissioner

**Attachment A**

Case No. U-13715  
 Exhibit A- (FAE-1)  
 Witness FA Ernst, Jr  
 Date March 2003

**Consumers Energy Company**  
**DEVELOPMENT OF THE GROSS METHOD OF SECURITIZATION OF QUALIFIED COSTS**  
 (\$000)

Line	Securitized Qualified Costs	12/31/2003 Balance (a)	1999-2003 Return On Investment (b)	Issuance Costs (1) (c)	Total 12/31/2003 Balance (d)
1	Implementation Costs W/ Carrying Costs @ 7.00%	\$64,108	\$0	\$1,740	\$65,848
2	Electric Pension Costs	\$0	\$0	\$0	\$0
3	Palisades New Capital	\$0	\$0	\$0	\$0
4	Clean Air Allowance Title I	\$405,309	\$139,120	\$14,780	\$559,209
5	Sub-Total Amount To Be Securitized	\$469,417	\$139,120	\$16,521	\$625,057
6	Add: Liquidity Subaccount @ 3.00%				\$19,332
7	Total Amount To Be Securitized				\$644,389

Note (1): Amounts include Issuance Costs based on rate stated below  
 U-12505 Exhibit CE-7 (FAE - 4) Line A 3 x 65%  
 U-12505 Exhibit CE-7 (FAE - 4) Lines A 4-5  
 Percentage of Issuance Costs to Gross Securitization

460,467  
 12,500  
 2.71463%

Source: Column (a) Line 1 - Workpaper FAE 14, Line 180, Column 2003  
 Column (a) Line 2 - Workpaper FAE 18, Line 231, Column 2003  
 Column (a) Line 3 - Workpaper FAE 16, Line 191+Line 207, Column 2003  
 Column (a) Line 4 - Workpaper FAE 14, Line 153, Column 2003  
 Column (b) Line 4 - Exhibit A- (FAE-6), Line 11  
 Column (c) - Column (a) x 2.71463% + Column (b) x 2.71463%  
 Column (d) Line 6 - Exhibit A- (FAE-4), Page 1 of 2, Dela Year 3, Column (i)

**Consumers Energy Company**  
**Demonstration of Compliance with Act 142 Section 10i(1) and Section 10i (2)(d)**  
**(\$000)**

Case No. U-13715  
 Exhibit A-\_\_\_\_ (FAE-3)  
 Witness: FA Ernst, Jr  
 Date: March 2003  
 Page 1 of 2

**A. Demonstration of Compliance with Act 142 Section 10i(1)**

Line	Description	Amount \$1000s (a)	
1	Discount Rate		10.63%
2	NPV of Annual Revenue of Regulatory Assets, Implementation Costs, Pension Liability, and Issuance Costs	\$ 554,323	
3	NPV of Total Revenue of Securitization Bond Payments (Est)	\$ 392,080	
4	Amount in Satisfaction of Statutory Requirements	\$ 162,243	

**B. Demonstration of Compliance with Act 142 Section 10i (2)(d)**

Line	Description	Amount \$1000s (b)	
5	Discount Rate		10.630000%
6	NPV of Annual Rev Req of Regulatory Assets, Implementation Costs and Issuance Costs (Over the Life of the Bonds)	\$ 554,323	
7	Total Amount Securitized	644,389	
8	Amount in Satisfaction of Statutory Requirements	\$ (90,066)	

Source: Line 1 - Workpaper FAE-51  
 Line 2 - Workpaper FAE-20, Line 276 + Exhibit A-\_\_\_\_ (FAE-1), Line 5(c) + Line 6(d)  
 Line 3 - NPV of Exhibit A-\_\_\_\_ (FAE-3), Page 2, Lines 10-23  
 Line 5 - Exhibit A-\_\_\_\_ (FAE-4)  
 Line 6 - Workpaper FAE-20, Line 277 + Exhibit A-\_\_\_\_ (FAE-1), Line 5(c) + Line 6(d)  
 Line 7 - Exhibit A-\_\_\_\_ (FAE-1), Line 7(d)

**CONSUMERS ENERGY COMPANY**

**Implementation Costs  
(\$000)**

Case No. U-13715  
Exhibit A - \_\_\_\_ (FAE-5)  
Witness: FA Ernst, Jr  
Date: March 2003  
Page 1 of 2

Line No.	Year	1998	1999	2000	2001	2002	2003
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
	<b>Implementation Costs</b>						
1	1998	\$15,376	\$16,452	\$17,604	\$18,836	\$20,155	\$21,566
2	1999		\$25,156	\$26,917	\$28,801	\$30,817	\$32,974
3	2000			\$19,587	\$20,958	\$22,425	\$23,995
4	2001				\$7,947	\$8,503	\$9,099
5	2002					\$2,221	\$2,376
6	BridgeCo					\$4,893	\$5,236
7	2003						\$1,546
		\$15,376	\$41,608	\$64,108	\$76,542	\$89,014	\$96,791
8	<b>Total Recoverable Implementation Charges</b>						<b>\$96,791</b>
9	Carrying Costs(@7%)		\$1,076	\$2,913	\$4,488	\$5,358	\$6,231

Source:

- Line 1(b) - Workpaper FAE-33
- Line 2(c) - Workpaper FAE-34
- Line 3(d) - Workpaper FAE-35
- Line 4(e) - Workpaper FAE-36
- Line 5(f) - Exhibit A-\_\_\_\_ (RTC-5), Line 11
- Line 6(f) - Exhibit A-\_\_\_\_ (FAE-5), Page 2 of 2, Line 8
- Line 7(g)

**Consumers Energy Company**  
**Clean Air Act Title I**  
**Determination of Return On Investment to be Securitized**  
**1999-2003**  
**(\$000)**

Case No. U-13715  
 Exhibit A - \_\_\_ (FAE-6)  
 Witness: FA Ernst, Jr  
 Date: March 2003

<u>Line</u>	<u>Description</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
1	Net Plant & CWIP Balance	13,519	103,800	295,716	395,861	373,419
2	Less: IDC	0	3,247	6,619	11,603	0
3	Adjusted Rate Base For Determining ROI	13,519	100,553	289,097	384,258	373,419
4	Pre Tax Weighted Average Cost of Capital	10.63%	10.63%	10.63%	10.63%	10.63%
5	Pre-Tax Return On Investment	1,437	10,689	30,731	40,847	39,694
						2003
			<u>Factor</u>			<u>Dollars</u>
6	1999 ROI @ 2003 Dollars (Pre-Tax ROI x (1+WACC)^4)		1.49793			2,153
7	2000 ROI @ 2003 Dollars (Pre-Tax ROI x (1+WACC)^3)		1.35400			14,473
8	2001 ROI @ 2003 Dollars (Pre-Tax ROI x (1+WACC)^2)		1.22390			37,612
9	2002 ROI @ 2003 Dollars (Pre-Tax ROI x (1+WACC)^1)		1.10630			45,189
10	2003 ROI @ 2003 Dollars (Pre-Tax ROI x (1+WACC)^0)		1.00000			39,694
11	Total Clean Air Act ROI To Be Securitized					139,120

Source:

- Line 1 - Workpaper FAE-14, Line 160
- Line 2, Workpaper FAE-14, Line 165
- Line 4 - Workpaper FAE-51

**Consumers Energy Company**  
**Summary of Compliance with Act 142 Section 10(i)(1) and Section 10(i)(2)(d)**  
**For Each Qualified Cost To Be Securitized**  
**(\$000)**

Case No. U-13715  
 Exhibit A - (FAE-7)  
 Witness: FA Ernst, Jr  
 Date: March 2003

**Section 10(i)(1)**

Line	Description	NPV of Annual Revenue of Regulatory Assets, Implementation Costs, Pension Liability, and Issuance Costs (a)	Pro-Rata NPV of Total Revenue of Securitization Bond Payments (b)	Amount in Satisfaction of Statutory Requirements (c)
1	Implementation Costs W/ Carrying Costs @ 7.00%	58,956	41,305	17,652
2	Electric Pension Costs	0	0	0
3	Palisades New Capital	0	0	0
4	Clean Air Allowance Title I	495,367	350,775	144,592
5	Sub-Total Amount To Be Securitized	554,323	392,080	162,243

**Section 10(i)(2)(d)**

Line	Description	NPV of Annual Rev Req of Regulatory Assets, Implementation Costs, Pension Liability, and Issuance Costs (Over Life of Bond) (a)	Total Amount Securitized (b)	Amount in Satisfaction of Statutory Requirements (c)
6	Implementation Costs W/ Carrying Costs @ 7.00%	73,401	67,885	5,516
7	Electric Pension Costs	0	0	0
8	Palisades New Capital	0	0	0
9	Clean Air Allowance Title I	653,516	576,505	77,011 (2)
10	Sub-Total Amount To Be Securitized	726,917	644,390	82,527

Note: (1) Individual amounts are the pro-rated portion of the \$670,448 shown on Line 3 of Exhibit A - (FAE-3), Page 1 of 2, based on the Total Amounts shown on Exhibit A - (FAE-1), Column (d), lines 1-5

(2) Since traditional ratemaking uses net plant to calculate the revenue requirement, the amount to be securitized would be limited if Clean Air Act is the only securitized class of qualified cost.

Source:  
 Line 1, Column (a) - Workpaper FAE-20, Line 254 + Exhibit A - (FAE-1), Line 1, Column (c) + Exhibit A - (FAE-1), Line 1, Column (d)/97 -Exhibit A - (FAE-1) Line 1, Column (d)  
 Line 2, Column (a) - Workpaper FAE-20, Line 269 + Exhibit A - (FAE-1), Line 2, Column (c) + Exhibit A - (FAE-1), Line 2, Column (d)/97 -Exhibit A - (FAE-1) Line 2, Column (d)  
 Line 3, Column (a) - Workpaper FAE-20, Line 261 + Exhibit A - (FAE-1), Line 3, Column (c) + Exhibit A - (FAE-1), Line 3, Column (d)/97 -Exhibit A - (FAE-1) Line 3, Column (d)  
 Line 4, Column (a) - Workpaper FAE-20, Line 247 + Exhibit A - (FAE-1), Line 4, Column (c) + Exhibit A - (FAE-1), Line 4, Column (d)/97 -Exhibit A - (FAE-1) Line 4, Column (d)  
 Line 5, Column (a) - Workpaper FAE-20, Line 255 + Exhibit A - (FAE-1), Line 1, Column (c) + Exhibit A - (FAE-1), Line 1, Column (d)/97 -Exhibit A - (FAE-1) Line 1, Column (d)  
 Line 6, Column (a) - Workpaper FAE-20, Line 271 + Exhibit A - (FAE-1), Line 2, Column (c) + Exhibit A - (FAE-1), Line 2, Column (d)/97 -Exhibit A - (FAE-1) Line 2, Column (d)  
 Line 7, Column (a) - Workpaper FAE-20, Line 264 + Exhibit A - (FAE-1), Line 3, Column (c) + Exhibit A - (FAE-1), Line 3, Column (d)/97 -Exhibit A - (FAE-1) Line 3, Column (d)  
 Line 8, Column (a) - Workpaper FAE-20, Line 250 + Exhibit A - (FAE-1), Line 4, Column (c) + Exhibit A - (FAE-1), Line 4, Column (d)/97 -Exhibit A - (FAE-1) Line 4, Column (d)

Consumers Energy Company

Determination of Annual Revenue Requirement  
Associated with Securitized Assets  
(\$000)

	2003	2004	2005	2006	2007
<b>RATE INCREASE IN 2006</b>					
244 Revenue Requirement Clean Air Act	63,289	70,865	67,552	132,846	129,532
245 Staggered Rate Increase	0.00%	0.00%	0.00%	100.00%	100.00%
246 Adjusted Revenue Requirement	0	0	0	132,846	129,532
247 NPV Over Life @	463,292				
248	10.63%				
249 Adjusted Revenue Requirement	0	0	0	132,846	129,532
250 NPV 14 Yrs @	621,441				
251	5.076%				
252 Revenue Requirement Implementation Costs	0	0	0	27,249	16,412
253 Staggered Rate Increase	0.00%	0.00%	0.00%	100.00%	100.00%
254 Adjusted Revenue Requirement	0	0	0	27,249	16,412
255 NPV Over Life @	55,180				
256 NPV 14 Yrs @	69,624				
257	10.63%				
258 Revenue Requirement Palisades	25,859	26,855	25,365	38,638	37,147
259 Staggered Rate Increase	0.00%	0.00%	0.00%	100.00%	100.00%
260 Adjusted Revenue Requirement	0	.0	0	38,638	37,147
261 NPV Over Life @	0				
262	10.63%				
263 Adjusted Revenue Requirement	0	0	0	38,638	37,147
264 NPV 14 Yrs @	0				
265	5.076%				
266 Revenue Requirement Pension Costs	25,200	29,400	31,500	39,900	47,600
267 Staggered Rate Increase	0.00%	0.00%	0.00%	100.00%	100.00%
268 Adjusted Revenue Requirement	0	0	0	39,900	47,600
269 NPV Over Life @	0				
270	10.63%				
271 NPV 14 Yrs @	0				
272	5.076%				
273 Total NPV Over Life @ Excluding Palisades	518,471				
274 Total NPV 14 Yrs @ Excluding Palisades	691,065				
275	10.63%				
276 Total NPV Over Life @ Including Palisades	518,471				
277 Total NPV 14 Yrs @ Including Palisades	691,065				

**Consumers Energy Company**  
Determination of Annual Revenue Requirement  
Associated with Securitized Assets  
(\$'000)

	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>RATE INCREASE IN 2006</b>									
244 Revenue Requirement Clean Air Act	126,219	122,906	119,592	47,671	44,358	41,044	37,731	26,971	7,542
245 Staggered Rate Increase	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
246 Adjusted Revenue Requirement	126,219	122,906	119,592	47,671	44,358	41,044	37,731	26,971	7,542
247 NPV Over Life @									
248									
249 Adjusted Revenue Requirement	126,219	122,906	119,592	47,671	44,358	41,044	37,731	26,971	7,542
250 NPV 14 Yrs @									
251									
252 Revenue Requirement Implementation Costs	15,514	14,617	13,719	0					
253 Staggered Rate Increase	100.00%	100.00%	100.00%	100.00%					
254 Adjusted Revenue Requirement	15,514	14,617	13,719	0					
255 NPV Over Life @									
256 NPV 14 Yrs @									
257									
258 Revenue Requirement Palisades	35,657	34,167	32,676	16,423	912	912	912	912	912
259 Staggered Rate Increase	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
260 Adjusted Revenue Requirement	35,657	34,167	32,676	16,423	912	912	912	912	912
261 NPV Over Life @									
262									
263 Adjusted Revenue Requirement	35,657	34,167	32,676	16,423	912	912	912	912	912
264 NPV 14 Yrs @									
265									
266 Revenue Requirement Pension Costs	48,300	50,400	51,800	52,500	49,700	51,100	47,600	48,300	49,000
267 Staggered Rate Increase	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
268 Adjusted Revenue Requirement	48,300	50,400	51,800	52,500	49,700	51,100	47,600	48,300	49,000
269 NPV Over Life @									
270									
271 NPV 14 Yrs @									
272									
273 Total NPV Over Life @ Excluding Palisades									
274 Total NPV 14 Yrs @ Excluding Palisades									
275									
276 Total NPV Over Life @ Including Palisades									
277 Total NPV 14 Yrs @ Including Palisades									

**Consumers Energy Company**

Determination of Annual Revenue Requirement  
Associated with Securitized Assets  
(\$000)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
151									
152		0	178,313	178,313	405,309	405,309	405,309	405,309	405,309
153	0	693	4,047	9,448	31,890	63,061	94,232	125,402	156,573
154	0	57,902	121,450	226,996	0	0	0	0	0
155	13,519	103,800	295,716	395,861	373,419	342,248	311,077	279,907	248,736
156	13,519	103,800	295,716	395,861	373,419	342,248	311,077	279,907	248,736
157									
158									
159	0	13,519	103,800	295,716	395,861	373,419	342,248	311,077	279,907
160	13,519	103,800	295,716	395,861	373,419	342,248	311,077	279,907	248,736
161	6,760	58,660	199,758	345,788	384,640	357,833	326,663	295,492	264,321
162	10.63%	10.63%	10.63%	10.63%	10.63%	10.63%	10.63%	10.63%	10.63%
163									
164		13,519	103,800	295,716	395,861	373,419	342,248	311,077	279,907
165	0	0	3,247	6,619	11,603	0	0	0	0
166	13,519	13,519	100,553	289,097	384,258	373,419	342,248	311,077	279,907
167									
168		1,437	10,689	30,731	40,847	39,694	36,381	33,068	29,754
169	693	693	3,354	5,401	22,442	31,171	31,171	31,171	31,171
170									
171		2,130	14,043	36,132	63,289	70,865	67,552	64,238	60,925
172								21,015	21,015
173								18,108	18,108
174								29,485	29,485
175					63,289	70,865	67,552	132,846	129,532

**Implementation Costs**

176				64,108	64,108	64,108	64,108	64,108	51,286
177				0	0	0	0	0	0
178				0	0	0	0	12,822	12,822
179				0	0	0	0	51,286	38,465
180				64,108	64,108	64,108	64,108	4,488	3,590
181				64,108	64,108	64,108	64,108	12,822	12,822
182				0	0	0	0	17,309	16,412
183				0	0	0	0	0	0
184				0	0	0	0	5,138	5,138
185				0	0	0	0	4,802	4,802
186				0	0	0	0	0	0
187				0	0	0	0	0	0
188				0	0	0	0	27,249	16,412



## Attachment B

### The Association of Businesses Advocating Tariff Equity's Proposed Findings of Fact and the Commission's Responses

1. "Collecting securitization costs from customers through a uniform energy surcharge for all rate classes results in a reallocation of costs to the various rate classes."

Answer -- The Commission finds that this proposed finding of fact is not true.

2. "A uniform of surcharge does not reflect cost causation and results in certain rate classes being charged for costs that are incurred to provide service to other rate classes."

Answer -- The Commission finds that this proposed finding of fact is not true.

3. "Over 70% of the costs that Consumers Energy is proposing to securitization are fixed generation costs."

Answer -- The Commission finds that this proposed finding fact does not control the outcome of this proceeding.

4. "In Consumers' last electric rate case, Case No. U-10865, the Commission concluded that fixed generation costs should be allocated to customers utilizing the 75% demand/ 25 % energy allocation method."

Answer -- The Commission finds that this proposed finding fact does not control the outcome of this proceeding.

5. "In Consumers' last gas rate case, Case No. U-13000, rates were established that did not contain any interclass subsidies."

Answer -- The Commission finds that this proposed finding fact does not control the outcome of this proceeding.

6. "Using a uniform surcharge to recover securitization costs will produce interclass rate subsidies."

Answer -- The Commission finds that this proposed finding of fact is not true.

7. "Excluding the securitized assets from the calculation of stranded costs will overstate the costs associated with open access."

Answer -- The Commission finds that this proposed finding fact does not control the outcome of this proceeding.