

STATE OF MICHIGAN

BEFORE THE PUBLIC SERVICE COMMISSION

**In the matter of the application of)
CONSUMERS ENERGY COMPANY)
For determination of net stranded costs)
and for approval of net stranded cost)
recovery charges)**

Case No. U-13380

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

I. Executive Summary

The National Energy Marketers Association hereby submits Comments on Staffs' April 4, 2003, Stranded Cost Strawman #2 in Case No. U-13380. The National Energy Marketers Association (NEM) is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy, financial services and technology firms has come together under NEM's auspices to forge consensus and to help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas and electricity in a competitively neutral fashion that bring suppliers and consumers together at the lowest possible cost;
- Standards rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecom, digital communications and Internet services to lower the cost of energy and related services.

As an initial matter, NEM wishes to encourage the staff and Commission to promote a net stranded cost recovery mechanism that is fair to all stakeholders and is competitively neutral. NEM members believe that Michigan could be an excellent market in which to invest and serve consumers. Additionally, NEM commends the Commission for its recognition of the high importance of establishing rate certainty for customers and marketers and ordering this collaborative process where all stakeholders can contribute to a workable solution. However, Staff's attempt to create certainty falls significantly short of the Commission's goals and what is required for development of a robust competitive market as was contemplated in Act 141.

II. The Table of Charges Does Not Eliminate Uncertainty

The Staff has proposed a table of monthly stranded cost charges to be assessed solely to ROA customers based upon the percentage of total retail load having switched to ROA service through the preceding month. The charge can fluctuate monthly however the maximum stranded cost charge based on a switch of 30% or more of the retail load to ROA is 5 mills per kWh. This 5 mill maximum charge presumably acts as a cap but will remain in place only through to the next annual reconciliation and ultimately only until the implementation of new base rates, predicted to be January 1, 2006. A 5 mill cap provides some level of certainty at a high price for a short period, and NEM is concerned that a fluctuating charge based on monthly switch rates will force consumers and retailers to continue to face even greater risks and uncertainties than the current process affords. These fluctuating charges put marketers at considerable and unnecessary financial risk given the thin margins that already exists in this market.¹ Marketers will be incented to price offerings based on the maximum 5-mill charge (regardless of the then current level of ROA migration) and/or ROA customers will be forced to assume the monthly risk that their anticipated savings will be offset by the fluctuating charge. In either case, the result will undermine the development of a viable competitive market, increase the costs and risks of doing business in the state and penalize more efficient alternative suppliers in direct relationship to their success rate.

III. The Annual Reconciliation Process Does Not Alleviate Uncertainty

Instead of eliminating the annual uncertainty, the strawman adds monthly variability to the equation, while retaining the annual reconciliation. As noted by staff:

MCL 460.10a(9) requires the Commission to conduct an annual reconciliation proceeding to determine over- or under-recovery of net stranded costs. During this proceeding, parties may challenge whether the utility has assessed the correct charge in accordance with the above table.

¹ See Direct Testimony of Roy J. Brunner on Behalf of Ontario Power Generation, Inc., Case No. U-13380, as well as Mr. Brunner's testimony submitted on behalf of NEM in Case No. U-13350, in which he testified that "marketers must be compensated for market risk, credit risk, the cost of capital and other significant costs incurred to translate a wholesale transaction into a competitive retail offering as well as numerous non-commodity business expenses, including labor, systems and office facilities."

It is likely based on history that the utilities will claim that stranded costs were under-recovered and they will file to recover those under-recovered amounts in a subsequent period. Therefore there appears to be no relief from the annual uncertainty inherent in the annual reconciliation process. In the event that the Commission determines in annual reconciliation proceedings that stranded costs were under-recovered, it is unclear in the strawman how those costs will be recovered (i.e. within the 5 mill cap or as an additional surcharge).

IV. The Proposed Schedule of Charges Is Presumptive and Not Tied to the Actual Incidence of Stranded Costs

These scheduled charges do not represent actual "net stranded costs" incurred by the utilities, rather there appears to be a presumption that as customers switch, the incidence of "net stranded costs" will escalate. NEM does not agree that the utilities should collect charges for costs that may not be incurred. NEM also does not agree that even in the event there are stranded costs that the incidence is in a direct relation to switch rates. NEM recommends that net stranded costs be computed and recovered after a reasonable migration rate has been achieved.

V. The Annual Reconciliation Process Needs Clarification

As noted above, the strawman does not eliminate the annual reconciliation and states that: "During this proceeding, parties may challenge whether the utility has assessed the correct charge in accordance with the above table." NEM questions whether the reconciliation will be to determine whether or not stranded costs were actually incurred in the prior period as well as whether over- or under- recoveries through the stranded cost charge occurred. If not, such a procedure will simply assure that the charges were fully collected in accordance with the table without regard to the actual incidence of valid stranded costs. In the event that a formal reconciliation determines that actual net stranded costs were under recovered, the imposition up-front of a presumptive stranded cost charge will: (1) significantly distort price signals, (2) prevent many customers from switching to competitive suppliers, (3) prevent some marketers from entering the market, and (4) cause others to assume unreasonable risk.

VI. Stranded Costs Must Be Collected in a Competitively Neutral Fashion

NEM urges the Staff and Commission to implement a more equitable and competitively neutral alternative. Specifically, net stranded cost charges should be recovered by a de minimus charge on all customers and not just ROA customers. NEM continues to strongly believe that effective competition cannot be achieved if stranded cost charges remain unpredictable and operate as an exit fee on ROA customers only. Additionally, NEM submits that a competitively neutral stranded cost recovery mechanism is the best solution because assessing this charge only on open access customers will operate contrary to its legislative intent and create a major barrier to the development of the competitive market in Michigan. Ironically, the more successful the program the higher the penalty.

NEM supports the proper recovery of net stranded costs, if and when, they occur. However, NEM submits that recovering net stranded costs in advance and adjusting charges monthly solely from departing customers will (1) punish migrating customers, (2) increase the costs to serve Michigan customers, (3) slow migration and the development of functional retail markets and (4) encourage utilities to continue to invest in competitive services thereby further increasing future stranded costs. In the end, Michigan consumers will pay a far higher transition cost, the longer utilities remain in competitive lines of businesses.

The benefits of a competitively neutral charge to all customers is obvious. As noted in testimony,

[Since] the charge would be “non-bypassable” and applied to all customers who are legally subject to such a charge, full collection each year is a virtual certainty. Unlike the uncertainty surrounding the forecasts of ROA deliveries (especially with the stranded cost issue unresolved), Consumers has a good understanding of its load and routinely forecasts total electric sales. Variations in total sales forecasts are likely to be within a fairly narrow range, whereas variations from forecasted ROA deliveries could be very large. With significant under-collections unlikely if the charge is applied to all customers who are legally subject to such a charge, fewer dollars would be rolled into regulatory asset accounts for later collection, and carrying costs that would ultimately be borne by customers would be greatly reduced.²

Additionally, NEM submits that because Michigan does not have a "bottoms up" rate structure it is unreasonably difficult for the utilities or the Commission to determine which costs are "stranded". Since in Michigan the "price to compare" is a largely a proxy price, NEM strongly believes that adding another monthly guess of up to 5 mills on only ROA customers is inherently unfair and anticompetitive.

VII. The Commission Has the Authority to Implement A Competitively Neutral Stranded Cost Charge

In Case U-12639 the Commission took a proactive approach in setting a methodology for determining stranded costs. The Commission expressly rejected the approach it had previously adopted in Case U-11290. The Commission reasoned that despite the language in Section 10a(5) of Act 141 recognizing the enforceability of orders on recovery of stranded costs entered prior to Act 141, "that MCL 460.10a(10) [] permits the Commission to consider other approaches. Having looked at alternatives, the Commission now concludes that the approach approved in Case No. U-11290 is not preferable to the Staff's proposal in this case." (Case U-12639, Opinion and Order, issued December 20, 2001, at page 11). In essence, given the increased experience with competitive markets, the Commission revised the methodology. NEM urges the Commission to take a similar proactive approach to its examination of stranded cost charges in the instant case.

² Direct Testimony of Roy J. Brunner on Behalf of Ontario Power Generation, Inc., Case No. 13380, August 9, 2002, at page 18.

The Commission was vested with a great deal of discretion by the Legislature with respect to determination of stranded costs. Section 10a(10) permits the Commission to consider, "[a]ny other method the commission considers appropriate." Therefore, notwithstanding prior decisions to the contrary, it is entirely appropriate for the Commission to decide to implement competitively neutral stranded cost charges in the instant case. NEM further notes that Consumers Witness Torrey states that, "[t]o the extent the suggestion of applying the stranded cost recovery charge to all customers could be lawfully adopted, Consumers Energy would not object." (Torrey Rebuttal Testimony at page 21).

VIII. Revenue Shortfalls Related to POLR Service Are Not Stranded Costs

NEM urges the Commission to ensure that any costs that are unavoidable because utilities must incur such costs to perform Provider of Last Resort (POLR)-related services be recovered through adjustments to the rates charged for POLR-related services. Utilities should not be permitted to recover revenue shortfalls through a transition charge based on a formula that assumes all unavoidable costs are caused by migration rather than by the necessity to provide POLR-related services.

Providing revenue recovery based on estimates of migration and the assumption that migration itself rather than the cost of POLR-related services causes the revenue shortfall will under-price POLR-related services and unfairly penalize customers who migrate. Any determination of costs that are truly stranded must necessarily address the issue of whether the "unavoidable" costs at issue are, in fact, costs properly attributable to POLR-related services.

The Commission should require utilities to provide a sufficient explanation of the costs they claim are "unavoidable" because of service obligations to remaining customers and/or to "unavoidable costs" relating to provider of last resort services. The embedded costs of rendering competitive versus POLR-related services should be separately set forth and identified. This is a proper, just and reasonable way to avoid customer confusion and to avoid hidden cross-subsidies in delivery rates. Any costs or lost revenues not connected with utilities provision of POLR-related services and fully bundled sales service should be added to distribution rates in a competitively neutral fashion.

Additionally, NEM submits that the costs to provide POLR-related services to customers that return to utility service are operational costs similar to business costs that the utilities already incur to handle population growth. The amount of staff, power supply, etc. that the utility chooses to dedicate to hedge the risk of customers returning is a business decision that is the result of each utility's individual prediction and assessment of the risks regarding the likeliness of a future event and not a "stranded" cost.

IX. The Costs That Consumers Seeks to Recover May More Properly Be Defined as "Qualified Costs" Rather Than "Net Stranded Costs"

The costs that Consumers seeks to recover in this case may be more properly be defined as "qualified costs" under Act 142, rather than as "stranded costs" under Act 141.

Section 10h(g) of Act 142 states that:

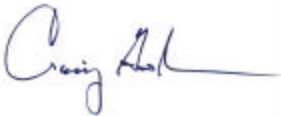
"Qualified costs" means an electric utility's regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commissions determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs . . . {MCL §460.10h(g)}

The costs that are the subject of this case are costs that Consumers claims to have incurred without regard to the number of customers who choose retail open access service. Therefore, such costs are more appropriately characterized as "qualified costs" and should not be treated as "stranded costs." Consumers may recover these costs through securitization bonds, as provided in Act 142. Such an approach would assure that the costs at issue in this case would be recoverable through a competitively neutral "non by passable charge."

X. Conclusion

For the reasons set forth herein, NEM urges the Commission to implement a competitively neutral stranded cost charge.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman", followed by a vertical line.

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