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MICHIGAN PUBLIC SERVICE COMMISSION (517) 377-0609

September 16, 1999

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

Via Hand Delivery

**RE: In the Matter, on the Commission's Own Motion, to Consider the
Restructuring of the Electric Utility Industry, et al
MPSC Case Nos. [REDACTED] U-11449; U-11451; U-11452; U-11453 and U-11454**

Dear Ms. Wideman:

Enclosed for filing in the above matter are an original and 4 copies of **Petition of Midland Cogeneration Venture Limited Partnership For Clarification or Rehearing of the Commission's August 17, 1999 Order.**

Also attached is the original Proof of Service with Service List. Please contact me if you have any questions. Thank you for your assistance.

Very truly yours,

HOWARD & HOWARD



Michael J. Brown

Enclosures

cc: w/enc: Service List
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION, ,

In the matter, on the Commission's own motion,)
to consider the restructuring of the electric)
utility industry.) Case No. U-1 1290
)

In the matter of the application of)
THE DETROIT EDISON COMPANY for authority)
to suspend implementation of its power supply cost) Case No. U-1 1449
recovery clause and related relief.)
)

In the matter of the request of)
CONSUMERS ENERGY COMPANY for) Case No. U-11451
approval of a retail open access tariff.)
)

In the matter of the request of)
THE DETROIT EDISON COMPANY for approval) Case No. U-1 1452
of a direct access tariff.)
)

In the matter of the request of)
CONSUMERS ENERGY COMPANY for authority)
to suspend its power supply cost recovery clause) Case No. U-1 1453
and related relief.)
)

In the matter of the request of)
CONSUMERS ENERGY COMPANY and)
THE DETROIT EDISON COMPANY for) Case No. U-1 1454
approval of a true-up mechanism in connection)
with the recovery of stranded costs.)
)

PETITION OF MIDLAND COGENERATION VENTURE
LIMITED PARTNERSHIP FOR CLARIFICATION
OR REHEARING OF THE COMMISSION'S
AUGUST 17, 1999 ORDER

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PETITION OF MIDLAND COGENERATION VENTURE
LIMITED PARTNERSHIP FOR CLARIFICATION
OR REHEARING OF THE COMMISSION'S
AUGUST 17, 1999 ORDER

Midland Cogeneration Venture Limited Partnership ("MCV"), by and through its attorneys, Howard & Howard, petitions the Michigan Public Service Commission ("Commission" or "MPSC") for clarification of its August 17, 1999 Order in the above dockets, or for rehearing of that Order, pursuant to Rule 403(R 460.17403), in the alternative. In this Petition, MCV respectfully requests the Commission clarify its position on the following issue:

The Commission should clarify that its intent in its August 17, 1999 Order is to unequivocally provide for full recovery by Consumers of the avoided cost rates, for both capacity and energy, previously approved by the Commission for Consumers' purchases from MCV before, during, and after the year 2007.

On Page 31 of the Commission's August 17, 1999 Order, the Commission addresses comments of various parties about the meaning of the decision by the United States District Court ("Federal Court") in *North American Natural Resources, Inc v Michigan Public Service Commission* (Case No. 5-98 CV-21 through 24)("Federal Court Decision") as it relates to the Customer Choice Orders. The Commission's response, however, is less than clear. Although the Commission acknowledged its duty (and apparent willingness) to comply with the Federal Court Decision, the Commission clouds the issue by indicating "the decision involves a hypothetical circumstance that cannot exist until 2008, at the earliest." MCV believes the issue addressed by the Federal Court Decision is not a "hypothetical circumstance" but involves a very real and immediate case or controversy. The Commission's statement on Page 31 of the August 17, 1999 Order that the Federal Court lawsuit involves a hypothetical circumstance that can be

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addressed “at the appropriate time” is an issue already decided adversely to the Commission by Judge Quist’s Order. As Judge Quist stated in his opinion:

Based upon its review of the Restructuring Orders, the Court agrees with Plaintiffs that the limitation on recovery of “stranded costs” beyond the year 2007 in the Restructuring Orders can be interpreted in a manner that violates Plaintiffs’ rights under PURPA to receive the full avoided cost rates from the utilities as set forth in their PPAs. . . .

The court previously rejected Defendants’ arguments that Plaintiffs have failed to present a case or controversy and that the Restructuring Orders do not violate PURPA because the MPSC has said that they do not do so. . . .

Defendants concede that PURPA prohibits them from altering the avoided cost rates once the MPSC has approved them and have freely acknowledged that their orders do not affect Plaintiffs’ rights under their PPAs in violation of PURPA. However, Plaintiffs were forced to file this action because Defendants would not acknowledge that the Restructuring Orders do not do indirectly what they cannot do directly: cause a reduction of Plaintiffs’ avoided cost rates by precluding the utilities from recovering their avoided costs from ratepayers. Frankly, in light of Defendants’ statement in their brief that “Commission-approved QF rates are recoverable by the utility from its ratepayers whether before or after 2007,” this Court cannot imagine why Defendants were unwilling to say so in their orders. . .

(Judge Quist’s Opinion and Order issued July 7, 1999, pages 12-13).

Judge Quist’s Opinion clearly and unequivocally rejected the arguments that MCV’s Federal Court lawsuit involved hypothetical, premature or uncertain circumstances. On the contrary, the Federal Court lawsuit was about how the Commission would interpret the Customer Choice Orders before, during and after 2007. As the Court noted, the Customer Choice Orders can be interpreted in a manner that violates plaintiffs’ rights under PURPA to receive the full avoided cost rates from the utilities as set forth in their PPAs. (Judge Quist’s Opinion and Order, page 12). Accordingly, Judge Quist concluded that plaintiffs are entitled to declaratory and injunctive relief in connection with their rights under PURPA and entered an order effective immediately which dictates what the Commission must do now, not only after 2007.

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Despite this unequivocal language from Judge Quist, the Commission's statement in its August 17, 1999 Order is less than clear on how it interprets the Customer Choice Orders and what it will do now to preserve the utilities' (and thus MCV's) rights to recover previously approved full avoided cost capacity and energy rates as part of the customer choice program. MCV respectfully requests the Commission to state, in the same kind of unequivocal language used by Judge Quist, that Commission-approved avoided cost rates are recoverable by Consumers from its ratepayers before, during, and after the year 2007. If the Commission's August 17, 1999 Order is intended to state anything other than such an unequivocal right to recovery of full avoided costs under PURPA, then MCV respectfully requests rehearing under Commission Rule 403 as to that part of the Commission's August 17, 1999 Order. Clearly, it would be an error of law to violate the injunction issued by the Federal Court and it would aid all parties for the Commission to simply state in clear and unambiguous language its intention to uphold the Federal Court Decision (unless reversed on appeal or superseded by future federal legislation). MCV suggests that the appropriate way for the Commission to clarify its August 17, 1999 Order is to remove the language "but the decision involves a hypothetical circumstance that cannot exist until 2008, at the earliest. The Commission will address the impact of that decision at the appropriate time." This eliminates the ambiguity.

In addition, the lack of clarity in the Commission's August 17, 1999 Order raises another interpretation concern for MCV. It is unclear whether the August 17, 1999 Order will be viewed as simply implementing the provisions of the Commission's Customer Choice Orders in U-1 1290 (which Judge Quist has ruled cannot be interpreted or applied as to deny MCV's PURPA rights) or as a new, stand-alone Order to which the Commission will not apply Judge Quist's ruling. Again, it would be an error of law to violate the injunction issued by the Federal Court to use the

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August 17, 1999 Order to circumvent Judge Quist 's order. Removing the above-quoted language would also clear up this aspect of the August 17, 1999 Order.

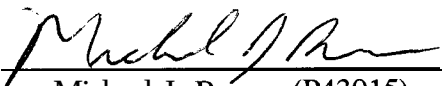
CONCLUSION

For the reasons stated above, MCV respectfully requests that the Commission clarify the above aspects of the August 17, 1999 Order or requests rehearing on the issues described above if necessary to a full determination of the issues presented by this petition.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.
Attorneys for Midland Cogeneration Venture
Limited Partnership

Dated: September 16, 1999

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own motion,
to consider the restructuring of the electric
utility industry.) Case No. U- 11290

In the matter of the application of
THE DETROIT EDISON COMPANY for authority
to suspend implementation of its power supply cost
recovery clause and related relief.) Case No. U-l 1449

In the matter of the request of
CONSUMERS ENERGY COMPANY for
approval of a retail open access tariff.) Case No. U-l 1451

In the matter of the request of
THE DETROIT EDISON COMPANY for approval
of a direct access tariff.) Case No. U-l 1452

In the matter of the request of
CONSUMERS ENERGY COMPANY for authority
to suspend its power supply cost recovery clause
and related relief.) Case No. U-11453

In the matter of the request of
CONSUMERS ENERGY COMPANY and
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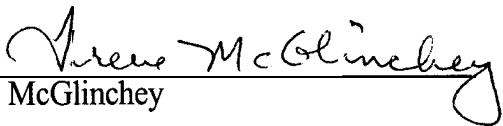
PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

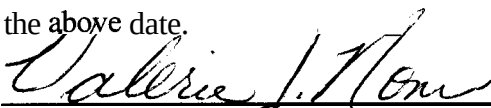
The undersigned, being duly sworn, deposes and says that on September 16, 1999, she served:

- Petition of Midland Cogeneration Venture Limited Partnership for Clarification or Rehearing of the Commission’s August 17, 1999 Order

upon the attached Service List via first class mail to the individuals at the addresses indicated.


Irene McGlinchey

Subscribed and sworn to before me on the above date.


Valerie J. Nonn, Clinton County Notary Public
Acting in Ingham County, State of Michigan
My Commission Expires: 1-1 6-2003

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MPSC Case Nos. U-11290; U-11449; U-11451; U-11452; U-11453 and U-11454

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