

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

March 8, 2000

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Wideman:

Re: MPSC Case No. U-11955156

I am enclosing for filing an original and 4 copies of the Attorney General's Response to Energy Michigan Motion for Accelerated Judgment on Metering Issues along with a proof of service. A copy of this response is also being electronically filed.

Sincerely,

A handwritten signature in cursive script that reads "Donald E. Erickson".

Donald E. Erickson
Assistant Attorney General

c All Parties
sld/cases/U-11955/56

PROOF OF SERVICE

**The Detroit Edison Company
Consumers Energy Company
MPSC Case Nos. U-11955, U-11956**

The undersigned certified that a copy of the Attorney General's Response to Energy Michigan Motion for Accelerated Judgment on Metering Issues was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepared thereon, or by State Interdepartmental mail as indicated, on the 8th day of March, 2000.



Lois Gruesbeck

The Detroit Edison Company

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Mr. Jon P. Christinidis (P47352)
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Consumers Energy Company

Mr. Jon Robinson (P27953)
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Consumers Energy Company
212 W. Michigan Avenue
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Energy Michigan

Mr. Eric J. Schneidewind (P20037)
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**Michigan Power Limited Partnership,
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Central Wayne Energy Recovery Ltd.
Partnership**

Mr. David E.S. Marvin (P26564)
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[I.D. Mail]

Administrative Law Tudee

Mr. James Rigas

Administrative Law Judge

6545 Mercantile Way, Suite 14

Lansing, MI 48911

[I.D. MAIL]

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
CONSUMERS ENERGY COMPANY for
authority to recover implementation costs, Case No. U-11955
for approval of stranded cost true-up
methodology, and for other relief

In the matter of the Application of THE
DETROIT EDISON COMPANY for authority
to recover retail access program
implementation costs and for approval of a Case No. U-11956
true-up mechanism in connection with the
recovery of stranded costs

ATTORNEY GENERAL'S RESPONSE TO
ENERGY MICHIGAN MOTION FOR ACCELERATED JUDGMENT
ON METERING ISSUES

In response to the motion for accelerated judgment on metering issues filed by Energy Michigan on March 2, 2000, Attorney General Jennifer M. Granholm says:

1. The Attorney General is concerned that the caption of Energy Michigan's motion might create some procedural confusion. Formerly, under GCR 1963, 116, parties could seek judgment on pleadings via a motion for accelerated judgment. Motions for judgments on the pleadings have now been renamed motions for summary disposition under MCR 2.116. See also, 1992 AACS, R 460.17323. As the Attorney General interprets Energy Michigan's motion, it is not a motion **for a judgment on the pleadings. On the other hand, if Energy Michigan is** seeking a judgment on the pleadings, then the MPSC would be required to assume

the truth of all allegations made by Consumers Energy Co (CECo) and The Detroit Edison Company (DECo). *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). Therefore, since CECo and DECo have disagreed with Energy Michigan's contentions via pleadings and testimony, Energy Michigan would not be entitled to a judgment on the pleadings.

2. A party can also seek a judgment as a matter of law when there is no dispute of material fact. MCR 2.116(C)(10) and 1992 AACS, R 460.17323. However, there is conflicting testimony on the fact question concerning whether billing and metering services should be a utility monopoly or whether marketers should have the option to provide these services. Energy Michigan would not be entitled to judgment as a matter of law on these issues because there is a dispute of fact. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76-77; 597 NW2d 517 (1999).

3. The Attorney General interprets Energy Michigan's motion as a motion seeking expedited, partial judgment in the captioned cases regarding the metering and billing issues raised by the testimony and the briefs plus the additional information submitted via Energy Michigan's supporting affidavit.

4. So long as there is no prejudice to the other parties regarding the other issues in the captioned cases, the Attorney General does not object to expedited judgment on the record and briefs concerning metering and billing issues. In her briefs, the Attorney General has taken no position concerning the metering and billings issues, and she takes no position on the merits of those issues for purposes of Energy Michigan's motion.

Relief Requested

Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to treat Energy Michigan's motion as a motion for expedited consideration and partial judgment in the captioned cases with regard to metering and billing issues. So long as there is no prejudice to the decision of the other issues in this case, the Attorney General neither opposes nor supports Energy Michigan's motion.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

A handwritten signature in black ink that reads "Donald E. Erickson". The signature is written in a cursive, slightly slanted style.

Donald E. Erickson
Assistant Attorney General

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March 8, 2000