

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

November 12, 1999

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

Dear Ms. Wideman:

Re: MPSC Case No. U-12177

I am enclosing for filing an original and 4 copies of the "Attorney General's Notice of Intervention and Request for Hearings" along with a proof of service. Since this case has been designated as a part of the Commission's electronic filings pilot program, this cover, the notice of intervention, and the proof of service are also being filed electronically.

Sincerely,

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

Donald E. Erickson
Assistant Attorney General

c All Parties
sld/cases/U-12177

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Petition of THE
DETROIT EDISON COMPANY to establish a
revised procedure for future capacity
solicitations

MPSC Case No. U-12177

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Attorney's Notice of Intervention and Request for Hearings

Attorney General Jennifer M. Granholm gives notice of her intervention and appearance as a party in this proceeding. In response to the application filed by The Detroit Edison Company (DECo), the Attorney General says:

I. Statement of Interest

1. The State of Michigan is a body politic established under the Constitution of the United States of America and admitted into the Union by act of Congress under date of January 26, 1837.

2. She is the duly elected and qualified Attorney General of the State of Michigan and holds such office by virtue of and pursuant to the provisions of Const 1963, art 5, §21, and by mandate of the qualified electorate of the State of Michigan and she is head of the Department of Attorney General created by the Executive Organization Act, 1965 PA 380, ch 3; MCL 16.150 *et seq* ; MSA 3.29(50) *et seq*.

3. The Attorney General's intervention and appearance in this proceeding are authorized by both statutory and common law.

4. MCL 14.28; MSA 3.181 provides in relevant part:

The attorney general . . . may, when in [her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

Thus, the Attorney General has the right to intervene in any administrative proceeding when the Attorney General, in her own discretion, deems it in the public interest to do so. *People v O'Hara*, 278 Mich 281; 270 NW2d 298 (1936), and *Gremore v Peoples Community Hospital Authority*, 8 Mich App 56; 153 NW2d 377 (1967).

5. In *Attorney General v Liquor Control Comm*, 65 Mich App 88; 237 NW2d 196 (1975), the Michigan Liquor Control Commission issued a complaint against four liquor licensees arising out of criminal convictions in federal court actions. A hearing was conducted before one of the liquor control commissioners, and that commissioner dismissed the complaint. One month later, the Attorney General intervened in the proceedings and filed a petition for rehearing. The Liquor Control Commission issued a written decision and ruled (1) that the Attorney General could not intervene and (2) that it had no authority to consider a petition for rehearing. The Michigan Court of Appeals ruled that, even after the administrative agency had ruled in favor of the licensee, the Attorney General had the legal authority and duty to intervene and seek review. *Id.* at 91-93.

6. As the chief law officer of the State, the Attorney General has common law authority to represent public interests as she may deem necessary for the protection of public rights. *Withee v Lane & Libby Fisheries Co*, 120 Me 121, 123; 113 A 22, 23 (1921).

7. The common law powers and duties of the Attorney General include the power to intervene in all actions which are of concern to the general public. *State ex rel Patterson v Warren*, 254 Miss 293; 180 So 2d 293, 299 (1965).

8. The Attorney General, in her judgment, has determined that the interests of the State and the People of the State of Michigan require her to intervene in this proceeding on their behalf. This proceeding will directly affect the State and a large number of the People of this State who are customers of DECo. The State and correspondingly the taxpayers of this State pay large amounts for utility

service for the State in the conduct of the People's affairs. In addition, the People of this State who are customers of DECo also pay large sums for utility service for their homes and businesses. Any action taken in this proceeding will directly affect the economy of the state and the general well-being of all of the citizens and residents of this state. Accordingly, the Attorney General has determined that the State and the People of the State of Michigan have a significant interest in this proceeding.

II. Statement of Positions

9. The Attorney General takes the position that since DECo has requested the Michigan Public Service Commission (MPSC or Commission to vacate its July 22, 1992, Opinion and Order in MPSC Case No. U-8869-DE / U-9798 and approve an alternative capacity solicitation process, the MPSC is required by MCL 462.24; MSA 22.43 to provide notice and an opportunity to be heard.

10. The Attorney General takes the position that since MCL 462.24; MSA 22.43 requires notice and an opportunity for a hearing, this case is a contested case as defined by MCL 24.203(3); MSA 3.560(103(3).

11. The Attorney General takes the position that DECo's proposed alternative solicitation process would not be in the public interest because even when DECo projects that it will need additional capacity to satisfy long-term customer demand, DECo's proposal would give DECo the discretionary power to satisfy this long-term demand by executing capacity contracts having a term of less than one year without regard to long-term economic considerations.

12. The Attorney General takes the position that DECo's proposed alternative solicitation process would create a legal ambiguity by not addressing capacity contracts for a term of not more than one year.

13. The Attorney General takes the position that DECo's proposed alternative solicitation process would not be in the public interest because its

confidentiality provisions would hide from public scrutiny bidding and contractual arrangements under which DECo would incur tens of millions, if not hundreds of millions, in power supply costs to be recovered from its customers.

14. The Attorney General takes the position that DECo's proposed alternative solicitation process would not provide the MPSC with appropriate oversight because DECo's proposal would give DECo total discretionary power to specify the terms and conditions for bidding, evaluation of offers, and acceptance of offers.

15. The Attorney General takes the position that DECo is proposing MPSC approval of only its so-called RFP form and that MPSC approval would not be in the public interest because Paragraph 6 C of DECo's application contains no reasonably precise standards for review and approval of DECo's RFP actions by the MPSC.

16. The Attorney General takes the position that the information provided by DECo regarding the likely power supply costs resulting from DECo's proposed process does not include sufficient information to permit the MPSC to determine that approval of the proposal will not increase customers' costs of service, and therefore, the MPSC cannot issue an ex parte order.

17. The Attorney General takes the position that DECo's proposal would not be in the public interest because it provides no terms and conditions under which affiliated or related organizations may participate in the process.

18. The Attorney General takes the position that DECo's proposal would not be in the public interest because it prohibits public posting of DECo's power supply requirements, the resulting bids, and the winning bids.

III. Relief Requested

WHEREFORE, the Attorney General requests the Commission to:

- A. Enter her Notice of Intervention upon the official record of the captioned case and treat her as a party to these proceedings for all purposes;
- B. Conduct a contested case review of DECo's application, and/or
- C. Grant the ratepayers such further and additional relief as the facts and circumstances show to be appropriate.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

J. Peter Lark
Assistant in Charge
Special Litigation Division

Donald E. Erickson

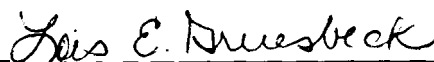
Donald E. Erickson (I' 13212)
Assistant Attorney General
630 G. Mennen Williams Building
P. O. Box 30212
Lansing, Michigan 48909

Dated: November 12, 1999
sld/cases/U-12177

PROOF OF SERVICE

MPSC Case No. U-12177

The undersigned certifies that a copy of the Attorney General's Notice of Intervention and Request for Hearings was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, or by State Interdepartmental mail as indicated, on the 12th day of November, 1999.



Lois E. Gruesbeck

Administrative Law Judge:

ALJ Daniel E. Nickerson, Jr.
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The Detroit Edison Company:

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