

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

January 18, 2000

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

Dear Ms. Wideman:

Re: MPSC Case Nos. U-8869-DE, U-9798, and U-12177

I am enclosing for filing an original and 4 copies of the "Attorney General's Petition for Rehearing and Comments" 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.

Also, please note that our address on the pleading and this letterhead has changed even though our telephone number, fax number, and email address has not changed.

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 motion of the
ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY for the
Commission to issue an order to initiate
proceedings to show cause why public
utilities should not establish comprehensive
procedures to implement the provisions of
the Public Utility Regulatory Policies Act of
1978 or, in the alternative, to reopen Case
No. U-6798

Case No U-8869-DE

_____/

In the matter, on the Commission's own
motion, to commence a proceeding to
establish a framework for future capacity
solicitations by THE DETROIT EDISON
COMPANY from qualifying facilities as
defined by the Public Utility Regulatory
Policies Act of 1978

Case No. U-9798

_____/

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

Attorney General's Petition for Rehearing and Comments

In response to the Opinion and Order issued by the Michigan Public Service Commission (MPSC or Commission) on December 16, 1999, Attorney General Jennifer M. Granholm requests the Commission to grant rehearing and offers the following comments:

1. On October 25, 1999, The Detroit Edison Company (DECo or Company) filed a petition with the Michigan Public Service Commission (MPSC or Commission) in Case No. U-12177.

2. DECo's petition requested the Commission to vacate its July 22, 1992, order in MPSC Case Nos. U-8869-DE / U-9798, to rescind the process begun under that order, and to approve an alternative capacity solicitation process proposed by DECo.

3. On November 15, 1999, Energy Michigan filed a response to DECo's petition and requested the MPSC to schedule Case U-12177 for contested case proceedings, to order that such proceedings shall not consider or approve purchases from DECo's affiliates, and to grant such other relief as the Commission deems appropriate.

4. On November 12, 1999, Attorney General Jennifer M. Granholm (Attorney General) filed a notice of intervention and request for hearings and requested the Commission to treat her as a party, to conduct a contested case review of DECo's application, and to grant any additional, appropriate relief.

5. On November 16, 1999, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition to intervene and request for hearing and requested the Commission to grant its petition and to set the case for hearings.

6. On December 16, 1999, the MPSC issued an Opinion and Order captioned in Case Nos. U-8869-DE, U-9798, and U-12177.

7. The Commission's order summarized DECo's petition and the filings made by Energy Michigan, the Attorney General, and ABATE, then the Commission's order discussed the requests for contested case hearings. Pages 3-4 of the Commission's order concluded:

Because Detroit Edison's petition constitutes a request for rescission or amendment of a Commission order pursuant to Section 24 of 1909 PA 300; MCL 462.24; MSA 22.43, all other parties to the contested case proceedings that led to the July 22 order must be given notice of

the utility's petition and at least 10 days to respond. Thus the Commission finds that ex parte approval is not appropriate in this case.

Nevertheless, the Commission agrees with Detroit Edison's assertion that, because granting the October 25, 1999 petition would not result in an increase in the rates, charges, or cost of service to the utility's customers, contested case proceedings are not required. The Commission further concludes that a notice and comment procedure, similar to that suggested by Detroit Edison as an alternative to ex parte approval, should be used to receive comments from interested parties regarding the utility's proposal to rescind the July 22 order and revise its capacity solicitation process.

8. The Attorney General requests the Commission to grant rehearing and conduct a contested case because the underlying case was a contested case and, therefore, MCL 24.287; MSA 3.560(187) requires rehearing via contested case process and because the Commission has misconstrued the requirements of MCL 462.24; MSA 22.43.

9. MCL 462.24; MSA 22.43 states:

The commission may, at any time upon application of any person or any common carrier, and upon at least 10 days' notice to the parties interested, including the common carrier, and after opportunity to be heard as provided in section 22, rescind, alter or amend any order fixing any rate or rates, fares, charges or classifications, or any other order made by the commission, and certified copies shall be served and take effect as herein provided for original orders. (emphasis added)

10. MCL 462.22; MSA 22.41 states:

(a) Upon complaint in writing of any person, firm or corporation or association, or of any mercantile, agricultural or manufacturing society, or of any body politic or municipal organization, that any of the rates, fares, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property or any service in connection therewith, is in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission shall notify the common carrier complained of that complaint has been made and shall furnish a copy of the said complaint with said notice, and 20 days after such notice has been given the commission may proceed to investigate the same as hereinafter provided. Before proceeding to

make the investigation, the commission shall give the said common carrier and the complainants at least 10 days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. Such hearings may be continued from time to time in the discretion of the commission. If, upon such investigation, the rate or rates, joint rate or rates, fares, charges or classifications, regulation, practice or service complained of shall be found to be unreasonable, inadequate or unjustly discriminatory, the commission shall have power to and it shall determine and by order fix and order substituted therefor, such rate or rates, joint rate or rates, fares and charges, as is or are just and reasonable, and which shall be the maximum to be charged in the future, and such classifications, regulation, practice or service as is or are just, reasonable and adequate, and which shall be imposed and followed or service rendered in future in lieu of that found to be unreasonable, inadequate or unjustly discriminatory, and in either case the commission shall make an order that the common carrier cease and desist from such violation, and shall conform to the regulation and practice so prescribed, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the common carrier affected thereby, which order shall, of its own force, take effect and become operative 20 days after the service thereof. All common carriers to which the order applies shall, on or before the date when such order becomes effective, make such changes in schedules on file as shall be necessary to make the same conform to such order, and no change shall within 2 years thereafter be made by any such common carrier in any such rates, fares or charges, or in any such joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the common carriers thereby affected in like manner, and the same shall take effect within such times thereafter as the commission shall prescribe;

(b) The commission may, when the complaint is made of more than 1 rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant;

(c) Whenever the commission shall believe that any rate or rates or charge or charges may be unreasonable or unjustly discriminatory, or that any service is inadequate, and that any investigation relating thereto should be made, it may, upon its own motion, investigate the same. Before making such investigation, it shall present to the common carrier a statement in writing, setting

forth the rate or charge to be investigated. Thereafter, on 10 days' notice to the common carrier of the time and place of such investigation, the commission may proceed to investigate such rate or charge in the same manner and make like orders in respect thereto as if such investigation had been made upon complaint;

(d) This section shall be construed to permit any common carrier to make complaint of like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization;

(e) The commission may, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and the terms and conditions under which such through routes shall be operated when the common carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates: Provided, No reasonably satisfactory through route and joint rate exist. Whenever the common carrier or common carriers, in obedience to an order of the commission or otherwise, in respect to joint rates, fares or charges, shall fail to agree among themselves upon the apportionment or division thereof, the commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate, fare or charge to be received by each common carrier party thereto, which order shall take effect as part of the original order. (emphasis added)

11. When these two statutes are read together, it becomes clear that they mandate evidentiary hearings before any order is rescinded or amended. Furthermore, When these two statutes are considered in the light of MCL 24.203(3); MSA 3.560(103)(3), it should also be clear that this case falls within the definition of "contested case" in the latter statute.

12. In addition, 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 DECo's proposal will not increase customers' costs of service, and therefore, the MPSC cannot issue an ex parte order. *Attorney General v PSC*, unpublished opinion per curiam of the Court of Appeals decided June 11, 1999, (Docket No. 207993).

13. On the other hand, assuming only for the sake of argument that the Commission's conclusion regarding the rate effects of the actions requested by DECo

is true, the foregoing statutes require evidentiary hearings in the captioned proceedings, so the Commission should grant rehearing and conduct contested case proceedings.

14. Since the deadline for comments established by the December 16 order is January 18, 2000, the Attorney General offers the following comments regarding DECo's petition without waiving her request for contested case proceedings.

15. 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.

16. 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.

17. DECo's proposed alternative solicitation process would not be in the public interest because DECo's proposed confidentiality provisions would hide from public scrutiny bidding and contractual arrangements under which DECo could incur tens of millions, if not hundreds of millions, in power supply costs to be recovered from its customers.

18. 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.

19. DECo is proposing MPSC approval of only its so-called RFP form, and MPSC approval would not be in the public interest because Paragraph 6 C of DECo's petition contains no reasonably precise standards for review and approval of DECo's RFP actions by the MPSC.

20. DECo's proposal would not be in the public interest because it permits affiliated or related organizations to participate in the process without any reasonable terms and conditions regarding affiliate participation.

21. 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, and these actions would create significant barriers to competition.

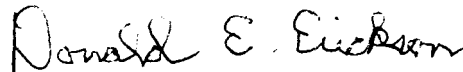
Relief Requested

For the reasons stated above, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to grant her petition for rehearing and to conduct contested case hearings. If the Commission decides to address the merits of DECo's petition without conducting hearings, then for the reasons stated in the comments above, the Attorney General requests the Commission to reject DECo's petition and enforce its previous orders.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

J. Peter Lark
Assistant in Charge
Special Litigation Division



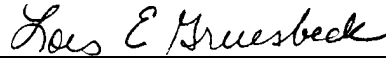
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Dated: January 18, 2000

PROOF OF SERVICE

MPSC Case Nos. U-8689-DE, U-9798, and U-12177

The undersigned certifies that a copy of the Attorney General's Petition for Rehearing and Comments 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 18th day of January, 2000.



Lois E. Gruesbeck

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