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STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

January 4, 2000

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

Dear Ms. Wideman:

Re: **MPSC Case No. U-12250**

I am enclosing for filing an original and 15 copies of the "Attorney General's Notice of Intervention and Request for Hearings" along with a proof of service.

Sincerely,

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

Donald E. Erickson
Assistant Attorney General

c Detroit Edison
sld/cases/U-12250

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of THE
DETROIT EDISON COMPANY for
amendment and extension of the R12
customer capacity release rider

MPSC Case No. U-12250

Attorney General'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 with the Michigan Public Service Commission (MPSC or Commission) by The Detroit Edison Company (DECo) on December 15, 1999, 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 he 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 shall prosecute and defend all actions in the supreme court , in which the state shall be interested, or a party; . . . 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.

In other words, the Attorney General has the right to intervene in any 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'n*, 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 even though the R12 tariff expired on December 31, 1999, that expiration date was known to DECo from the outset, and DECo's creation of an artificial crisis by delaying its application until the eleventh hour does not justify hasty action by the MPSC.

10. The Attorney General takes the position that DECo's proposed amendment to and extension of the capacity release tariff provides no realistic mechanism for assuring other customers that any so-called release of electric capacity by customers under the tariff will provide actual incremental capacity during times of hourly capacity shortfall. At best, the amendment and extension will create a mere paper transaction in which metered load during a so-called release period will be compared with contract entitlements or with loads during preceding periods of time. Thus, the tariff could readily result in payments for capacity releases only when the customer has no use for and would not actually be using

capacity entitlements during the period for which payment would be made. Thus, since the tariff is voluntary, the tariff will create an illusion of additional capacity at an additional cost when in reality the customers receiving payments would not be truly reducing their use of electricity during the time for which payment is being made.

11. The Attorney General takes the position that no reasonable price (¢/kWh) will induce customers to reduce their use of electricity when they actually need the capacity and energy which they will be paid to release. For example, if DECo paid $\$1.00/\text{kWh}$, if a customer had 10 MW of qualifying load, and if the customer reduced demand by 5 MW, then the customer would be paid $\$5,000.00$ per hour under the proposed tariff. It is unlikely that even this extremely high rate would induce any customer to stop using electricity if customers otherwise had a need for the 5 MW of capacity to continue their ordinary business operations. On the other hand, if customers do not need capacity and energy at a given time, then no extra payment is necessary to induce the customers to reduce their demand on DECo's system.

12. The Attorney General takes the position that coincidental peak demand is the sum of all electricity which customers are actually using, not the sum of customer maximum entitlements or of the maximum demand in a preceding period; therefore, comparing actual use during any given four hours of time with use during prior periods or with contract entitlements does not truly identify or measure a reduction in the use of capacity and energy during the relevant time. Such comparisons would simply match apples with oranges timewise.

13. The Attorney General takes the position that the MPSC lacks the statutory power to establish a tariff such as the proposed R12 tariff. Under that tariff DECo would pay customers for voluntarily curtailing consumption of electricity. Numerous cases hold that the MPSC has only limited powers, has no inherent or

common law powers, and has only such powers as are conferred upon it by clear and unmistakable statutory language. *Union Carbide Corp v PSC*, 431 Mich 135, 146-151; 428 NW2d 322 (1988). For example, in *General Telephone Co v PSC*, 341 Mich 620, 636 & 638; 67 NW2d 882 (1954), the Supreme Court ruled that even though the MPSC had the power to require utilities to provide adequate service and had the power to set rates, the MPSC did not have the power to delay the effective date of an approved rate increase until the utility built certain needed facilities and improvements. *See also, Attorney General v MPSC*, 412 Mich 385, 417-418; 316 NW2d 187 (1982) (holding that the MPSC has no statutory power to approve generating plant construction plans before or while a utility is constructing a new plant).

14. Paragraph 8 of DECo's application alleges, "Extending the CCRR and amending the terms . . . will not result in an increase in the costs of service to Applicant's customers at this time . . . (emphasis added)" Assuming only for the sake of argument that DECo's allegation is true, the Attorney General takes the position that this allegation does not legally justify ex parte action by the MPSC.

15. The Attorney General takes the position that ex parte action cannot be taken unless the Commission can rule that the action will not result in an increase in the cost of service to DECo's customers. *Attorney General v PSC*, unpublished opinion per curiam of the Court of Appeals decided June 11, 1999 (Docket No. 207993). In other words, the Commission cannot issue an ex parte order which may have the effect of increasing customers' cost of service even if the order does not increase rates. *In re Consumers Energy Co*, MPSC Case No. U-11941, Opinion on Rehearing dated 8-31-99, pp 13-14 & 16.

16. Assuming only for the sake of argument that the amendment and extension requested by DECo's application would not result in an increase in customers' cost of service, the Attorney General takes the position that MCL 462.24;

MSA 22.43 requires a hearing because the Capacity Release Rider, No. R12, which offers to pay customers a bid price (¢ / kWh) for energy reductions, would be amended and extended. MCL 462.24; MSA 22.43 says that when the MPSC amends an order there must be an opportunity to be heard as provided in MCL 462.22; MSA 22.41. The latter statute says that parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. In other words, those statutes require a hearing. Furthermore, those statutes bring this case within the definition of a contested case which is set forth in MCL 24.203(3); MSA 3.560(103)(3).

17. The Attorney General takes the position that DECo cannot make any payments which create any illegal preference or rate discrimination. MCL 462.16; MSA 22.35, MCL 462.17; MSA 22.36, MCL 462.18; MSA 22.37, MCL 462.22; MSA 22.41, and / or MCL 460.557; MSA 22.157. DECo's proposed amendment would allow the Company to waive the minimum requirements for the availability of the capacity release service without any guidelines to prevent intentional or unintentional discrimination. Therefore, DECo's proposal should not be adopted.

Relief Requested

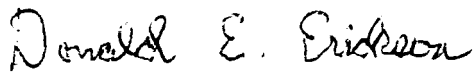
For the reasons stated above, the Attorney General requests the Michigan Public Service Commission to:

- 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. Issue a notice and conduct contested case hearings before granting approval for DECo's plan to buy services from its customers -- assuming only for the sake of argument that the MPSC can lawfully provide advance authorization for DECo to buy services, and/or
- C. Grant such further relief as the Commission determines to be fair and equitable based upon the record as a whole.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

J. Peter Lark
Assistant in Charge
Special Litigation Division



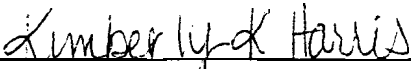
Donald E. Erickson (P 13212)
Assistant Attorney General
630 G. Mennen Williams Building
P. O. Box 30212
Lansing, Michigan 48909

Dated: January 4, 2000
sld/cases/U-12250

PROOF OF SERVICE

MPSC Case No. U-12250

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 4th day of January, 2000.



Kimberly K. Harris

The Detroit Edison Company:

Ms. Kathryn L. Westman
The Detroit Edison Company
2000 Second Avenue, 688 WCB
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MPSC Staff:

Mr. David A. Voges
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Public Service Division
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