

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



WILLIAM J. RICHARDS
Deputy Attorney General

P.O. Box 30212
LANSING, MICHIGAN 48909

JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

January 24, 2000

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

Dear Ms. Wideman:

Re: MPSC Case No. U-12266

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. This filing is also being submitted electronically as part of the Commission's electronic filing pilot.

Sincerely,

A handwritten signature in dark ink that reads "Donald E. Erickson".

Donald E. Erickson
Assistant Attorney General

c All Parties
sld/cases/U-12266

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of THE
DETROIT EDISON COMPANY for certain
determinations pursuant to Sections 32(c)
and (d) of the Public Utility Holding
Company Act of 1935 and for accounting
approval for the transfer of certain assets

MPSC Case No. U-12266

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 28, 1999, and the Errata filed on January 14, 2000, 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. DECo's application requests the MPSC to approve the transfer of DECo's ratebase assets in the River Rouge Unit No. 1 power plant from DECo to DTE River Rouge No. 1 LLC (DTE River Rouge) and to make the determinations required by 15 USC § 79z-5a(c) in order to qualify River Rouge No. 1 as an exempt wholesale generator (EWG) within the meaning of that statute, which states:

If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; Provided, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction

over the retail rates and charges of the affiliates of such registered holding company; and

(B) the approval of the Commission under this chapter shall not be required for the transfer of the facility to an exempt wholesale generator.

10. DECo's application alleges that qualification of DTE River Rouge as an EWG (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law because there is an immediate need for additional summer peaking capacity and because the sale of output from River Rouge No. 1 could provide critical in-state capacity.

11. The Attorney General takes the position that qualification of DTE River Rouge as an EWG will not benefit consumers because such qualification is not necessary to the modernization and restarting of River Rouge No. 1. If restarting River Rouge No. 1 will provide needed capacity and will provide an economical source of capacity, then that could have been done and still can be done more rapidly and earlier by DECo as a rate based facility without approval of EWG status by the MPSC and by the FERC.

12. The Attorney General takes the position that, if DTE River Rouge is qualified as an EWG, this will transfer approximately 260 MW of capacity from DECo to DTE River Rouge, will reduce DECo's resulting reserve margin, and would reduce the amount of capacity subject to DECo's obligation to provide service to captive customers.

13. The Attorney General takes the position that transferring the River Rouge No. 1 assets will not benefit customers because DECo's potential costs for any resulting energy will be increased to an average of \$150 to \$300 per MWh, if not peak costs in excess of \$1,000 per MWh, instead of a much lower cost for modernizing and retaining the plant in DECo's ratebase.

14. The Attorney General takes the position that DECo has failed to describe the costs which would be necessary to put River Rouge No. 1 back into service and has provided no independent information concerning the market value of the capacity from this plant if it is put back into service. The Attorney General believes a conservative estimate of the value of steam plant capacity should range from \$140 per kW to \$820 per kW. Therefore, assuming 260 MW of capacity, the market value of River Rouge No. 1 after restarting would range from \$36.4 million to \$213.2 million. Since the net plant investment is now approximately \$3.3 million, there is tremendous room for huge profits from qualifying River Rouge No. 1 as an EWG instead of restarting it as a ratebase facility. The MPSC should either reject DECo's proposal, or should at least conduct hearings before determining whether the transfer will benefit customers and serve the public interest.

15. The Attorney General takes the position that DECo's application is a self serving request which will increase the profits of DECo's parent company at a higher cost to DECo's customers.

16. Paragraph 8 of DECo's application and the affidavit of David B. Harwood allege that the proposed transfer price is reasonable, but those allegations misdirect the Commission's attention. Implicitly, DECo's application alleges that it would be useful and economical to restart River Rouge No. 1. If not, then the transfer will not create additional capacity and would make no sense. Therefore, the MPSC should not be considering what the value of the current assets are; the Commission should be considering how the current net plant value plus the cost of restarting compares with what the market value of River Rouge No. 1 will be when it is operating again. DECo's application offers no information bearing on this relevant issue, so the MPSC cannot make the determinations required by 15 USC §79z-5a(c).

17. DECo's application alleges that no hearing is required because the asset transfer will not result in an increase in the rates for DECo's customers. This allegation represents misleading sophistry which has been rejected by the Michigan Court of Appeals. *Attorney General v PSC*, unpublished opinion per curiam of the Court of Appeals decided June 11, 1999 (Docket No. 207993). As this court opinion indicates, even when the form of the final, net relief is a rate reduction, the MPSC cannot issue an order which includes an increase in customer costs without a hearing.

18. If the Commission grants DECo's application in this case, that will increase DECo's PSCR costs; therefore, the Commission must grant a hearing.

19. In addition, MCL 24.203(3); MSA 3.560(103)(3) defines a contested case as a proceeding in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. Since 15 USC 79z-5a(c) requires state commissions to make three determinations in cases like this one, the MPSC must conduct hearings in this case pursuant to MCL 24.271; MSA 3.560(171).

20. Assuming only for the sake of argument that a hearing is not otherwise required, Paragraphs 11-16 above demonstrate the need for hearings before the determinations required by 15 USC § 79z-5a(c) are made by the MPSC in this case. In addition, its recent "Guidelines for Cost Allocations and Affiliate Transactions," NARUC has recommended careful review and independent appraisal by state commissions before approving any transfers from utilities to unregulated affiliates; therefore, the MPSC should not act on DECo's undocumented allegations that the transfer price is adequate.

21. In any event, if the transfer will benefit customers and is in the public interest, DECo can restart River Rouge No. 1 and transfer all assets after the MPSC conducts hearings in this case.

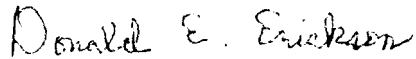
Relief Requested

For the reasons stated above, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission either to deny the application filed by The Detroit Edison Company or to set this case for hearings to make the determinations required by 15 USC §79z-5a(c).

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

J. Peter Lark
Assistant in Charge
Special Litigation Division



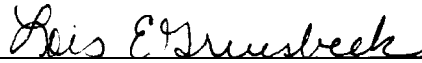
Donald E. Erickson (P 13212)
Assistant Attorney General
6520 Mercantile Way, Suite 2
P.O. Box 30218
Lansing, Michigan 48909

Dated: January 24, 2000
sld/cases/U-12266

PROOF OF SERVICE

MPSC Case No. U-12266

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 24th day of January, 2000.



Lois E. Gruesbeck

The Detroit Edison Company:

Mr. Bruce R. Maters
The Detroit Edison Company
2000 Second Avenue, 688 WCB
Detroit, MI 48226

**Association of Businesses Advocating
Tariff Equity:**

Mr. Robert A. W. Strong
Clark Hill, P.L.C.
255 S. Old Woodward Av., Third Floor
Birmingham, MI 48009-6179

MPSC Staff:

Mr. David A. Voges
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911 [ID MAIL]

Energy Michigan:

Mr. Eric J. Schneidewind
Varnum, Riddering, Schmidt
& Howlett, LLP
Suite 810, The Victor Center
201 N. Washington Square
Lansing, MI 48933