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August 14, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

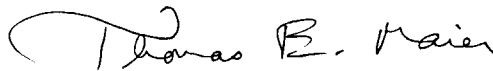
Re: In the Matter of the Rates, Terms, and Conditions for Retail Customers of Consumers
Energy Company to Choose an Alternate Electric Supplier
MPSC Case No. U-12488

Dear Ms. Wideman:

Enclosed for filing please find an original and four copies of the Exceptions of The Association of Businesses Advocating Tariff Equity, Motion to Accept Filing Out of Time and Notice of Hearing in the above-captioned proceeding. Proof of Service upon the parties of record is enclosed.

Very truly yours,

CLARK HILL P.L.C.



Thomas E. Maier

TEM/dg

Enclosures

cc: Parties of Record

3119058-1

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and)
conditions for retail customers of)
CONSUMERS ENERGY COMPANY)
to choose an alternate electric supplier)
_____)

Case No. U-12488

THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY'S
MOTION TO ACCEPT FILING OUT OF TIME

The Association of Businesses Advocating Tariff Equity ("ABATE"), by and through its attorneys, Clark Hill PLC, hereby submits this Motion to Accept Filing Out of Time pursuant to Rule 335 of the Michigan Public Service Commission's Rules of Practice and Procedure, 1992 AACSR 460.17335.

ABATE respectfully moves the Commission to accept its Exceptions due yesterday a day late. By Notice of Proposal for Decision, issued July 30, 2001, by Administrative Law Judge James N. Rigas, Exceptions to the proposed final decision were due to be filed August 13, 2001. Due to technical difficulties in counsel's computer system, ABATE was delayed in preparing and filing its Exceptions, and the filing was tendered to the Secretary's office shortly after 5:00 p.m. on August 13, 2001. Counsel for ABATE had contacted the Commission's filing office regarding the technical problems and had requested that it be permitted to file via electronic filing with hard copies to follow on August 14; however, the filing office advised that they would not accept such a filing. Therefore, ABATE made all attempts to work within the technical difficulties then occurring in its word processing system to furnish a hard copy by the 5:00 p.m. deadline. Nevertheless, these efforts were

unsuccessful as ABATE's courier arrived just after 5:00 p.m. Copies of the Exceptions were served upon all parties in the ordinary course.

ABATE's intent and attempt to file Exceptions were unambiguous and frustrated by technical difficulties that had not previously been encountered. The delay in filing will not prejudice the other parties to the proceeding, as service copies were dispatched and received in a timely fashion. Counsel complied with Commission Rule 109(1) (1992 AACS, R 460.17109(1)) by sending a copy of the Exceptions via mail. The timely filing of Exceptions is not jurisdictional, *See, e.g., Coast to Coast v City of Birmingham*, MPSC Case No. U-12354, Opinion and Order dated October 24, 2000, at p 5, n 3, and the Commission's ruling on the Exceptions in this case will not be materially delayed by accepting the formal documentation out of time, since Replies to Exceptions will still be due on the date originally specified by Judge Rigas' Order, August 24, 2001.

CONCLUSION

For the reasons set forth above, the Commission should accept for filing ABATE's tendered Exceptions to the Proposal for Decision in this proceeding.

Respectfully submitted,

CLARK HILL PLC



By: _____

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2455 Woodlake Circle
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(517) 381-0268 Fax
Attorneys for The Association of Businesses Advocating
Tariff Equity

Date: August 14, 2001

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and)
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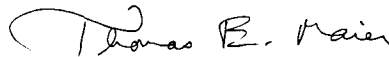
Case No. U-12488

NOTICE OF HEARING

PLEASE TAKE NOTICE that The Association of Businesses Advocating Tariff Equity's Motion to Accept Filing Out of Time will be brought on for hearing at such date and time as set by the Commission at the offices of the Michigan Public Service Commission, 6545 Mercantile Way, Lansing, MI 48909.

Respectfully submitted,

CLARK HILL PLC



By: _____

Thomas E. Maier (P34526)

2455 Woodlake Circle

Okemos, Michigan 48864-5941

(517) 381-9193

(517) 381-0268 Fax

Attorneys for The Association of Businesses Advocating
Tariff Equity

Date: August 14, 2001

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and)
conditions for retail customers of)
CONSUMERS ENERGY COMPANY)
to choose an alternate electric supplier)
_____)

Case No. U-12488

EXCEPTIONS OF THE ASSOCIATION
OF BUSINESSES ADVOCATING TARIFF EQUITY

**Association of Businesses
Advocating Tariff Equity**

By Its Attorneys
CLARK HILL P.L.C.
Thomas E. Maier (P34536)
2455 Woodlake Circle
Okemos, MI 48864-5941
Telephone: (517) 381-9193

Dated: August 13, 2001

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and)
conditions for retail customers of)
CONSUMERS ENERGY COMPANY)
to choose an alternate electric supplier)
_____)

Case No. U-12488

**EXCEPTIONS OF THE ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity ("ABATE"), by and through its attorneys, Clark Hill P.L.C., hereby submits the following Exceptions to the Proposal for Decision issued by Administrative Law Judge ("ALJ") James N. Rigas on April 4, 2001 in this case (the "PFD") pursuant to the Notice of Proposal for Decision also issued on April 4, 2001.

INTRODUCTION

The PFD, in rejecting various proposals by ABATE, has failed to make recommendations to the MPSC which will assure that the end project in this case actually promotes retail open access and increases competition as required by the Customer Choice and Electric Reliability Act, 2000 PA 141 ("Act 141") which amended 1939 PA 3. *See, e.g.,* MCL 460.10(2). ABATE's specific Exceptions are set forth below.

EXCEPTIONS

1. **PFD Erred in Recommending that the Rate DA Program be Closed Out Prior to January 1, 2002.**

The PFD adopts Consumers' proposal that the Rate DA Program be closed out at the

beginning of the first month after the issuance of an Order in this case. (PFD, p 5). ABATE had argued that the Rate DA Program should be extended until January 1, 2002, so as to avoid current Rate DA customers being required to participate in Consumers' Electric Customer Choice ("ECC") program especially given the time suggested with regard to the implementation of the proposed ROA tariffs. Rather, ABATE recommended that current Rate DA customers be allowed to return to full service or participate in customer choice which becomes available for all retail customers of Consumers on January 1, 2002. *See, e.g., 2 TR 132.* This would certainly not be administratively burdensome to Consumers as only two customers remain on Rate DA. Nevertheless, the ALJ rejected the ALJ's recommendation and would require these two customers to transfer over to a new program sometime near the end of this year when, if the Rate DA Program were continued until January 1, 2002, they could transition to retail open access at the same time as all retail electric customers of Consumers. ABATE excepts to this finding and suggests that its recommendation be adopted.

2. The PFD Erred in Adopting a 30-Day Return to Service Notice Requirement.

The PFD adopted Staff's recommended return to service proposal of 30 days. (PFD p 18). In doing so, the PFD rejected ABATE's proposed adoption of a modified version of the Detroit Edison return to service proposal. That proposal would allow customers to return to distribution company at full service tariff rates if they agree to remain a full-service customer for 12 months, or would allow customers the option of returning to distribution company full service with only a three-month obligation to stay, but pricing for that option would be market based. ABATE excepts to the finding in the PFD and believes that its recommendation, as set forth in its Initial and Reply Briefs incorporated herein by reference, should be adopted. ABATE also contends that the Commission

should strive for consistency between utilities in connection with return to service and that a modified version of the Detroit Edison return to service proposal is appropriate for both utilities.

3. The PFD Erred in Approving Consumers' ROA Standby Rate Proposal, as Modified by Staff.

The PFD recommends adoption of Consumers' ROA standby rate proposal, as modified by Staff. (PFD, pp 12-13). In doing so, the PFD rejects ABATE's criticism that it is not appropriate to have each utility define a methodology to determine market prices and also rejected ABATE's contention that the extra 10 percent charge proposed by Consumers is not consistent with PA 141. The PFD should be rejected.

4. The PFD Erred in Rejecting ABATE's Recommendation that Energy Imbalances be Settled at the Retail Level.

The PFD erred in rejecting ABATE's proposed methodology for settling energy imbalances at the retail level. It did so in part based on jurisdiction. However, ABATE contends that the MPSC's regulatory power extends to establishing a necessary service associated with open access under its general statutes and under 2000 PA 141. For example, Section 10a(1) provides that "No later than January 1, 2002, the commission shall issue orders establishing the rates, terms and conditions of service that allow all retail customers of an electric utility are provided to choose an alternative electric supplier." MCLA 460.10a(1); MSA 22.13(10a)(1). The Michigan Legislature has ordered the Commission to issue orders addressing these matters, and the Commission should not shirk its responsibility under Act 141. Contrary to Consumers' contention, Mr. Dauphinais' proposals would not "provoke a state-federal jurisdictional battle with the FERC." Rather, the Commission's adoption of such proposals would be fulfilling the Commission's mandate under Act 141.

WHEREFORE, ABATE requests that the Commission enter an Order consistent with its Initial Brief, Reply Brief and these Exceptions.

Respectfully submitted,

CLARK HILL PLC

By: 

Thomas E. Maier (P34526)

2455 Woodlake Circle

Okemos, Michigan 48864-5941

(517) 381-9193

(517) 381-0268 Fax

Attorneys for ABATE

Date: August 13, 2001

STATE OF MICHIGAN

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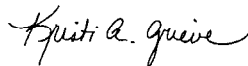
PROOF OF SERVICE

STATE OF MICHIGAN)
) SS:
COUNTY OF INGHAM)

Kristi A. Grieve, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on August 14, 2001, copies of the Exceptions of the Association of Businesses Advocating Tariff Equity, Motion to Accept Filing Out of Time and Notice of Hearing were served upon:

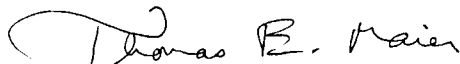
See attached service list

Except as otherwise noted on the attached list, service was accomplished by depositing same in a regular mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly and via electronic mail.



Kristi A. Grieve

Subscribed and sworn to before me
this 14th day of August, 2001.



Thomas E. Maier, Notary Public
Ingham County, Michigan
My Commission Expires: July 18, 2005

Service List
U-12488

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