

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

August 10, 2001

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

Dear Ms. Wideman:

Re: MPSC Case No. U-12966

I am enclosing for filing an original and 4 copies of the Attorney General's Notice of Intervention. I am also enclosing a proof of service. In addition, I am submitting a copy of this notice in PDF electronic format.

Sincerely,

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

Donald E. Erickson
Assistant Attorney General

c All Parties
U-12966

PROOF OF SERVICE - U-12966/BOH 2001-1172

The undersigned certifies that a copy of the Attorney General's Notice of Intervention 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 10th day of August 2001



Lois E. Gruesbeck

Administrative Law Judge:

Ms Barbara A. Stump (P37356)
Michigan Department of Consumer &
Industry Services
Bureau of Hearings
611 West Ottawa Street
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P. O. Box 30695
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MPSC Staff:

Mr. Stephen D. Hughey (P32203)
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Public Service Division
6545 Mercantile Way, Suite 15
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Energy Michigan:

Mr. Eric J. Schneidewind (P20037)
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The Victor Center, Suite 810
201 N. Washington Square
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The Detroit Edison Company:

Mr. Bruce R. Maters (P28080)
The Detroit Edison Company
Legal Department
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Detroit, MI 48226

ABATE:

Mr. Robert A. W. Strong (P27724)
Clark Hill, P.L.C.
255 S. Old Woodward Ave., Third Floor
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Plastipak Packaging, Inc.:

Mr. Stewart A. Binke (P47149)
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Lansing, MI 48933

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of THE DETROIT
EDISON COMPANY to unbundle its retail electric
rates

MPSC No. U-12966

BOH Docket No. 2001-1172

Attorney General's Notice of Intervention

Now comes Attorney General Jennifer M. Granholm and gives notice of her intervention as a party and of her appearance in this proceeding. In response to the application filed by The Detroit Edison Company (DECo or the Company) and the notice of hearing issued by the Michigan Public Service Commission (MPSC or Commission), the Attorney General says:

I. Statement of Interest

1. She is the duly elected and qualified Attorney General of the State of Michigan and holds such office by virtue of and pursuant to 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, and The State of Michigan is a body politic established under the Constitution of the United States and admitted into the Union by act of Congress under date of January 26, 1837.

2. The Attorney General intervenes and appears in this proceeding for and on behalf of the People of the State of Michigan and for and on behalf of the State of Michigan, its departments, commissions and agencies, as customers and ratepayers of DECo. DECo serves

over 2 million retail electric customers. The interest of these customers is a public one, being common among virtually all electric customers in DECo's service area. The State of Michigan is a substantial user of and ratepayer for DECo's electricity services.

3. The Attorney General's intervention and appearance in this proceeding are authorized by both the statutory and common law of Michigan. MCL 14.28 provides in pertinent 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."

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 NW 298 (1936), and *Gremore v People's Community Hospital Authority*, 8 Mich App 56; 153 NW2d 377 (1967). Furthermore, when the Attorney General deems it in the public interest to do so, she may intervene in any administrative proceeding at any stage of that proceeding. *Attorney General v Liquor Control Comm'n*, 65 Mich App 88; 237 NW2d 196 (1975).

4. The Attorney General, in her judgment, has determined that the interests of both 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 significant 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

both the economy of the state and the general well-being of all of the citizens and residents of this State.

II. Statement of Positions

5. MCL 460.10b(2) [Section 10b(2)] states:

No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from the effective date of the amendatory act that added this section, the commission may order the electric utility to file an application to unbundle existing residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection.

6. Because of this statute, DECo filed its application in this case; however, DECo takes the position that MCL 460.10d(1) [Section 10d(1)] precludes any unbundling changes through December 31, 2003.

7. The Attorney General takes the position that the quoted statute requires the MPSC to conduct this unbundling case for DECo regarding existing commercial and industrial rate schedules and permits the MPSC to consider unbundling of DECo's residential rates.

8. Section 10d(1) states:

Unless otherwise reduced by the commission under subsection (4), the commission shall establish the residential rates for each electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 that will result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. Notwithstanding any other provision of law or commission order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on the effective date of the amendatory act that added this section and remain in effect until December 31, 2003 and all other electric retail rates of an electric utility with 1,000,000 or more retail customers

authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003, unless otherwise reduced by the commission under subsection (4).

9. The Attorney General takes the position that these facts and the statutes quoted above create a legal question concerning whether Section 10b(2) and Section 10d(1) conflict. If they conflict, then the language of Section 10d(1) seems to preclude action by the MPSC that might conflict with that section.

10. The Attorney General takes the position that the MPSC must give meaning to all the language in both statutes if possible. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich. 211, 228; 507 NW2d 422 (1993), and *Klopfenstein v Rohlfing*, 356 Mich 197, 202; 96 NW2d 782 (1959).

11. The Attorney General takes the position that the MPSC can unbundle DECo's existing commercial and industrial rate schedules and separately identify and charge for discrete services in compliance with Section 10b(2) and still allow rates approved pursuant to Section 10d(1) and (4) to remain in effect until December 31, 2003. Therefore, the Attorney General takes the position that the MPSC should establish unbundled rates pursuant to Section 10b(2).

12. In the alternative, if the MPSC decides that Section 10b(2) irreconcilably conflicts with Section 10d(1), then the MPSC should dismiss this case on the basis that the Commission cannot comply with both statutes and is bound to comply with Section 10d(1) in the event of a conflict between the two statutes.

13. The Attorney General takes the position that pursuant to Rule 323 [1992 AACs, R 460.17232] of the Commission's Rules of Practice and Procedure the Administrative Law Judge (ALJ) should first decide this legal question concerning any conflict between Section 10b(2) and Section 10d(1).

14. The Attorney General takes the position that if the ALJ and/or the Commission decide to go forward with this case, then the Commission should unbundle DECo's existing commercial and industrial rate schedules and separately identify and charge for discrete services.

Relief Requested

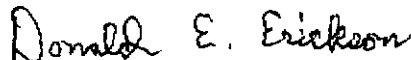
WHEREFORE, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to:

- A. Enter her Notice of Intervention upon the official record of the captioned proceeding and treat her as a party for all purposes;
- B. Conduct proceedings in this case in a manner consistent with the applicable statutes and Commission rules, and
- C. Grant the ratepayers of The Detroit Edison Company such further and additional relief as the facts and circumstances show to be appropriate.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

J. Peter Lark (P26970)
Assistant in Charge
Special Litigation Division



Donald E. Erickson (P13212)
Assistant Attorney General

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Dated: August 10, 2001
U-12966