

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of a Request for a Declaratory Ruling)
Regarding the Regulation of the Rates, Service)
and Facilities of Michigan Gas Storage Company)
_____)

Case No. U-12990

**ANSWER OF THE ASSOCIATION OF BUSINESSES ADVOCATING
TARIFF EQUITY TO CONSUMERS ENERGY COMPANY'S
REQUEST TO WITHDRAW**

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill P.L.C., hereby files its answer to the purported written request to withdraw Consumers Energy Company's ("Consumers") request for a declaratory order and, instead, request for minute action and states as follows:

I

ARGUMENT

A. Consumers is not Really Withdrawing its Request for Relief.

In a letter dated July 23, 2001, addressed to Ms. Dorothy Wideman, Consumers and Michigan Gas Storage Company ("MGSCo") purportedly withdrew their request for a declaratory order that the assets of MSGCo should be transferred from the jurisdiction of the Federal Energy Regulatory Commission ("FERC") to the jurisdiction of the Michigan Public Service Commission ("Commission"). In the same letter, Consumers and MGSCo request that the Commission issue a minute action to approve the transfer of jurisdiction without a hearing. Thus, the relief that the two utilities asked for in their request for a declaratory order is the same relief they are now asking for in a minute action. Consumers and MGSCo have asked the Commission to take this minute action without a hearing so there has been no change in the relief requested, only in the mechanism by which it would be delivered. Therefore, there is no substantive withdrawal.

ABATE, in its Petition to Intervene, stated that there would be net increase in revenue requirements of \$5 million per year as a result of the transfer of jurisdiction from FERC to the Commission. As such, a hearing is required by law. It matters not that Consumers and MGSCo are attempting to accomplish the rate increase through a bifurcated process which establishes the predicate of the rate increase in this case that ultimately would be implemented in Case No. U-13000. Exhibits in that case indicate that customers would be financially harmed as a result of the transfer of jurisdiction with absolutely no showing that they would receive any corresponding benefit. Consequently, a hearing is a legal necessity and cannot be ignored either through the issuance of a declaratory order or by the Commission issuing a minute action because the logical consequence of any such action would be that customers will receive a rate increase, which requires the utilities to issue a notice and for the Commission to hold hearings. MCL 460.6 et seq.

B. The Commission has no Statutory Authority to Take the Action Requested by Consumers and MGSCo.

In Union Carbide Corporation v. PSC, 431 Mich 135 (1988) the Michigan Supreme Court clearly held that the Commission possesses no “common law” powers and possesses only that authority bestowed upon it by statute. Id. at 146. The Court went on to say that a determination of the Commission’s powers requires an examination of the various statutory enactments pertaining to its authority and then proceeded to review the specific language of a number of statutes that apply to the Commission.

Under these circumstances, the Commission must also undertake a review of its statutory authority to transfer jurisdiction over assets and expenses from the FERC to the Commission without notice and without a hearing. There is nothing in the statutory scheme that would grant the Commission a specific power to approve the transfer of jurisdictional assets from FERC to the MPSC as well as taking jurisdiction over the customers of MGSCo. The Supreme Court in Union Carbide, supra., made it absolutely clear that MCL 460.6(1) does not confer any specific ratemaking authority so that statute is unavailable to support the action requested by Consumers and MGSCo.

The Michigan Supreme Court in Union Carbide, supra, also found that MCL 460.54 is not a specific grant of authority that would allow the Commission to transfer jurisdiction of assets and expenses from a Federal agency to the Commission.

In summary, there is nothing in the Commission's powers that would allow it through a minute action to assert jurisdiction over assets which are currently regulated by FERC and if transferred to the Commission would result in a rate increase as outlined in the exhibits sponsored by Consumers in Case No. U-13000. To implement the relief requested by Consumers and MGSCo is simply beyond the Commission's power and would be illegal under Union Carbide, supra.

II

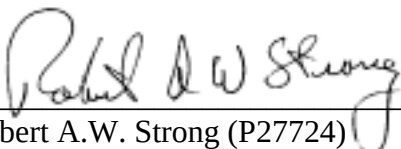
RELIEF

WHEREFORE, ABATE respectfully requests the Commission to deny the relief requested by Consumers and MGSCo, set this matter for hearings and direct the two utilities to demonstrate why it is in the public interest that the jurisdiction of the assets and jurisdiction over the customers of MGSCo should be transferred from FERC to the Commission in light of exhibits filed by Consumers in Case No. U-13000 showing a net increase in Consumers' revenue requirement of approximately \$5 million per year.

Respectfully submitted,

CLARK HILL P.L.C.

By:


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Dated: July 24, 2001

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

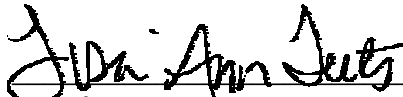
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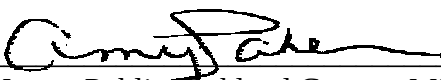
PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Lisa Ann Teets, being first duly sworn, deposes and says that she filed electronically Answer of the Association of Businesses Advocating Tariff Equity to Consumers Energy Company's Request to Withdraw in the above docket on the people identified on the attached service list by depositing the same on July 24, 2001, in the United States mail in the City of Birmingham, Michigan with first-class postage thereon fully paid.



Lisa Ann Teets



Notary Public, Oakland County, Michigan
My Commission Expires January 16, 2002

SERVICE LIST
MPSC CASE NO. U-12990

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