

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

July 24, 2001

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

Dear Ms. Wideman:

Re: MPSC Case No. U-12990

I am enclosing for filing an original and 4 copies of the Attorney General's Objections to Consumers Energy Company's Withdrawal of Request for Declaratory Order and Request for Minute Action. I am also enclosing a proof of service. In addition, a copy of this filing is being submitted electronically.

Sincerely,

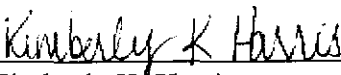
A handwritten signature in black ink that reads "Donald E. Erickson".

Donald E. Erickson
Assistant Attorney General

c All Parties
sld/cases/U-12990

PROOF OF SERVICE - U-12990

The undersigned certifies that a copy of the Attorney General's Objections to Consumers Energy Company's Withdrawal of Request for Declaratory Order and Request for Minute Action 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 July, 2001



Kimberly K. Harris

MPSC Staff:

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Public Service Division
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ABATE:

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Michigan Gas Storage Company:

Mr. Robert M. Neustifter
Consumers Energy Company.
212 West Michigan Avenue
Jackson, MI 49201

Consumers Energy Company:

Mr. H. Richard Chambers
Consumers Energy Company
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Jackson, MI 49201

Residential Ratepayer Consortium:

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Lansing, MI 48917

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

MPSC No. U-12990

Attorney General's Objections to
Consumers Energy Company's Withdrawal of Request for Declaratory Order and
Request for Minute Action

In response to the July 23, 2001, withdrawal letter from Consumers Energy Company (CECo) and Michigan Gas Storage Company (MGSCo), Attorney General Jennifer M. Granholm makes the following objections:

1. On June 22, 2001, CECo and MGSCo jointly filed a Request for Declaratory Order in the captioned case.
2. That request asks the Michigan Public Service Commission (MPSC or Commission) to issue a declaratory ruling and formally certify the Commission's intent and ability to regulate MGSCo's rates, service and facilities by approving a statement in the form attached as Exhibit C.
3. On July 18, 2001, the Attorney General filed a response to the request filed by CECo and MGSCo. In her response, the Attorney General contended that the MPSC could not lawfully issue a declaratory ruling pursuant to MCL 24.264, that the MPSC should treat the

request as a contested case, and that the request should either be decided in Case No. U-13000 or as a contested case in the captioned case.

4. On July 23, 2001, CECo and MGSCo filed a letter requesting withdrawal of their application for a declaratory order and requesting the MPSC to approve and sign a letter in the exact same form as they proposed in their original request. But, CECo and MGSCo now ask the MPSC to take this action in a "minute action" instead of as a declaratory ruling under MCL 24.264.

5. The letter filed by CECo and MGSCo is a charade. The letter seeks the exact same relief as the June 22 request sought; therefore, CECo' and MGSCo are not truly withdrawing their request. They merely eschew reliance upon MCL 24.264 and substitute reliance upon an alleged willingness of the Federal Energy Regulatory Commission (FERC) to accept an MPSC minute action as the basis for an exemption under federal law.

6. Neither CECo nor MGSCo cite any statute permitting the MPSC to exercise jurisdiction to regulate MGSCo via a minute action.

7. Such action would result in new regulation and rates for CECo's customers as well as for CECo and MGSCo. Upon information and belief based upon understanding of current regulation of MGSCo as well as proposals in Case No. U-13000, the Attorney General believes that this new regulation would increase costs of service for CECo's customers by approximately \$5 million per year.

8. The minute action now requested by CECo and MGSCo involves issues of federal law as well as issues of state law. If FERC exempts MGSCo from federal regulations as a consequence of the action requested by CECo and MGSCo in this case, which is the stated

purpose, then even though the amount of a cost increase may not yet be quantified, a cost increase will result based upon the information described in CECo's filing in U-13000.

9. Since the action requested will result in increased costs of service for CECo's customers, the MPSC cannot take such action without notice and an opportunity for a hearing as required by MCL 460.6a(1).

10. Since at least 1914, Michigan courts have ruled that the MPSC and its predecessors (the Michigan Railroad Commission and the Michigan Public Utilities Commission) possess limited powers. In *Grand Rapids & I R Co v Michigan Railroad Comm'n*, 183 Mich 383, 392; 150 NW 154 (1914), the Supreme Court ruled that the railroad commission was not empowered to compel a railroad to provide switching facilities. In *Taylor v Michigan Public Utilities Comm'n*, 217 Mich 400, 403; 186 NW 485 (1922), the Supreme Court said that the public utilities commission's jurisdiction must affirmatively appear in a statute and any power possessed by the MPSC must be found in statutory enactments before the MPSC's jurisdiction could be invoked or exercised. In *Sparta Foundry Co v Michigan Public Utilities Comm'n*, 275 Mich 562, 564; 267 NW 736 (1936), the Supreme Court affirmed these rulings.

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 a utility to provide adequate service and the power to set rates, the MPSC did not have the power to delay the effective date of a rate increase until the utility built certain facilities and improvements. In *Huron Portland Cement Co v PSC*, 351 Mich 255, 262; 88 NW2d 492 (1958), the Court ruled that the MPSC has no common law powers and, therefore, it had no power to require Consumers Power Company to extend service beyond its own territory. In *Union Carbide Corp v PSC*, 431 Mich 135, 151; 428 NW2d 322 (1988), the Supreme Court ruled that the power and authority to

be exercised by the MPSC must be conferred by clear and unmistakable language and ruled that, since a doubtful power does not exist, an order issued by the MPSC requiring Consumers Power Company to terminate a fuel oil contract which had an unreasonably high price was unlawful because the Commission lacked the power to issue such an order. In addition to these authorities, the Supreme Court has ruled that where powers are specifically conferred, they cannot be extended by inference. *Sebewaing Industries Inc v Sebewaing*, 337 Mich 530, 545-546; 60 NW2d 444 (1953). *Accord, Taylor* at 402-403.

11. In other words, assuming only for the sake of argument that the MPSC could take ex parte action in this case, there is no clear and unmistakable statutory language empowering the MPSC to exercise jurisdiction over MGSCo via a "minute action." Therefore, the MPSC cannot lawfully grant the relief currently requested by CECo and MGSCo.

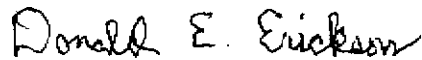
Relief Requested

For the reasons stated above, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to deny the request for a minute action and to address in Case No. U-13000 the issues raised by the Request for Declaratory Ruling. In the alternative, the Attorney General contends that the issues in this case should be resolved in the captioned case and cannot be lawfully resolved in the form of a minute action.

Respectfully submitted,

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Attorney General

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July 24, 2001