

CLARK HILL
PLC
ATTORNEYS AT LAW

255 South Old Woodward Avenue
3rd Floor
Birmingham, MI 48009-6179
Tel. (248) 642-9692 • Fax (248) 642-2174
www.clarkhill.com

Robert A. W. Strong
Phone: (248) 988-5861
E-Mail: rstrong@clarkhill.com

July 26, 2004

***VIA ELECTRONIC CASE FILING and
U.S. FIRST CLASS MAIL***

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909-7721

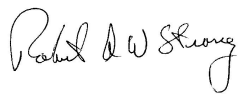
Re: *MPSC Case No. U-12999*

Dear Ms. Kunkle:

Enclosed for filing is Replies to Exceptions of the Association of Businesses Advocating
Tariff Equity along with a Proof of Service.

Very truly yours,

CLARK HILL PLC

 Digitally
signed by
Robert
A.W. Strong



Robert A. W. Strong

Enclosure
cc (w/enc): Parties of Record
/ag

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of CONSUMERS)	
ENERGY COMPANY for accounting and)	Case No. U-12999
ratemaking approval of depreciation rates for gas)	
utility plant.)	
_____)	

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

The Association of Businesses Advocating Tariff Equity ("ABATE") by its attorneys, Clark Hill PLC, files its replies to exceptions to the Proposal for Decision ("PFD") issued by the Administrative Law Judge ("ALJ") on June 28, 2004.

I.

ARGUMENT

1. Reply to the MPSC Staff.

The Staff is taking exception to a recommendation to utilize a methodology sponsored by the Attorney General ("AG") which the Staff had characterized as being a reasonable alternative to the Staff's proposal in its brief. Specifically, the Staff stated:

"Staff continues to support its proposed depreciation rates as set forth in Exhibit S-27. However, Staff believes the witnesses for the AG and ABATE present *persuasive* arguments for their alternative positions regarding cost of removal expenses. The AG's inflation-adjusted cost of removal proposal and his proposal to recover removal costs following the procedures prescribed in SFAS 143 would reduce removal costs, and *would help to eliminate the intergenerational inequities inherent in the traditional approach*. An approach which ignores inflationary effects and overcharges customers today for a future inflated cost. The AG's and ABATE's proposal to recover only the current level of removal costs in utility rates is also a reasonable proposal if modified to recognize Consumers' asset retirement obligations as described at 5 Tr 114. This modified proposal would bring Consumers' accounting treatment in line with SFAS 143m and with the pending Statement of Position (SOP) by the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants on "Accounting for Certain Costs and

Activities related to Property, Plant, and Equipment.” (emphasis added)

Staff Initial Brief, pp. 7-8.

The Staff then discusses the need for a “generic electric and gas case” to address FAS 143 accounting. The implication is that the Staff’s proposal, which is to include substantially more dollars in net removal costs in rates than either the AG’s or ABATE’s approach, is an interim proposal. The dollar gap between the Staff’s position and the other two positions sponsored by ABATE and the AG is simply too great to conclude that the Staff’s proposal would result in just and reasonable rates. The same is true of Consumers’ proposal which would establish rates which are far above just and reasonable levels.

The Staff also seems confused that this case involves rate making as a result of FAS 143. FAS 143 applies only to the cost of removal as it relates to equipment where there is a legal obligation to remove the equipment. This case, on the other hand, involves a cost of removal where there is no specific statutory or regulatory requirement that the equipment be removed. This case has its basis in proceedings that started a substantial time ago and there is no excuse not to adopt just and reasonable rates.

2. Reply to Consumers.

Consumers’ principal arguments in its exceptions are that the AG’s method is “contrary” to the traditional gas depreciation practice in Michigan, “contrary” to two settlements, “contrary” to the principle that depreciation should allocate costs over the useful life of assets, and “contrary” to general principles of intergenerational equity and, lastly, “contrary” to the concept of gradualism. ABATE’s proposal and the AG’s proposal should be “contrary” to all of these things because under the current Consumers’ traditional gas depreciation practice, customers are paying unjust and unreasonable rates in violation of MCL 460.557(4). There should be a radical change, given the current method would include approximately \$58 million in negative net

salvage costs in depreciation rates, whereas the actual experience of Consumers has been to be incur an average of approximately \$8 million per year over the last five years. The evidence shows that the current practice greatly over collects from current customers. Contrary to the assertion of Consumers, there is intergenerational inequity because the current rates are so much higher than the actual. This means that current customers are paying far more now than future customers will pay for net salvage for equipment that has useful lives extending to and beyond 40 years.

In summary, the Commission should adopt either ABATE's or the AG's position, because either one of them results in more reasonable rates than either the Consumers' proposal or the Staff's proposal.

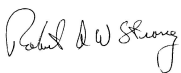
III

RELIEF

WHEREFORE, ABATE requests the Commission either adopt ABATE's proposal or the AG's proposal because the resulting rates will be just and reasonable.

Respectfully submitted,

CLARK HILL PLC

By:   Digitally signed
by Robert
A.W. Strong

Robert A.W. Strong (P27724)
Attorneys for the Association of Businesses
Advocating Tariff Equity
255 South Old Woodward Ave., 3rd Floor
Birmingham, Michigan 48009
248/642-9692
rstrong@clarkhill.com

Dated: July 26, 2004

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of CONSUMERS ENERGY
COMPANY for accounting and ratemaking approval of
depreciation rates for gas utility plant.

MPSC Case No. U-12999

_____)

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Audrey L. Gilliatt, being first duly sworn, deposes and says that on the 26th day of July, 2004 she filed electronically and/or by U.S. First Class Mail: Replies to Exceptions of the Association of Businesses Advocating Tariff Equity on those persons identified in the attached service list.

 Digitally signed by
Audrey L. Gilliatt

Signature Not Verified

Audrey L. Gilliatt

 Digitally signed by
Judy Haffner

Judith A. Haffner
Notary Public, Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission expires: 07/11/05

SERVICE LIST
MPSC CASE NO. U-12999

Administrative Law Judge

Hon. Daniel E. Nickerson, Jr.
Administrative Law Judge
6545 Mercantile Way, Suite 14
P.O. Box 30221
Lansing, MI 48909-8195
denicke@michigan.gov

Consultant for Attorney General

Charles W. King
Snively King Majoros O'Connor & Lee Inc
1220 L Street, NW, Suite 410
Washington, DC 20005
charlieking@snively-king.com

**Attorney for Consumers Energy
Company**

H. Richard Chambers, Esq.
Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
hrchambers@cmsenergy.com

**Attorney for Michigan Public Service
Commission**

Steven D. Hughey, Esq.
Assistant Attorney General
Public Service Commission
6545 Mercantile Way
Suite 15
Lansing, Michigan 48911
hugheys@michigan.gov

Mr. Robert Ozar
MPSC Gas Staff
6545 Mercantile Way
P.O. Box 30221
Lansing, Michigan 48909
rgozar@michigan.gov

Attorney for Attorney General

Donald E. Erickson, Esq.
Assistant Attorney General
6th Floor, G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909
ericksond@michigan.gov