

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

February 17, 2005

***VIA ELECTRONIC CASE FILING and
HAND DELIVERY***

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 the Association of Businesses Advocating Tariff Equity's Answer in Opposition to Petition of Consumers Energy Company for Waivers of Filing Requirements 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.)	
_____)	

**ASSOCIATION OF BUSINESSES ADVOCATING TARIFF
EQUITY'S ANSWER IN OPPOSITION TO PETITION OF CONSUMERS ENERGY
COMPANY FOR WAIVERS OF FILING REQUIREMENTS**

The Association of Businesses Advocating Tariff Equity ("ABATE") by its attorneys, Clark Hill PLC, files this Answer in Opposition to Petition of Consumers Energy Company for Waivers of Filing Requirements and in support states as follows:

I.

INTRODUCTION

Consumer Energy Company's (Consumers) depreciation rates were last established by the Michigan Public Service Commission in a December 7, 1998 Order in Case No. U-11509. In the interim, there was a slight voluntary reduction which was recently reapproved in an order in this proceeding dated December 2, 2004. Previously in this proceeding, ABATE and the Attorney General claimed that the current depreciation rates were unjust and unreasonable and supported a substantial reduction in depreciation expense. Also, the MPSC Staff supported a reduction in depreciation expense, however, the Commission held that there should be no changes in depreciation expense and initiated a generic case, U-14292, to review the issue further and also directed Consumers to compile a study that should be filed with the Staff on or about December 31, 2005, comparing its negative net salvage expenses to the same expenses experienced by other Michigan gas utilities. In addition, Consumers was directed to file an application for new depreciation accrual rates for its natural gas utility plant on or no earlier than

a date three months prior to the date that the company files its next natural gas general rate case and to utilize the natural gas utility plant balances as of the December 31 of the calendar year immediately preceding the filing date. Opinion and Order, Case No. U-12999, dated October 14, 2004, p. 16 and p. 18.

The Commission issued a notice of hearing regarding accounting and rate making treatment in Case No. U-14292 which initiated “a proceeding to review future treatment of accounting and ratemaking issues, proper future ratemaking policy regarding those issues, necessary uniform system of accounts, revisions and other matters related to transactions and events deemed appropriate for ratemaking purposes.” Notice, p. 1. This notice did not state that rates would be changed as a result of the policy determinations made in that case without a future depreciation case. Consequently, without a depreciation case, there is a good possibility that even if a policy determination is made that is consistent with either the position of the Attorney General or ABATE, then rates will not be revised until the Commission issues another order in response to a new depreciation case.

In its Petition, Consumers is seeking waiver of a requirement that it file a new depreciation case prior to the filing of a general rate case which it says it will file in mid-2005. If granted, Consumers’ requested relief would eliminate the Commission imposed requirement that the depreciation policy be decided prior to consideration of adjusting rates to reflect the outcome of a general rate case. The Commission should reject Consumers’ request and instead insist upon the filing of a depreciation case so that there will be a procedural vehicle to incorporate the results of the generic depreciation case that can be synchronized with the results of the yet to be filed general rate case.

In its Petition, Consumers would like the Commission to waive the requirement that Consumers commence a depreciation case as a prerequisite for issuing an order in a general rate case. This should be avoided to ensure that future rates will be just and reasonable following a policy determination in Case No. U-14292. Without an existing depreciation case, then presumably Consumers would be in control of the timing of the filing of a new depreciation case, which would review the specific numbers based upon the policy determinations made in Case No. U-14292. Therefore, the offer made in paragraph 12 of the Petition is illusory in that it would only go into effect after the new depreciation case is processed, which could take up to nine months after an order is issued in Case No. U-14292. The offer of surcharges and, by implication, credits made by Consumers in paragraph 12 of its Petition, therefore provides customers no relief from paying unjust and unreasonable rates for an extended period of time.

This Commission owes a duty to customers of Consumers to establish rates that are just and reasonable as soon as possible. Based upon ABATE's testimony and position in Case No. U-13000, the current depreciation rates are unjust and unreasonable and have been so since they were last adjusted in 1998. Granting Consumers' requested relief would be unjust and unfair.

II

ARGUMENT

A. It Would Be Unfair To Create A Procedure That Would Delay Rate Adjustments To Reflect The Commission's Policy On Depreciation.

Consumers has asked this Commission to grant it waiver from filing a depreciation case in accordance with the Commission's Opinion and Order dated October 14, 2004. The absence of a depreciation case can make it impossible to timely adjust depreciation rates following a Commission decision on the impact of FAS 143 and how net salvage value will be calculated on a going forward basis. Consumers can simply file a case which complies with the Commission's

order stating that it will be updated once the Commission's depreciation policy has been established by an order in Case No. U-14292. Such an order can be issued by the end of the year or before the next gas rate case is decided, assuming one is filed in mid-2005. This procedure would allow for the synchronization of the rate adjustments found in both the depreciation case and the general rate case.

Assuming that an order is issued by the end of the year in Case No. U-14292, then Consumers could file testimony in the depreciation case detailing the revenue and rate impact of the policy pronouncements. Abbreviated proceedings could be held with respect to Consumers' case and any responsive filings made by intervenors and Staff. The proceedings should be completed before there are any revenue adjustments, either as a result of the depreciation case or the general rate case. Such a procedure would ensure that the Commission was given sufficient information, testimony and evidence to support a determination of just and reasonable rates.

B. The Commission Should Reject Consumers' Efficiency Argument.

Consumers allege that it would be more efficient to delay the filing of the depreciation case until after the Commission's final order in Case No. U-14292 and the completion of Consumers' net salvage analysis. This argument means that effectively Consumers would not file a depreciation case until the beginning of 2006 that would not be completed until nine months later. Such a nine month delay is very prejudicial to retail customers who have been paying higher than justified depreciation rates since 1998.

Consumers is free to complete its net salvage analysis at any time and can simply amend or supplement a filed depreciation case with results of its net salvage analysis and comparison. Consumers need not wait until the Commission imposed deadline of December 31, 2005 to complete its analysis and comparison of net salvage claimed by Consumers and the net salvage

claimed by other utilities subject to Commission regulation. Again, following a final Commission order in Case. No. U-14292, Consumers should be required to supplement the filings made in the yet to be filed depreciation case. Under no circumstances should the Commission decouple the depreciation case from the general rate case. As the Commission noted in this case in its October 14, 2004 Opinion and Order, there is a substantial amount of money at stake which could have a substantive impact on the retail rates Consumers may charge its customers.

C. Consumers' Proposed Modifications To The Filing Requirements Are Unreasonable.

In paragraph 10 of its Petition, Consumers is requesting that the Commission permit Consumers to use different year ending plant balances depending upon when Consumers files its depreciation case. For example, if Consumers filed its case anytime before June 1, 2006, then Consumers is requesting that it be allowed to utilize plant balances as of December 31, 2004. Anytime after that date, then it would use plant balances as of December 31, 2005. This request is further proof of Consumers' plan to delay the filing of a depreciation case and not timely implement any Commission approved policy on net salvage value.

Publicly held companies, such as CMS Energy, must file their SEC Form 10-K within 90 days of the end of the fiscal year which ends on December 31 for CMS and Consumers. Therefore, Consumers must close its books in advance of that date in order to allow the report to be prepared, which means that Consumers will have the ending plant balances well before June 1 of a particular year. Consequently, Consumers' proposal is unreasonable on its face and should be denied.

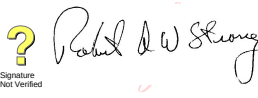
III.

RELIEF

WHEREFORE, ABATE requests the Commission to not grant the waivers sought by Consumers and clarify that Consumers should complete its net salvage study and comparisons as soon as possible and that it should amend any pending depreciation case as soon as the policy on net salvage is determined by the Commission and order that revenue changes, both as a result of the depreciation case and any general rate case, be synchronized and implemented at the same time.

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: February 17, 2005

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)

Robert A.W. Strong, being first duly sworn, deposes and says that on the 17th day of February, 2005 he did cause to be filed electronically and/or by U.S. First Class mail: Association of Businesses Advocating Tariff Equity's Answer in Opposition to Petition of Consumers Energy Company for Waiver of Filing Requirements and Proof of Service on those persons identified in the attached service list.



Digitally signed
by Robert A.W.
Strong

Robert A.W. Strong



Digitally signed by
Audrey L. Gilliatt

Audrey L. Gilliatt
Notary Public, Oakland County, MI
Acting in Oakland County, MI
My Commission expires: 07/06/05

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

Attorney for Consumers Energy Company

Jon R. Robinson, Esq.
H. Richard Chambers, Esq.
Consumers Energy Company
22 West Michigan Avenue
Jackson, Michigan 49201
hrchambers@cmsenergy.com
jrrobinson@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

William Aldrich
MPSC Gas Staff
6545 Mercantile Way
P.O. Box 30221
Lansing, Michigan 48909
wgaldri@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