

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 10, 2006

VIA ELECTRONIC CASE FILING

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

Re: MPSC Case No. U-14561

Dear Ms. Kunkle:

Enclosed for filing is the Reply Brief of the Association of Businesses Advocating Tariff Equity and a Proof of Service in the above matter.

Very truly yours,

CLARK HILL PLC

Robert A.
W. Strong

Digitally signed by Robert A.W.
Strong
DN: CN = Robert A.W. Strong,
C = US, O = Clark Hill
Date: 2006.07.10 14:08:58 -
04'00'

Robert A. W. Strong

Enclosures

cc w/enc: Parties of Record
ALJ Mark E. Cummins

/ag

5183442v.1 07411/058110

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to investigate)
investigate the appropriateness of instituting a surcharge to assist)
in the funding of the Gas Technology Institute) Case No. U-14561

REPLY BRIEF OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE") by its attorneys, Clark Hill PLC, files this Reply Brief in accordance with this schedule established by the Michigan Public Service Commission ("Commission").

I.

ARGUMENT

A. Reply to SEMCO, MGU, WPS and NSP-W

Collectively, these gas utilities support voluntary funding for R&D projects and if these research projects prove to be beneficial then the expenses can be included in rates. ABATE agrees with this position.

B. Reply to Consumers Energy Company.

Consumers supports voluntary funding for GTI and requests that the proposal by GTI be denied and the funding be continued as agreed upon by the parties and approved by FERC. ABATE agrees with this position.

C. Reply to the Michigan Public Service Commission Staff.

Staff supports voluntary funding of GTI and rate increases must be based upon the benefits to the ratepayers. ABATE supports this position.

D. Reply to the Attorney General.

The Attorney General takes the position that the Commission lacks statutory authority to impose a mandatory surcharge on all natural gas utilities to fund GTI. ABATE agrees with this position. In addition, the Attorney General stated that the Commission should not adopt any type of mandatory surcharge or any type of requirement where a utility must use GTI in order to conduct R&D. ABATE supports this position.

The Attorney General also states that a utility must carry the burden of proving the benefits outweigh the cost when seeking to include an R&D project in rate base. ABATE agrees with this position.

E. Reply to GTI.

GTI seems to have given up on a mandatory surcharge and instead has moved to a position that utilities could decide which projects they would fund and that there will be a rebuttable presumption that all expenses within a cap that correlates to \$.0174/Mcf are recoverable in a general rate case. Sections 75 and 76 of the Michigan Administrative Procedures Act of 1969, as amended (MCL 24.275 and 24.276) ("APA"), state that in contested cases, the rules of evidence as applied in a non-jury civil case in circuit court shall be followed and that evidence upon which the parties wish to avail themselves shall be offered and made a part of the record. Section 85 of the APA provides, in pertinent part:

"Findings of fact shall be based exclusively on the evidence and on matters officially noticed."

MCL 24.285.

There is no evidentiary support for GTI's new proposal to implement a rebuttable presumption in favor of cost recovery as long as the projects fell within so-called "criteria". Consequently, this concept is not properly before the Commission and must be rejected.

GTI also claims that there has been a showing that the benefits of its R&D far out weigh the cost of implementation. There has been no such showing nor could there be because benefits associated with R&D are purely speculative at best.

GTI would also like the Commission to stack the deck in favor of cost recovery by adopting certain so called “criteria” which are simply categories. A rebuttable presumption in favor of cost recovery would arise if expenses were associated with the following broad categories (Initial Brief, p. 5):

- Distribution System Integrity
- Distribution System Safety
- Distribution System Deliverability
- Low-Income – Customer Increased-Efficiency End - Use Equipment
- Consumer Safety

These are hardly “criteria” and certainly are not an attempt to identify the benefits associated with any particular R&D project. “Criterion” has been defined as follows:

“A standard, rule, or test on which a judgment or decision can be based.”

The American Heritage College Dictionary, Third Edition.

The categories offered by GTI certainly are not criteria that will allow the Commission to make an informed judgment or decision regarding whether to raise rates to pay for a particular R&D project and therefore, they should be rejected by the Commission as being applicable to any voluntary program.

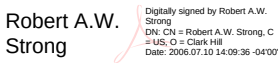
II.

RELIEF

WHEREFORE, ABATE requests the Commission to deny GTI's application with prejudice.

Respectfully submitted,

CLARK HILL PLC

By:  Robert A.W. Strong
Robert A. W. Strong (P27724)
Attorneys for the Association of Businesses
Advocating Tariff Equity
255 S. Old Woodward Avenue, Third Floor
Birmingham, Michigan 48009
(248) 642-9692
rstrong@clarkhill.com

Dated: July 10, 2006

5282862v.1 07411/102158

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to investigate
the appropriateness of instituting a surcharge to assist in the
funding of the Gas Technology Institute

Case No. U-14561

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Robert A.W. Strong, being first duly sworn, deposes and says that he did cause to be filed electronically the Reply Brief of the Association of Businesses Advocating Tariff Equity and Proof of Service in the above docket on the persons identified on the attached service list on July 10, 2006.

Robert A. W. Strong
Digitally signed by Robert A.W. Strong
DN: CN = Robert A.W. Strong, C = US, O = Clark Hill PLC
Hill
Date: 2006.07.10 14:10:02 -0400

Robert A.W. Strong

Subscribed and sworn to before me
this 10th day of July, 2006.

Gloria A. Walsh
Digitally signed by Gloria A. Walsh
DN: CN = Gloria A. Walsh, C = US,
O = Clark Hill PLC
Date: 2006.07.10 14:10:33 -0400

Gloria A. Walsh, Notary Public
Macomb County, MI, acting in Oakland County, MI
My Commission expires: 08/03/11

SERVICE LIST
MPSC Case No. U-14561

Administrative Law Judge

Hon. Mark E. Cummins
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48911
mecummi@michigan.gov

Counsel for Attorney General Michael A. Cox

Michael E. Moody
Assistant Attorney General
Special Litigation Division
6th Floor, G. Mennen Williams Building
525 W. Ottawa Street, P.O. Box 30212
Lansing, MI 48909
moodyme@michigan.gov

Counsel for MPSC Staff

Patricia Barone
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
baronep@michigan.gov

Counsel for Michigan Consolidated Gas Company

Bruce Maters
Richard P. Middleton
The Detroit Edison Company
2000 Second Avenue, 688 WCB
Detroit, MI 48226
matersb@dteenergy.com
middletonr@dteenergy.com
mpscfilings@dteenergy.com

Counsel for Consumers Energy Company

John C. Shea
Consumers Energy Company
1 Energy Plaza Drive, Rm EP11-225
Jackson, MI 49201
jcshea@cmsenergy.com

Counsel for SEMCO Energy Gas Company; Northern States Power Company dba Xcel Energy; Wisconsin Public Service Corp.

Harvey J. Messing
Sherri A. Wellman
Miller, Canfield, Paddock & Stone, PLLC
One Michigan Avenue, Suite 900
Lansing, MI 48933
wellmans@millercanfield.com

Counsel for Aquila

Stewart A. Binke
Dykema Gossett PLLC
800 Michigan National Tower
Lansing, MI 48933-1707
sbinke@dykema.com

Counsel for Citizens Gas Fuel Company

Bruce Maters
Richard P. Middleton
The Detroit Edison Company
2000 Second Avenue, 688 WCB
Detroit, MI 48226
matersb@dteenergy.com
middletonr@dteenergy.com
mpscfilings@dteenergy.com

Counsel for Gas Technology Institute

Robert B. Nelson
Fraser, Trebilcock, Davis & Dunlap, PC
124 W. Allegan Street
Suite 100
Lansing, MI 48933
rnelson@fraserlawfirm.com