

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**
(e-file/paperless)

**THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
INITIAL BRIEF**

The Michigan Public Service Commission Staff ("Staff"), by its attorney, Patricia S. Barone, Assistant Attorney General, files the following brief in the above-entitled case.

I. History of Proceedings

On June 30, 2005, the Commission issued an Order Initiating Generic Proceeding and Notice of Hearing. In that order, the Commission described the Gas Technology Institute ("GTI"), its purpose and history. The Commission stated¹:

The Gas Technology Institute (GTI) is the leading research, development, and training organization serving the natural gas industry. For the past 60 years, GTI and its predecessor, the Gas Research Institute, have been meeting the nation's energy and environmental challenges by developing technology-based solutions for consumers, industry, and government. For most of those years, GTI's research efforts were funded through an energy surcharge applied to all natural gas transmitted through interstate commerce in the United States. However, effective in August 2004, the Federal Energy Regulatory Commission discontinued the surcharge. GTI's research efforts will now be funded with contributions from individual states or even individual distribution companies.

The Commission went on to state that it was establishing this proceeding in order to consider on a state-wide basis the appropriate level of support, if any, for GTI's research efforts. It indicated that this level of funding should be determined on a state-wide basis, rather than by

¹ Order Initiating Generic Proceeding and Notice of Hearing, Case No. U-14561, June 30, 2005, page 1.

making company-by-company determinations of support and funding requirements. The Commission also stated that it would consider a mechanism for recovery of GTI-related support and funding. Such a mechanism could involve an energy surcharge to apply to all gas distribution and transportation volumes in Michigan, a per-meter charge, or another appropriate method of cost recovery.

On August 29, 2005, a prehearing conference was held. At that time, the Petitions to Intervene of the following parties were granted: Consumers Energy Company (“Consumers”), the Association of Businesses Advocating Tariff Equity (“ABATE”), Michigan Consolidated Gas Company (“MichCon”), the Attorney General, SEMCO Energy Gas Company (“SEMCO”), Wisconsin Public Service Corporation (“WPS”), Northern States Power Company, d/b/a Xcel Energy (“Xcel”), Aquila, Inc., d/b/a Aquila Networks-MGU (“Aquila”), and GTI. Staff appeared and has participated as a party.

On October 18, 2005, the Commission issued an order denying ABATE’s application for leave to appeal. The Commission found that it had jurisdiction to set gas rates, and therefore, had jurisdiction to approve money in rates for gas utilities to engage in research involving natural gas. The Commission also found that the settlement at the Federal Energy Regulatory Commission (“FERC”) involved interstate pipelines and its customers, not state regulation of gas rates for local distribution companies. The Commission found²:

The Commission finds that it has jurisdiction to hear this proceeding pursuant to the Commission’s broad ratemaking powers, as outlined in MCL 460.6 (“The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state . . . to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities.”), and MCL

² Order, Case No. U-14561, October 18, 2005, pages 7-8.

460.54 (the Commission's "jurisdiction shall be deemed to extend to and include the control and regulation, including the fixing of rates and charges, of all public utilities within this state, producing, transmitting, delivering or furnishing . . . gas for heating or lighting purposes for the public use."). The Commission finds that funding of GTI's efforts has been beneficial to ratepayers in the past, and the Commission's broad authority over rates confers jurisdiction on the Commission to explore mechanisms for continued funding.

This proceeding does not involve interstate pipelines, over which the Commission has no rate setting authority. It involves Commission-jurisdictional natural gas distribution companies. Thus, the Commission finds ABATE's reliance on the FERC settlement agreement to be misplaced. While it is true that the FERC settlement agreement places limitations on the forms of funding available to GTI after January 1, 2005, those limitations apply to the interstate pipelines that were parties to the FERC settlement agreement, and whose cost recovery processes are governed by FERC. The Commission is not a party to the FERC settlement agreement, and the Commission's options with respect to voluntary or mandatory funding of GTI by LDCs are not limited by the terms of the FERC settlement agreement, because the LDCs are not interstate pipelines. 83 FERC ¶ 61,093, at *61,454. Neither of the post-January 1, 2005 funding alternatives laid out in the FERC settlement agreement affects the ability of a state commission to investigate potential funding mechanisms for GTI's RD&D programs, nor the ability of an LDC to choose to support GTI and to apply to the state commission for recovery of those amounts in rates. Indeed, in its recent filing in Case No. U-13898, Michigan Consolidated Gas Company proposed a mandatory surcharge to fund GTI's efforts. This evidences the interest of at least one LDC in finding a way to continue to support GTI. If the collaborative process is not productive, this proceeding will allow the Commission to explore the level of potential support among Michigan's LDCs for funding GTI, and possible mechanisms for doing so.

On November 21, 2005, another prehearing was held, and a schedule for filing testimony and briefs were set. TR 43. On June 1, 2006, a hearing was held to present and cross-examine the parties' pre-filed testimony. GTI presented the testimony of Ronald B. Edelstein, and he was cross-examined. The testimony of Consumers' witness, Jill Mills Polich, was bound into the record without cross-examination. The Attorney General presented the testimony of Charles W. King, and he was cross-examined. Staff presented the testimony of Susan Crimmins Devon, and she was cross-examined.

II. Staff's Position

Staff presented its position through the testimony and exhibit of Susan Crimmins Devon. TR 161-172; Exhibit S-1.³ Ms. Devon is the Director of the Regulated Energy Division at the Commission and is responsible for planning and directing the activities related to the setting of regulated energy rates for all gas and electric utilities in Michigan. TR 162-164.

Ms. Devon first explained that the Michigan Public Service Commission's Uniform System of Accounts for Major and Non-major Gas Utilities' ("USOA") has provisions regarding Research and Development ("R&D"). She testified regarding the USOA's definition of R&D:

- A. Yes, per Section I. General Instructions, (1) Definitions, paragraph 31. B: "Research and Development" in the case of major utilities means expenditures incurred by natural gas companies either directly or through another person or organization (such as **research institute**, industry association, foundation, university, engineering company or similar contractor) in pursuing research and development activities including experiment, design, installation, construction or operation. Such research and development costs should be reasonably related to the existing or future utility business, broadly defined, of the company or to the environment in which it operates or expects to operate. The term includes but is not limited to: all such costs incidental to the design, development or implementation of an experimental facility, a plant process, a product, a formula, an invention, a system or similar items, and the improvement of already existing items of a like nature; amounts expended in connection with the proposed development and/or proposed delivery of substitute or synthetic gas supplies (alternate fuel sources for example, an experimental coal gasification plant or an experimental plant synthetically producing gas from liquid hydrocarbons); and the costs of obtaining its own patent, such as attorney's fees expended in making and perfecting a patent application. The term does not include expenditures for efficiency surveys; studies of management, management techniques and organization; consumer surveys, advertising, promotions, or items of a like nature. (USOA – page 5, emphasis added.) [TR 166-167.]

³ Exhibit S-1 is a copy of GTI's response to Question 1 of Staff's First Discovery Request in this case. It provides details of all the states and individual companies that are providing funding for GTI research programs and projects. TR 166.

Ms. Devon went on to testify that the R&D work performed by GTI falls with the definition of R&D as provided for in paragraph 31.B of the General Instructions in the Commission's USOA. She stated:

- A. Yes, the definition specifically provides for R&D work furnished by research institutes. According to its web-site and information obtained in this proceeding, GTI is the leading research, development, and demonstration (RD&D) organization serving the natural gas industry. GTI has more than sixty years of experience in technology development and training. GTI role includes RD&D needs assessment, program development, research and development efforts, and implementation of technologies and effective issue resolution. The type of R&D work performed by the GTI is fully explained in the testimony of Ronald Edelstein. [TR 167.]

Ms. Devon then went on to explain the various accounts that are provided for in the Commission's USOA in which gas utilities may record R&D expenses as defined in paragraph 31.B of the General Instructions. TR 167-169. She next noted that as of the filing of her testimony, none of the gas utilities participating in this case had filed in support of a funding mechanism for GTI's R&D work, and that Consumers filed testimony opposing a state-wide funding mechanism. She also noted that the Attorney General filed testimony that recommends that the funding be purely voluntary and that the gas distribution companies should be responsible for supporting GTI with no guarantee that their support will be reimbursed by ratepayers. The Attorney General's witness, Mr. King, further recommended that gas utilities should be required to make an independent analysis and evaluation of each of GTI's R&D projects, and if beneficial to ratepayers, seek reimbursement in a contested case, Ms. Devon noted. TR 170.

Ms. Devon articulated Staff's position that the Commission support funding of GTI's research efforts at the state level. She stated Staff's conclusion as follows:

- Q. What is Staff's recommendation regarding the Commission's order to explore the appropriate state-wide level of future support and funding for GTI?
- A. First I would point out that besides GTI, the only party to file substantive testimony in this case, the Attorney General, agrees that R&D activities can be beneficial to utility ratepayers. The Attorney General's witness specifically testified, "Ultimately, both the gas distribution companies and their customers benefit from the R&D activities of GTI." Staff agrees, as did the Commission in its order of October 18, 2005 in this case, where the Commission stated that funding of GTI's efforts has been beneficial to ratepayers in the past. The Staff therefore recommends that the Commission continue to support funding of GTI's research efforts at the state level. The Commission would express this support in future rate cases by approving a contribution from ratepayers, not to exceed a fixed amount equal to each individual utility's total gas throughput multiplied by \$0.0174 per Mcf. Thus, if a utility's rate case adjusted throughput was 10 million Mcf, the maximum annual contribution from ratepayers would be \$174,000; the actual ratepayer contribution would be requested by each of Michigan's gas utilities on a voluntary basis, and would be incorporated in the revenue requirements of the utility if approved by the Commission. After receiving Commission approval, each utility would decide on a project by project basis those GTI R&D activities that will benefit its ratepayers, and would transfer customer payments to GTI to help fund those R&D activities. Utilities will be required to provide support for R&D funding decisions in future rate proceedings. Mr. Ronald Edelstein provided potential criteria that could be used by the Commission and gas utilities in determining whether R&D expenses should be recovered from ratepayers in his direct testimony. If the annual fixed amounts collected in rates exceed amounts that the utility wishes to contribute to GTI projects in any particular year, any excess amounts should be deferred and used to fund future year's R&D projects. [TR 170-171.]

With regard to funding, Ms. Devon testified that Staff was not advocating approval of mandatory funding through a fixed surcharge, but was supporting voluntary funding through inclusion of amounts for research in each utility's revenue requirements in a general rate proceeding. She testified:

- A. Staff recommends that the Commission not require mandatory GTI funding through a fixed surcharge, but rather support voluntary funding through inclusion of these amounts in each utility's revenue requirements in a general rate proceeding. Amounts paid to GTI pursuant to a voluntary funding program should be recorded in Account 930.2 – Miscellaneous General Expenses, in accordance with the Commission's USOA as described earlier in my testimony. Rate recovery should be provided for

in the same manner as any other utility operating expense. Continued support for funding should be based upon benefits to the ratepayers and amounts included in rates should be ordered by the Commission to be contributed to GTI for utility selected projects. [TR 172.]

In conclusion, Staff recognizes that the Commission's USOA for gas utilities recognizes that a gas utility may incur expenses associated with gas research as part of its gas business and that GTI has conducted research involving natural gas that may be useful in providing service to the gas utility's service to its ratepayers. As such, Staff recommends that the Commission express this support in future rate cases by approving a contribution from ratepayers, not to exceed a fixed amount equal to each individual utility's total gas throughput multiplied by \$0.0174 per Mcf.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**



Patricia S. Barone (P29560)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

Dated: June 22, 2006

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**
(e-file/paperless)

_____ /

PROOF OF SERVICE

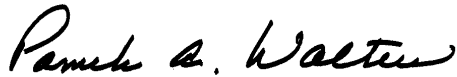
STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Linda Andreas, being first duly sworn, deposes and says that on **June 22, 2006**, she served a true copy of **The Michigan Public Service Commission Staff's Initial Brief** upon the parties listed on the attached Service List by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed.



Linda Andreas

Subscribed and sworn to before me
this 22nd day of June, 2006.



Pamela A. Walters, Notary Public
State of Michigan, County of Ionia
Acting in the County of Ingham
My Commission Expires: 02/04/2007

Service List
U-14561

Michael E. Moody
John R. Liskey
Assistant Attorneys General
Tobacco & Special Litigation Division
525 W. Ottawa Street, Seventh Floor
P.O. Box 30212
Lansing MI 48909

Thomas E. Maier
Clark Hill PLC
212 E. Grand River Avenue
Okemos, MI 48906

Richard P. Middleton
Jon P. Christinidis
2000 Second Avenue, 688 WCB
Detroit, MI 48226

John C. Shea
Consumers Energy Company
One Energy Plaza, Room EP11-225
Jackson, MI 49201

Sherri A. Wellman
Ronald Bloomberg
Miller, Canfield, Paddock & Stone, PLC
One Michigan Avenue, Suite 900
Lansing, MI 48933

Rhonda M. Morris
Consumers Energy Company
One Energy Plaza, Room EP11-230
Jackson, MI 49201

Robert A.W. Strong
Clark Hill PLC
255 S. Old Woodward Ave., Third Floor
Birmingham, MI 48009

William J. Wolter
Wolter & Associates, P.C.
192 E. Main Street
Northville, MI 48167

Robert B. Nelson
Fraser Trebilcock Davis & Dunlap, PC
124 W. Allegan St., Suite 1000
Lansing, MI 48933

Gary B. Pasek
Vice President, General Counsel and Secretary
Midland Cogeneration Venture Limited Partnership
100 Progress Place
Midland, MI 48640

David R. Radtke
Klimist, McKnight, Sale, McClow & Canzano, P.C.
400 Galleria Officentre, Suite 117
Southfield, MI 48034-8460