STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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MIKE COX
ATTORNEY GENERAL

June 1, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

Re: MPSC Case No. U-14716

I am attaching for filing the Attorney General's Response to MCAAA's Motion for Declaratory Ruling. This filing is being submitted electronically pursuant to the instructions in the Commission's notice of hearing. I am also attaching a proof of service.

Sincerely,

DonaldEErickson
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Donald E. Erickson
Assistant Attorney General

c All Parties

PROOF OF SERVICE - U-14716

The undersigned certifies that a copy of the Attorney General's Response to MCAAA's Motion for Declaratory Ruling was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon on the 1st day of June 2006.

Janet Schafer
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Janet A. Schafer

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of CONSUMERS ENERGY COMPANY for Approval of a Gas Cost Recovery Plan and Authorization of Gas Cost Recovery Factors for the 12-Month Period April 2006 – March 2007

MPSC No. U-14716

/

Attorney General's Response to
MCAAA's Motion for Declaratory Ruling

Pursuant to Rule 335 of the Michigan Public Service Commission's Rules of Practice and Procedure before the Commission [1992 AACS, R 460.17335], Attorney General Michael A. Cox responds to the "Motion for Declaratory Ruling of the Michigan Community Action Agency Association." In response to MCAAA's motion the Attorney General says as follows:

1. Among other things, MCAAA's motion states that the motion is filed "pursuant to Sections 33, 63, and 64 of the Administrative Procedures Act (APA), MCL 24.233, MCL 24.263, and MCL 24.264, and pursuant to Rule 701 of the Commission's Rules of Practice and Procedure Before the Commission, R 460.17701, and such other statutory provisions or rules that are applicable."

2. MCL 24.233; MCL 24.263, and MCL 24.264 are part of Chapter III of the Administrative Procedures Act of 1969, as amended (APA). Rule 701 is promulgated as Part 7 in the Commission's Rules of Practice and Procedure, and that rule implements the powers granted to the Commission by Chapter 3 of the APA.

3. The captioned case is being conducted pursuant to Chapter 4 in the APA. *See* MCL 24.203(3), MCL 24.271-MCL 24.287, and MCL 460.6h(5).

4. The MPSC lacks power to delegate power in the absence of an express statute empowering the MPSC to do so. *Detroit Edison Co v Corporation & Securities Comm'n,* 361 Mich 150, 154; 105 NW2d 110 (1960), and *Edmond v Mich Dept of Corrections,* 143 Mich App 527, 536; 373 NW2d 168 (1985).

5. MCL 24.279-MCL 24.281 in Chapter 4 of the APA empower the MPSC to delegate its authority to take specified actions in contested cases, but neither those statutes nor any statute in Chapter 3 empower the Commission to delegate authority to administrative law judges to issue declaratory rulings under Chapter 3.

6. The introduction in MCAAA's motion and Paragraph 1 in the motion indicate that the motion is directed to the ALJ and requests the ALJ to make specific rulings on the basis of the motion. The conclusion and relief section in MCAAA's motion also requests the ALJ to make a ruling. The notice of hearing filed by MCAAA along with its motion and brief also schedules MCAAA's motion for declaratory ruling for hearing by the ALJ.

7. In light of the statutes, administrative rule, and cases discussed above, ALJ's have no lawful power to hear or grant motions for a declaratory ruling. Therefore, the ALJ should deny the motion as being beyond his statutory power.

9. In the alternative, MCAAA has filed analogous testimony and analogous motions for declaratory ruling in earlier cases. In a March 12, 2003 order in Case No. U-13060, pp 31-32, the Commission rejected similar testimony and a analogous motion. Similar issues have also been rejected in MPSC Case Nos. U-14401 and U-14403. Therefore, MCAAA's requested declaratory rulings must be rejected on their merits.

Relief Requested

The Attorney General requests the Administrative Law Judge to deny MCAAA's motion as beyond the scope of the power and authority that can be delegated to him under MCL 24.279 and MCL 24.280. In the alternative, the Attorney General requests the Administrative Law Judge to reject MCAAA's proposed declaratory rulings on the ground that they go beyond the scope of MCL 460.6h(3)-(7).

Respectfully submitted,

MICHAEL A. COX
Attorney General

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June 1, 2006