

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

May 15, 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-14547

Dear Ms. Kunkle:

Enclosed for filing is the Reply Brief of the Association of Businesses Advocating Tariff Equity together with a Proof of Service.

Very truly yours,

CLARK HILL PLC

Robert A.
W. Strong
Robert A. W. Strong

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DN: CN = Robert A.W. Strong,
C = US, O = Clark Hill
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cc w/enc: ALJ James N. Rigas
Parties of Record
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Consumers is seeking to have a rate of return established in this case that, at a minimum, remains at the current level of 11.40% or, preferably, is increased to 12.00%. This contrasts with the Staff recommendation that the return be established at 11.15%, which is the midpoint of the Staff's range. The increased rate of return is to compensate the investors and Consumers for the higher risks faced by that company according to Consumers. ABATE's position is that any higher risk associated with Consumers' gas operations is solely attributable to the fact that its parent corporation, CMS Energy Corp., has created the higher risk through its investment decisions and that customers of Consumers' gas operations should not have to pay higher rates under the circumstances. Consumers' gas operations have been steadily profitable, and no further increase in return over and above 11.0% is warranted.

The Staff's Initial Brief, pp. 21-24, contains an extensive discussion of Consumers' risk factors and these factors will not be repeated here. ABATE agrees with the Staff conclusion that Consumers' gas operations are no more risky than the average utility.

ABATE also opposes the use of floatation costs, because these are not costs actually incurred by Consumers. As such, there are no book entries reflecting these costs, so they should not be recognized for ratemaking purposes.

Consumers justifies an increase above an 11.15% return on the basis of changes in market conditions, one of which is the impairment of Consumers' investment in the MCV partnership. This certainly is not a reason to raise retail gas rates. Consumers' investment in the MCV partnership is a non-jurisdictional asset as far as Consumers' gas business is concerned and, as such, it should have absolutely no impact on the rates paid by Consumers' gas rate payers. The MCV partnership is not part of the gas business and Consumers has never offered to reduce the rates to gas customers when the MCV was making substantial sums of money for its investors. Now that the MCV is not making what it has in the past, Consumers is seeking to have Consumers gas customers compensate Consumers for this loss. It is certainly not an appropriate policy and changes to gas rates cannot be justified by looking at non-jurisdictional property and Consumers' investment losses in that property.

ABATE recommends that the Commission adopt a policy which is similar to the previous Commission policy regarding the impact on retail utility rates associated with investments made by CMS Energy Corp. ("CMS"). In a series of orders, this Commission held that it had the authority and resources to protect ratepayers subject to its jurisdiction and intended to exercise that authority based upon CMS's pledge that no investment will have a detrimental effect on the financial viability, capital structure, or cost of capital of Consumers. See Case Nos. U-11438, U-11442, U-11519, U-11521, U-11558, U-11559, U-11570, U-11593, U-11610, U-11858, U-

12224, U-12718, and U-134210. Now is certainly time for the Commission to exercise its responsibility and protect ratepayers by turning down Consumers' request for a higher return. Customers should not be forced to be the insurers protecting Consumers from all losses, when customers are not in a position to protect themselves from that risk.

Consumers also points to the continued weakness in the economy as a reason for increasing rates that it will charge customers. Initial Brief, p. 19. Why should Consumers have the right to increase rates to customers who are already struggling with the economy in Michigan? Does not equity suggest that between a company that is making money and a company that is losing money, that a company making money should not be able to use the state regulatory apparatus to impose higher charges on those companies not making money?

Consumers also argues that it has a higher risk as a result of lower equity ratio. Initial Brief, pp. 20-21. CMS controls the equity ratio and any failure of CMS to invest further equity into Consumers' gas operation should not be a justification for raising rates to gas customers. Faced with these circumstances, the appropriate regulatory response should be to use the actual capital structure and not increase the return to reflect an alleged increase in risk.

An additional reason for increasing the rate of return according to Consumers is Consumers' lower debt ratings. ABATE supports Staff's interpretation that lower debt ratings are generated as a result of the risk of CMS, not Consumers' gas operations. Therefore, this should not be a reason to increase the rate of return.

ABATE supports a rate of return of 11.0% which was the average return for gas utilities approved by other states in 2004 which is within the Staff's range, particularly if the Commission approves any of the requested trackers which are discussed below.

2. Throughput Adjustments.

ABATE supports the Staff's analysis on whether to make adjustments for throughput. The Staff's position is that no adjustment should be made based upon unusually low usage caused by an economic downturn. If an adjustment is made and the economic climate improves, then customers will be overpaying for gas services. In any event, there should be more of history shown before an adjustment is made to sales level, which, as used by the Staff, is based upon actual data.

3. Trackers.

Consumers is asking the Commission to approve trackers for pension expenses and other post-retirement employee benefits. In addition, Consumers is requesting a tracker for uncollectible expense even though its gas uncollectible rate is only 0.53%, whereas MichCon's was 2.46% when the Commission approved a tracker for MichCon. To the extent that these trackers are adopted by the Commission, then there is certainly no reason to increase Consumers' rate of return on common equity to any level above 11%.

ABATE is opposed to trackers because they focus only on one aspect of the revenues and expenses experienced by a regulated utility. If implemented, trackers will insulate a utility and its shareholders from the ratemaking process which looks at all expenses and all revenues in determining what are just and reasonable rates. To the extent that there are more and more trackers, the utilities will have no incentive to control their costs and will avoid rate cases if the trackers result in over earnings. Gas utilities such as Consumers already have 80-85% of their costs covered by a form of tracker called the GCR factor. In this proceeding, Consumers is requesting the Commission to protect three more areas of expense from the normal ratemaking process: pension, other post-retirement benefit expenses, and uncollectibles. If these three categories are given the protection of trackers, then a substantial amount of the non-gas costs will

be subject to trackers and Consumers' business risk will be reduced and almost eliminated. The Commission should reject the use of trackers in the utility ratemaking process.

4. LIEEF Funding.

See the reply to the Attorney General for a discussion of why this funding request cannot be granted as a matter of law.

5. Rate Design.

In its Initial Brief, p. 55, Consumers states that it accepts the Staff's rate design, which is to provide for an equal percentage increase to all rates with the exception of Rate GL, outdoor lighting. This moves away from Consumers' cost based proposal and is done "in an effort to minimize issues in dispute". Consumers' Initial Brief, p. 55. ABATE submits that Consumers' cost based rate allocation of 23% to sales customers and 18% to transportation customers is justified on the record. *Exhibit A-11, F-1*. Consumers does not have a horse in the allocation race because, because regardless of which allocation methodology, it will receive all of its revenues. On the other hand, transportation customers do have a horse in the race in that the facts show that they should be allocated a lesser amount of any final rate increase authorized by the Commission in this proceeding. ABATE urges the Commission to not be swayed by Consumers' capitulation in this area and adopt a cost based allocation which would allocate 18% of any rate increase to transportation customers and 23% to sales customers. Just because the Staff claims that its allocation methodology is "much simpler to implement" does not mean that the allocation methodology is right. Staff Initial Brief, p. 56. The allocation percentages developed by Consumers are based on its cost of service study and they should be utilized because they will more closely align rates with costs, providing customers with proper economic signals to guide their consumption of natural gas.

B. Reply To Attorney General.

The Attorney General begins his discussion of the Low-Income and Energy Efficiency Fund ("LIEEF") in his Initial Brief, p. 35. The Attorney General's conclusion is that the Commission is a creature of statute and has only those powers which have been expressly conferred upon it. *Huron Portland Cement Co. v PSC*, 351 Mich 255, 262 (1958) and *Union Carbide Corp v PSC*, 431 Mich 135, 146 (1988). Under this overriding principle, the Attorney General then turns to statutory construction of MCL 460.10d(7). It is clear from even a cursory reading of the statute that it applies **only** to electric utilities and only to electric utilities which issue securitization bonds. This statute does not justify an increase in O&M expenses to pay for LIEEF for a gas utility.

II.

RELIEF

WHEREFORE, ABATE requests that the Commission to set Consumers' rate of return on common equity at 11.0%, allocate any increase 23% to sales customers and 18% to transportation customers, base the throughput on actual figures without adjustments, deny Consumers' request for three trackers, and deny the request to increase O&M expense to pay for LIEEF.

Respectfully submitted,

CLARK HILL PLLC
**Robert A.W.
Strong**

Digitally signed by Robert A.W.
Strong
DN: CN = Robert A.W. Strong, C
= US, O = Clark Hill
Date: 2006.05.15 15:03:34 -
04'00'

ROBERT A. W. STRONG (P27724)
Attorney for Association of Businesses
Advocating Tariff Equity
255 S. Old Woodward Avenue, Third Floor
Birmingham, MI 48009
(248) 642-9692
rstrong@clarkhill.com

Dated: May 15, 2006

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

PROOF OF SERVICE

Audrey Gilliatt, Notary Public
Oakland County, MI, acting in Oakland County, MI
My Commission expires: 7/06/06

SERVICE LIST
MPSC Case No. U-14547

Administrative Law Judge

Hon. James N. Rigas
Administrative Law Judge
Michigan Public Service Commission
6545 Mercantile Way/P.O. Box 30221
Lansing, MI 48909-7721
jnrigas@michigan.gov

Counsel for Attorney General Michael A. Cox

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

Mr. Michael McGarry
Ms. Donna Mullinax
Ms. Debra Rollins
Blue Ridge Consulting Services, Inc.
2131 Woodruff Rd., Suite 2100 PMB309
Greenville, SC 29607
mmcgarry@blueridgecs.com
dmullinax@blueridgecs.com
drollins@blueridgecs.com

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

Counsel for MPSC Staff

Kristin M. Smith
Angie A. Fadly
Heidi Raymond
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
smithkm@michigan.gov
fadlya@michigan.gov
hjraymo@michigan.gov

Counsel for Consumers Energy Company

H. Richard Chambers
Jon R. Robinson
John C. Shea
Raymond E. McQuillan
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201
hrchambers@cmsenergy.com
jrrobinson@cmsenergy.com
jcshea@cmsenergy.com
remcquillan@cmsenergy.com
mpscfilings@cmsenergy.com

Attorney for Michigan Schools Electric Cooperative

Eric J. Schneidewind
Varnum Riddering Schmidt & Howlett
The Victor Center #810
201 N. Washington Square
Lansing, MI 48933
ejschneidewind@varnumlaw.com

Counsel for National Energy Marketers Association

John M. Dempsey
Jennifer L. Frye
Dickinson Wright
215 S. Washington Square, Suite 200
Lansing, MI 48933
jdempsey@dickinsonwright.com
jfrye@dickinsonwright.com