

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of
MICHIGAN CONSOLIDATED GAS COMPANY
for approval of a gas cost recovery plan, 5-year
forecast and monthly GCR factor for the 12 months
ending March 31, 2007.

Case No. **U-14717**
(e-file paperless)

**THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
PROCEDURAL RESPONSE TO THE
MOTION FOR DECLARATORY RULING OF MCAAA**

The Michigan Community Action Association (MCAAA) filed a Motion for a Declaratory Ruling addressed to the Administrative Law Judge ("ALJ") and the Commission. MCAAA Motion, page 1. This pleading does not address the substantive issues raised by the Motion, but rather is filed to indicate that this Motion is properly addressed only to the Commission and not the ALJ.

The Administrative Procedures Act, 1969 PA 306; MCL 24.101 *et seq.*, at Section 63, MCL 24.263, provides a procedure whereby an interested person may request that an agency issue a declaratory ruling as to applicability of facts to a statute that is administered by the agency. It provides:

On request of an interested person, **an agency** may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. [Emphasis added.]

This statute specifies that upon the request of an interested person, an agency may issue a declaratory ruling. MCAAA's Motion is addressed then to the Michigan Public Service Commission.

This statute also provides that an agency shall prescribe by rule the form and procedure for submission, consideration and disposition of such a request. Pursuant to this directive, the Commission promulgated Rule 701 of the Commission's Rules of Practice and Procedure, R 460.17701. That rule provides:

Rule 701. (1) Any person may request a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the commission or of a rule or order of the commission, pursuant to the provisions of sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.233 and 24.263 of the Michigan Compiled Laws. A request for a declaratory ruling shall contain, or by attached exhibits show, all of the following:

- (a) A complete, accurate, and concise statement of the facts or situation upon which the request is based.
 - (b) A concise statement of the issues presented.
 - (c) Specific reference to all statutes, rules, and orders to which the request relates.
 - (d) An analysis by the person's legal counsel of the issues presented and a proposed conclusion, or the person's analysis of the issues presented and a proposed conclusion.
- (2) The commission may require that notice of the request for declaratory ruling be provided and may require a contested case proceeding instead of issuing a declaratory ruling.
- (3) The decision to issue a declaratory ruling is within the discretion of the commission.

This rule indicates that any person may request a declaratory ruling pursuant to the provisions of MCL 24.233 and 24.263. As explained above, MCL 24.263 provides that upon request of an interested person, **an agency** may issue a declaratory ruling.

In addition, Subsection 2 of the rules provides that the Commission may require that notice be provided and may require a contested case proceeding instead of issuing a declaratory ruling. Subsection 3 provides that the decision to issue a declaratory ruling is within the discretion of the Commission. It is clear that the Commission must in the first instance address a request for a declaratory ruling and determine whether to require a contested case or whether to issue the ruling, and has discretion to decline to make a ruling. Therefore, MCAAA's Motion may only be addressed to the Commission for a determination of whether to require a contested case or whether to issue a ruling. Pursuant to the Rule, the ALJ in this case does not have that authority.

The Staff urges the ALJ to determine that this Motion is properly addressed only to the Commission and that the ALJ lacks authority to consider it unless directed to by the Commission.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in black ink that reads "Kristin M. Smith". The signature is written in a cursive, flowing style.

Kristin M. Smith (P46323)
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Dated: June 15, 2006

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Pamela A. Walters, being first duly sworn, deposes and says that on June 15, 2006, she served a true copy of the MPSC Staff's Procedural Response to the Motion for Declaratory Ruling of MCAAA upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

Richard P. Middleton
Michigan Consolidated Gas Company
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Pamela A. Walters
Pamela A. Walters

Subscribed and sworn to before me
this 15th day of June 2006

Carol Ann Dale
Carol Ann Dale, Notary Public
State of Michigan, County of Eaton
Acting in the County of Ingham
My Commission Expires: 07/23/2011