

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)

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REPLY BRIEF OF
THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

The Michigan Public Service Commission Staff ("Staff"), by its counsel, Patricia S. Barone, Assistant Attorney General, files the following reply to the brief of the Association of Businesses Advocating Tariff Equity ("ABATE"). Failure to respond to any particular assertion of any party should not be construed as agreement with that assertion. Rather, Staff continues to maintain its position as set forth in its testimony, exhibit and brief.

In its brief, ABATE states that "there is no empirical data in this proceeding to support that it would be beneficial for customers to pay increased rates for RD&D performed by GTI." This is simply untrue. The unrefuted testimony offered by GTI's witness, Mr. Edelstein, sets forth information regarding the efficacy of GTI's research (TR 56-85), and Staff's witness, Ms. Devon, after reviewing the information presented by GTI, indicated that such research could be beneficial to customers (TR 165-172). The Attorney General's witness also agreed that R&D activities can be beneficial to ratepayers. TR 139.

Further, ABATE asserts that "gas customers have not been asked whether they would like to pay higher gas rates..." This is also incorrect as this case was noticed to the public in areas served by the MPSC-regulated gas utilities in this state to consider instituting a surcharge to assist in the funding of the Gas Technology Institute. All interested customers had the opportunity to participate in this case.

ABATE next claims that GTI's R&D efforts are unrelated to regulated gas utility service in Michigan. Ms. Devon's testimony clearly refutes such a claim. Ms. Devon testified that the Michigan Public Service Commission's ("MPSC") Uniform System of Accounts for Major and Non-Major Gas Utilities ("USOA") defines research and development by natural gas utilities, and she testified that GTI performs work that falls within the definition set forth in the USOA. TR 166-169. This definition provides that R&D costs should be "reasonably related to the existing or future utility business, broadly defined, of the company or the environment in which it operates or expects to operate." TR 166.

In any event, Staff's position in this case is that no fixed surcharge for gas research should be imposed, and that in future rate cases, voluntary utility proposals for inclusion of costs associated with gas research in their revenue requirements should be considered. These future rate cases will provide the public an opportunity to examine the proposals, offer alternatives, oppose the proposals, or take any other position. After being fully litigated, the Commission would determine what level of costs, if any, should be included in customers' rates for gas research activities.

ABATE next argues that the 1998 FERC order approving a settlement agreement precludes the Michigan Public Service Commission from including costs for gas research in rates for Michigan gas utilities. The Staff supports the MPSC's order wherein it found that that FERC proceeding does not govern what costs can be included in a local distribution company's rates. ABATE's argument on this issue fundamentally confuses the words "voluntary" and "involuntary." ABATE argues that the settlement agreement indicated that GTI agreed that as of January 1, 2005, its funding is purely voluntary so it should not be allowed to participate in a proceeding where the Michigan Public Service Commission's perceived outcome is an involuntary surcharge. No one to this proceeding has suggested that any regulated gas utility

should be forced by the MPSC to charge its customers for gas research. Rather, the proposal supported by Staff is that a regulated gas utility that wants to request that research costs be included in its rates, i.e., volunteers to make such a request, may make the request and have it considered in its next rate case. If the MPSC approves such a request in a rate case, the amount included in the company's revenue requirement will be collected from customers through the rates set by the Commission. Such rates are not "involuntary surcharges," but are rates that the Commission determines are just and reasonable and that are designed to collect the utility's reasonable costs of doing business including an opportunity to earn a reasonable return. To describe the rates that are approved by the MPSC and charged by gas companies as "involuntary surcharges" would mean that every time a customer receives a bill they are paying an "involuntary surcharge." Obviously, while most of us would prefer to pay nothing for our gas service, we must pay for that service in the amount that the Commission finds to be just and reasonable.

ABATE also claims that any surcharges on ABATE's members can only be imposed "if ABATE and its members voluntarily agree to pay them" because the FERC settlement agreement provides for only voluntary funding for "shippers." ABATE then tries to define shipper, but that definition is of no consequence because the shipper is a shipper on the interstate pipeline. That status does not relate to an ABATE's member's status as a customer of a local distribution company.

ABATE also argues that the Commission lacks jurisdiction to set rates for gas utilities. The Commission clearly has such jurisdiction pursuant to MCL 460.54, 460.58, 460.6, and 460.6a. Those rates include all reasonable costs of providing gas service, including funding research designed to benefit the provision of gas service to customers. ABATE argues that "voluntary contributions" to organizations such as GTI which is located in another state are legally

precluded. Such a position implies that the Commission has the authority to manage a gas utility by dictating to it which entity it will utilize to conduct its research and where any of its consultants have their principal place of business. Such a position clearly interferes with the utility's management discretion and would be a violation of the principles articulated in *Union Carbide v. MPSC*, 431 Mich 135 (1998).

ABATE concludes by stating that the charges for gas research relate to research "which is not [related to] a traditional utility service." ABATE brief, page 13. ABATE is reaching a conclusion before a proposal is made in an individual rate case. In any event, the question is not whether the research is traditional, but rather whether it represents a reasonable cost of providing gas service. That determination will be made in future rate cases when a utility makes a proposal to include costs associated with that research in rates. Finally, ABATE poses the question "Does this Commission want to impose a tax on the citizens of Michigan?" Staff maintains that the question more appropriately asked in a future rate case is whether the Commission wants to allow costs in rates for research which may allow the utility to provide service in a manner that, for example, may prevent gas explosions and loss of life. Research that permits a utility to deliver gas in safe pipes is certainly an example of an expense that parties to a rate case may support regardless of whether the party it represents is the public at large or a party whose goal is to protect its own pecuniary interests.

In conclusion, Staff urges the Administrative Law Judge and the Commission to adopt its findings and recommendations as set forth in its testimony, exhibit and briefs.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in black ink, reading "Patricia S. Barone". The signature is written in a cursive style with a large, stylized "P" and "B".

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Dated: July 10, 2006

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PROOF OF SERVICE

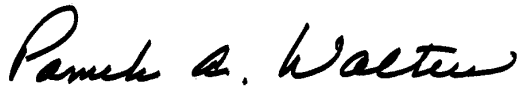
STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Linda Andreas, being first duly sworn, deposes and says that on **July 10, 2006**, she served a true copy of the **Reply Brief of the Michigan Public Service Commission Staff** 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 10th day of July, 2006.



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

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