

STATE OF MICHIGAN
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July 10, 2006

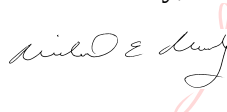
Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

RE: MPSC Case No. 14561

Enclosed for filing in the above captioned case please find the **Attorney General's Reply Brief**, together with a Proof of Service. This filing is being submitted electronically pursuant to the Commission's Paperless Electronic Filings Program.

Sincerely,

 Michael Moody
2006.07.10
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MEM/wjc
Enclosures
c: All parties

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PROOF OF SERVICE - U-14561

The undersigned certifies that a copy of the **Attorney General's Reply Brief** was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon as indicated, on the 10th day of July, 2006.

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2006.07.10 15:56:23 -04'00'

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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

ATTORNEY GENERAL'S REPLY BRIEF

Reply to GTI

In its Initial Brief, GTI states that its:

proposal would only require that a utility demonstrate compliance with the criteria, and there would not need to be additional proof as to the reasonableness of individual expense items. Once established that the criteria was met, there would be a presumption that all expenses, within the caps proposed by Ms. Devon would be recovered. In other words, if Consumers Energy included expenses paid to GTI for Consumer Safety Program in its next general rate application, there would be a presumption that all such expenses were recoverable. As such, the burden of providing evidence that the criteria has not been met would fall upon "the opposing party.

(GTI's Initial Brief, p 6).

This is contrary to GTI's position in its rebuttal testimony. In its rebuttal testimony, GTI states that "Ms. Devon's testimony reflects what FERC had in mind for a 'voluntary' program. She proposes that LDCs who voluntarily agree to use GTI for R&D could recover from their customers up to \$.0174 per Mcf in a general rate proceeding. **GTI can support this approach.**" (Tr 89 (emphasis added)). Ms. Devon explained on cross examination that the burden of proof would remain on the utility with regard to the

benefits of the proposed R&D project similar to any issue in rate case and dealt with in a contested case proceeding. (Tr 172, 175, 177). Ms. Devon testified as follows:

In my opinion, it's up to the utility to provide the commission in their filing any information that they believe supports the funding program that they are going to be asking for, **the burden would be on them.** If they feel that cost benefit analysis should be done then that would be up to them.

* * *

But ultimately I believe it's up to the utility to make a case to the commission through their filing for recover of these costs. **The burden of proof would be on them.**

* * *

I think that the utility will come forward with a level of funding, they'd have to provide information as to the benefits that they believe would be provided, and they'd make a recommendation on who should pay for it, and then that would be subject to the contested case proceedings.

(Tr 172, 175, 177 (emphasis added)).

No where does Ms. Devon state that there will be a rebuttal presumption or that once the utility identifies a project under the criteria then the burden would switch to the opposing party.

Thus it is unclear why GTI provides a position in its rebuttal testimony and contradicts itself in its Initial Brief. Assuming GTI is seeking a rebuttal presumption, then GTI's continual use of the word "voluntary" is just a ruse in order to avoid the word "mandatory" and is simple a game of definitions. Such a game is bad for natural gas customers. Under GTI's definition of "voluntary", the surcharge is essentially mandatory since the burden is on the natural gas customer to show that costs outweigh the benefits. This is absurd. Why would the Commission guarantee this R&D money to GTI? There is no benefit to natural gas customers by ordering such a rebuttal presumption. GTI's

request is simply a way to guarantee itself funding at the expense of Michigan's natural gas customers even if any benefits outweigh the costs.

As stated in the Attorney General's Initial Brief, not only is a mandatory surcharge unlawful, but it is also bad policy. Attorney General expert witness Charles W. King explained:

If you just have a surcharge that is a conduit to GTI with no requirement, no burden on the utility to make that defense on a project-by-project basis, then there is no incentive to look closely at those projects. The utilities must be held accountable for every penny they spend on GTI.

(Tr 156).

Accordingly, the Commission should not adopt any type of mandatory surcharge or any type of requirement where a utility must use GTI in order to conduct R&D.

Reply to ABATE

The Attorney General agrees with ABATE's argument about the unlawfulness of a mandatory surcharge. The Attorney General also agrees with ABATE's statement that "this is simply the wrong time to implement a surcharge to pay for RD&D." (Initial Brief, pp 12-13). Energy rates have been skyrocketing and Michigan natural gas consumers do not need an additional surcharge added to their bills.

Reply to Consumers Energy

The Attorney General agrees with Consumers Energy's argument that "it is not fair for Michigan ratepayers to accept responsibility for funding programs that other states are not currently funding." (Initial Brief, p 2). In addition, the Attorney General agrees with Consumers Energy's statement that "[s]ince Michigan ratepayers are currently faced with rising gas costs, a non-Michigan company should not be able to come to Michigan and demand that the customers pay more to fund outside research."

RELIEF REQUESTED

For the reasons stated above and in his Initial Brief, Attorney General Michael A. Cox requests the Commission grant the relief requested in his Initial Brief.

Respectfully submitted,

Michael A. Cox
Attorney General

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