STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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 through March 2007.	)))))	Case No. U-14716 (e-file/paperless)

MOTION FOR DECLARATORY RULING OF THE MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION

The Michigan Community Action Agency Association (MCAAA) file this Motion for Declaratory Ruling in this proceeding, directed to the Administrative Law Judge (ALJ) and the Commission, 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.

1. MCAAA files this Motion for Declaratory Ruling to seek and obtain the following rulings of the ALJ and Commission in this case:

(a) A proper and comprehensive gas cost recovery (GCR) Plan and 5-year forecast filed by a utility under 1982 PA 304, Section 6a, MCL 460.6a *et seq.* and Section 6h *et seq.*, MCL 460.6h *et seq.*, should include as an energy <u>resource</u> the development and implementation of programs to reduce, moderate, or mitigate gas loads and consumption over time, through energy conservation, energy efficiency, or demand-supply-management (DSM) efforts and programs (for simplicity, sometimes referred to collectively as energy efficiency programs).

(b) The development and implementation of energy efficiency programs is fully lawful under Act 304, and in fact should be regarded as an ongoing duty of any utility subject to Act 304, as more fully explained in the accompanying brief in support of this motion;

(c) The development and implementation of energy efficiency programs is also directly relevant to the proper functioning of Act 304; the statute was adopted to require the use of comprehensive energy resource and cost planning strategies by utilities, and to avoid many of the abuses that had occurred under automatic fuel adjustment clauses in effect in the 1970's and early 1980's; energy efficiency programs represent a valuable resource to reduce the cost of energy supplies, both in terms of price per unit of energy and through the reduction of energy waste and avoidable consumption; energy efficiency programs can accomplish these results by reducing energy loads and consumption, thereby reducing avoidable energy costs and customer bills. Energy efficiency programs directly serve to assist the statutory duty of the utility and the Commission under Act 304 to "minimize" energy costs, to consider all alternative sources of energy (which includes as a resource the reduction in energy waste and conservation), and to assist energy consumers and ratepayers in mitigating the cost of energy on an ongoing and long-term basis.

(d) The implementation and development of energy efficiency programs would also greatly promote the public interests of the state and its citizens as it would assist in ameliorating energy costs, and the attendant outflow of billions of energy-cost dollars out of Michigan, and would also promote economic development and job creation by providing greater financial resources to businesses arising from the energy savings obtained from the more efficient utilization of energy resources in Michigan; said programs would also result in ongoing and long-term energy savings to the various units of local and state government in Michigan,

thereby directly saving scarce taxpayer dollars for more beneficial uses; energy efficiency programs also result in significant other economic and environmental benefits.

2. MCAAA files this Motion for Declaratory Ruling in accordance with Commission Rule 701, which states:

> **R 460.17701 Declaratory rulings.**
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> 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, 63 of Act No. 306 of the Public Acts of 1969, as amended, being §§ 24.233 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.
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> (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.

MCAAA's motion herein meets all requirements of Rule 701 because this case constitutes a contested case under Chapter 4 of the Administrative Procedures Act, MCL 24.201 *et seq.*, and also pursuant to several provisions of Act 304, Section 6a and 6h *et seq.*, MCL 460.6a *et seq.*, wherein all facts and legal arguments can be promptly and efficiently considered. A declaratory ruling may be sought either separately or within the framework of a contested case. Moreover, the ALJ can alternatively treat this motion as a motion requesting specific legal findings in

accordance with the APA and Commission process. This motion also meets the requirements of Rule 701 for the following reasons:

(a) MCAAA's evidentiary filing, this motion, the accompanying brief in support of this motion, and the transcript of hearings to be undertaken herein, provides a complete, accurate, and concise statement of the facts or situation upon which this request is based;

(b) A concise statement of the issues presented is also set forth in this Motion and in MCAAA's accompanying brief, and will also be developed further within the framework of these contested case hearings;

(c) MCAAA in this Motion and supporting brief has also provided specific reference to all statutes, rules, and orders to which this request relates;

(d) An analysis of the issues presented, the proposed conclusion, and request for relief, are incorporated in this motion and accompanying supporting brief, and in the prefiled testimony of MCAAA's witnesses in this case.

WHEREFORE, MCAAA request the Commission to issue the declaratory rulings requested herein; MCAAA request such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

CLARK HILL PLC

By: Don L. Keskey

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