

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30212
LANSING, MICHIGAN 48909

June 13, 2006

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

Dear Ms. Kunkle:

Re: MPSC Case No. U-14838

I am attaching for filing the Attorney General's Response to Detroit Edison's Application and Energy Michigan's Reply. This filing is being submitted electronically pursuant to the Commission's Paperless Electronic Filings Program. I am also attaching a proof of service.

Sincerely,
DonaldEErickson
Digitally signed by DonaldEErickson
DN: cn=DonaldEErickson, c=US
Date: 2006.06.13 09:18:59 -04'00'
Donald E. Erickson
Assistant Attorney General

c All Parties

PROOF OF SERVICE - U-14838

The undersigned certifies that a copy of the Attorney General's Response to Detroit Edison's Application and Energy Michigan's Reply was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon on the 13th day of June 2006.

Wendy J. Cadwell
2006.06.13 09:21:20 -04'00'

Wendy J. Cadwell

Administrative Law Judge:

Daniel E. Nickerson, Jr.
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
PO Box 30221
Lansing, MI 48911

MPSC Staff:

Patricia S Barone (P29560)
Kristin M Smith (P46323)
Assistant Attorneys General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48909

The Detroit Edison Company:

Richard P. Middleton (P41278)
2000 Second Avenue
Detroit, MI 48226

Michigan Retailers Association:

Stewart A. Binke (P47149)
Albert Ernst (P24059)
Christine Mason Soneral (P58820)
Dykema Gossett PLLC
124 W. Allegan, Suite 800
Lansing, Michigan 48933-1707

Local 23 Utility Workers Union:

David R. Radtke (P47016)
Klimist, McKnight, Sale, McClow &
Canzano, P.C.
400 Galleria Officentre, Suite 117
Southfield, MI 48034

ABATE:

Robert A. W. Strong
Clark Hill, PLC
255 S. Old Woodward Ave., 3rd Floor
Birmingham, MI 48009

Energy Michigan:

Eric J Schneidewind (P20037)
Varnum Riddering Schmidt & Howlett
The Victor Center, Suite 810
201 N Washington Square
Lansing MI 48933

Kroger Company:

Michael L. Kurtz (P67067)
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Constellation NewEnergy, Inc.:

John M. Dempsey (P30987)
Erin J. Stovel (P66291)
Dickinson Wright PLLC
215 S. Washington Square, Suite 200
Lansing, Michigan 48933

National Energy Marketers Ass'n.:

Jennifer L. Frye (P57123)
Dickinson Wright PLLC
301 East Liberty, Suite 500
Ann Arbor, MI 48104-2266

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,
ordering **THE DETROIT EDISON COMPANY** to
show cause why its retail rates for the sale and
distribution of electric energy should not be decreased.

MPSC Case No. U-14838

**Attorney General's Response to
Detroit Edison's Application
and
Energy Michigan's Reply to Detroit Edison's Request**

Pursuant to Rule 335(3) of the Michigan Public Service Commission's (MPSC) Rules of Practice and Procedure [1992 AACS, R 46-.17335(3)], Attorney General Michael A. Cox responds to the application filed by The Detroit Edison Company (DECo) and to the reply filed by Energy Michigan. The Attorney General says:

1. MCL 462.22(c) empowers the MPSC to initiate a rate investigation upon its own motion.
2. On March 24, 2006, the MPSC issued an "Order to Show Cause and Notice of Hearing" in this case.
3. Page 7 in the order required DECo to show cause why its rates should not be reduced, ordered DECo to publish an attached notice of hearing, and scheduled a prehearing conference for April 25, 2006.

4. Page 8 in the order required DECo to file testimony and exhibits by June 1, 2006 and described certain requirements regarding what should be included in the filing.

5. Page 8 in the order also dismissed a petition filed by Energy Michigan in Case No. U-13808 and a complaint filed by ABATE in Case No. U-14522.

6. The Notice of Hearing attached to the order indicated that DECo may experience a revenue sufficiency by 2007 and that a decrease in its annual revenues may be warranted and went on to indicate that the MPSC would hold a hearing to determine if DECo's rates should be reduced.

7. Pursuant to the MPSC's order, DECo filed its application and testimony on June 1, 2006.

8. Among other things, DECo's application requested the MPSC to approve an additional annual revenue increase of approximately \$45 million based upon a 2005 test year as adjusted for known and measurable changes through 2007, and DECo supported its application with testimony and exhibits.

9. Among other things, Paragraphs 4-7 in DECo's application request the MPSC to authorize it to amend the Notice of Hearing published in this case to indicate that the review initially contemplated for this proceeding will include the possibility of a rate increase for customers.

10. On June 8, 2006, Energy Michigan filed a reply to DECo's request for approval of an amended notice.

11. Energy Michigan's reply requests the Commission to deny DECo's request to re-notice the hearing in this matter. In the alternative, Energy Michigan requested the MPSC to reverse a May 25 order and allow Energy Michigan to present testimony and exhibits regarding the proper allocation of costs between generation and distribution functions.

12. Paragraphs 4-7 in Energy Michigan's reply argue that portions of the testimony and exhibits filed by DECo should be stricken because those portions exceed the scope of this proceeding, but the request for relief did not discuss those claims.

13. Rule 335(1) in the Commission's Rules of Practice and Procedure states that a request to the commission or presiding officer for a ruling or order, other than a final order, shall be by motion. Therefore, the Attorney General contends that DECo's request to re-notice this proceeding and Energy Michigan's requests for relief effectively constitute motions.

14. Rule 103(1) in the Commission's Rules of Practice and Procedure states:

These rules govern practice and procedure in all proceedings before the commission, except as otherwise provided by statute or these rules. In areas not addressed by these rules, the presiding officer may rely on appropriate provisions of the currently effective Michigan court rules.

15. The Commission's order in this case is a complaint issued on the Commission's own motion under MCL 462.22(c). In this context, the relief requested by DECo and Energy Michigan might be viewed as affirmative defenses under MCR 2.111(F) or counterclaims or cross claims under MCR 2.203. Thus, the question becomes whether or not denying either request would violate either DECo's or Energy Michigan's rights.

16. Neither DECo nor Energy Michigan have identified any legal authority upon which they base their requests.

17. The goal of a proceeding such as the current case is to determine what are just, reasonable, and non-discriminatory rates. MCL 462.22(c). See also, MCL 460.58.

Relief Requested

In this light, Attorney General Michael A. Cox requests the Michigan Public Service Commission to determine whether or not it would be just and reasonable under all of the circumstances to re-notice this case and/or to allow new functionalization proposals. If the MPSC agrees to either or both requests, then the Attorney General requests the MPSC to schedule a new prehearing conference to revise and extend the current schedule.

Respectfully submitted,

Michael A. Cox
Attorney General

DonaldEErickson

Digitally signed by DonaldEErickson
DN: cn=DonaldEErickson, c=US
Date: 2006.06.13 09:19:33 -04'00'
Donald E. Erickson
Assistant Attorney General

Tobacco & Special Litigation Division
Seventh Floor Williams Bldg.
525 W. Ottawa Street
P. O. Box 30212
Lansing, MI 48909

(517) 373-1123

June 13, 2006