

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,	)	
to rescind rules governing the regulation of	)	Case No. U-14908
informal reparation docket cases before Commission.	)	
	)	

At the June 15, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER FORMALLY RESCINDING RULES

This order rescinds certain administrative rules pertaining to railroad regulation, which is no longer under the Commission's jurisdiction. The rules, R 460.1, R 460.22, R 460.3, R 460.4, R 460.5, R 460.6, and R 460.7, became obsolete when authority to regulate railroads was transferred from the Commission to the Department of Transportation by Executive Order 1975-1 (codified at MCL 247.822) and Executive Order 1982-3 (codified at MCL 247.823).

The Commission initiated rescission of these obsolete rules under Section 44(1) of the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.244(1), which provides a streamlined process for rescinding obsolete rules. Section 44(1) permits obsolete rules to be rescinded without notice to the public or a public hearing.

On May 25, 2006, the Legislative Service Bureau and the State Office of Administrative Hearings and Rules (SOAHR) approved the rescission under Section 44(1) and requested that the Commission execute and forward a certificate of formal rescission to SOAHR.

The Commission finds that:

- a. Jurisdiction is pursuant to 1967 PA 19, as amended, MCL 486.551 *et seq.*; 1909 PA 300, as amended, MCL 462.2 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. The Commission should rescind its obsolete administrative rules governing informal reparation docket cases.

THEREFORE, IT IS ORDERED that:

- A. The obsolete administrative rules governing informal reparation docket cases, included in Exhibit A, R 460.1, R 460.22, R 460.3, R 460.4, R 460.5, R 460.6, and R 460.7, are rescinded.
- B. The Commission's Executive Secretary shall execute the certificate of formal rescission, attached to this order in Exhibit A, and forward it to the State Office of Administrative Hearings and Rules for filing with the Secretary of State in accordance with the Michigan Administrative Procedures Act.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chairman

(S E A L)

/s/ Laura Chappelle

Commissioner

/s/ Monica Martinez

Commissioner

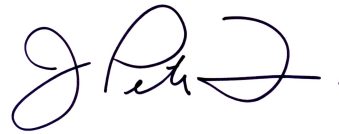
By its action of June 15, 2006.

/s/ Mary Jo Kunkle

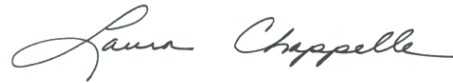
Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

By its action of June 15, 2006.



Its Executive Secretary

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

PUBLIC SERVICE COMMISSION

INFORMAL REPARATION DOCKET CASES BEFORE COMMISSION

(By authority of Act No. 300 of the Public Acts of 1909, being S462.2 et seq. of the Michigan Compiled Laws)

R 460.1 Application for reparation.

Rule 1. The commission will entertain claims for applications for reparation, if filed with it within 2 years after the delivery of any shipment of freight at destination, under an informal docket when such applications are presented to it by the carrier, or carriers, which participated in the transportation of the property in which it is admitted that the rate charged was irregular or exorbitant, and supports such admission by a statement of the facts and uses as a basis for adjustment, a tariff which was subsequently published naming a rate lawfully applicable via the route over which the shipments moved. (See R 460.2.)

History: 1944 AC; 1954 AC; 1979 AC.

R 460.22 Informal reparation.

Rule 2. Informal reparation will be allowed in the following cases:

- (a) Reparation on account of error in publishing rate.
- (b) Reparation on account of the reestablishment of a rate formerly in effect, which rate was unintentionally omitted in a reissue of a tariff and the cancellation of which was overlooked when shipments moved.
- (c) Reparation on account of rate or charge as assessed (which rate was lawful at time shipment was moved), which rate is admitted by the carrier or carriers to be irregular or exorbitant, and should not have exceeded the rate subsequently established via the same route over which the shipments involved moved. (NOTE: Reparation will be allowed on this account only when the subsequently published rate was established to meet new traffic conditions, or circumstances, which the rate as assessed did not take into account or contemplate. This should not be construed to include cases in which a rate is reduced simply to meet competition or another carrier. Any regulation or rule which is used in connection with a rate or charge may be used as a basis for refund in informal reparation cases when such refund is sought on account of conditions or circumstances as outlined in subdivisions (a), (b), and (c) of this rule.)

History: 1944 AC; 1954 AC; 1979 AC

R 460.3 Application for informal reparation; form.

Rule 3. All applications for informal reparation must conform to the commission's standard form in such cases.

History: 1944 AC; 1954 AC; 1979 AC.

R 460.4 Extension of principle upon which informal reparation order based.

Rule 4. When an informal reparation order has been made by the commission, the principle upon which it is based shall be extended to all like shipments, but no refunds shall be made upon such like shipments except upon specific authority from the commission therefor.

History: 1944 AC; 1954 AC; 1979 AC.

R 460.5 Reparation award; assignment.

Rule 5. In awarding reparation, the commission will recognize an assignment by a consignor to a consignee or by a consignee to a consignor.

History: 1944 AC; 1954 AC; 1979 AC.

R 460.6 Order for refund.

Rule 6. The commission's order for refund on account of a reduced rate or changed tariff regulation will require the maintenance of such rates or regulation for at least 1 year as a maximum from the date on which the rates or rules sought to be applied became effective except that when refund is made, on account of error in publishing a rate or rule, the commission's order will not carry the 1-year clause. (NOTE: Attention is called to the fact that where carriers and shippers cannot agree in claims involving informal reparation, it is necessary under the statute in case the aggrieved person desires to submit the claim to the commission for adjustment, that the complaint be filed with this commission within 2 years after the delivery of the freight at destination.)

History: 1944 AC; 1954 AC; 1979 AC.

R 460.7 Applications; forms.

Rule 7. Applications on the commission's informal docket shall be made in the following form and all the requirements of this form must be complied within in every case:

INFORMAL DOCKET NO.

_____	Complainant's No. _____
Complainant	_____ Co. Claim No. _____
vs.	_____ Co. Claim No. _____
_____	_____ Co. Claim No. _____
_____	Request for authority to pay \$ _____
Defendant	

To Michigan Public Service Commission:

The _____ company
respectfully requests an order herein authorizing the payment to the above-named claimant, of
_____, state of _____, of the sum of _____
dollars _____ (\$ _____), as special reparation in connection with the following
shipment:

Commodity _____
Number of shipments or carloads _____, aggregate weight _____
From _____ to _____
(Point of origin) (Destination)
Consignor _____ Consignee _____
Bill of lading issued by _____ Co., at _____
(Use initials)
Date _____, 19____. Shipment moved as follows:
_____ Co., from _____ to _____, via _____
_____ Co., from _____ to _____, via _____
_____ Co., from _____ to _____, via _____
Aggregate freight charges actually collected, \$_____, date paid____, 19____
By whom paid to carrier_____ Date of delivery _____, 19____
Give reference to previous cases which involved the same rate situation ____

(If combination rate legally applicable, show each factor thereof.)

ton
Rate legally applicable ____ per or ____ carload min. ____ for ____ ft. car
cwt.
Tariff authority_____ M.P.S.C. No._____, page_____, effective_____
Rate sought _____ ton _____ carload
To be applied _____ per or _____ min wt. _____ for _____ ft. car
cwt.
Tariff authority_____ M.P.S.C. No._____, page_____, effective_____

Aggregate freight charges at claimed rate would be \$_____.

(Insert here such explanation as the case may require. If shipment was reconsigned, state date of reconsigning order, point of reconsignment, and tariff authority for reconsignment. If shipment was misrouted by carrier, state routing instructions given by consignor, and the proper route in detail; with specific admission that misrouting was caused by carrier's agent.)

It is admitted that the rates or rules legally applicable at the time and over the route shipment moved were, under all circumstances and conditions then existing, irregular and exorbitant.

It is agreed that the order of the commission authorizing refund herein may require that the published tariff rates and rules upon which adjustment is based shall be maintained (as maximum) for a period of not less than one year from the date on which the rates or rules sought to be applied became effective.

The undersigned who makes this application in the name of his company certifies that he has familiarized himself with all the facts and figures upon which this application for reparation is made and knows the same to be correct.

Respectfully submitted,

_____ company

Defendant

_____, _____, By _____
(City) (state) (Personal signature)
_____, 19_____ Its _____

The undersigned companies join in the foregoing application:

_____ company

Defendant

By _____
(Personal signature)

_____ company

Defendant

By _____
(Personal signature)

The foregoing application must be personally signed by an executive or general officer of the accounting or traffic department, and not a subordinate.

I, _____, have carefully read the foregoing application and certify that the facts as therein set forth have been verified by a check against the accounts affected as audited under my direction, and I now certify that the records of this company show:

1. That the aggregate weight was _____ pounds.
2. That the aggregate freight charge actually collected and retained was \$ _____.
3. That the amount of the refund to which the above-named complainant is/are entitled, on the basis of the reduced rate, is \$ _____ and that the present weight is \$ _____ per ton/cwt.
4. The attached statement of billing, exhibit 1, corresponds to the checked billing of the auditing department.

(Personal signature)

(Comptroller or general auditor)

This certificate must be personally signed by the comptroller or the accounting officer in charge of freight revenue accounts, and not by a subordinate.

The foregoing certificate by the accounting officer of the applicant carrier must be used in every case and must show the aggregate charges on the shipments. But if the charges, or part of the charges were collected by another carrier or carriers, the following certificates will also be

used, and in that event the above certificate, so far as the charges collected are concerned, will be understood to be based on and qualified by the assumed correctness of the following certificates.

If the applicant carrier did not collect the freight charges, the carrier which made the collection will use the following supplemental certificate; and if a third carrier collected part of the charges, the special certificate will also be used, and the supplemental certificate will be understood to be based on and qualified by the assumed correctness of the special certificate.

SUPPLEMENTAL CERTIFICATE

I, _____, the _____ of the _____ Rail _____ company, have carefully read the foregoing application and now certify that the records and accounts of this company, as audited under my direction, show:

1. That the aggregate weight was _____ pounds.
2. That the aggregate freight charge, actually collected and retained, was \$_____.
3. That the attached statement of billing, exhibit 1, corresponds to the checked billing of the auditing department of this company.

(Comptroller or general auditor)

This certificate must be personally signed by the comptroller or the accounting officer in charge of freight revenue accounts, not by a subordinate.

When a carrier, other than the applicant and not the carrier using the supplemental certificate, has collected any part of the charges, the following special certificate will also be used:

SPECIAL CERTIFICATE

I, _____, the _____ of the _____ Rail _____ company, have carefully read the foregoing application and now certify that the records and accounts of this company, as audited under my direction, show:

1. That the aggregate weight was _____ pounds.
2. That additional freight charges were collected by this company to the amount of \$_____, no part of which has been refunded.

(Personal signature)

(Comptroller or general auditor)

This certificate must be personally signed by the comptroller or the accounting officer in charge of freight revenue accounts, not by a subordinate.

COMPLAINANT'S CERTIFICATE

I hereby certify that charges of \$_____ on the shipments involved herein were paid and borne as such by _____ Co., and by no other.

By _____ Its _____.

Subscribed and sworn to before me this _____ day of _____, A.D. 19____.
(Seal) Notary Public _____

Instructions--Read carefully

1. Under section 10G of Act No. 300, Public Acts of 1909, as amended, and as interpreted by the commission, all claims for reparation are absolutely barred if not filed within 2 years from the date property was delivered.

2. This application should be accompanied by the original paid freight bills, which will be returned by the commission after the claim has been acted upon.

3. The commission will authorize payment only to the party who paid and bore the charges and not to an assignee. Where the application is for authority to refund to the consignee when the paper shows that the charges were paid by the consignor, or vice versa, the commission requires that a stipulation be filed with the application signed by the consignor, by the consignee, and by an executive or general officer of the carrier in substantially the following form:

Title. (Here insert names of complainant and defendants as in application to which stipulation relates.)

The undersigned _____, the consignor of the following described shipments (here insert date, car number, commodity, and points of origin and destination) and _____, the consignee thereof, and the undersigned _____ Rail _____ Company, stipulate and agree that any order entered in the above-entitled informal complaint for a refund on account of the excessive freight charges collected on said shipment shall be in favor of (here insert name of consignor or consignee, as case may be).

_____ (Signature of cosignor,) _____

_____ (Signature of cosignee,) _____

_____ Rail _____ Co. _____

By _____

Its _____

History: 1944 AC; 1954 AC; 1979 AC.



Jennifer M. Granholm
GOVERNOR

STATE OF MICHIGAN
PUBLIC SERVICE COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
ROBERT W. SWANSON
DIRECTOR

J. Peter Lark
CHAIRMAN

Laura Chappelle
COMMISSIONER

Monica Martinez
COMMISSIONER

CERTIFICATE OF FORMAL RESCISSION

I hereby certify that, in accordance with Section 44(1) of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.244(1), the Michigan Public Service Commission approved and signed an order in Case No. U-14908, dated June 15, 2006, formally rescinding R 460.1, R 460.22, R 460.3, R 460.4, R 460.5, R 460.6, and R 460.7.

MICHIGAN PUBLIC SERVICE COMMISSION

A handwritten signature in cursive script, reading "Mary Jo Kunkle".

By: _____
Mary Jo Kunkle
Its Executive Secretary

Dated: June 15, 2006



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

PETER L. PLUMMER
EXECUTIVE DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated March 21, 2006, in which the Department of Labor and Economic Growth proposes to modify a portion of the Michigan Administrative Code entitled, "**Informal Reparation Docket Cases Before Commission**," by:

- ♦ Rescinding R 460.1, R 460.22, R 460.3, R 460.4, R 460.5, R 460.6, and R 460.7

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2005-1. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: 5/25/06

State Office of Administrative Hearings and Rules

By: 

Peter L. Plummer, Executive Director

2006-022 LG



LEGISLATIVE
SERVICE
BUREAU

Since 1941

Legal Division

John C. Bollman, Director

CERTIFICATE OF APPROVAL

I hereby certify that the Legislative Service Bureau has examined the attached rescissions of the Department of Labor and Economic Growth, dated March 21, 2006, rescinding R 460.1, R 460.22, R 460.3, R 460.4, R 460.5, R 460.6 and R 460.7 of the Department's rules entitled "Informal Reparation Docket Cases Before Commission," and further certify that, pursuant to section 45 of 1969 PA 306, MCL 24.245, the Legislative Service Bureau approves the rescissions as to form, classification, and arrangement.

Pursuant to section 44 of 1969 PA 306, being MCL 24.244(1), these rescissions are being processed without a public hearing.

Dated: May 24, 2006

LEGISLATIVE SERVICE BUREAU

By Elliott Smith / jmm
Elliott Smith, Director

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-14908

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on June 15th 2006, A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Patricia
A. Fronta

Digitally signed by
Patricia A. Fronta
DN: CN = Patricia A.
Fronta, C = US, O =
Case Management, OU
= MPSC
Date: 2006.06.16
13:39:06 -04'00'

Patricia Fronta

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

Sharron A.
Allen

Digitally signed by Sharron A. Allen
DN: cn=Sharron A. Allen, c=US,
o=MPSC, ou=Case Management,
email=saallen@michigan.gov
Date: 2006.06.16 12:48:41 -04'00'

Notary Public, Ingham County, Michigan
My Commission expires August 16, 2011

**SUBSCRIPTION LIST
ALL ELECTRIC ORDERS**

MR. LARRY LEWIS
GENERAL SERVICES ADMINISTRATION
670 MORRISON ROAD, ROOM 209
COLUMBUS OH 43230

MR. MICHAEL BYRNE
SENATE DEMOCRATIC STAFF
ROMNEY BUILDING
LANSING MI **ID MAIL**

MR. JOHN PESTLE
VARNUM, RIDDERING, SCHMIDT & HOWLETT
BRIDGEWATER PLACE
P.O. BOX 352
GRAND RAPIDS MI 49501 0352

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-14908

County of Ingham)

April M. Arman being duly sworn, deposes and says that on June 15, 2006 A.D. she served a copy of the attached Commission orders via E-Mail, to the persons as shown on the attached service list.

April M. Arman

Digitally signed by April M. Arman
DN: CN = April M. Arman, C = US, O =
Michigan Public Service Commission
Date: 2006.06.16 13:24:09 -04'00'

April M. Arman

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

**Sharron A.
Allen**

Digitally signed by Sharron A. Allen
DN: cn=Sharron A. Allen, c=US,
o=MPSC, ou=Case Management,
email=saallen@michigan.gov
Date: 2006.06.16 12:47:28 -04'00'

Sharron A. Allen
Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

ELECTRIC

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Michigan South Central Power
Agency

The Ontonagon County Rea. Assoc.
Natural Gas Supply Association

Mark Burzych

City of Charlevoix

City of Chelsea

Tri-County Electric Co-Op

Tri-County Electric Co-Op

Tri-County Electric Co-Op

Tri-County Electric Co-Op

Tri-County Electric Co-Op

Comsumers Energy Company

Consumers Energy Company

Edison Sault Electric Company

Edison Sault Electric Company

Exelon Energy Company

Exelon Energy Company

Upper Peninsula Power Company

Alger Delta Cooperative

Cherryland Electric Cooperative

Cloverland Electric Cooperative

Cloverland Electric Cooperative

Great Lakes Energy Cooperative

Thumb Electric Cooperative

Wolverine Power Marketing

Cooperative, Inc.

Wisconsin Public Service Corp.

Michigan Electric Power Coord. Ctr

Escanaba Electric Department

Niles Utilities Department

Stephson Utilities Department

Nordic Electric, LLC

presque Isle Electric & Gas

Cooperative, INC

DTE Energy

DTE Energy

North American Energy, LLC

North American Energy, LLC

Quest Energy, LLC

Xcel Energy

City of Crystal Falls

Lisa Felice

City of South Haven

Bay City Electric Light & Power

Grand Haven Board of Light &
Power

Lansing Board of Water and Light

Marquette Board of Light & Power

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davidw@BPW.ZEELAND.MI.US

*

* Total number of users subscribed to the list: 61

* Total number of local host users on the list: 0

*

City of Saint Louis
Nordic Marketing, LLC
City of Marshall
April Arman - MPSC
Mary Jo Kunkle - MPSC
Alpena Power
Lowell Light and Power
City of Eaton Rapids
Wyandotte Municipal Services
Wyandotte Municipal Services
First Energy Solutions
Coldwater Board of Public Utilities
Hillsdale Board of Public Utilities
Clinton Board of Public Works
Holland Board of Public Works
Zeeland Board of Public Works