

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the **ASSOCIATION OF** )  
**BUSINESSES ADVOCATING TARIFF EQUITY'S** )  
formal complaint for the reduction of **CONSUMERS** ) Case No. U-11560  
**ENERGY COMPANY'S** rates for the sale of )  
electricity. )  
\_\_\_\_\_)

At the May 27, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**ORDER**

The Association of Businesses Advocating Tariff Equity (ABATE) filed a complaint regarding the electric rates of Consumers Energy Company (Consumers). On April 9, 1999, a prehearing conference was held before Administrative Law Judge Robert E. Hollenshead (ALJ). Among other things, the ALJ ruled that ABATE's complaint would not be treated as a request to reduce Consumers' rates but as a request for the Commission to determine whether to order Consumers to show cause why its rates should not be reduced or to file a general rate case. On April 23, 1999, ABATE filed an application for leave to appeal that ruling.<sup>1</sup> On May 7, 1999, Consumers and the Commission Staff (Staff) filed responses.

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<sup>1</sup>ABATE also filed a motion for immediate consideration, which the Commission denies. Among other things, ABATE took the full 14 days allowed by the rules to file its application for leave to appeal and did not request that the ALJ shorten the time for responses.

At that same prehearing conference, the ALJ denied petitions for leave to intervene filed by Energy Michigan; the Michigan United Conservation Clubs (MUCC), the Michigan Environmental Council (MEC), and the Public Interest Research Group in Michigan (PIRGIM); the Michigan Community Action Agency Association (MCAAAA); and the Michigan Petroleum Association/ Michigan Association of Convenience Stores (MPA/MACS). On April 15, 1999, Energy Michigan filed an application for leave to appeal the ruling denying its petition for leave to intervene. On April 29, 1999, Consumers and the Staff filed responses. On April 26, 1999, MUCC, MEC, and PIRGIM; MCAAAA; and the MPA/MACS filed delayed applications for leave to appeal the ALJ's rulings on the scope of the case, the denial of their petitions for leave to intervene, and the schedule.<sup>2</sup> On May 7, 1999, Consumers and the Staff filed responses.

Rule 337 of the Commission's Rules of Practice and Procedures, 1992 AACS, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review; an appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

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<sup>2</sup>The filings were one business day late and no prejudice resulted. The Commission grants the motion to accept the late filings.

The Commission concludes that the applications for leave to appeal should be granted. A decision at this time will materially advance a timely resolution of ABATE's complaint.

ABATE's complaint seeks a reduction in Consumers' electric rates. The Commission agrees with ABATE that it is inappropriate and unnecessary to convert the complaint into a proceeding to determine whether there should be a subsequent proceeding to examine Consumers' rates. ABATE's complaint itself provides an opportunity to examine whether Consumers' rates should be reduced. Both Section 8 of 1919 PA 419, MCL 460.58; MSA 22.8, and Section 22 of 1909 PA 300, MCL 462.22; MSA 22.41, authorize the Commission to reduce rates following a complaint hearing. It is within the scope of the complaint for ABATE and any intervenors to propose adjustments that they believe support their position that Consumers' electric rates should be reduced. In responding to the claim that its rates should be reduced, Consumers may rebut the adjustments proposed by other parties and may also raise additional adjustments that it asserts support its position that its rates should not be reduced. A necessary consequence of the complaint proceeding is that ABATE and other parties supporting a reduction in rates bear the burden of going forward and the burden of persuasion. Consequently, in the absence of proper evidence that a reduction is warranted, Consumers' rates will remain unchanged.

Because the scope of this complaint proceeding is a broad examination of Consumers' electric rates, the Commission finds it appropriate to permit wide participation. It therefore grants the petitions for leave to intervene filed by Energy Michigan, the MUCC, MEC, PIRGIM, MCAAA, and MPA/MACS. There is no prejudice to any party in permitting their intervention at this early stage of the proceedings.

In light of these rulings, it will be necessary for the ALJ to adjust the schedule for the case and to consider other petitions for leave to intervene.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The applications for leave to appeal should be granted.
- c. The ALJ's ruling on the scope of the case should be reversed.
- d. The petitions for leave to intervene should be granted.

THEREFORE, IT IS ORDERED that:

- A. The applications for leave to appeal are granted.
- B. The Administrative Law Judge's ruling on the scope of the case is reversed.
- C. The petitions for leave to intervene filed by Energy Michigan; the Michigan United Conservation Clubs, the Michigan Environmental Council, and the Public Interest Research Group in Michigan; the Michigan Community Action Agency Association; and the Michigan Petroleum Association/Michigan Association of Convenience Stores are granted.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of May 27, 1999.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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By its action of May 27, 1999.

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Case No. U-11560

Suggested Minute:

“Adopt and issue order dated May 27, 1999 granting the applications for leave to appeal, reversing the ruling on the scope of the case, and granting the petitions for leave to intervene, as set forth in the order.”