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December 11, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Ste. 7
Lansing, MI 48911

Re: Case No. U-12134
CECo and DECo Code of Conduct Approval
MECA Answer to MAFC Petition for Rehearing

Dear Ms. Wideman:

Enclosed please find original and four copies of Michigan Electric Cooperative Association Answer to Michigan Alliance for Fair Competition Petition for Rehearing in the above-referenced matter. Also enclosed is Proof of Service upon the Parties of Record.

If there are any questions or comments, do not hesitate to contact me.

Sincerely,

DYKEMA GOSSETT PLLC



Albert Ernst

AE/jmb

Enclosures

cc: Mike Peters
Service List
MECA Managers

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the approval of)
A code of conduct for CONSUMERS)
ENERGY COMPANY and THE)
DETROIT EDISON COMPANY.)

Case No. U-12134

MICHIGAN ELECTRIC COOPERATIVE ASSOCIATION
ANSWER TO
MICHIGAN ALLIANCE FOR FAIR COMPETITION
PETITION FOR REHEARING

Pursuant to Rule 403(2) of the Michigan Public Service Commission’s (“Commission”) Rules of Practice and Procedure, R 460.17403(2), the Michigan Electric Cooperative Association (“MECA”), on behalf of the state’s rural electric cooperatives, respectfully submits this answer to the Michigan Alliance for Fair Competition’s (“MAFC”) November 21, 2001 petition for rehearing (“petition”).

Introduction

MAFC’s petition shows how this docket has spun out of control. We started with a new law, 2000 PA 141 (“Act 141”), called the *Customer Choice and Electricity Reliability Act*. Its purposes are enumerated in §10(2) to include *electric* choice (§10(2)(a)), competition in *electric* supply (§10(2)(b)), merchant plants for *electric* generation (§10(2)(c)), reliable/reasonably priced *electric* power (§10(2)(d)) and economic development to promote healthy *electric* utilities in Michigan (§10(2)(e)).

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Somehow, this case has metamorphosed into a case which bears no resemblance to the purposes set out in Act 141. From reading Act 141, one would think that this case would focus on using the code of conduct to encourage *electric* choice (§10(2)(a)), competition in *electric* supply (§10(2)(b)), merchant plants for *electric* generation (§10(2)(c)), reliable/reasonably priced *electric* power (§10(2)(d)) and economic development to promote healthy *electric* utilities in Michigan. Instead, we now have heating contractors and propane dealers using the code of conduct as a weapon to beat back competition. In effect, the code of conduct has now been twisted to be a tool of the heating contractors and propane industry.

The code of conduct now aggressively tells us how we will finance (or not finance), how we will market (or not market), *etc.* It is no secret that the substance of the Commission's authority is now before the Michigan Court of Appeals. MECA will not reargue positions heretofore raised before the Commission or before the Michigan Court of Appeals.

Instead, this answer will assume that the Commission has the authority which is being questioned before the Michigan Court of Appeals. If the Commission has such authority, it must use judgment in exercising that authority. The essence of the MAFC's petition for rehearing is that the Commission used bad judgment with respect to §§II.H, III.E and III.F of the code of conduct. Stated alternatively, MAFC is displeased that it did not get 100% of what it asked for; it wants it all.

The Commission's initial code of conduct order was issued on December 4, 2000. It then took 329 days to issue the second code of conduct order on October 29, 2001. One must assume that the Commission carefully considered changes made from the first version to the second version, *i.e.*, no credible claim can be made for claims of error, newly discovered evidence, facts, circumstances arising subsequent to the close of the record or unintended consequences arising

subsequent to the close of the record or unintended consequences arising from compliance with the decision or order.

MAFC apparently intends to remove any benefit of an association with an electric utility, *i.e.*, MAFC would have all economies of scale eliminated. MAFC's true goal is that no utility affiliate be involved in anything but the electric utility business. The reason for MAFC's position is obvious – it seeks to eliminate competition. It couldn't do it in the legislature so it seeks to achieve its goals through the Commission.

A. The Commission's Revisions to §§III.E and III.F Are Reasonable and Appropriate

The Commission's second code of conduct order revised §§III.E and III.F to prohibit provision of information, consulting advice, or customer referral from a regulated electric utility to an affiliate offering unregulated electric service in Michigan. This makes eminent sense. The Commission is stating that no electric utility should use its resource base to adversely affect competition in emerging competitive electric markets.

At page 7, MAFC quotes from testimony of PG&E witness Oglesby which speaks to "inordinate competitive advantage". MECA submits that MAFC's proposal would tip the scales so that its members have all the advantages. Also at page 7, MAFC claims that "utilities will be able to engage in preferential treatment, exchange of referrals, and information sharing, in an anti-competitive manner without any oversight from the Commission." MECA notes that the Commission has the strongest "oversight" authority of all; it can adjust rates where it concludes that cross-subsidization, *etc.*, is occurring.

B. The Commission's Removal of Language in §II.H

At page 8 of its petition, the Commission is criticized by MAFC for removing certain language in §II.H. MAFC's basic concern appears to be that it not only wants language restricting the use of the incumbent's name and logo, it wants to have additional language inserted, *i.e.*, belts and suspenders. After discussing its proposed change, MAFC states as follows:

Consequently [if MAFC's language is not inserted] the utility's name recognition and reputation built through years of ratepayer dollars is granted at no charge to a nonregulated entity and customers may be given the unintended impression that this Commission is regulating non-regulated activities and rates of affiliates. [MAFC petition, p 9].

The obvious point missed by MAFC is that its purported concerns are more than adequately addressed by §§II.K and II.L of the code of conduct which provide as follows:

- K. An electric utility or alternative electric supplier offering regulated service in Michigan shall not allow its affiliates to use its logo unless the affiliate includes, in a clearly visible position and easily readable by customers the following statement:

"(Affiliate name) is not regulated by the Michigan Public Service Commission".

- L. If an electric utility, its affiliate, or other entity within the corporate structure offers an unregulated service, any use of its logo shall include, in a clearly visible position and easily readable by customers, the following statement:"

(Service) is not regulated by the Michigan Public Service Commission."

To our knowledge, the above quoted §§II.K and II.L are not being challenged. The Commission need not give MAFC more than §§II.K and II.L.

C. Standard of Review Discussion

MAFC's petition merely reargues MAFC's positions or seeks another opportunity to argue a position. In denying rehearing requests, the Commission has repeatedly stated that "[a] petition for rehearing is not merely another opportunity for a party to argue a position or express disagreement with the Commission's position." *See, e.g., Vista Communications, Case No. U-12444 (April 17, 2001)*. MAFC's petition adds nothing new to the Commission's understanding. It should be denied.

WHEREFORE, MECA respectfully requests that this Honorable Commission deny MAFC's petition for rehearing.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Attorneys for

MICHIGAN ELECTRIC COOPERATIVE
ASSOCIATION



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Dated: December 12, 2001

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

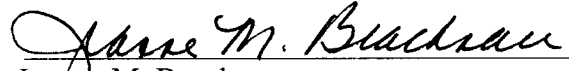
**In the matter of the approval of a code of conduct)
for CONSUMERS ENERGY COMPANY and)
THE DETROIT EDISON COMPANY.)
_____)**

Case No. U-12134

PROOF OF SERVICE

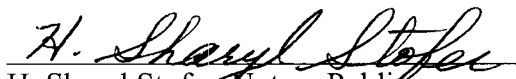
STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Jeanne M. Beachnau, being first duly sworn, deposes and says that on the 12th day of December, 2001, she caused to be served copies of Michigan Electric Cooperative Association Answer to Michigan alliance for Fair Competition Petition for Rehearing upon the parties listed in the attached Service List by electronic mail and First Class United State Mail.



Jeanne M. Beachnau

Subscribed and sworn to before me
this 12th day of December, 2001.



H. Sharyl Stofor, Notary Public
Ingham County, Michigan
My commission expires: 12/17/03

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Case No. U-12134

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