

# CLARK HILL

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February 14, 2020

***VIA ELECTRONIC CASE FILING***

Ms. Lisa Felice  
Acting Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, Michigan 48917

**Re: *MPSC Case No. U-20649: In the matter, on the application of Consumers Energy Company for approval of Voluntary Green Pricing programs pursuant to Section 61 of 2016 PA 342.***

Dear Ms. Felice:

Enclosed for filing please find the *Association of Businesses Advocating Tariff Equity's Petition to Intervene* and *Proof of Service* for the same.

Sincerely,

**CLARK HILL PLC**

**Stephen A.  
Campbell**

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Date: 2020.02.14 11:45:40 -05'00'

Stephen A. Campbell

SAC/lkd

cc w/enc.: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter, on the application of )  
CONSUMERS ENERGY COMPANY )  
for approval of Voluntary Green Pricing programs )  
pursuant to Section 61 of 2016 PA 342. )  
\_\_\_\_\_ )

Case No. U-20649  
ALJ Martin Snider

**PETITION TO INTERVENE OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by and through its attorneys, Clark Hill PLC, hereby petitions the Michigan Public Service Commission (“Commission”) for leave to intervene in this case pursuant to Mich Admin Code, R 792.10410 (“Rule 410”) of the Commission’s Rules of Practice and Procedure. In support of this petition, ABATE states as follows:

1. ABATE is a voluntary association of large industrial companies that conduct business throughout the state of Michigan. The primary purpose of ABATE is to participate in state and federal regulatory proceedings to protect the interests of businesses in connection with energy and utility matters. To that end, ABATE consistently advocates for cost-of-service based energy rates, equitable terms of service, and increased access to a competitive energy market. ABATE is also interested in assuring that rates, surcharges, and conditions of service are adopted in conformance with the law and in a fair and reasonable manner.

2. Collectively, ABATE’s members employ almost 100,000 Michiganders and spend approximately \$1.5 billion on energy and related services in Michigan each year. As the representative of such large users of electricity, natural gas, and transportation services, ABATE is vitally interested in achieving increased economic efficiencies for the utilities that serve its members.

3. Present members of ABATE include: AK Steel Corporation; Carbon Green BioEnergy, LLC; Cargill, Inc.; Charles River Laboratories, Inc.; The Dow Chemical Company; DW-National Standard-Niles, LLC; Eastman Chemical Company; Eaton Corporation; Edw. C. Levy Company; Enbridge Energy, Limited Partnership; FCA US LLC; General Motors LLC; Gerdau MacSteel INC.; Graphic Packaging International, Inc.; Hemlock Semiconductor Operations LLC; J. Rettenmaier USA LP; Marathon Petroleum Corporation; Martin Marietta Magnesia Specialties LLC; Metal Technologies, Inc.; Occidental Chemical Corporation; Ox Industries; Pfizer Inc.; Praxair, Inc.; United States Gypsum Company; U.S. Steel Corporation; WestRock California, Inc.; White Pigeon Paper Company; and Zoetis LLC.

4. ABATE members take significant amounts of electric service from Consumers Energy Company (“Consumers” or the “Company”) and will be subject to and impacted by the rates, programs, terms, and conditions of service approved in this proceeding.

5. ABATE members are directly impacted by these proceedings and have a substantial interest therein because ABATE members are concerned about costs relating to the Company’s Voluntary Green Pricing (“VGP”) programs for which the Company seeks approval in this proceeding (the “Application”), as well as the structure and details of those programs. The determinations made in these proceedings will affect the VGP programs available to (and the costs and rates paid by) ABATE members.

6. Although Rule 410 speaks in terms of *leave to intervene*, the Commission has indicated that it considers the ability to intervene to be one of right when a petitioner can meet

the two-prong test for standing.<sup>1</sup> This test requires a showing that the prospective intervenor will (1) suffer an **injury in fact** as a result of the outcome of the case; and (2) the interests allegedly endangered fall within the **zone of interests** intended to be protected or regulated by the statute or constitutional guarantee in question.<sup>2</sup>

7. ABATE meets the two-prong test for standing because, as ABATE members take service from the Company, ABATE members have a direct financial interest in the amount, rates, terms, programs, and conditions of service for the Company's customers. This interest is within the zone of interests to be protected by the Commission's consideration of the issues addressed in this proceeding.

8. In addition to meeting the conditions for intervention by right, ABATE meets the Commission's criteria for permissive intervention. As recognized in prior Commission orders, "the Commission's discretion to grant leave to intervene is broader than the two-prong test . . . Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation."<sup>3</sup> Permissive intervention has also been granted where a proceeding "raises novel questions and important issues of policy" and the intervenor will "bring a unique perspective" to the case.<sup>4</sup>

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<sup>1</sup> The United States Supreme Court established the two-prong test for standing in *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970), applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123, 1127 (WD Mich, 1978), and adopted by the Commission in its November 10, 1988 Order in Case No. U-9138.

<sup>2</sup> *In re Consumers Energy for authority to implement a power supply cost recovery plan*, MPSC Case No. U-17317, March 6, 2014 Order, p 4 (emphasis added).

<sup>3</sup> *In re Michigan Consolidated for authority to increase its rates*, MPSC Case No. U-10150, December 8, 1992 Order, p 5.

<sup>4</sup> *In re Consumers Energy to fully comply with Public Act 295 of 2008*, MPSC Case No. U-17771, October 27, 2015 Order, p 6, citing *In re Mascotech Forming Technologies*, MPSC Case No. U-11057, June 5, 1996 Order, pp 2-3.

9. ABATE has regularly participated in electric and natural gas proceedings before the Commission and federal regulatory bodies for over 25 years. As in prior cases, ABATE will provide the Commission with useful and unique information through the testimony of its experts. As a matter of course, ABATE will scrutinize the reasonableness and prudence of the proposals presented in this proceeding through necessary and appropriate means. These efforts will assist the Commission in making significant policy determinations in this case and will “bring helpful information to the Commission’s attention that might not otherwise be available.”<sup>5</sup> As such, ABATE meets the test for permissive intervention.

10. ABATE will carefully examine the proposals put forth by the parties to this proceeding, including the Company’s requests that the Commission: (i) approve revisions to certain existing VGP programs; (ii) approve new VGP programs; and (iii) approve the proposed costs and terms of service associated therewith. ABATE will carefully review and analyze the impact these proposals and requests will have on ABATE members and the rates and costs charged thereto.

11. The interests of ABATE and its members are not adequately represented by the present parties and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

12. ABATE will take the position that the Company’s Application, the proposals put forth by additional parties, and the Company’s proposed VGP programs and associated costs should be carefully scrutinized and any unjustified, unsubstantiated, imprudent, unreasonable, or unlawful deficiencies, costs, proposals, or mechanisms should be disallowed.

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<sup>5</sup> *In the Matter, on the Commission’s own motion*, MPSC Case No. U-18091, February 21, 2019 Order, p 9.

13. ABATE will thoroughly explore and analyze the reasonableness and prudence of the following in this matter: (i) the VGP program proposals put forth in this proceeding; and (ii) the costs, charges, and terms of service associated therewith.

14. ABATE will seek an order in this proceeding approving rates, terms, programs, and conditions of service which are just, fair, reasonable, and lawful.

15. ABATE reserves the right to take other positions and/or seek other relief based on a review of the various filings, responses to discovery, or positions taken in testimony or briefs.

**WHEREFORE**, ABATE requests that the Commission grant ABATE's Petition for Leave to Intervene in and be treated as a full party hereto. ABATE further requests that the parties serve copies of all pleadings and correspondence in these proceedings to the offices of its counsel listed below and to its consultant(s):

MAILING: James Dauphinais  
Amanda Alderson  
Brubaker & Associates, Inc.  
16690 Swingley Ridge Road, Suite 140  
Chesterfield, Missouri 63017  
P.O. Box 412000  
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Respectfully submitted,

**CLARK HILL PLC**

By: Stephen A. Campbell  
  
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Stephen A. Campbell (P76684)  
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Date: February 14, 2020

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the application of )  
CONSUMERS ENERGY COMPANY )  
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pursuant to Section 61 of 2016 PA 342. )  
\_\_\_\_\_ )

Case No. U-20649  
ALJ Martin Snider

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF WAYNE )

Stephen A. Campbell, being first duly sworn, deposes and says that on February 14, 2020, he did cause to be served the *Association of Businesses Advocating Tariff Equity's Petition to Intervene*, as well as this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service list.

Stephen A.  
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Stephen A. Campbell

Subscribed and sworn to before me  
This 14<sup>th</sup> day of February 2020.

Lauren K.  
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Lauren K. Degnan, Notary Public  
Ingham County, Michigan  
Acting in the County of Wayne  
My Commission Expires: January 20, 2022

**SERVICE LIST**  
**MPSC Case No. U-20649**

**Administrative Law Judge**

Hon. Martin Snider  
Administrative Law Judge  
Michigan Public Service Commission  
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