



ASSOCIATION of BUSINESSES ADVOCATING TARIFF EQUITY

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Robert A. W. Strong and Roderick S. Coy, Legal Counsel
Clark Hill PLC
151 S. Old Woodward Ave., Suite 200
Birmingham, MI 48009-6179
(248) 988-5861; Fax (248) 642-2174
rstrong@clarkhill.com; rcoy@clarkhill.com

Comments of the Association of Businesses Advocating Tariff Equity on Act 295

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The Association of Businesses Advocating Tariff Equity would like to thank Chairman Nofs and members of the Senate Energy and Technology Committee for this opportunity to provide written comments on Act 295, as administered by the Michigan Public Service Commission. It is certainly good government policy to match the reality of the actual implementation of the Act with the expectation of the Legislature and other participants at the time the actual statutory language was first drafted. Therefore, if there is a mismatch between the initial intent and the way that the Michigan Public Service Commission (“PSC”) has implemented the Act, then adjustments should be made.

ABATE is focusing only on two aspects of Act 295. This should not be construed as acquiescence in the way that the PSC has implemented the entire Act. At this point, ABATE believes that high-level comments are necessary in order for this Committee and parties to focus on swift and targeted changes to Act 295.

Throughout the drafting process in 2008, ABATE and its members were repeatedly assured that energy optimization charges would *not* apply to natural gas transportation customers since these customers bought their natural gas from third parties and merely contracted to have it transported and then delivered to their facilities in Michigan. However, the PSC has imposed these charges on transportation only customers. Obviously, the programs to reduce natural gas consumption which are funded by the energy optimization surcharges, will not reduce the consumption of entities who already buy no gas at all. Reductions in the amount of natural gas that transportation customers purchase from third parties also have absolutely no financial impact

on the price of the natural gas that local distribution companies ("LDCs") purchase for their bundled sales customers. Moreover, the driving fundamentals underlying the amount of gas purchased by transportation customers and the amount of gas the LDCs purchase for their bundled sales customers are entirely different. Transportation customers purchased gas primarily as if feed stock to the production of goods and as the demand for those goods wanes or increases, then the amount of gas purchased will vary accordingly. LDCs, on the other hand, purchase gas primarily to meet the heating requirements of their customers whether it be for water or space heating.

It should also be noted that the declining trend of natural gas usage for residential customers since at least 1985 has been documented by the American Gas Association. Energy optimization programs merely provide an additional boost for sales reductions which in turn results in the utilities replacing the lost margin contribution to fixed costs through rate increases.

The PSC has misinterpreted MCL 460.1089(2) to require gas transportation customers to pay the energy optimization charges. This is based upon the misinterpretation of the term "natural gas customers," which the PSC claims includes customers who do not buy natural gas. ABATE, on the other hand, interprets "natural gas customers" to mean those customers that purchase natural gas from the LDCs. Transportation customers only purchased delivery service from the LDCs and all natural gas is purchased from third parties. In short, they are not natural gas customers. The cost of these program currently exceeds \$1.2 million annually.

ABATE recommends that the Legislature pass an amendment which adds the following phrase after "natural gas customers" in MCL 460.1089(2): "which does not include all gas transportation customers,". Such an amendment would reconfirm the legislative intent and prior assurances given to industrial customers that transportation customers should not be paying energy optimization surcharges.

The second issue that ABATE would raise in these comments relates to the calculation and use of the "transfer price" discussed in MCL 460.1047 and 1049. To get at the transfer price the PSC has adopted a practice of fixing an estimated market price that is virtually always higher than the true market price, resulting in the subsidies for renewable energy being charged to customers rather than the renewable surcharge revenues. The legislative intent, as explained to ABATE and its members during the drafting process, was to create a program which separated the market price for new renewable energy resources from the total price paid, including subsidies, for renewable energy resources and allocate the market price to the PSCR clause and the remainder to the funds collected through the renewable energy surcharge. In this way, the PSCR customers would not be paying any subsidies and any and all subsidies would be allocated to the renewable energy surcharge fund, exclusively.

In order to begin the process, it was obviously necessary for the PSC to estimate the future transfer price. Following the initial estimate, the transfer price would be based on the true market price calculated as dictated by the statute. Anything above the transfer price was the subsidy needed to "buy down" the contract price to market and that subsidy would be paid from the renewable program revenues.

The continued use of estimates over allocates approximately \$22 per megawatt hour to customers paying the power supply cost recovery ("PSCR") factor. Detroit Edison's customers are paying \$11 million in PSCR expense that should be allocated to the renewable energy program. (There is a stop loss provision in that the market price or transfer price could never exceed the contract price.)

In order to assure that any subsidies for renewable energy are charged solely to the amounts collected through the renewable energy surcharge, the following amendment should be made at the end of Section 49(3)(c): "The per megawatt hour price established in the reconciliation process shall be the only cost that is included within the power supply cost recovery clause and all other costs paid to a renewable energy developer shall be allocated to the revenues generated by the charges in Section 45."

Please contact Cami Pendell, tel.: 517.372.2560 if the Committee or its members desires additional information regarding the recommendations contained in these comments.

ABATE stands willing to assist this Committee in making fair and reasonable adjustments to Act 295 in order to ensure that Michigan customers will enjoy just and reasonable utility rates.

