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February 14, 2000

**MICHIGAN PUBLIC SERVICE
COMMISSION**

FEB 14 2000

FILED

Ms. Dorothy Wideman
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-12134

Dear Ms. Wideman:

Enclosed for filing in the above captioned matter please find the original and 15 copies of Qualifications and Testimony of Roy Boston on Behalf of Energy Michigan. Also enclosed is the original Proof of Service indicating service on counsel.

Please date stamp one copy of the above entitled document for my records and return it in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}



for Eric J. Schneidewind

EJS/mrr

cc: ALJ
parties

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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 U-12134
**MICHIGAN PUBLIC SERVICE
COMMISSION**

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QUALIFICATIONS AND TESTIMONY OF

ROY BOSTON ON

BEHALF OF ENERGY MICHIGAN

FEBRUARY 14, 2000

1 preclude all sharing of employees, and not just officers and directors. Third,
2 Section II. I should be amended to prohibit joint sales calls of utilities and their
3 affiliates. Fourth, in order to prevent consumer confusion, Section II. L should be
4 amended so as to inform consumers that the affiliate is not the same entity as the
5 utility and that the customer does not have to do business with the affiliate in
6 order to receive regulated service from the utility.

7
8 **Q. What are the general concerns surrounding the creation of utility marketing**
9 **affiliates?**

10 **A.** The opportunity for abuse is all too real when utility marketing affiliates compete
11 for sales on their parents' system. A code of conduct should be structured so that
12 utilities can have no incentive to favor their affiliates in any way, e.g. granting
13 preferences in the scheduling of power flows through a delivery constraint or
14 during a partial generation outage; using the utility sales force to generate sales
15 leads for the affiliate; giving preference to customers of affiliates when switching
16 customers between suppliers; interpreting tariffs so as to favor the affiliate, such
17 as not charging a switching fee in transactions involving the affiliate.

18
19 **Q. Are there ways in which the Commission can address those concerns?**

20 **A.** Yes. The opportunity for abuse can be obviated by: 1) completely separating the
21 marketing affiliate from the utility; 2) imposing a code of conduct; and, 3)
22 mandating a level playing field with respect to all aspects of service on the

1 utility's system, including terms and conditions of service, cost allocation and rate
2 design and contractual issues.

3
4 **Q. Are you opposed to utilities creating marketing affiliates?**

5 A. No. I support customer choice for sales of electricity. I am not opposed to utilities
6 forming marketing affiliates. As long as all suppliers of electricity and all
7 customers are subject to the same rules, have access to the same information, and
8 are treated equally by the utility and its employees, competition from affiliates is
9 welcome.

10
11 **Q. What is your impression of the provisional standards of conduct for
12 Consumers Energy and Detroit Edison?**

13 A. I believe that the provisional standards of conduct that are currently in place for
14 Consumers Energy and Detroit Edison do not adequately address all of the issue
15 areas that are necessary to protect ratepayers and the competitive marketplace.
16 Although these provisional standards of conduct could be substantially modified
17 in a manner that would improve their coverage, its is much more expedient to
18 begin with a draft that better addresses the issues initially. Therefore, I strongly
19 recommend that the Commission use Staff's Proposed Code as the basis of the
20 code of conduct the Commission eventually approves.

21

1 **Q. What is your impression of Staff's Proposed Code?**

2 A. Generally, I support the Staff's Proposed Code and share the concerns it seeks to
3 address through its many provisions. However, some portions of Staff's Proposed
4 Code may not go far enough to ensure that cross-subsidization or discrimination
5 will not occur by utilities in favor of their unregulated affiliates. Accordingly, I
6 recommend that four changes be made to Staff's Proposed Code to strengthen its
7 provisions in those areas.

8
9 **Q. What is your recommendation with respect to Section II E. of Staff's
10 Proposed Code?**

11 A. Section II E prohibits the utility sharing corporate officers and directors.
12 Unfortunately, this would permit utilities to share with their unregulated affiliates
13 other employees such as customer account representatives, sales personnel,
14 marketing personnel, and other lower level corporate employees that may possess
15 market sensitive, or customer account information. Thus, I recommend that
16 Section II E be amended to prohibit the sharing or joint employ of all employees
17 except those engaged in the provision of corporate support, such as pension fund
18 administration, human resources, etc. The definition of corporate support should
19 not be extended to permit joint marketing or sales functions between the utility
20 and its affiliates.

21
22 **Q. What is your recommendation with respect to Section II F of Staff's
23 Proposed Code?**

1 A. Section II F requires that utility employees and the affiliates' operating employees
2 shall function independently of each other and maintain separate offices. This
3 provision should be amended to make it clear that utilities and their affiliates shall
4 be legally and physically separated, including their employees. The reason for
5 physical separation is that absent physical separation, utility employees and their
6 affiliate counterparts could impermissibly or inadvertently share market sensitive
7 information. The only way to adequately prevent this sharing of information
8 across corporate entities is to ensure that they are physically separated from each
9 other.

10
11 **Q. What is your recommendation with respect to Section II H of Staff's**
12 **Proposed Code?**

13 A. Section II H provides for a quarterly log of utility employee transfers between the
14 utility and its affiliates. I recommend that the Commission place a time limit on
15 the return of a utility employee that has been transferred to an affiliate to prevent
16 the utility from circumventing the prohibition of the preferential provision of
17 customers data through employee transfer to its affiliates. Merely keeping
18 transfer logs does not prevent damage to the competitive marketplace that could
19 have occurred several months previous. Amending this subsection would place a
20 proactive measure in the code that does not exist in Staff's Proposed Code as
21 presently drafted.

22

1 **Q. What is your recommendation with respect to Section II L of Staff's**
2 **Proposed Code?**

3 A. While this Section permits the sharing of the utility's name and logo, it does not
4 go far enough to prevent consumer confusion about the business entity soliciting
5 their business. The disclosure statement required under Section II L only
6 references the fact that the affiliate is not regulated by the Commission. The
7 disclosure statement should also require that any communication between the
8 affiliate and a consumer that includes the utility name and/or logo also includes a
9 statement that the affiliate is not the same as the utility and that customers do not
10 have to buy products from the affiliate in order to receive quality regulated
11 services from the utility. Other jurisdictions have required similar corporate
12 relationship disclosures when affiliates use their utility parents' name and/or logo.

13
14 **Q. Does this conclude your testimony?**

15 A. Yes.

Schedule 1 Qualifications of Roy L. Boston

ROY L. BOSTON
Enron Corp.

Roy L. Boston is a Director of US/Canada Government Affairs for Enron Corp. and works from its Hinsdale, Illinois office. He is responsible for regulatory and legislative efforts to promote the development of competitive energy markets in the upper Midwest states.

In his current job, Mr. Boston has evaluated and made recommendations regarding proposed codes of conduct applicable in the upper Midwest area. Mr. Boston testified on behalf of Enron Energy Services in Wisconsin regarding the standards of conduct appropriate for utility affiliates.

Prior to his employment with Enron in July, 1997, Mr. Boston was the Manager of State Relations for MidCon Corp. located in Lombard, Illinois. In that capacity, he was responsible for regulatory and legislative efforts of that company in the natural gas and electricity markets in several Midwest states. He represented MidCon Corp. before a variety of regulatory and legislative bodies and committees.

As part of his responsibilities for MedCon, Mr. Boston testified before legislative and regulatory bodies, and presented testimony before the Indiana Commission regarding restructuring issues including a code of conduct for the Northern Indiana Public Service Company. Mr. Boston also testified before the Michigan Commission in connection proceedings to establish title transfer and tracking fees for Consumers and Michigan Consolidated Gas Company. Mr. Boston has also provided comments to the South Dakota Commission regarding their development of rules to establish a code of conduct.

Prior to his employment with MidCon Corp., Mr. Boston was an Executive Assistant to Commissioner Ruth K. Kretschmer of the Illinois Commerce Commission. In that capacity, he was responsible for advising the commissioner on policy and legal issues arising from regulatory proceedings before the Commission and federal regulators. These issues pertained to the regulation of natural gas, electricity, telecommunications, transportation and water companies.

While at the Illinois Commission, Mr. Boston worked on transfer pricing issues between Illinois public utilities and their affiliates.

Previously, Mr. Boston was employed by John Gubbins & Associates in Chicago and practiced in federal courts specializing in plaintiff and appellate litigation.

Mr. Boston graduated from Indiana University in Bloomington, Indiana with a Bachelor of Science degree in Business Economics and Public Policy. He received his Juris Doctorate degree from Southwestern University School of Law in Los Angeles, California.

MICHIGAN PUBLIC SERVICE
COMMISSION

FEB 14 2000

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

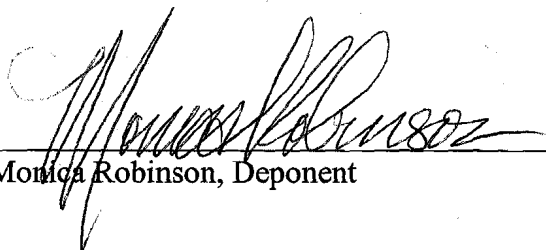
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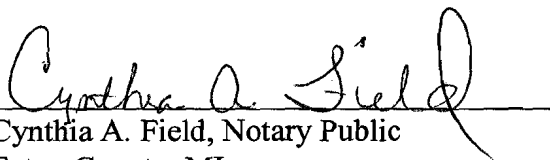
PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 14th day of February, 2000 she served the original and 15 copies of Qualifications and Testimony of Roy Boston on Behalf of Energy Michigan upon the MPSC and those individuals listed on the attached service list by e-mail and regular mail at their last known addresses.



Monica Robinson, Deponent

Subscribed to and sworn before me
this 14th day of February, 2000.



Cynthia A. Field, Notary Public
Eaton County, MI
Acting in Ingham County, MI
My Commission Expires: 4/26/02

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CASE NO. U-12134

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