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STATE OF MICHIGAN
IN THE SUPREME COURT

In Re Complaint of Enbridge Energy, Limited Partnership
against Upper Peninsula Power Company

UPPER PENINSULA POWER COMPANY

Supreme Court No. _____

Appellant,

Court of Appeals No. 321946

v

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

Michigan Public Service Commission
Case No. U-17077

Appellee.

APPLICATION FOR LEAVE TO APPEAL OF
UPPER PENINSULA POWER COMPANY

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STATEMENT OF JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Appellant Upper Peninsula Power Company (“UPPCo”) seeks leave to appeal the December 22, 2015 published decision (attached to this Application as Appendix A) of the Court of Appeals in Docket Number 321946 (“December 22, 2015 decision”). That decision reversed the May 13, 2014 Order (attached as Appendix B to this Application) of the Michigan Public Service Commission (“MPSC” or “Commission”) in Case No. U-17077 (“Order Dismissing Complaint”) dismissing with prejudice the Complaint of Enbridge Energy, Limited Partnership (“Enbridge” or “Appellee”). Enbridge’s Complaint claimed that the Commission’s final and unappealed August 14, 2012 and September 25, 2012 Orders in Case No. 16568 (attached as Appendix C and Appendix D, respectively, to this Application) approving the reconciliation of 2010 revenues pursuant to a previously approved Revenue Decoupling Mechanism (“RDM”)¹ in UPPCo’s electric service tariffs were unlawful. The Commission’s May 13, 2014 Order Dismissing Complaint dismissed the Complaint on the basis that it failed to state a claim upon which relief could be granted, finding that when: (i) all the parties in Case No. U-15988 negotiated the settlement agreement providing for, among other things, a RDM; and (ii) the

¹ The Commission’s Report on Electric and Gas Revenue Decoupling in Michigan required by MCL 460.1097(4) is available on the Commission’s website as Document 0008 in Case No. U-15898 at <http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15898&submit.x=0&submit.y=0>

It describes RDMs generally, stating:

Revenue decoupling is a regulatory mechanism that removes the link between energy sales and utility revenues and profits. Revenue differences are trued-up on a periodic basis as a surcharge or credit to customers so that the utility’s revenues match the allowed revenue requirement as established in the utility’s last general rate case. Revenue decoupling removes the utility’s disincentive to promote energy efficiency by eliminating the negative financial impact on a utility’s earnings resulting from the reduction of energy sales due to the implementation of energy efficiency programs.

A decoupling mechanism will break the link between actual revenues and utility energy sales. Decoupling means that changes in revenues resulting from changes in consumption will no longer contribute to the determination of need for a rate case. Instead, rate case filings will be driven by a change in underlying costs sufficient to warrant a filing by the utility. Thus, a decoupling mechanism will remove the energy optimization disincentive and may reduce the frequency of rate case filings.

Commission issued its December 16, 2009 Order Approving Settlement Agreement in Case No. U-15988 (attached as Appendix E to this Application) approving the RDM, it was unclear whether 2008 PA 295 (“Act 295) permitted electric RDMs. In its May 13, 2014 Order Dismissing Complaint, the Commission: (i) determined that the decision *In re Detroit Edison Co Application*, 296 Mich App 101; 817 NW2d 30 (2012), that Act 295 did not permit the Commission to order electric RDMs, was distinguishable; and (ii) relying on the doctrine recognized in *Dodge v Detroit Trust Co*, 300 Mich 575; 2 NW2d 509 (1942), determined that the Court’s ruling *In re Detroit Edison, supra*, did not afford a basis upon which the relief requested in the Complaint could be granted as the UPPCo RDM was created and implemented pursuant to a settlement agreement among all the parties to Case No. U-15988. The Commission found that it had jurisdiction to approve the parties’ settlement agreement in 2009, thus binding the parties to their compromise, and that consistent with the long-standing legal doctrine recognized by this Supreme Court in *Dodge, supra*, the Court of Appeals’ later decision in *Detroit Edison, supra*, did not invalidate the parties’ settlement agreement.

The Court of Appeals’ December 22, 2015 decision reversed the Commission’s May 13, 2014 Order Dismissing Complaint on the basis that the MPSC exceeded its statutory authority when it approved the RDM in the 2009 settlement agreement.² The Court of Appeals distinguished *Dodge, supra*, by asserting that: (i) at the time the Commission approved the settlement agreement in Case No. U-15988 “reasonable minds could not have disputed” that the Commission lacked authority to approve a RDM for an electric utility; and (ii) because

² The Court of Appeal mistakenly stated at page 5 of its decision that the Commission “approved the RDM in Case No. U-16568”, and that this “approval was accomplished in the context of a settlement”. To clarify, UPPCo’s RDM was established by a settlement agreement reached in Case No. U-15998, and there was no settlement agreement reached in Case No. U-16568.

“countless others that were not a party to the agreement” were affected by the settlement. (December 22, 2015 decision, pp 4-5)

As demonstrated below, the Court of Appeals’ December 22, 2015 decision involves issues of significant public interest and of major significance to the state’s jurisprudence³ as it creates significant limitations on the long-standing legal doctrine recognized by this Supreme Court in *Dodge, supra, 614* that:

“... where a doubt as to what the law is has been settled by a compromise, a subsequent judicial decision by the highest court of the jurisdiction upholding the view adhered to by one of the parties affords no basis for a suit by him to upset the compromise.”

The limitations on *Dodge, supra*, created by the Court of Appeals’ published decision severely diminish the sanctity and efficacy of settlement agreements among the parties to duly noticed contested case proceedings involving issues effecting multiple persons or the public, particularly in public utility rate cases before the MPSC. The Court of Appeals’ December 22, 2015 decision is clearly erroneous in creating such limitations on the efficacy of settlement agreements to resolve disputed issues in MPSC proceedings and will cause manifest injustice by permitting collateral attacks via separate complaint proceedings upon the terms of settlement agreements previously approved by the Commission in final orders no longer subject to appeal. In essence, the Court of Appeals December 22, 2015 decision permits collateral attacks on individual terms of previously-approved settlement agreements on the basis that: (i) a subsequent court decision may conclude that such terms were not authorized by law; and (ii) without regards to how such specific terms were arrived at in the context of the entire settlement agreement. In this regard, the Court of Appeals December 22, 2015 decision is: (i) contrary to the recognized public policy

³ UPPCo’s Application for Leave satisfies three of the six grounds for evaluating an application for leave to appeal listed in MCR 7.305(B)(2), (3) and (5).

in favor of the use of settlement agreement to resolve contested case proceedings; (ii) clearly erroneous; (iii) of significant public interest; and (iv) involves a legal issue of major significance to the State's jurisprudence.

Appellant UPPCo respectfully requests that this Honorable Court: (i) grant this Application for Leave to Appeal; (ii) review and reverse the Court of Appeals' December 22, 2015 decision in Docket No. 321946 reversing the MPSC's dismissal of Enbridge's Complaint in Case No. U-17077; and (iii) uphold the MPSC's approval of the settlement agreement in Case No. U-15988 and implementation in Case No. U-16568 of said settlement agreement.

STATEMENT OF QUESTIONS PRESENTED

- I. DID THE COURT OF APPEALS CLEARLY ERR BY REFUSING TO APPLY THE LEGAL DOCTRINE RECOGNIZED IN *DODGE v DETROIT TRUST CO*, 300 MICH 575, 614; 2 NW2d 509 (1942) THAT "...WHERE A DOUBT AS TO WHAT THE LAW IS HAS BEEN SETTLED BY A COMPROMISE, A SUBSEQUENT JUDICIAL DECISION BY THE HIGHEST COURT OF THE JURISDICTION UPHOLDING THE VIEW ADHERED TO BY ONE OF THE PARTIES AFFORDS NO BASIS FOR A SUIT BY HIM TO UPSET THE COMPROMISE" ON THE BASIS THAT: (i) NOT ALL CUSTOMERS AFFECTED BY THE RATE ORDER WERE PARTIES TO THE SETTLEMENT AGREEMENT; AND (ii) THAT "REASONABLE MINDS" COULD NOT HAVE DISPUTED THE MPSC'S AUTHORITY TO APPROVE A REVENUE DECOUPLING MECHANISM FOR AN ELECTRIC UTILITY?

Appellant UPPCo answers "YES".

The MPSC, by its decision, would answer "YES".

Appellee Enbridge Energy, Limited Partnership would presumably answer "NO".

- II. DOES THE COURT OF APPEALS DECISION PERMITTING COLLATERAL ATTACK BY SEPARATE COMPLAINT ON A PROVISION OF A SETTLEMENT AGREEMENT, WHICH WAS AGREED TO BY ALL THE PARTIES TO A DULY NOTICED CONTESTED CASE PROCEEDING AND APPROVED BY THE COMMISSION IN A FINAL, NON-APPEALED ORDER, INVOLVE ISSUES OF PUBLIC SIGNIFICANCE AND LEGAL ISSUES OF MAJOR SIGNIFICANCE TO THE STATE'S JURISPRUDENCE.

Appellant UPPCo answers "YES".

The MPSC, by its decision, would answer "YES".

Appellee Enbridge Energy, Limited Partnership would presumably answer "NO".

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

1. **DESCRIPTION OF THE ADMINISTRATIVE PROCEEDINGS RELATED TO AND AFFECTED BY ENBRIDGE'S COMPLAINT.**

The following procedural history necessarily includes several proceedings spanning almost five years, from UPPCo's 2009 electric general base rate case through UPPCo's 2010 RDM reconciliation. Consideration of this history is necessary to fully understand the facts and proceedings underlying the issues in this appeal.

A. UPPCo's 2009 General Base Rate Case, MPSC Case No. U-15998 –Included a RDM as Part of the Rates and Rate Structure Agreed to by all the Parties in a Settlement Agreement.

On June 26, 2009, UPPCo filed with the Commission its application and direct case in Case No. U-15988 for authority to increase rates for retail electric service in the annual amount of \$12,182,239 and requested among other things, a rate design which would include a RDM. The rate case was formally noticed in July 2009 as a contested case proceeding, with notice of hearing given by: (i) mail to all municipalities in UPPCo's service area and intervenors in its prior rate case; and (ii) publication in daily newspapers throughout UPPCo's electric service area.⁴ The Commission's billing rules also require that customers be notified of proposed changes in rates. *See* Mich Admin Code R 460.132(3) and R460.1618. The Staff, and customers of UPPCo who intervened (*i.e.*, Calumet Electronics Corporation, Michigan Technological University and Smurfit-Stone Container Corporation) were parties to and participated in Case No. U-15988. Enbridge did not file a petition to intervene in this general base rate proceeding.

See id.

⁴ A copy of the Commission's Notice of Hearing and UPPCo's proofs of mailing and publication are available on the Commission's website at:

<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15988&submit.x=0&submit.y=0>.

Document Nos. 0017 and 0029.

Ultimately the parties entered into a settlement agreement. This settlement agreement consisted of 94 pages.⁵ By agreement, the parties agreed to: (i) increase UPPCo's electric rates in the annual amount of \$6,499,934 (just over half of the increase requested in the Application); (ii) establish the projected base sales per customer level amount for each rate class designed to recover the authorized increase; and (iii) establish and implement a pilot RDM intended by the parties to provide UPPCo with a means, via annual RDM reconciliation proceedings, to earn its approved revenue requirement from each rate class.⁶ These annual reconciliation proceedings were intended to be integral to the RDM, as without the reconciliation, the RDM could not be effectuated. In this settlement agreement, pages 5-6, the parties identified the procedures, proofs, and defined the scope of, the annual RDM reconciliations.

The parties further provided in the settlement agreement, page 7, that it was entered into for the *sole and express purpose of reaching compromise among the parties* and that if the Commission failed to adopt the agreement as written then the agreement would be withdrawn and would not constitute any part of the proceeding.

⁵ A complete copy of the Settlement Agreement Order can be found on the MPSC's website at the following web address:

<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15988&submit.x=0&submit.y=0>.

Document No. 0060.

⁶ A utility's revenues are dependent on its sales, and because a utility's rates, which are designed to capture revenues, are based on a projection of what customer sales will be in the future, it often comes to bear that actual future sales will not match that projection. In other words, although a utility has been authorized to recover an additional amount of revenues from its customers, it may not actually recover those costs because actual sales are less than those projected in the rate case. The purpose of decoupling is to periodically address differences between the projected and actual sales, and to adjust charges to match the authorized revenues. "A well-crafted decoupling mechanism will likely mean that changes in revenue resulting from changes in consumption will no longer cause a utility to file a general rate case."

The Commission subsequently issued its December 16, 2009 Order adopting the settlement agreement⁷ and, consistent with the understandings reached in the agreement, all of terms and conditions of the settlement agreement went into effect. No appeal was taken by Enbridge or any other person from the December 16, 2009 Order.⁸

B. UPPCo's 2010 RDM Reconciliation, MPSC Case No. U-16568 – Reconciled the Revenues Collected During 2010 Pursuant to the Rate Structure Established in U-15998.

Pursuant to the settlement agreement in Case No. U-15988, on May 13, 2011, UPPCo filed in Case No. U-16568 its application and supporting direct testimony and exhibits for its *first* annual RDM reconciliation. This reconciliation covered the 2010 calendar year. Notice of hearing in Case No. U-16568 was given by: (i) mail to all municipalities in UPPCo's service area and intervenors in its prior rate case; and (ii) publication in daily newspapers throughout UPPCo's electric service area.⁹ Calumet intervened. Enbridge did not seek to intervene in Case No. U-16568.

Following contested case proceedings, on March 28, 2012, a Proposal For Decision ("PFD") was issued, finding (page 14) based on the revenue relief established in U-15988, "UPPCO experienced a \$1,723,294 revenue shortfall between January 1, 2010 and December 31,

⁷ To avoid waste, with the exception of Exhibit E, the 87 pages of attachments appended to the MPSC's December 16, 2009 Order in Case No. U-15988 are not included in Appendix E. The attachments are not relevant to any issue in this appeal. A complete copy of the MPSC's December 16, 2009 Order can be found on the MPSC's website at the following web address:

<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=17077&submit.x=0&submit.y=0>.

⁸ See generally, MPSC Electronic Docket Statement for Case No. U-15998 at: <http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15988&submit.x=0&submit.y=0>.

⁹ A copy of the Commission's Notice of Hearing and UPPCo's proofs of mailing and publication are available on the Commission's website at:

<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=16568&submit.x=0&submit.y=0>

Document Nos. 0009 and 0012.

2010”, and that the “shortfall should be collected through surcharges to UPPCO’s customer classes”.¹⁰

Twelve days after the issuance of this PFD, on April 10, 2012, the Court of Appeals, in connection with appeals taken by Michigan’s Attorney General and the Association of Businesses Advocating Tariff Equity (“ABATE”) from a Commission order in the contested general rate case for The Detroit Edison Company issued its decision in *Detroit Edison, supra*. The opinion vacated that portion of a Commission order that had imposed a RDM. The Court of Appeals held that the MPSC did not have the statutory authority pursuant to MCL 460.1097(4) to approve or direct the use of a RDM for electric providers. See *Detroit Edison, supra*, at 110.

In MPSC Case No. U-16568, both Staff and UPPCO addressed the Court’s decision in *Detroit Edison, supra*, in their exceptions to the PFD and replies to exceptions to the PFD, concluding that the Court’s decision had no effect on UPPCo’s RDM as the mechanism was established by a settlement agreement and not appealed.¹¹

On August 14, 2012, the Commission issued its Order in Case No. U-16568: (i) distinguishing *Detroit Edison, supra*, on the basis that UPPCo’s RDM was part of a settlement agreement resolving contested issues in a general rate case proceeding; (ii) finding that all parties to the reconciliation proceeding were signatories to the settlement agreement providing for UPPCo’s RDM; and (iii) authorizing UPPCo to implement RDM surcharges for service rendered from September 1, 2012 through August 31, 2013 to collect the 2010 revenue shortfall of \$1,723,294. See August 14, 2012 Order, pages 4-5, attached as Appendix C.

¹⁰ See generally, MPSC Electronic Docket Statement for Case No. U-16568 <<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=16568&submit.x=0&submit.y=0>>. Document No. 0028.

¹¹ See generally, MPSC Electronic Docket Statement for Case No. U-16568 <<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=16568&submit.x=0&submit.y=0>>; Document Nos. 0030-0034.

On August 20, 2012, Enbridge filed a petition for rehearing, or in the alternative a formal complaint, in Case No. U-16568, asserting that the Commission lacked authority to reconcile the RDM and approve surcharges to collect additional RDM revenues. Enbridge based its assertion on the April 10, 2012 Court of Appeal decision in *Detroit Edison, supra*¹². In its Order (on rehearing) issued on September 25, 2012 (attached as Appendix D to this Application), the Commission denied Enbridge's petition for lack of standing because Enbridge was not a party to the proceeding. Neither Enbridge nor any other person ever appealed any of the orders issued by the Commission in Case No. U-16568.

C. MPSC Case No. U-17077—Enbridge's Complaint Attacking the 2010 RDM Surcharges Previously Approved in Case No. U-16568 .

On October 23, 2012, Enbridge filed a formal Complaint against UPPCo regarding the implementation of the 2010 RDM surcharges previously approved in Case No. U-16568. In its Complaint, Enbridge alleged that the Commission's December 16, 2009 Order in Case No. U-15988 (Appendix E) and its August 14, 2012 and September 25, 2012 Orders in Case No. U-16568 (Appendix C and Appendix D, respectively) had been invalidated by the Court of Appeals opinion in *Detroit Edison, supra*. The Staff and UPPCO filed motions to dismiss the complaint. On May 13, 2014, the Commission issued its Order Dismissing Complaint, granting the motions to dismiss and finding in pertinent part:

Enbridge argued that the Commission lacks subject-matter jurisdiction to approve any rates or surcharges related to an electric RDM, including those implemented as a result of a settlement

¹² Enbridge is a member of ABATE, and it was ABATE who participated in The Detroit Edison Company rate case before the Commission and then took an appeal of the Commission's order issued in that case in which it directed The Detroit Edison Company to implement a revenue decoupling mechanism. That appeal was taken in 2010. Notably, ABATE did not participate in UPPCo's electric rate case and, therefore, did not challenge the implementation of the RDM as initially established in Case No. U-15988. Clearly, however, ABATE (and ostensibly, Enbridge) was well aware of the challenge to the Commission's authority to impose an electric revenue decoupling mechanism, as it was ABATE who championed the issue.

agreement. Enbridge also asserted that the Commission conferred jurisdiction upon itself to approve the illegal settlement agreement. The Commission disagrees.

Pursuant to MCL 460.551 et seq., the Commission has general authority to set rates. In addition, pursuant to MCL 460.6 and *Dodge v Detroit Trust Co*, 300 Mich 575 (1942) (Dodge), the Commission has authority to approve settlement agreements, including those which resolve utility rates and disputed legal issues. In *Dodge*, the Michigan Supreme Court held, “there is...a host of decisions which recognize that, where doubt as to what the law is has been settled by a compromise, a subsequent judicial decision by the highest court of the jurisdiction upholding the view adhered to by one of the parties affords no basis for a suit by him to upset the compromise” [internal citation omitted].

At the time the parties were engaging in settlement negotiations in Case No. U-15988, it was unclear whether Act 295 permitted electric RDMs. In order to settle the case, UPPCo, the Staff, and the intervenors agreed that pursuant to Act 295, UPPCo could implement an electric RDM. This compromise was included in the settlement agreements approved by the Commission in the December 16 and 21 orders. Subsequently, in *In re Detroit Edison*, the Michigan Court of Appeals determined that Act 295 does not permit electric RDMs. Although the decision in *In re Detroit Edison* is contrary to the parties’ agreement, pursuant to MCL 460.6 and *Dodge*, the Commission finds it has jurisdiction to approve the parties’ settlement agreement, thus binding the parties to their compromise, and the Court of Appeals’ decision may not upset the parties’ agreement.

Order Dismissing Complaint, *supra*, p 11.

Enbridge filed its Claim of Appeal with the Court of Appeals on May 27, 2014, and on December 22, 2015, the Court of Appeals issued its decision reversing the May 13, 2014 Order Dismissing Complaint and implicitly reversing the final, unappealed orders in Case Nos. U-15988 and U-16568.

2. COURT OF APPEALS PUBLISHED DECEMBER 22, 2015 DECISION.

In a published decision, the Court of Appeals reversed the Commission’s Order Dismissing Complaint, holding that the Commission exceeded its statutory authority by

approving and implementing a settlement agreement with an electric RDM. *Enbridge Energy*, ___ Mich App at ___; slip op at 4–5. (Attached as Appendix A to this Application). It further held that this Court’s decision in *Dodge, supra*, did not save the Commission from reversal.

The Court relied on *In re Detroit Edison, supra*, to hold that the Commission exceeded its statutory authority by approving a settlement agreement that contained a RDM for an electric utility. In *Detroit Edison, supra*, the opinion authored by Judge Saad noted that Act 295 required the MPSC to approve decoupling mechanisms for gas utilities but only required electric utilities to file a report about electric decoupling. *Detroit Edison, supra*, 109-110. The Court, therefore, concluded that the Commission lacked statutory authority to approve a RDM for electric utilities. (*Id.*) In the Court’s opinion in the instant case, also authored by Judge Saad, it faulted the Commission for not following *Detroit Edison Co, supra*. *Enbridge Energy*, ___ Mich App at ___; slip op at 4 (“In spite of the clear statutory language, the PSC approved the settlement agreement and relied on *Dodge*, 300 Mich 575 . . . for the proposition that it had the authority to approve a settlement agreement that resolved a disputed legal issue.”). The Court of Appeals concluded that *Dodge, supra*, did not exempt settlement agreements that predated *Detroit Edison Co, supra*, from the prohibition against electric RDMs.

The Court held that *Dodge* did not apply for two reasons. First, it held that there was no intervening change in the law and that the state of the law was never unclear. (*Id.* at 5.) The Court said that “reasonable minds could not have disputed the extent of the PSC’s authority at the time it approved the settlement.” (*Id.*) Second, it held that “the strong public policy behind the long-standing doctrine that requires people to be bound by their settlements simply is not advanced when such a ‘settlement’ affects countless others that were not a party to the agreement.” (*Id.*)

ARGUMENT

- I. THE COURT OF APPEALS CLEARLY ERRED IN OVERTURNING THE COMMISSION'S APPLICATION OF THE LEGAL DOCTRINE RECOGNIZED IN *DODGE v DETROIT TRUST CO*, 300 MICH 575; 2 NW2d 509 (1942) THAT "...WHERE A DOUBT AS TO WHAT THE LAW IS HAS BEEN SETTLED BY A COMPROMISE, A SUBSEQUENT JUDICIAL DECISION BY THE HIGHEST COURT OF THE JURISDICTION UPHOLDING THE VIEW ADHERED TO BY ONE OF THE PARTIES AFFORDS NO BASIS FOR A SUIT BY HIM TO UPSET THE COMPROMISE" ON THE BASIS THAT: (i) NOT ALL CUSTOMERS AFFECTED BY THE RATE ORDER WERE PARTIES TO THE SETTLEMENT AGREEMENT; AND (ii) THAT "REASONABLE MINDS" COULD NOT HAVE DISPUTED THE MPSC'S AUTHORITY TO APPROVE ELECTRIC REVENUE DECOUPLING MECHANISMS.

The Court of Appeal's December 22, 2015 decision reversed the Commission's May 13, 2014 Order Dismissing Complaint on the basis that Commission erred in applying the legal doctrine in *Dodge, supra*, to the settlement agreement approved in its December 16, 2009 Order. As support, the Court concluded, that unlike *Dodge, supra*, there was "no intervening change in the law" as MCL 460.1097(4) became effective in 2008 and has not been altered since" and that in December 2009 "reasonable minds could not have disputed" that the Commission lacked authority to approve a RDM for an electric utility. Additionally the Court concluded that the legal doctrine in *Dodge, supra*, did not apply to the settlement agreement reached in UPPCo's 2009 general rate case because not all customers affected by the settlement were parties to the agreement. Neither of the bases stated by the Court of Appeals supports its refusal to uphold the Commission's application of *Dodge, supra*, to this instant case, and the Court of Appeals' reversal of the Commission's Order Dismissing Complaint was clearly erroneous and will cause manifest injustice

Although MCL 460.1097(4) as added by 2008 PA 295 has not been subsequently amended, it is incorrect for the Court of Appeals to conclude that in December 2009 "reasonable minds could not have disputed" whether the Commission had statutory authority to approve a

RDM for an electric utility. Up until the Court of Appeal's 2012 decision *In re Detroit Edison*, *supra*, it was believed, and so argued by the competent legal minds for The Detroit Edison Company, Consumers Energy Company, Assistants Attorney General representing the MPSC and its Staff, and others that the Commission had authority to approve RDMs for electric utilities. The legitimate, legal basis for the argument included that the Commission's broad ratemaking authority to fix just and reasonable rates of electric utilities (*see e.g.*, MCL 460.557) permitted the establishment of RDMs for electric utilities. It is without question that the Commission possesses the statutory authority to fix the rates of electric utilities. The Electric Transmission Act, 1909 PA 106, MCL 460.551 *et seq.*, as amended, confers on the Commission the power to regulate electric utilities and to fix just and reasonable rates for electric service.¹³ The MPSC's ratemaking power is plenary, and in setting rates the MPSC is not bound by any particular formula. *See generally, Attorney General v Public Service Comm*, 231 Mich App 76; 585 NW2d 310 (1998) and *In re Detroit Edison Co*, 221 Mich App 370, 373, 375; 562 NW2d 224 (1997). It is beyond dispute that the Commission is vested with authority to make rate decisions relating to the electric utilities that it regulates as circumstances warrant:

“The PSC is not bound by any single ratemaking formula, and may make pragmatic adjustments when warranted by the circumstances of the particular matter before it.” *In re Detroit Edison Co*, 276 Mich App 216, 224-226, 740 NW2d 685 (2001&), *aff'd in part and rev'd in part on other grounds*, 483 Mich 993; 764 NW2d 272 (2009)

¹³ See also, MCL 460.6.

The Commission's power to set just and reasonable rates has historically been construed by the Courts to include the authority to approve adjustment clauses, even when such clauses are not expressly authorized by statute.¹⁴

Absolutely nothing on the face of MCL 460.1097(4) prohibited the MPSC from approving an electric RDM as part of its broad ratemaking authority to set just and reasonable rates. In fact, it took an interpretation of the law as rendered by the Court of Appeals *In re Detroit Edison, supra*, to conclude that the legislature had intended to limit the Commission's authority to design the rates for electric utilities by approving a RDM. The Court of Appeals reached its decision *In re Detroit Edison, supra*, only after comparing MCL 460.1097(4) to MCL 460.1089(6) and applying several rules of statutory construction, as well as case law. If, as the Court in its December 22, 2015 decision so claims, the law was so clear back in 2009 that there can be no "honest dispute", it is counterintuitive for the Court to have needed to engage in legal reasoning and statutory construction to reach its decision *In re Detroit Edison, supra*.

The Court of Appeal's "no honest dispute" finding in this regard is belied by the number of disputes which took place subsequent to the enactment of 2008 PA 295 regarding RDMs for electric utilities. Not only The Detroit Edison Company, but also Consumers Energy Company¹⁵, and UPPCo had requested approval of RDMs in their electric rates. Such requests had been supported by the MPSC Staff, some customers which had intervened in the proceedings, recommended for approval by an Administrative Law Judge¹⁶, and approved by the

¹⁴ See generally, *Attorney General v Public Serv Comm*, 141 Mich App 505; 367 NW2d 341 (1984), *Attorney General v Public Serv Comm*, 122 Mich App 777; 333 NW2d 131 (1983).

¹⁵ Re Consumers Energy, MPSC Case No. U-15645.

¹⁶ See e.g., ALJ Cummins PFD, page 105, in Re Detroit Edison Co, MPSC Case No. U16472 at:

<http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=16472&submit.x=0&submit.y=0>

Commission. On the other hand, it cannot be denied, that such requests were disputed by others. The Court of Appeals' 2012 decision *In re Detroit Edison, supra*, was the first time 2008 PA 295 had ever been interpreted by any agency or court as denying the Commission the authority to approve a RDM for an electric utility. There is absolutely no basis for the Court of Appeals to characterize the earlier positions taken by such persons and agencies as anything less than 'honest' disputes or characterizing the minds of persons and agencies supporting the lawfulness of RDMs for electric utilities as something other than "reasonable". The Court of Appeals decision in this regard was clearly erroneous and provided no basis for its overturning of the Commission's application of the *Dodge, supra*, doctrine to the facts of this case.

Also, the Court of Appeals' refusal in its December 22, 2015 decision to apply the legal doctrine in *Re Dodge, supra*, to the Settlement Agreement reached in UPPCo's general rate case because not all customers whose service would be affected by the settlement were parties to the agreement was unsupported and clearly erroneous. The Court observed that "the settlement in *Dodge* involved private parties, who only themselves were bound by the agreement" and "the strong public policy behind the long-standing doctrine that requires people to be bound by their settlements....simply is not advanced when such 'settlement' affects countless others that were not a party to the agreement." (p 5) Both the Court of Appeals': (i) finding as to whom would be affected by the agreement in *Dodge, supra*; and (ii) interpretation of the applicability of *Dodge, supra*, to the instant case, are clearly erroneous and without support of law. None of the cases cited by the Court support its new limitation on the enforceability of settlement agreements approved by the MPSC in public utility rate cases.

Public utilities in Michigan have hundreds of thousands of customers. UPPCo, a smaller utility in the State, has 54,000 electric customers. Consistent with the Michigan's Administrative

Procedures Act¹⁷ and the Commission's rules of practice and procedure,¹⁸ utility customers are provided notice of utility rate cases and other proceedings by mail and publication. Through such notice, all affected utility customers are given notice (at least constructive, if not actual notice) and the opportunity to intervene and participate.

Also, and importantly, customer interests are represented in all Commission contested case proceedings by the Commission's Staff as it is charged with representing the "public", including the interests of non-participating customers. *See generally, Attorney General v Public Service Comm No. 2*, 237 Mich App 82, 93-94; 601 NW2d (1999), *Ass'n of Businesses Advocating Tariff Equity v. Public Service Comm*, 216 Mich App 8, 25-26; 548 NW2d 649 (1996). The Staff's signature on the 2009 settlement agreement was intended to represent the interest of the "countless others that were not a party" to the case.

In each of MPSC Case Nos. U-15998 and U-16568, notice of hearing was duly provided to UPPCo customers consistent with the requirements of law, the Commission's Rules and the Commission's Executive Secretary's directive. Several customers, such as Calumet Electronics Corporation, Michigan Technological University and Smurfit-Stone Container Corporation intervened in Case No. U-15988. Each petition to intervene filed was granted. Each party to Case No. U-15988 agreed to and signed the Settlement Agreement, which included a representation in Paragraph 9 that it was reasonable and prudent. In its December 16, 2009 Order, page 7, approving the Settlement Agreement, the Commission found that the settlement agreement is reasonable, in the public interest, and should be approved. In contrast, despite the

¹⁷ MCL 24.271(2)

¹⁸ Mich Admin Code, R 792.10417

notice of hearing provided, Enbridge Energy did not file a petition to intervene in either Case No. U-15988 or U-16568.

The refusal of the Court of Appeals to apply the *Dodge, supra* doctrine in the instant case because electric service for some customers who did not sign the settlement agreement may be affected is clearly erroneous. Nothing in *Dodge, supra*, nor any other reported Michigan court decision supports the creation of such a limitation. In fact, the settlement agreement in *Dodge, supra*, did impact possible future heirs, etc., who were not signatories to the settlement but whose possible future interests were represented by others.

Moreover, in the Commission proceedings at issue in this appeal, the interests of all customers and the public interest were represented by the Commission Staff and considered by the Commission in approving and implementing the settlement agreement and in dismissing Enbridge's Complaint. Even if one were to accept as a premise underlying the Court's ruling that persons who did not have notice of, or an opportunity to participate in the crafting of the settlement, should not be bound by it, such premise does not apply in these proceedings in which notice of hearing was given as required by law, all customers had the opportunity to intervene, and the interests of all customers and the public were represented by the Commission Staff and the Commission in approving the settlement agreement.

The error of the Court in refusing to apply the doctrine in *Dodge, supra*, on the basis that some customers whose service may be impacted by the settlement did not sign the agreement is manifest considering that there has never been a general rate case proceeding for an electric utility in Michigan in which every customer has intervened; let alone signed the settlement agreement. The Michigan Administrative Hearing System's Administrative Hearing Rules¹⁹

¹⁹ Mich Admin Code, R 792.10431(3)

contemplate situations which settlement agreements may be approved and become binding on all customers, even those parties who object and refuse to enter into them.²⁰ By necessity and their very nature, Commission orders setting rates for public utility service apply to service to all customers, regardless of whether a particular customer chooses to intervene in the proceeding. The impact of the Commission order in this regard must be the same regardless of whether the contested case proceeding is resolved by settlement agreement or continued litigation until a final order is issued.

One necessary impact of the Court of Appeal's December 22, 2015 decision is that the long-standing doctrine in *Dodge, supra*, will not apply to any MPSC settlement agreement, as it is practically impossible to have every customer whose service may be affected sign the settlement agreement, particularly given that the settlement agreement will effect rates for service to both existing and future customers. Also, the efficacy of settlement agreements entered into in proceedings before agencies other than the MPSC, the results of which may affect non-parties, is similarly hampered. Such results are contrary to the public policy favoring and encouraging the use of settlement agreement to resolve contested cases. For example, Michigan's Administrative Procedures Act, MCL 24.278(2), authorizes parties to enter into settlements to resolve all contested issues. Settling contested rate cases before the MPSC is a common procedure: A review of the "Electric Orders" listed as issued in 2015 on the MPSC's web-site²¹ shows that more than 65 such orders approved settlement agreements. This constitutes more than 50% of all such "Electric Orders" issued in contested rate proceedings instituted by application of a public utility. To advance, as the Court of Appeals does, that

²⁰ Clearly Michigan law does not permit an objecting party to a contested settlement agreement who does not appeal the final order approving such settlement to later file a complaint retroactively challenging the rates approved in the settlement as applied to service previously rendered.

²¹ <http://www.dleg.state.mi.us/mpsc/orders/electric/2015/>

settlements reached at the MPSC cannot be accorded the full force of the law simply because not all customers signed the settlement agreement is clearly erroneous.

Neither of the out-of-state court decisions cited by the Court of Appeals supports its decision. *Indiana Bell Telephone Co, Inc v Office of Utility Consumer Counselor (On Rehearing)*, 725 NE2d 432 (Ind App, 2000), does not hold or support the conclusion that a settlement agreement approved by the Indiana Public Utility Commission is subject to attack by a non-party customer in a separate complaint proceeding. The Indiana Court of Appeals' statement recognizing that the Indiana Public Utility Commission's approval of settlement agreements in rate matters "carry the force of law and necessarily bind all consumers in the affected area, even those who are not a party to the settlement" (*Id*, at 435) is both consistent with, and supportive of, the Commission's decision in the case below. *Timney v Lin*, 106 Cal App 4th 1121; 131 Cap Rptr 2d 387 (Cal App, 2003) also does not support the Court of Appeals' decision. *Timney, supra*, did not even involve a settlement agreement approved by a regulatory agency in a public utility rate matter. It involved a settlement agreement between private parties which included an excessive forfeiture provision, which by statute (see Cal Civ Code, §§1675, subd (d) and 3275) was made invalid, void and unenforceable, even when agreed to by the parties.

The Court of Appeals' refusal to uphold the Commission's application of the *Dodge, supra*, doctrine in the instant case will cause manifest injustice both in the instant case and future proceedings. In the instant case, despite the notice provided in Case Nos. U-15998 and U-16568, Enbridge did not even seek to intervene in either proceeding nor advance its views on RDMs for the parties to consider in structuring the settlement. Instead Enbridge accepted service during 2010 at the compromised rates set forth in the settlement agreement in Case No. U-15998.

Furthermore, under the Court of Appeal's decision, Enbridge not only got the benefit of the base rates set forth in the settlement agreement, but also preserved its ability to either: (i) obtain a refund/credit if the 2010 RDM reconciliation resulted in a refund/credit²²; or alternatively (ii) to file a separate complaint retroactively²³ attacking the settlement if the 2010 RDM reconciliation resulted in a surcharge. For Enbridge, it's the proverbial "heads I win, tails you lose" scenario. Such a result is manifestly unjust.

In this regard, the Court of Appeals decision effectively discourages customers in future cases from intervening and entering into settlement agreements if the customer has the option to sit back and either accept future rate adjustments that work in its favor; or challenge them by Complaint if they do not work in his favor. For all the reasons set forth above, the Court of Appeals decision is clearly erroneous, causes manifest injustice and should be reversed.

²² *In re Upper Peninsula Power Co*, MPSC Case No. U-16990 was UPPCo's reconciliation of its RDM for 2011. In its August 13, 2013 Order in that case, the Commission approved reconciliation of RDM revenues for 2011 which resulted in a credit to customers of \$273,456. Enbridge did not seek to intervene in proceeding, nor attack the Commission's order by rehearing, appeal or separate complaint.

²³ In the instant case, while Enbridge's complaint was filed on October 23, 2012, while the 2010 RDM surcharges were still in effect, it was essentially a retroactive attack on the rates set for service provided in 2010. Retroactive ratemaking is prohibited in Michigan. *See generally, Detroit Edison Co v Pub Serv Comm*, 416 Mich 510; 331 NW2d 159 (1982).

II. THE COURT OF APPEALS' PUBLISHED DECISION PERMITTING A COLLATERAL ATTACK BY SEPARATE COMPLAINT ON IMPLEMENTATION OF ONE ASPECT OF A MULTIFACETED SETTLEMENT AGREEMENT WHICH WAS AGREED TO BY ALL THE PARTIES TO A GENERAL RATE CASE PROCEEDING AND APPROVED BY THE COMMISSION IN A FINAL, NON-APPEALED ORDER INVOLVES ISSUES OF PUBLIC SIGNIFICANCE AND LEGAL ISSUES OF MAJOR SIGNIFICANCE TO THE STATE'S JURISPRUDENCE.

As demonstrated in argument above, the legal doctrine recognized and applied by this Supreme Court in *Dodge, supra*, is fully applicable to a settlement agreement among all the parties in a duly noticed MPSC proceeding setting rates for public utility service. The Court of Appeals' published decision creating new limitations on the application of the *Dodge, supra*, doctrine in MPSC rate proceedings involves both issues of public significance and legal issues of major significance to the state's jurisprudence as it adversely impacts the motivation and advantages to all the parties to MPSC and other agency proceedings of resolving disputed legal issues by settlement agreement; and reduces the efficacy of such settlement agreement, especially to the extent it exposes particular aspects of the settlement to collateral attack. For these reasons, the grounds for leave to appeal in MCR 7.305(B)(2) and (3) are satisfied and this Court should grant this Application for Leave to Appeal.

MCR 3.705(B), in part provides:

(B) Grounds. The application must show that:

* * * * *

- (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
- (3) the issue involves a legal principle of major significance to the state's jurisprudence;

The grounds for appeal in MCR 3.705(B)(2) and (3) are satisfied. The underlying appeal is a case against the MPSC, a State agency. As demonstrated below, the issue has significant public interest and involves legal principles of major significance to the state's jurisprudence.

The Court of Appeals creation of new limitations on the legal doctrine recognized in *Dodge, supra*, has significant public interest as it creates a more hostile environment for the use of settlement agreements to resolve issues in contested case public utility rate proceedings before the MPSC. Michigan law and courts have long favored settlement agreements. *See generally, Putney v Haskins*, 414 Mich 181, 189; 324 NW2d 729 (1982), *Musial v Yatzik*, 329 Mich 379, 383; 45 NW2d 329 (1951), *Transportation Dep't v Christensen*, 229 Mich App 417, 429; 581 NW2d 807 (1998), *Metropolitan Life Ins Co v Goolsby*, 165 Mich App 126, 128; 418 NW2d 700 (1987). Settlement agreements are binding and conclusive as to all matters included and cannot be set aside absent a claim of mistake, fraud or unconscionable advantage. *See Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998), *Metropolitan Life, supra*.

The use of settlement agreements to resolve contested cases before administrative agencies is encouraged as a matter of public policy. The Administrative Procedures Act expressly permits contested cases to be resolved by settlement.²⁴ The rules of practice and procedure before the Commission, R 792.10431, expressly encourages all parties to enter into settlements when possible.²⁵ The Commission has a long-standing policy encouraging

²⁴ MCL 24.278 (2) provides:

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

²⁵ Mich Admin Code, R 792.10431 in part provides:

Rule 431. (1) All parties to proceedings before the commission are encouraged to enter into settlements when possible and the provisions of these rules shall not be construed in any way to prohibit settlements.

settlements. For example, in its February 10, 1987 Opinion and Order, page 3, *In re Lake Superior District Power Co*, MPSC Case No. U-8605, the Commission stated:

The Commission takes this opportunity to again encourage settlements of disputes between parties. The settlement process does involve give and take, but facilitates the accomplishment of the Commission's goals, conserves scarce resources and, in the long run improves the public's perception of the process of utility regulation.

The Commission uses its administrative expertise to examine and decide whether to approve a settlement agreement. See *Ass'n of Businesses Advocating Tariff Equity, supra*. Under the Commission's rules of practice and procedure, to approve a settlement agreement, the Commission must find that "the public interest is adequately represented by the parties who entered into the settlement agreement" and the settlement agreement is in the public interest" and "represents a fair and reasonable resolution of the proceeding".²⁶

As repeatedly recognized by the Commission, the use of a settlement agreement to resolve contested cases usually involves give and take on multiple issues and positions by all the parties in developing an acceptable and effective resolution of the issues. Particularly, but not exclusively, in general rate case proceeding, the settlement involves rates, terms and conditions of service that are designed to be, and in some cases must be, in effect for substantial periods of time in the future in order to give effect to the resolution of the issues agreed to by the parties.²⁷ Thus, in settlement agreements before the Commission it is standard practice for the parties: (i) to condition the settlement on approval of the agreement by the Commission without change, and (ii) to require that each party agree not to appeal, challenge, or contest the rates approved if they are a result of a Commission order approving the settlement without change.²⁸ The practice

²⁶ Mich Admin Code, R 792.10431(5)(b) and (c).

²⁷ For example, it is not uncommon for settlement agreements in general rate cases to include a moratorium against the filing of future rate cases for an agreed upon period of time.

²⁸ For example, the settlement agreement, pages 6-7, approved in Case No. U-15998, provides:
Continued on next page.

of including these requirements in settlement agreements strongly reflects that parties either will not, or at the least will be less likely to, employ settlement agreements as a means of crafting resolutions to issues in general rate cases if such resolution, or even particular aspects of such resolution, are subject to later attacks, especially attacks, by either parties to the agreement, or third-persons who did not even participate in the proceeding which resulted in the settlement.

For these reasons, the Court of Appeals decision creating limitations on the *Dodge, supra*, doctrine, so as to allow persons who chose not to even participate in the duly-noticed contested case proceeding to subsequently attack, particularly retroactively, one specific aspect of a settlement previously negotiated by all the parties and approved by the Commission is of significant public interest as it both (i) impairs the efficacy of Commission-approved settlement agreements as a means to resolve issues in contested case public utility rate proceedings; and (ii) reduces the willingness of the parties to use settlement agreements as a means to resolve such issues. Furthermore, the Court of Appeals published decision involves issues of major significance to the State's jurisprudence as it creates new limitations on the long-standing legal doctrine recognized by this Court in *Dodge, supra*, which limitations effectively prevent parties to contested case public utility rate proceedings before the Commission from continuing to resolve legal issues presented in such cases through the use of binding settlement agreement. The Court of Appeals' creation of such limitations on the *Dodge, supra*, doctrine will have precedential significance pursuant to MCR 7.215(C)(2). The adverse impact of such limitations

Continued from previous page.

9. This settlement agreement resolves the issues in this case and all provisions of the settlement agreement are dependent upon all other provisions.

* * * * *

11. Each signatory agrees not to appeal, challenge or contest the rates approved by the Commission in this case if they are the result of a Commission order accepting and approving this settlement agreement without modification. If the Commission does not accept this settlement agreement without modification, this settlement agreement shall be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.

is particularly significant today with the increase in legal issues presented by increasing legislative action in the context of public utility regulation. Thus, this Court should grant leave to appeal the Court of Appeals published decision and, on appeal, reverse that clearly erroneous decision.

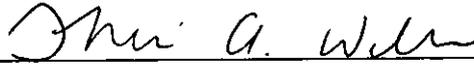
REQUESTED RELIEF

For the reasons set forth above, Appellant UPPCo respectfully requests that this Honorable Court grant leave to appeal, review and reverse the Court of Appeal's decision in Docket No. 321946 and uphold the MPSC's dismissal of Enbridge's Complaint with prejudice in Case No. U-17077.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Attorneys for Upper Peninsula Power Company

Dated: February 2, 2016

By: 
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STATE OF MICHIGAN
IN THE SUPREME COURT

In Re Complaint of Enbridge Energy, Limited Partnership
against Upper Peninsula Power Company

UPPER PENINSULA POWER COMPANY

Supreme Court No. _____

Appellant,

Court of Appeals No. 321946

v

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

Michigan Public Service Commission
Case No. U-17077

Appellee.

NOTICE OF HEARING

PLEASE TAKE NOTICE that Appellant Upper Peninsula Power Company's Application for Leave to Appeal will be heard on **Tuesday, February 23, 2016.**

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Attorneys for Upper Peninsula Power Company

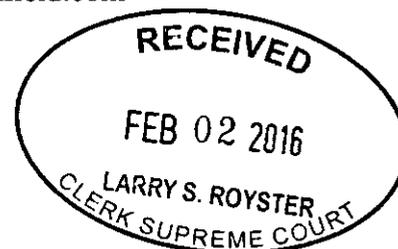
Dated: February 2, 2016

By:



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STATE OF MICHIGAN
IN THE SUPREME COURT

In Re Complaint of Enbridge Energy, Limited Partnership
against Upper Peninsula Power Company

UPPER PENINSULA POWER COMPANY

Supreme Court No. _____

Appellant,

Court of Appeals No. 321946

v

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

Michigan Public Service Commission
Case No. U-17077

Appellee.

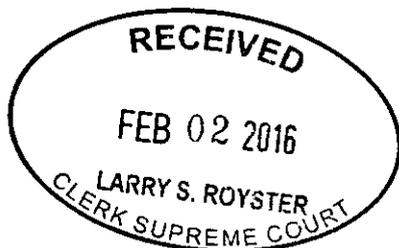
NOTICE OF FILING APPLICATION FOR LEAVE TO APPEAL

To: Michigan Court of Appeals Clerk
Executive Secretary, Michigan Public Service Commission

NOW COMES Appellant Upper Peninsula Power Company, and states that on February 2, 2016, an Application for Leave to Appeal has been filed in the Michigan Supreme Court.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Attorneys for Upper Peninsula Power Company



Dated: February 2, 2016

By: *Sherri A. Wellman*
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STATE OF MICHIGAN
IN THE SUPREME COURT

In Re Complaint of Enbridge Energy, Limited Partnership
against Upper Peninsula Power Company

UPPER PENINSULA POWER COMPANY

Supreme Court No. _____

Appellant,

Court of Appeals No. 321946

v

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

Michigan Public Service Commission
Case No. U-17077

Appellee.

PROOF OF SERVICE

Theresa M. Briseno, being first duly sworn, deposes and says that on February 2, 2016 she served copies of Upper Peninsula Power Company-Appellant's *(1) Application for Leave to Appeal, (2) Notice of Hearing, and (3) Notice of Filing of Application for Leave to Appeal* upon the following individuals shown on the attached service list by placing same in envelopes addressed to said individuals and mailing same by U.S. Mail and hand delivery as indicated below.

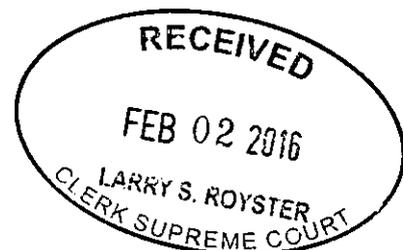


Theresa M. Briseno

Subscribed and sworn before me
on this 2nd day of February, 2016.



Crystal L. Abbott, Notary Public
State of Michigan, County of Eaton
My Commission Expires: May 25, 2018
Acting in Ingham County



SERVICE LIST

U.S. Mail

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Clark Hill PLC
212 E. Grand River
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Executive Secretary
Michigan Public Service Commission
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Lansing, MI 48917

Hand Delivery

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Lansing, MI 48909-7522

Founded in 1852
by Sidney Davy Miller

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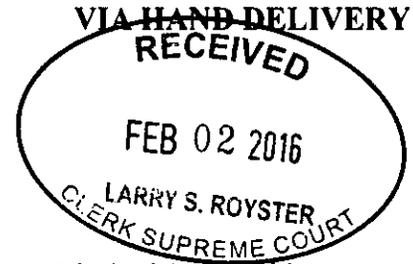
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February 2, 2016

Clerk of the Court
Michigan Supreme Court
Hall of Justice – 6th Floor
925 West Ottawa Street
Lansing, MI 48915



Re: Upper Peninsula Power Company v Enbridge Energy, Limited Partnership
Court of Appeals No. 321946
Michigan Public Service Commission Case No. U-17077

Dear Clerk:

Enclosed please find for filing the:

1. Application for Leave to Appeal of Upper Peninsula Power Company (1 original and 3 copies);
2. Notice of Hearing;
3. Notice of Filing of Application for Leave to Appeal; and
4. Proof of Service.

The \$375.00 filing fee will be paid with a Miller, Canfield, Paddock and Stone credit card. At your earliest convenience, please provide a time-stamped copy of the filing, along with a receipt for the filing fee.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: Sherris A. Wellman
Sherri A. Wellman

Enclosures

cc: Stephen R. Serraino
Susan Devon

SAW/tmb

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