

# State of Michigan Court of Appeals

Cynthia Edwards. Linda Kurtz and Leslie Panzica-GLAPA No. 316728

Dominic and Lillian Cusumano No. 316781

V

Michigan Public Service Commission LC No. 00-017053

## Michigan Court of Appeals set Legal Standing of MPSC, DTE and customer!

1. **PSC has only authority granted by statute.**
2. **PSC does not have authority to make management decisions for Utilities.**
  - a. *Consumers Power Co v Public Serv Comm, 460 Mich 148, 157-158; 596 NW2d 126 (1999)* (PSC lacked authority to order utilities to transport electricity produced and sold by other utilities to customers);
  - b. *Union Carbide Corp v Public Serv Comm, 431 Mich 135, 148-150; 428 NW2d 322 (1988)*(PSC lacked authority to forbid the operation of a facility)
3. **PSC has no authority to require customers to accept AMI meters even if some customers choose to opt-out of the AMI program.**
4. **What type of equipment to deploy is a management decision. DTE applied for approval of its AMI program, but that fact does not mandate a conclusion that DTE's decision regarding what meters to use is not a management decision. (Union Carbide)**

By Michigan Court of Appeals decision and documentation, the DTE forced installation of AMI meters is solely a corporate decision against customers and not under PSC authority. Thus liability rest with DTE Corporation and customer contracted service, lawful statutes and following PSC rules and guidelines.

The PSC has only the authority granted to it by statute. The PSC has broad authority to regulate rates for public utilities, but that authority does not include the power to make management decisions for utilities. *Consumers Power Co v Public Serv Comm, 460 Mich 148, 157-158; 596 NW2d 126 (1999)* (PSC lacked authority to order utilities to transport electricity produced and sold by other utilities to customers); *Union Carbide Corp v Public Serv Comm, 431 Mich 135, 148-150; 428 NW2d 322 (1988)* (PSC lacked authority to forbid the operation of a facility).

Appellants correctly point out that the PSC has no statutory authority to enable DTE to require all customers to accept an AMI meter, even if some customers choose to opt-out of the AMI program. However, no such statute exists because the decision regarding what type of equipment to deploy can only be described as a management prerogative. DTE applied for approval of its AMI program, but that fact does not mandate a conclusion that DTE's decision regarding what meters to use is not a management decision. Appellants' suggestion that the PSC could order DTE to allow customers who wish to do so to retain analog meters is clearly the type of action found invalid in *Union Carbide*. Appellants clearly do not wish to accept AMI meters, but they have cited no authority that supports their argument that the PSC erred in approving DTE's AMI program with its requirement that all customers accept AMI meters, even if those meters are rendered incapable of transmitting. The PSC's order is not unlawful in this regard.