

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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MICHIGAN PUBLIC SERVICE COMMISSION
FEB 02 1998

In the Matter of the Application of)
Engage Energy US, L.P., a Delaware)
limited partnership, for a Certificate of)
Public Convenience and Necessity and)
for approval of Power Sales Agreement)

ADMINISTRATIVE LAW DIVISION
Case No. U- 11608

SETTLEMENT AGREEMENT

On December 18, 1997, Engage Energy US, L.P. (“Engage”) filed an Application for a Certificate of Public Convenience and Necessity and for approval of a Power Sales Agreement. On December 22, 1997, the Commission issued its Notice of Hearing. In accordance with the Commission’s Notice of Hearing, Engage provided the requisite notice to Consumers Energy Company (“Consumers”) and the Allegan, Michigan, City Clerk and filed Proof of Service by letter dated January 16, 1998.

At the prehearing conference on January 26, 1998, appearances were filed on behalf of Engage, Consumers, and the Commission Staff (“Staff”). Without objection, the intervention of Consumers was allowed. In lieu of setting a procedural schedule, the parties proffered this Settlement Agreement.

Pursuant to Section 78 of the Administrative Procedures Act of 1969, as amended, (1969 PA 306, Sec. 78; MCLA 24.278; MSA 3.560 (178)) and R 460.17333 (Rule 333) of the Rules of Practice and Procedure before the Commission, Engage, Consumers and Staff hereby agree and stipulate as follows:

1. Engage is a Delaware limited partnership with principal offices located in Houston, Texas. Engage is qualified to do business in Michigan and has offices located in Southfield, Michigan.
2. Engage is an electric power marketer that has been granted authority by the Federal Energy Regulatory Commission (“FERC”) to engage in wholesale electric power energy transactions at market based rates. (Docket No. ER-97-654-000). Engage is not a

public utility, nor an affiliate of a public utility, but is an eligible third-party power marketer prepared to serve Rate DA customers pursuant to the provisions of the Commission's Final Opinion and Order in Cases Nos. U-10685, U-10754, and U-10787, dated November 14, 1996.

3. Engage has signed a contract for the sale of electric capacity and energy with the following Rate DA customer: Perrigo Company.

This customer is located in the following municipality.

<u>Customer</u>	<u>Service Address</u>	<u>Municipality</u>
Perrigo Company	502 Eastern Avenue	Allegan, MI

The retail electric sales contract with this customer is attached hereto as Exhibit A.

4. The customer identified in paragraph 3 previously applied for Rate DA service and was selected by lottery conducted on April 25, 1997 by an independent third party in a public forum. By virtue of its place in the lottery, such customer is eligible to take Rate DA service from Consumers and to choose its own third party supplier. The customer has not yet signed a Rate DA contract with Consumers, but is ready to begin the process leading to the signing of such a contract.

5. Engage has received a franchise from the appropriate governmental entity to serve the customer identified in paragraph 3. A copy of such franchise is attached as Exhibit B and made a part hereof.

6. The public convenience and necessity will be served by the rendering of electric service as described in this Application. Granting an Act 69 Certificate of Public Convenience and Necessity to Engage would serve the public interest because this customer would then be able to consummate the transactions for which it has contracted and the objectives of the Commission in approving the Rate DA Program would be fulfilled. Moreover, given the nature of the transactions, there will be no duplication of

utility facilities for the transmission and distribution of power to customers.

7. Engage has agreed to abide by the same conditions set forth by the Commission in its order dated October 20, 1997 in Case No. U-1 1130 in which it granted a certificate of public convenience and necessity to another power marketer, to wit:

- a. Engage's operations will be limited to the provision of unbundled generation services over Consumers' (or any other applicable utilities') transmission and distribution systems. Engage will not construct its own facilities for delivering energy to its Rate DA customers, except perhaps for meters and telemetry equipment, provided that such equipment will not be used to bill services provided by Consumers Energy.
- b. Engage will provide full public disclosure of its contracts with its Rate DA customers, and disclosure to the Commission's Staff of its contracts with its power suppliers (as provided in paragraph 7h below and Exhibits C-E attached hereto).
- c. Supplemental applications to amend the Act 69 Certificate shall be filed as Engage obtains contracts with additional customers, and receives additional franchises, and shall state the following:
 1. Reference to this Case No. and the date of the Commission Order in this case.
 2. The name and address of the customer and municipality in which the customer is located.
 3. A statement that a retail electric sales contract has been entered into with the customer for qualified Rate DA service.
 4. A statement that a copy of the contract shall be submitted to

the Commission and the Commission Staff and served on all parties to this proceeding, and that Engage has requested MPSC approval of that contract.

5. A statement that Engage has a current franchise to serve in the municipality on file with the Commission in this case, or that a copy of the franchise is included in the supplemental application.
 6. Proof that a copy of the supplemental application has been served on all parties to this proceeding and on all parties entitled to notice of the supplemental application.
 7. Notice that objections to the supplemental application shall be filed within fourteen (14) days of service of the supplemental application.
- d. The Act 69 certificate shall limit Engage Energy to providing unbundled power supply service through the existing transmission and distribution system of Consumers Energy Company (or any other applicable utility), except that Engage may provide such other services as may be approved by the Commission in an amended certificate.
 - e. Engage agrees not to build, own, or operate any transmission or distribution lines or facilities for the purpose of providing service in any of the franchise areas to be served in conjunction with Rate DA service. Provided, however, that if Engage will be the power supplier for any transaction that requires the installation of any transmission or distribution facilities in order to effect the transaction (regardless whether those facilities will be owned or installed by the customer,

Engage, or by any other entity) such facilities shall be specified in the Engage supplemental application for Act 69 certification, so the Commission can determine the need and decide whether those facilities constitute unnecessary duplication. Nothing in this paragraph shall prohibit Engage from owning, operating, or maintaining the telemetry equipment or metering equipment for the purpose of serving its customers, provided that such equipment will not be used to bill services provided by Consumers Energy.

- f. Engage must obtain and provide to the Commission evidence of the local franchise secured from the municipality or township to serve each customer, covering every jurisdiction where customer facilities are to be served if more than one jurisdiction applies. The Act 69 certificate for power supply shall specifically describe the geographic area(s) to be served. The description shall not exceed the area specified in the local franchise approved by the municipality or township.
- g. Engage has provided an affidavit which certifies that it meets all of the requirements to act as a Supplier (Third Party Provider) in the context of the Consumers Energy Company Rate DA program approved by the Commission in Case No. U-10787 et al, and that it agrees to comply fully with all of the terms and conditions of the Rate DA Program. (See Exhibit F to this Agreement).
- h. Engage has enabling agreements for the purchase of power with a wide range of power suppliers which it can utilize to serve its customers. These suppliers are located in Michigan as well as in other states.

Attached as Exhibit C is a full and complete copy of its standard power supply enabling agreement. Attached as Exhibit D is a list of power suppliers (who are not investor owned utilities) with which Engage has agreements. In addition, Engage has enabling agreements for the purchase of power with numerous investor owned utilities that are regulated by the Federal Energy Regulatory Commission (“FERC”). The agreements with such utilities are on file with the FERC. Attached as Exhibit E are a list of such utilities with whom Engage has an agreement. Engage reserves the right to obtain power from any of these parties or any other party with whom it contracts in the future.

- i. Engage agrees to provide all information, reports, and filings as required by the Commission for non-traditional suppliers and/or third party suppliers who participate in Consumers Energy’s Rate DA Program.

8. By requesting a certificate, Engage does not concede that a certificate (nor franchise) is required by Act 69 for power marketers. Engage reserves the right to make arguments on this issue in other proceedings or forums. In addition, although Engage is only asking for a certificate to serve Rate DA customers at this time, Engage, if required, will seek-an amendment to serve customers who may become eligible under any other program approved by the Commission.

9. Based on the above-stated propositions, the parties agree that Engage should be granted an Act 69 certificate to serve eligible Rate DA customers pursuant to the terms of this Settlement and the Rate DA program, and that the request for approval of the Power Sales Agreement be granted.

10. This Settlement Agreement is intended for final disposition of the issues in this proceeding and the parties hereto join in respectfully requesting the Commission to grant prompt approval of the same. It is the opinion of the signatories hereto that this Settlement Agreement will be in the public interest, aid the expeditious conclusion of this case and minimize the time and expense which otherwise would have to be devoted to this matter by the Commission and the parties.

11. Each signator hereto agrees not to appeal, challenge, or contest the certificate approved by the Commission in this case if it is the result of a Commission order accepting and approving this Settlement Agreement without modification. If the Commission does not accept this Settlement 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.

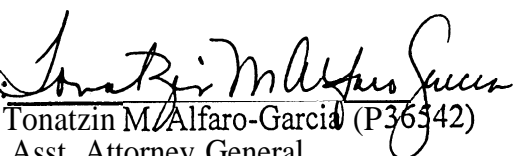
12. The parties hereto agree that no precedential value shall be accorded an order approving this Settlement Agreement and that any such order shall be strictly confined to the facts of this case.

13. Section 8 1 of the Administrative Procedures Act of 1969 is waived by the signatories hereto, if this Settlement Agreement is Approved by the Commission without modification.

14. The Commission Staff certifies that this Settlement is in the public interest.


Dated: January 26, 1998

COMMISSION STAFF

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Dated: January 26, 1998

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