

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of )  
**GREAT LAKES ENERGY COOPERATIVE** ) Case No. U-11172  
against **CONSUMERS ENERGY COMPANY.** )  
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At the June 2, 1998 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. John C. Shea, Commissioner  
Hon. David A. Svanda, Commissioner

**OPINION AND ORDER**

**I.**

**HISTORY OF PROCEEDINGS**

On September 5, 1996, Great Lakes Energy Cooperative (Great Lakes), through one of its predecessor companies,<sup>1</sup> filed a complaint alleging that Consumers Energy Company (Consumers) improperly extended distribution facilities and provided electric service in violation of 1983 AACS,

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<sup>1</sup>Effective January 1, 1997, O&A Electric Cooperative (O&A) and Oceana Electric Cooperative merged and consolidated their operations, creating Great Lakes. Thus, although the complaint was filed by O&A, Great Lakes will be referred to as the complainant for purposes of this order.

R 460.3411 (Rule 411)<sup>2</sup> within the Highpoint Industrial Park in Zeeland, Michigan. Consumers filed its answer on October 7, 1996.

Pursuant to due notice, a prehearing conference was held before Administrative Law Judge Theodora M. Mace (ALJ) on November 15, 1996. In addition to Great Lakes and Consumers, the Commission Staff (Staff) participated in the proceedings. In accordance with the schedule established at that prehearing conference, evidentiary hearings were conducted on February 4, 1997. The record consists of 138 pages of transcript and 13 exhibits, all of which were admitted into evidence. Each of the parties filed briefs on March 17, 1997. Great Lakes and Consumers filed reply briefs on March 28, 1997.

On May 15, 1997, the ALJ issued a Proposal for Decision (PFD) in which she concluded, among other things, that Consumers' activities in and around the Highpoint Industrial Park violated Rule 411. Consumers filed exceptions to the PFD on May 28, 1997. Replies to exceptions were filed on June 5 and 6, 1997 by the Staff and Great Lakes, respectively.

## II.

### **FACTUAL BACKGROUND**

The dispute in this case centers around which of these utilities should properly serve the three-phase load of a warehouse that was constructed by Robert Grooters Development, Inc. (Grooters) within the Highpoint Industrial Park.

Consumers and Great Lakes have long provided service to various facilities owned by Zeeland Farm Services (ZFS) and located in the extreme southwest corner of the industrial park. According

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<sup>2</sup>Rule 411 was amended by 1996 MR 4, R 460.3411. However, that amendment did not alter Rule 411 in any respect material to the issues in this case.

to Dennis J. Berens, the Electric Field Manager of Consumers' West Grand Rapids Area, its service to ZFS was provided from the Black River Substation (located four miles to the west) through use of the Zeeland Circuit. 2 Tr. 95-96. As depicted on Exhibit R-6, this circuit enters and departs the southwest corner of ZFS's property. In contrast, Great Lakes provided service to ZFS by way of a short three-phase distribution line originating at a substation located near the center of the industrial park. Exhibit C-1. Additional distribution lines running from Great Lakes' substation were used to provide service to all seven of the other facilities that had begun operating within the industrial park by mid-1996. Id.

ZFS operated an agricultural business that, prior to 1995, included the transportation of soybeans to out-of-state processing plants. That year, ZFS decided to expand its business to include the on-site extraction and processing of beans to create soybean oil and soybean meal for animal feed. 2 Tr. 106. After contacting both Consumers and Great Lakes, ZFS elected to have Consumers serve the additional 1.5 megawatt load resulting from that expansion. Due to long-standing reliability problems on Consumers' Black River Substation/Zeeland Circuit, problems that would have been exacerbated by the addition of ZFS's new load, Consumers agreed to (1) build a new substation, referred to as the Logistics Substation, on ZFS's property, (2) provide service to ZFS through a dedicated circuit running from that substation, and (3) use the existing source of Consumers' three-phase service from the Black River Substation/Zeeland Circuit as a form of emergency backup for ZFS. 2 Tr. 95.<sup>3</sup>

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<sup>3</sup>Consumers provided ZFS with other incentives to secure its selection over Great Lakes, including a contribution of \$25,000 toward the installation of high efficiency motors. Although it was neither mentioned in the complaint nor addressed in the direct testimony submitted by Great Lakes, an issue arose regarding whether inducements offered to ZFS by Consumers violated the Commission's restrictions on promotional practices. Because that issue is not germane to the underlying question in this complaint case (specifically, which utility should provide service to Grooters, as opposed to which company should serve ZFS), it need not be addressed at this time.

To supply power to the Logistics Substation, Consumers needed to construct a 46 kilovolt (kV) subtransmission line extending from ZFS's property to a point of interconnection with an existing transmission line running parallel to Highway M-21, north of the Highpoint Industrial Park. According to Mr. Berens, several alternate routes for this new 46 kV subtransmission line were considered. 2 Tr. 98-99. While its planning for that new line was underway, Consumers also decided to build a new three-phase distribution line running directly underneath (and attached to the same poles as) the proposed 46 kV subtransmission line. The ostensible purpose of this three-phase line was to improve the reliability of service provided to 277 of Consumers' existing customers. 2 Tr. 96. Specifically, Consumers indicated that these customers had been voicing concerns about inadequate service reliability for several years. Exhibit R-7.

In the course of selecting a route for the 46 kV subtransmission line and its three-phase distribution underbuild, Consumers discussed with Grooters the possibility of routing its lines over property owned by Michigan Consolidated Gas Company (Mich Con) and upon which Grooters was constructing its warehouse. 2 Tr. 99-100. Ultimately, Consumers concluded that its "first preference" for the route (which would entail building a relatively short line running due north from its proposed substation to the existing 46 kV line along M-21) "was not available due to problems obtaining rights-of-way and tree replacement rights from adjacent property owners." 2 Tr. 98. Consumers' witness, Mr. Berens, went on to assert that the utility's "second preferred option" (building a line north to Logistics Drive, west to 84th Street, and then north along 84th Street to M-21) was abandoned due to difficulty in obtaining the necessary road use permits from the City of Zeeland. *Id.* Therefore, Mr. Berens continued, the only remaining option for the utility was to loop its proposed lines around the east side of the existing structures in the industrial park, and to run them through the property owned by Mich Con and being developed by Grooters. As shown on

Exhibit R-10, this resulted in a line that was considerably longer than either of Consumers' other proposed routes and that was located parallel to (but slightly east of) Great Lakes' existing distribution facilities.

Consumers then notified Great Lakes and the Commission of its plan to build the Logistics Substation and the 46 kV subtransmission line needed to serve ZFS, and described the locations of these proposed facilities. However, it failed to provide notice of its intent to also construct the three-phase distribution line through the east side of the Highpoint Industrial Park. According to Mr. Berens, once the 46 kV line and its three-phase underbuild were completed and energized, Grooters requested service from Consumers for its newly constructed warehouse at 7900 Logistics Drive. 2 Tr. 100. He went on to state that as an inducement to select Consumers over Great Lakes, Consumers provided Grooters with two transformers, a pair of underground electrical services, two junction boxes, four meter sockets, and other "miscellaneous hardware," all free of charge. 2 Tr. 123-124; Exhibit C-11.

### **III.**

#### **DISCUSSION**

##### **Duplication of Facilities**

In its complaint, Great Lakes asserted that Consumers' three-phase distribution line was built in a manner that duplicated Great Lakes' existing distribution facilities. According to Great Lakes, construction of Consumers' line thus violated Rule 411(14), which states in pertinent part:

Regardless of other provisions of this rule, except subrule (9),<sup>4</sup> a utility shall not extend service to a new customer in a manner that will duplicate the existing electric distribution facilities of another utility, except where both utilities are within 300 feet of the prospective customer.

R 460.3411(14). Although not disputing Consumers' right to build the 46 kV subtransmission line and to provide service to ZFS's new soybean processing facility, Great Lakes requested an order stating that (1) Consumers' three-phase underbuild should not be used as a measuring point for any current or future Rule 411 determinations, (2) Consumers should cease serving any customers in the Highland Industrial Park except ZFS, and (3) electric service to Grooters should be provided by Great Lakes.

The Staff concurred with Great Lakes that Consumers violated Rule 411(14) by unnecessarily duplicating the existing three-phase distribution system. It therefore supported Great Lakes' request for relief.

Based on the map submitted as Exhibit R-10, as well as testimony to the effect that the new line ran alongside and within 50 feet of Great Lakes' distribution lines, the ALJ agreed that Consumers' three-phase underbuild duplicated the existing distribution facilities. Moreover, she rejected Consumers' assertions that Rule 411(14) did not apply because its three-phase underbuild was intended solely to improve system reliability and not to serve new customers like Grooters. In so doing, she concluded that Consumers' decision to build a three-phase distribution line that "exactly duplicated" Great Lakes' existing distribution facilities within the Highpoint Industrial Park "appears to be a strategy to circumvent the spirit, if not the letter of the Rule." PFD, p. 10. She

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<sup>4</sup>This subrule, found at R 460.3411(9), concerns service provided to manufacturing facilities. Because Grooters is a warehouse, rather than a manufacturing facility, that subrule does not apply in this case.

therefore recommended that the Commission find Consumers in violation of Rule 411(14) and grant the relief requested by Great Lakes.

Consumers excepts to that recommendation. According to the utility, any duplication of Great Lakes' existing distribution facilities was minimal and arose solely from the fact that both of Consumers' preferred routes were unavailable. Consumers further argues that there was no reason for the ALJ to believe that its three-phase underbuild was a subterfuge undertaken to gain access to Grooters. Finally, Consumers asserts that the construction of its distribution line is not within the scope of Rule 411(14). According to Consumers, that rule applies only to lines built to serve new customers, not to distribution facilities constructed to provide increased reliability to 277 existing customers. Consumers therefore contends that the Commission must reject the ALJ's recommendation on this issue.

The Commission finds that Consumers' arguments on this issue should be rejected and that the ALJ's recommendations should be adopted instead. It reaches this conclusion for three reasons.

First, maps offered by each of the utilities show that Consumers' new three-phase line follows a circuitous path through the Highpoint Industrial Park that leaves it, at all times, just to the east of Great Lakes' existing three-phase distribution facilities. Exhibits C-1 and R-10. This is confirmed by Mr. Berens who, during cross-examination, conceded that his company's distribution underbuild runs parallel to and within 50 feet of Great Lakes' distribution line. 2 Tr. 130-132. Based on this evidence, the ALJ was correct in concluding that Consumers' three-phase distribution underbuild duplicates Great Lakes' existing three-phase line and that this duplication is "far from minimal." PFD, p. 10. Moreover, Consumers offered little support for its claim that both of the utility's other routing options were unavailable. For example, the only reason given for discarding its first preferred option was a vague reference to problems regarding the purchase of rights-of-way and

tree replacement rights. No attempt was made to show that the cost of securing those rights was going to exceed the added expense of building the longer line (including its associated right-of-way costs) along the route ultimately selected by Consumers.

Second, adequate reasons exist for concluding (as the ALJ did) that Consumers' construction of the three-phase underbuild and its selection of this particular route violated the spirit, if not the letter, of Rule 411. For example, prior to the construction of this underbuild, Rule 411(7) gave Great Lakes the exclusive right to serve any prospective customers within the first 2,640 feet to the east of Great Lakes' existing three-phase facilities. As noted by Consumers witness Berens, this included the property on which Grooters ultimately built its warehouse. 2 Tr. 132, 137. However, Mr. Berens continued, placing its own three-phase line where it did allowed Consumers to compete for Grooters' load. 2 Tr. 131-132. The potential use of the new line as a measuring point also eliminated Great Lakes' ability to serve any new customers located more than 300 feet to the east of its existing three-phase distribution facilities.<sup>5</sup> Id. Moreover, although Consumers may have had valid concerns regarding the reliability of service on its Black River Substation/Zeeland Circuit, the record indicates that other, less costly remedies existed. According to its own records, Consumers concluded that it could fix this problem by intensifying its tree trimming program and installing \$10,000 worth of new lightning arresters. See, Exhibit R-7.

Third, Consumers cites no statute, rule, or Commission order in support of its claim that Rule 411(14) does not apply to distribution lines that are designed to improve system reliability for existing customers. Taken to its logical extreme, Consumers' interpretation of this subrule would

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<sup>5</sup>Specifically, Rule 411(7) dictates that when a prospective three-phase customer is between 300 and 2,640 feet from two or more utilities' three-phase distribution facilities, service shall be provided by the closest utility. By placing its three-phase line slightly east of Great Lakes' line, Consumers would have the exclusive right to serve all such customers.

create an exception large enough to swallow Rule 411 in its entirety. Specifically, it would allow utilities to duplicate each others' systems freely, as long as they showed that the proposed expansions would improve system reliability to at least some extent. Such an interpretation is clearly at odds with Rule 411, which was adopted specifically to avoid the unnecessary duplication of electric distribution facilities.

For all of these reasons, the Commission concludes that it should adopt the ALJ's recommendation, find that Consumers violated Rule 411(14), and provide the relief requested by Great Lakes.

### Lack of Notice

Great Lakes and the Staff asserted that Consumers also violated Rule 411(10) by constructing the three-phase underbuild without providing the required notice. In support of their assertion, these two parties noted that Rule 411(10) states, in pertinent part, that:

The extension of distribution facilities, except as provided in subrules (3), (4), (6), and (7) of this rule, where an extension will be located within 1 mile of another utility's distribution facilities, shall not be made by a utility without first giving the commission and any affected utility 10 days' notice of its intention by submitting a map showing the location of the proposed new distribution facilities, the location of the prospective customers, and the location of the facilities of any other utility in the area. . . . If no objections to the proposed extension of distribution facilities are received by the commission within the 10-day notice period, the utility may proceed to construct the facilities. If objections are received, the determination of which utility will extend the service may be made the subject of a public hearing and a determination by the commission, upon proper application by any affected party.

R 460.3411(10).

The parties went on to contend that because the exceptions concerning subrules (3), (4), (6), and (7) do not apply,<sup>6</sup> and because the only preconstruction notice provided by Consumers limited

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<sup>6</sup>Subrules (3) and (4) deal solely with service provided by single-phase lines and are thus inapplicable to this case. Moreover, neither subrule (6) nor subrule (7) applies to situations where, as here, a single three-phase line exists within 300 feet of the prospective customer.

its discussion to the proposed Logistics Substation and the 46 kV subtransmission line needed to power that substation, Consumers violated Rule 411(10). According to them, that violation provided additional support for granting the relief requested in Great Lakes' complaint.

The ALJ agreed with Great Lakes and the Staff, and recommended that the Commission find Consumers to be in violation of Rule 411(10).

Consumers excepts to the ALJ's conclusion. According to the utility, Rule 411(10) applies only when a proposed distribution line is designed to provide service to a new--as opposed to an existing--customer. Because the three-phase underbuild at issue in this case was intended to improve the reliability of service for 277 of its existing customers, Consumers continues, the utility had no obligation to advise the Commission and other nearby utilities of its construction plans. The possibility that these distribution facilities "might some day be used as a measuring point" to serve new customers like Grooters, Consumers concludes, does not justify imposition of the notice requirement found in Rule 411(10). Consumers therefore argues that the Commission should reject the ALJ's recommendation.

Consumers' arguments are not well taken. As with Consumers' interpretation of Rule 411(14), no statute, rule, or Commission order is cited in support of the utility's claim that the notice requirement imposed by Rule 411(10) does not apply to distribution facilities whose construction will improve system reliability. Moreover, the record supports the ALJ's conclusion that "Consumers was [aware], during the preconstruction phase, of Grooters' potential as a new customer" to be served by the three-phase underbuild. PFD, p. 12. Specifically, Consumers' witness testified that:

Through the process of working with them for routing the transmission line and distribution underbuild to the Logistics substation, Grooters became aware that [Consumers]

would have three-phase primary distribution near its warehouse building which was under construction.

2 Tr. 100. The Commission therefore finds that Consumers was obligated to give the notice required by Rule 411(10) and that its failure to do so violates the rule. This, the Commission concludes, justifies granting the relief requested by Great Lakes and recommended by the ALJ.

#### Incentives Provided to Grooters

In addition to the Rule 411 violations addressed above, the Staff claimed that Consumers violated Commission-imposed restrictions on promotional practices. The Staff noted that, in its December 13, 1988 order in Case No. U-9246, the Commission authorized Consumers to undertake certain promotional practices in return for the utility's pledge not to use those practices in a discriminatory manner. According to the Staff, Consumers violated that order by providing Grooters with transformers, underground electrical services, meter sockets, and other hardware, all at no charge to the customer.

The ALJ concluded that the Staff's concerns regarding the cost of connecting Grooters to Consumers' system were not well founded. Because no evidence of improper discrimination was found on the record, the ALJ recommended rejecting the Staff's position. None of the parties except to that recommendation. The Commission therefore finds that the ALJ's recommendation should be adopted, and that the Staff's assertion regarding improper discrimination should be rejected.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as

amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. Consumers improperly extended distribution facilities and provided electric service in violation of Rule 411.

c. The three-phase underbuild constructed in conjunction with Consumers' 46 kV subtransmission line within the Highpoint Industrial Park should not be used as a measuring point for purposes of Rule 411.

d. Great Lakes is the proper utility to provide electric service to Grooters' warehouse located at 7900 Logistics Drive in Zeeland Township, Ottawa County.

e. Consumers should cease serving 7900 Logistics Drive in Zeeland Township, Ottawa County, as soon as Great Lakes is capable of providing electric service to Grooters.

f. Consumers should hold Grooters harmless for all costs associated with the transition to the appropriate serving utility.

THEREFORE, IT IS ORDERED that:

A. The complaint filed by Great Lakes Energy Cooperative is granted.

B. The three-phase line electric distribution line constructed by Consumers Energy Company through the east side of the Highpoint Industrial Park in Zeeland Township, Ottawa County, shall not be used as a measuring point for purposes of 1983 AACS, R 460.3411.

C. Great Lakes Energy Cooperative has the exclusive right to supply three-phase electric service to 7900 Logistics Drive in Zeeland Township, Ottawa County.

D. Consumers Energy Company shall cease providing electric service to 7900 Logistics Drive in Zeeland Township, Ottawa County, once Great Lakes Energy Cooperative is physically able to provide electric service to this customer.

E. Consumers Energy Company shall hold the customer at 7900 Logistics Drive in Zeeland Township, Ottawa County, harmless for all costs associated with the transition to the appropriate serving utility.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand  
Chairman

( S E A L )

/s/ John C. Shea  
Commissioner

/s/ David A. Svanda  
Commissioner

By its action of June 2, 1998.

/s/ Dorothy Wideman  
Its Executive Secretary

D. Consumers Energy Company shall cease providing electric service to 7900 Logistics Drive in Zeeland Township, Ottawa County, once Great Lakes Energy Cooperative is physically able to provide electric service to this customer.

E. Consumers Energy Company shall hold the customer at 7900 Logistics Drive in Zeeland Township, Ottawa County, harmless for all costs associated with the transition to the appropriate serving utility.

The Commission reserves jurisdiction and may issue further orders as necessary.

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MICHIGAN PUBLIC SERVICE COMMISSION

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Commissioner

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By its action of June 2, 1998.

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Case No. U-11172

Suggested Minute:

“Adopt and issue order dated June 2, 1998 granting the complaint filed by Great Lakes Energy Cooperative against Consumers Energy Company, as set forth in the order.”