

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)
FRUIT BELT ELECTRIC COOPERATIVE)
against **INDIANA MICHIGAN POWER COMPANY**) Case No. U-11512
relative to the provision of electric service to Pri Mar)
in Antwerp Township, Van Buren County.)
_____)

At the July 24, 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

History of Proceedings

On September 2, 1997, Fruit Belt Electric Cooperative (Fruit Belt) filed a complaint against Indiana Michigan Power Company (I&M), alleging that I&M violated Rule 411 of the Commission's rules governing services supplied by electric utilities, 1996 AACS, R 460.3411, by extending electric facilities and service to a new customer. On October 28, 1996, Administrative Law Judge Theodora M. Mace (ALJ) conducted a prehearing conference encompassing this case as well as two other Rule 411 complaints between the same parties in Cases Nos. U-11513 and U-11514. The Commission Staff (Staff) participated. On January 14, 1998, the ALJ conducted evidentiary hearings on separate records in each of the three cases. Thereafter, in this case, the parties filed

briefs, and Fruit Belt and I&M filed reply briefs. The ALJ issued a Proposal for Decision (PFD) on March 25, 1998.

Summary of the Record

This dispute relates to I&M's extension of 3-phase service to Pri Mar Petroleum, Inc., (Pri Mar), which operates a gasoline and convenience store located on the southwest corner of the intersection of Red Arrow Highway and County Road 652 in Antwerp Township. I&M commenced service to Pri Mar on January 3, 1997. I&M provided the service to Pri Mar through facilities constructed as the result of several successive stages of 3-phase line extensions running from the south along County Road 652.

Prior to 1986, I&M provided 3-phase service to a Shell gasoline station located to the south of Pri Mar, at the intersection of County Road 652 and I-94.¹ Sometime in 1986, I&M extended 3-phase facilities from the Shell station north along County Road 652 for about 2,500 feet to provide service to Engineered Plastic Components (EPC). I&M's basis for extending service to EPC was Rule 411(9), which permits certain types of industrial customers to choose their electric utility without regard to the location of existing utility facilities. Tr. 98.

The next northward extension occurred in 1995. The justification for doing so was in dispute, with Fruit Belt claiming that I&M attempted to position its facilities to serve new loads that would otherwise belong to Fruit Belt under Rule 411. I&M claimed that it needed to reinforce the operational reliability of its distribution system, which had become deficient by 1993.

¹Although the record does not specify the distance between the Shell station and Pri Mar, the length of I&M's subsequent line extensions suggests that the distance was about a mile. Tr. 27. Although Fruit Belt argues in its exceptions that the distance is 5,680 feet, this issue is not outcome-determinative and need not be resolved precisely.

As documentation for the claimed operating deficiencies, I&M submitted, as part of Exhibit R-8, a memorandum dated February 3, 1993 by Eric J. Morris, an I&M technician. The memorandum is an engineering analysis that addresses localized low voltage conditions and the overloading of step-down transformers during peak conditions. According to the memorandum, the loading of a 500 kilovolt-ampere (kVA) transformer located near County Road 652 to the north of EPC was then at 199% of its nameplate capability. Mr. Morris's analysis added that expected load growth due to a new residential subdivision in the area would exacerbate the overloading. To rectify the problem, Mr. Morris recommended, among other things, that a second phase be added to an existing single-phase line that ran along County Road 652 from EPC to the step-down transformer and that a second 500 kVA transformer be installed on the same platform as the existing transformer. The transformer platform, known as an isolation bank, is located about midway between EPC and Pri Mar. Mr. Morris added: "Construction of the new installation should be made with plans to add a third 500 KVA transformer some time in the future." Morris Mem. at 2.

Ronald D. Cotant, I&M's Region Engineering Manager, testified that, after reviewing Mr. Morris's recommendations, he modified them by having the 2,000 feet of single-phase line running from EPC to the isolation bank converted to 3-phase in February 1995. Tr. 92, 99-103, 106-07. I&M energized all three phases up to the isolation bank and reserved a space for the future installation of a third transformer. The third, or "B," phase did not provide service to any 3-phase loads north of EPC at that time, although I&M did use it to provide single-phase service to a street light and a cable television power source located south of the isolation bank.

In a letter dated September 5, 1995, Mr. Cotant advised Fruit Belt that I&M had completed the upgrade of its facilities and that it would use the upgraded facilities as a measuring point for future 3-phase service under Rule 411. Ex. C-6.

The final stage of the northward extensions occurred when Pri Mar requested 3-phase service from I&M in November 1996. To accommodate this request, I&M installed a third transformer at the isolation bank and added approximately 1,100 feet of a third phase conductor extending north to Pri Mar's meter. At the time that Pri Mar requested service, Fruit Belt's closest 3-phase facilities were 2,307 feet to the west. Ex. C-1.

Rule 411 Standard

Rule 411 provides a distance-based framework for resolving service disputes between nearby utilities. Rule 411(1)(b) defines "distances" as "measurements which are determined by direct measurement from the closest point of a utility's existing distribution facilities to the customer's meter location and which are not determined by the circuit feet involved in any extension." For purposes of this complaint, the applicable subrule is Rule 411(7), which states: "Prospective customers for 3-phase service that are located more than 300 feet, but within 2,640 feet, from the 3-phase distribution facilities of 1 or more utilities shall be served by the closest utility."

The parties disputed which of them was "the closest utility" under Rule 411(7). Although I&M's isolation bank, which is 1,100 feet from Pri Mar, is closer than Fruit Belt's nearest 3-phase facilities, which are 2,307 feet away, Fruit Belt challenged I&M's use of its extensions north along County Road 652 as a measuring point under Rule 411. The Rule 411 basis for I&M's extension of service as far north as EPC in 1986 was subrule (9), but that subrule, by its terms, prohibited I&M from using the extension as a measuring point for further extensions to new customers.² However, I&M contended that its subsequent extension northward from EPC in 1995 provided a valid

²Subrule (9) provides in part: "The facilities that are constructed to serve an industrial customer that would otherwise have been served by another utility shall not qualify as a measuring point in determining which utility will serve new customers in the future."

measuring point because the modifications to its facilities were necessary to bolster the reliability of its operations in the area, thereby relieving it of the subrule (9) constraint.

PFD

Although the ALJ accepted I&M's contention that the basis for installing multi-phase facilities north of EPC was to improve the utility's distribution capabilities, she rejected I&M's further contention that the extended facilities could be regarded as a 3-phase measuring point for Rule 411 purposes. In the ALJ's view, the line was not serving a 3-phase function until I&M extended service to Pri Mar. She noted that I&M did not, prior to then, activate all three phases so that it could provide 3-phase service, but that serving a 3-phase load would have required the installation of the third transformer and other equipment. She cited the August 30, 1990 order in Case No. U-9517 for the holding that Rule 411 did not permit Consumers Energy Company (Consumers) to use V-phase facilities (having only two phase wires) as a measuring point for providing 3-phase service to new loads. PFD at 12-13.

The ALJ found that Fruit Belt, as the closest utility under Rule 411(7), had the exclusive right to serve Pri Mar. She recommended that the Commission order I&M to cease and desist from serving Pri Mar and to transfer the customer to Fruit Belt. PFD at 18. I&M, Fruit Belt, and the Staff filed exceptions to the PFD and replies to the exceptions.

Discussion

In its exceptions, I&M objects to the ALJ's finding that the line running from EPC to the isolation bank was a V-phase facility prior to November 1995 and could not be used as a measuring point for extending 3-phase service. I&M argues that, as of 1995, the line running to the isolation bank was fully operational and all three phases had been energized. I&M contends that the ALJ's

reliance on the need for additional equipment before I&M could serve a 3-phase load is faulty because all 3-phase loads necessarily require equipment to be added before service can begin.

I&M distinguishes the August 30, 1990 order in Case No. U-9517 regarding Consumers' V-phase facilities. I&M argues that, unlike Consumers' facilities, its line had all three phases present, energized at the same voltage, and providing service to actual loads. Notwithstanding that there were only two transformers at the isolation bank, I&M asserts that the line itself was a 3-phase facility up to that point. Although the loads served off of the line were single-phase, I&M says, the line was capable of providing 3-phase service to a load connected to the south of the isolation bank without installing a B-phase step-down transformer.

Fruit Belt responds that the I&M facilities at issue were the equivalent of V-phase because only the A and C phases had their own transformers, and the B phase had only an empty platform space where a transformer could be added. Fruit Belt notes that I&M did not in fact provide any 3-phase service off of that line or attempt to balance the electrical load among all three phases until it commenced service to Pri Mar. According to Fruit Belt, I&M, in arguing that it energized all three phases, conceded that its facilities were no different than Consumers' "3-wire system (having 2 phase wires and 1 ground wire)," which the Commission found to be a V-phase system in Case No. U-9517. Order in Case No. U-9517, at 3.

Fruit Belt relies on the February 8, 1993 order in Case No. U-10108, which adopted a settlement agreement between Cherryland Electric Cooperative and Consumers that incorporated the Staff's proposed framework for resolving Rule 411 disputes relating to upgraded distribution facilities. The settlement provides in part:

- The central issue in this case involves a determination as to what circumstances, if any, would allow a utility a single phase upgrade to three phase to improve its competitive position for qualifying for new three phase load.

....

- [I]n determining the serving utility for three phase service, qualifying measurements may be taken only from three phase facilities.
- A “stub-line” is distinguishable from an “upgrade line.”
- A stub line is a dead end extension that serves no load or useful purpose other than establishing the presence of an electric utilities’ [sic] facilities for future measurement purposes.
- An upgrade line is a line that serves load – even if it has been upgraded to three phase and dead ends at property which requires single phase load.
- The Commission Staff takes the position that distribution facilities should not be extended or upgraded merely to provide a prospective advantage for future territorial disputes.
- The Commission Staff takes the position that distribution facilities should only be extended or upgraded (i) when it is clear that the utility will, in fact, be the utility of service or (ii) when system improvements are clearly needed for reliability or quality of service enhancements.
- The Commission Staff will support system improvements that are necessary to resolve legitimate reliability or quality of service problems as long as they are consistent with Michigan law.
- Such system improvements, including their routing, must be supportable by adequate technical studies – in order to be used for measuring purposes. However, the burden for supporting such a line belongs to the utility responsible for the upgrade.
- The Commission Staff cannot conceive of a situation where it would support, for measurement purposes, the existence of a stub line extension (i.e. a line that does not serve load).

Order in Case No. U-10108, Ex. A at 2-4 (citations to the record omitted). Applying this framework, Fruit Belt argues that I&M’s extension was a stub line that cannot be used for measurement purposes, that I&M did not provide an adequate technical study to support an upgrade, and that, as “the utility responsible for the upgrade,” I&M did not meet its “burden for supporting such a line.”

Id. at 4. Fruit Belt notes that I&M’s own engineering analysis concluded that a 3-phase line was

not necessary. In overruling that recommendation, Fruit Belt continues, I&M witness Cotant acted without adequate technical support. As such, Fruit Belt argues, I&M's modifications were not a necessary upgrade to improve system reliability, but the circumstances suggest instead that I&M was seeking an unfair competitive advantage under Rule 411.

I&M responds by noting that Mr. Morris's engineering analysis indicated that the transformer was already loaded to 199% of its capability under July 1991 peak conditions, that installing a 2-phase capability would have provided only a temporary solution in light of expected load growth, and that Mr. Cotant decided to install 3-phase facilities only after consulting with Mr. Morris. I&M notes that it constructed the 3-phase upgrade almost two years before Pri Mar requested service.

The Staff supports I&M's position. The Staff argues that the ALJ should not have relied on the orders in Cases Nos. U-9517 or U-10108. The Staff notes that Case No. U-10108 ended with a settlement and that Commission orders are generally not binding precedent. The Staff further argues that, under Rule 411(14), Fruit Belt would impermissibly duplicate I&M's distribution facilities if it were permitted to extend service to Pri Mar.

The Commission finds that I&M's installation of 3-phase facilities up to the isolation bank in 1995 provides a valid measuring point for purposes of Rule 411. Although Fruit Belt has vigorously disputed whether the modifications had a legitimate basis in the operational reliability of I&M's system, the Commission is not persuaded that I&M added the third phase as a subterfuge for positioning itself to add future loads that it could not have otherwise served under Rule 411. Although Mr. Morris's memorandum in 1993 did not recommend an immediate conversion to 3-phase service, it did not, as Fruit Belt contended, preclude that possibility, and Mr. Cotant provided valid technical reasons for converting the line to 3-phase service. Unlike the V-phase facilities at issue in Case No. U-9517, I&M's facilities, as of 1995, had three energized phases

capable of serving 3-phase loads connected south of the isolation bank. The record indicates that I&M's 3-phase line was not the functional equivalent of the V-phase facilities in Case No. U-9517 from a technical or engineering standpoint.

The Commission is not persuaded by Fruit Belt's argument that I&M's line, as modified in 1995, was a stub line, as that term was used in Case No. U-10108. Case No. U-10108 concluded with a settlement that does not necessarily provide guidance for other cases between unrelated parties.³ Moreover, Mr. Cotant's testimony provided an adequate technical explanation for I&M's decision to modify the recommendations in the 1993 memorandum and thus justified I&M's upgrade work as "clearly needed for reliability or quality of service enhancements" and "to resolve legitimate reliability or quality of service problems." Order in Case No. U-10108, Ex. A at 3.

In view of the finding that I&M acted properly in converting the line between EPC and the isolation bank to 3-phase service in 1995, it follows that the line was a valid measuring point for determining which utility had the right to serve new 3-phase customers under Rule 411. As the closest utility, I&M had the right to extend 3-phase service to Pri Mar under Rule 411(7).

Fruit Belt also contends that I&M violated Rule 411(10) by failing to give ten days' advance notice to the Commission and Fruit Belt of its work modifying the line between EPC and the isolation bank in 1995. Fruit Belt contends that Mr. Cotant's letter dated September 5, 1995, which was admitted as Exhibit C-6, did not comply with Rule 411(10) because I&M sent it after completing the modifications, did not provide notice to the Commission, and did not include a map or the other information specified in subrule (10).

³The Commission expresses no opinion in this order regarding whether the Staff's framework in Case No. U-10108 would be valid for resolving future disputes under Rule 411.

I&M responds that Rule 411(10) does not require notice to be given when a utility undertakes a line upgrade without an intent to extend service to a new customer. I&M also contends that Fruit Belt is not in a position to protect the Commission's interests in receiving notice. I&M claims that Fruit Belt was not prejudiced by the lack of notice, given that Fruit Belt was aware of the circumstances and had no right to object to the extension.

Rule 411(10) provides in pertinent part:

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.

This subrule does not explicitly state that an extension of distribution facilities must connect a new customer or load before the notice requirements are triggered. However, I&M's interpretation of subrule (10) finds support in the overall purpose of Rule 411 to facilitate an orderly extension of facilities providing service to new customers. Moreover, subrule (10) specifically refers to the disclosure of, among other things, "the location of the prospective customers" as part of the required notice.

The Commission also agrees with I&M that, under the circumstances, I&M did not adversely affect Fruit Belt's interests by failing to give notice. Fruit Belt was aware of I&M's upgrade of the facilities between EPC and the isolation bank well before I&M extended service to Pri Mar.

Although a Fruit Belt employee made verbal objections regarding the modifications in 1995, Fruit Belt did not take formal steps to object until the dispute over the right to serve Pri Mar arose more than 1½ years later. Thus, any violation of subrule (10) on I&M's part was not prejudicial to Fruit Belt and does not entitle Fruit Belt to relief in this complaint.

Both I&M and the Staff raise the issue of customer choice, arguing that there is record evidence showing Pri Mar's preference for I&M's service. I&M and the Staff contend that Pri Mar's letter stating its position pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17207, is a proper indication of customer choice. Because Rule 411(7) is otherwise consistent with the customer's choice of service providers under the circumstances of this case, it is not necessary to determine whether there is an independent basis on the record showing the customer's preference.

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 AACCS, R 460.17101 et seq.

b. The complaint should be dismissed.

THEREFORE, IT IS ORDERED that the complaint is dismissed with prejudice.

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

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of July 24, 1998.

Its Executive Secretary

In the matter of the complaint of)
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Case No. U-11512

Suggested Minute:

“Adopt and issue order dated July 24, 1998 dismissing a complaint filed by Fruit Belt Electric Cooperative against Indiana Michigan Power Company alleging a violation of Rule 411, as set forth in the order.”