

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the approval of a code of conduct )  
for **CONSUMERS ENERGY COMPANY** and )  
**THE DETROIT EDISON COMPANY.** )  
\_\_\_\_\_ )

Case No. U-12134

At the April 24, 2000 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

On September 14, 1999, the Commission issued an order and notice of hearing commencing this proceeding to determine what modifications, if any, should be made to the provisional codes of conduct approved for Consumers Energy Company (Consumers) and The Detroit Edison Company (Detroit Edison) in connection with the retail open access program. The Michigan Alliance for Fair Competition (MAFC) filed testimony and exhibits on February 15, 2000. Consumers, Detroit Edison, and the Michigan Electric Cooperative Association (MECA) filed motions to strike all or portions of the MAFC's testimony and exhibits. At a hearing on March 24, 2000, Administrative Law Judge George Schankler (ALJ) struck all of the MAFC's testimony and exhibits. On April 4, 2000, the MAFC filed an application for leave to appeal the ALJ's ruling.

By April 18, 2000, Consumers, Detroit Edison, MECA, and Wisconsin Public Service Corporation, Upper Peninsula Power Company, Northern States Power Company-Wisconsin, and Wisconsin Electric Power Company had filed responses in support of the ALJ's ruling. On April 18, 2000, the Association of Businesses Advocating Tariff Equity filed a response in opposition to the ALJ's ruling.

Rule 337 of the Commission's Rules of Practice and Procedures, 1992 AACS, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review; an appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

The Commission grants the application for leave to appeal because it concludes that the testimony should not have been stricken and granting the application for leave to appeal will materially advance a more timely resolution of the case than if the decision to hear the testimony were made at a later date.

The Commission commenced this case to determine what modifications, if any, should be made to the provisional codes of conduct approved for Consumers and Detroit Edison in the implementation of retail open access. The Commission concludes that testimony about utility conduct in other settings may have some use in determining what modifications, if any, should be

made to those codes of conduct. The ALJ recognized that some of the MAFC's testimony could be left in the record, but concluded that, to do so, he would have to take the testimony out of context and ignore the apparent interest of the MAFC in expanding the scope of the case. He also noted that the MAFC had withdrawn all of its similar testimony in another case when portions had been stricken. Tr. 73-74. Because the testimony and exhibits have some relevance to the issues in this case, the Commission concludes that the ALJ should not have granted the motions in their entirety. Rather, the parties should deal with questions about how the testimony relates to the scope of this proceeding and the weight to be given to the testimony through cross-examination and briefing.

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 application for leave to appeal should be granted and the ruling of the ALJ reversed.

THEREFORE, IT IS ORDERED that:

- A. The application for leave to appeal is granted and the ruling of the Administrative Law Judge is reversed.
- B. The case is remanded to the Administrative Law Judge for further proceedings consistent with this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of April 24, 2000.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of April 24, 2000.

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Suggested Minute:

“Adopt and issue order dated April 24, 2000 granting the application for leave to appeal filed by the Michigan Alliance for Fair Competition and reversing the ruling of the Administrative Law Judge, as set forth in the order.”