

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to implement Section 10a(3) of Public Act 141	)	Case No. U-12640
of 2000.	)	
_____	)	

At the November 20, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**ORDER ADOPTING STANDARDS**

On June 5, 2000, Public Act 141 of 2000 (Act 141) became effective. Section 10a(3) of Act 141, MCL 460.10a(3), requires the Commission to issue orders to protect electric customers in this state from being switched to another supplier without the customer's consent (slamming) or from being billed for unwanted services (cramming). Further, Sections 10c(2) to 10c(5) of Act 141 authorize the Commission to conduct contested case proceedings to investigate violations of Section 10a(3), impose fines, order the payment of refunds and other forms of compensatory relief, issue cease and desist orders, and sanction the use of frivolous arguments.

In an order issued on October 6, 2000, the Commission found that it should encourage broad participation by all interested persons in the development of anti-slamming and anti-cramming procedures. To that end, interested persons were invited either to file a statement of their position or to submit a detailed proposal regarding anti-slamming and anti-cramming procedures. Such

statements and detailed proposals were filed by the Commission Staff (Staff), Consumers Energy Company (Consumers), The Detroit Edison Company (Detroit Edison), the Michigan Electric and Gas Association (MEGA), and the National Energy Marketers Association (NEMA).

#### Staff

The Staff indicated that its investigation of procedures adopted in other states to curb slamming and cramming of electric customers establishes that such behavior is not a major problem. Nevertheless, the Staff proposed adoption of the same type of anti-slamming and anti-cramming measures for electric suppliers as are in place for telecommunications providers by virtue of the Commission's orders in Cases Nos. U-11757 and U-11900.

#### NEMA

NEMA urged the Commission to adopt Section IV of its Uniform Business Practices (UBP) to address slamming and cramming concerns. Further, NEMA maintained that suppliers that adhere to all of the requirements contained in Section IV of the UBP should be immune from any penalties associated with slamming or cramming incidents. Indeed, NEMA contended that the Commission should hold that proof of compliance with Section IV of the UBP constitutes prima facie evidence that the electric supplier has not engaged in a slamming or cramming activity. In any event, NEMA insisted that the Commission should not support passage of any additional consumer protection laws directed specifically towards curbing slamming or cramming by electric suppliers.

#### MEGA

MEGA stated that imposition of stringent restraints to prevent slamming and cramming is not necessary. According to MEGA, it would be reasonable to require alternative electric suppliers

(AESs) to obtain and retain some documentation for each switch of a customer or an account.

MEGA also maintained that another safeguard would be to require that every customer receive a copy of the contract prior to being switched to the new service. MEGA also stated that fraudulent switches could be prevented through use of a unique identification methodology, such as use of the customer's account number, which could only be obtained from the customer. Finally, MEGA suggested that by requiring the local distribution company to give a customer prior notice of the switch and by establishing a reasonable period of time during which the customer could rescind the contract with the new supplier, the Commission could substantially reduce slamming violations.

### Consumers

Consumers contended that the use of several simple precautions could minimize slamming complaints. Consumers' procedures include requiring the AES to supply the name, address, and account number of the customer to be switched. Consumers also believed that an AES should be required to maintain a copy of the written authorization signed by the customer. In addition, Consumers stated that all customers should be sent a written confirmation letter by the local distribution company and that the customer's final bill before the switch should contain a message again notifying the customer of the switch. Further, according to Consumers, the slamming of larger customers is not likely due to use of customer-ordered telephone service for meters serving loads in excess of 20 kilowatts and the mandatory use of distribution contracts for larger customers that take service pursuant to Consumers' retail open access program. However, Consumers indicated its belief that adoption of NEMA's UBP would not be appropriate because the subject matter of the UBP exceeds the scope of this proceeding and because the UBP contain unwarranted provisions that could adversely affect the enrollment of retail open access customers.

## Detroit Edison

Detroit Edison supported adoption of procedures that protect the rights of customers, but do not unduly burden AESs. More specifically, Detroit Edison opposed use of the type of stringent anti-slamming and anti-cramming standards that apply to telecommunications providers.

According to Detroit Edison, differences between electric service and telephone service provide a measure of protection for electric customers that does not exist for telephone customers. Further, Detroit Edison insisted that the Commission could effectively send a message to unscrupulous suppliers through enforcement actions without imposing unnecessary procedural burdens on the entire industry.

## Discussion

On August 28, 2001, the Staff submitted a proposal for the Commission's consideration developed in light of the requirements of Act 141, the recommendations contained in the comments submitted by Consumers, Detroit Edison, MEGA, and NEMA, knowledge garnered from other states, and experience gained from dealing with slamming and cramming issues in telecommunications matters in this state. After reviewing the Staff's August 28, 2001 proposal, the Commission finds that it should be adopted with minor editorial changes and clarifications.

The proposal adopted by the Commission balances the need to provide protection to the public from unscrupulous suppliers with the need to encourage development of a competitive market. These standards involve simple and straightforward procedures that address slamming and cramming abuses without overly intruding into the process by which customers switch from supplier to supplier. The Commission's determination to minimize oversight of the switching process reflects its desire to promote a robust market through use of guidelines that are concise,

but that also provide for the imposition of significant penalties to discourage slamming and cramming.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACR, R 460.17101 et seq.

b. The Staff's August 28, 2001 proposal, as modified by this order, is reasonable and in the public interest, and should be adopted.

THEREFORE, IT IS ORDERED that standards protecting electric customers in this state from being switched to another supplier without consent or from being billed for unwanted services, attached to this order as Exhibit A, are adopted.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of November 20, 2001.

/s/ Dorothy Wideman  
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated November 20, 2001 adopting standards protecting electric customers in this state from being switched to another supplier without consent or from being billed for unwanted services, as set forth in the order.”