

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>INDIANA MICHIGAN POWER COMPANY,</b>	)	
<b>d/b/a AMERICAN ELECTRIC POWER,</b> for	)	Case No. U-12780
certain approvals in connection with Section 10v	)	
of 2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
<b>INTERNATIONAL TRANSMISSION COMPANY,</b>	)	
<b>CONSUMERS ENERGY COMPANY,</b> and	)	Case No. U-12781
<b>GREAT LAKES ENERGY COOPERATIVE.</b>	)	
_____	)	

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

**OPINION AND ORDER**

Background

Section 10v of the Customer Choice and Electricity Reliability Act, MCL 460.10v, requires electric utilities serving more than 100,000 retail customers in Michigan to file a joint plan to expand, by June 5, 2002, the available transmission capability by at least 2,000 megawatts (MW) over the amount in place as of January 1, 2000. If the utilities are unable to agree on a joint plan, the Commission is required to conduct a hearing to establish a plan.

On December 28, 2000, Indiana Michigan Power Company (I&M), d/b/a/ American Electric Power (AEP), submitted an application seeking approvals in connection with a plan that it represented would comply with Section 10v. The application was docketed as Case No. U-12780. Also on December 28, 2000, International Transmission Company (ITC) on behalf of The Detroit Edison Company (Detroit Edison)<sup>1</sup>, Consumers Energy Company (Consumers)<sup>2</sup>, and Great Lakes Energy Cooperative (Great Lakes) submitted an application seeking approvals in connection with a plan, the Joint Report, that they represented would comply with Section 10v. The application was docketed as Case No. U-12781. Both plans identify the additional facilities, the schedule, and the costs to comply with Section 10v. The most significant difference between the two plans is that I&M's plan does not require the installation of a second transformer at the Dumont substation, which is located in northern Indiana on AEP's transmission system.

The prehearing conference for both cases was held on February 7, 2001 before Administrative Law Judge James N. Rigas (ALJ), who granted petitions for leave to intervene filed by the Association for Businesses Advocating Tariff Equity (ABATE), Energy Michigan, Inc., Exelon Energy Inc., Midland Cogeneration Venture Limited Partnership, First Power, L.L.C., PG&E National Energy Group (PG&E), Dynegy, Inc., and Ontario Power Generation, Inc. The Commission Staff (Staff) also participated in the case.

At the hearing on June 6, 2001, counsel for I&M stated:

AEP will not contest in this proceeding . . . that the second Dumont transformer should be included in the joint plan approved by the Commission.

AEP will at this time unilaterally stipulate to the joint report filed by the other utilities.

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<sup>1</sup> Detroit Edison has transferred its transmission assets to ITC, a wholly-owned subsidiary of DTE Energy.

<sup>2</sup> Consumers has transferred its transmission assets to its wholly-owned subsidiary, Michigan Electric Transmission Company.

3 Tr. 39. The parties agreed that all testimony and exhibits (except for the withdrawn direct and rebuttal testimony of one of I&M's witnesses) would be bound into the record and that three additional exhibits would be offered through limited cross-examination of one witness. The record consists of 251 pages of transcript and 16 exhibits.

On June 29, 2001, the Staff, Consumers, Detroit Edison, ABATE, Energy Michigan, I&M, ITC, PG&E, and Great Lakes filed briefs. On July 13, 2001, the Staff, Consumers, Detroit Edison, I&M, and Great Lakes filed reply briefs. Because the Commission had agreed to read the record, the ALJ did not prepare a proposal for decision.

#### Joint Plan

Section 10v requires the Commission to conduct a hearing if the utilities are unable to agree on a joint plan to meet the requirements of the act. Because I&M stipulated to the Joint Report filed by ITC, Consumers, and Great Lakes, the Staff recommends that the cases be closed with an order confirming that the Joint Report complies with the requirements of Section 10v. Great Lakes and PG&E agree that there are no issues to be addressed other than approval of the plan. ABATE says that the Commission should approve the Joint Report and require the utilities to notify the Commission when the new facilities begin commercial operation.

Consumers asks the Commission to find that: (1) the Joint Report complies with the provisions of Section 10v, (2) once an individual utility (or its affiliate or successor) has completed the projects identified in the Joint Report for its system, that utility will be deemed to be in compliance with Section 10v, and (3) the projects identified in the Joint Report and the associated costs are reasonable and prudent. Detroit Edison requests that the Commission approve the Joint Report and find that the transmission facility upgrades are reasonable and prudent. I&M and ITC also request that the Commission approve the Joint Report.

ABATE expresses concern that, under the current system, utilities allocate transmission capacity on a first-come, first-served basis after it has been posted to each utility's open access same time information system (OASIS) and that there will be a bias in favor of using the second Dumont transformer to make more sales into Commonwealth Edison's service territory because a transaction into Michigan has much more effect on the transformer's rating than a transaction going to Commonwealth Edison. 3 Tr. 227. To more fairly allocate the capacity and to avoid the opportunity for one market participant to obtain all of the new transmission capacity, ABATE recommends, first, a simultaneous posting of increases in transmission capacity available on each transmission path into the Lower Peninsula, with the posting to occur at a specific time of day to avoid giving more sophisticated parties an undue advantage over less sophisticated parties. 3 Tr. 94-95. Second, ABATE recommends that the Commission require the utilities to create an "open season" by using an auction or by allowing a flexible window for the receipt of transmission service requests. It acknowledges that either approach would probably require the Federal Energy Regulatory Commission (FERC) to approve an amendment to each utility's open access transmission tariff (OATT), but says that the Legislature intended to make the increase in transmission capacity, for which Michigan customers will pay, available to marketers and others that are interested in moving power into the state.

Energy Michigan supports both recommendations, and adds that offers of transmission capacity must be amended to remove restrictions that prevent the offers from benefiting Michigan customers.

In addition, Energy Michigan argues that the Commission must take action to assure that the legislative intent to enhance competition in Michigan is fulfilled or, at least, not require customers to pay for the transmission improvements until they benefit. It acknowledges the utilities' view

that the second Dumont transformer is designed to facilitate competition in the lower peninsula, but says that 500 MW of the increased transmission capability has already been reserved for delivery outside Michigan, with another 416 MW reserved for delivery into Michigan, although likely not for an independent marketer or open access customer. It says that these long-term firm reservations of transmission capacity will preclude marketers and alternative electric suppliers from using that capacity to serve customers in Michigan. Energy Michigan also questions whether the transmission upgrades related to the interface between Detroit Edison and Hydro One (formerly, Ontario Hydro) should be viewed as increasing the available transmission capability for purposes of Section 10v. It says that Hydro One does not maintain an active OASIS, and therefore parties cannot compete equitably for transmission service over that interface. It suggests remedial action to assure access to the legislatively-mandated incremental capacity, such as reducing firm transmission reservations at the Michigan Electric Coordinated System southern interface on a one-for-one basis with new transfer capacity added to the Hydro One interconnection or requiring the utilities to make in-state generation available to alternative electric suppliers to the extent available import capability is not permanently increased.

The Commission agrees with the Staff that I&M's stipulation to the Joint Report removes the basis for conducting a hearing on the transmission capacity expansion plan. As to the concerns raised by ABATE and Energy Michigan, the Commission concludes that the issues would be better resolved when there is less uncertainty about when the projects comprising the Joint Report will be completed and whether the additional transmission capacity will be used to facilitate retail open access in Michigan. The issues could be raised in the context of a complaint alleging noncompliance with Section 10v or an application by Consumers or Detroit Edison to increase rates. Pursuant to MCL 460.10(d)(2), completion of the increase in transmission capacity required

by Section 10v is a condition to any rate increase for those two companies from December 31, 2003 through December 31, 2013 (as is compliance with the market test in MCL 460.10f).

### Cost Recovery

The utilities raised a number of issues in connection with the recovery of the costs of implementing the Joint Report. Consumers says that none of its investment is reflected in its current OATT, and thus requests that the Commission authorize the company to establish a regulatory asset, with the costs to be recovered, with carrying costs, at the end of the rate freeze. Detroit Edison says that the primary means for it to recover its costs will be a FERC-approved transmission tariff, but, in the event that FERC-approved tariffs do not provide full recovery, it proposes that the utilities file reports no later than December 31, 2003 and that the Commission initiate a case within 60 days of the filing to determine an appropriate procedure for recovering the remaining cost. I&M says that it anticipates that the costs, other than for the second Dumont transformer, will be recovered through revenues from FERC-approved transmission rates, as well as state commission rate cases. For the approximately \$20 million related to the Dumont transformer, it says that it is preparing a filing for FERC approval that may permit recovery of some of the cost. It proposes that it be authorized to file, within 90 days after a final FERC decision, an application for authority to recover any remaining cost from Consumers and Detroit Edison because the actions set forth in the Joint Report are designed to increase transmission capacity into their service territories.

The Staff says that the issue of cost recovery is premature and not within the scope of this case as defined by Section 10v, which envisions that utilities must first seek cost recovery through FERC-approved transmission tariffs. It says that the language of Section 10v should be sufficient to ensure cost recovery at an appropriate time.

ABATE agrees that Section 10v does not require the Commission to approve cost recovery at this time. PG&E also says that it would be premature to approve cost recovery because Section 10v authorizes cost recovery only if there is no recovery through FERC rates and because there is a rate freeze. Both suggest that deferred cost accounting might be appropriate.

The Commission concludes that issues of cost recovery should not be addressed at this time. Section 10v provides that the utilities must first seek recovery through transmission rates approved by the FERC. “The commission shall authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet the requirements of this section that are not recovered through FERC transmission rates.” MCL 460.10v(3). It is not sufficient to argue, as Consumers does, that its current transmission rates do not cover these new costs. It or a subsequent purchaser of its transmission system must first seek recovery in the federal forum. Further, to the extent that the FERC may approve arrangements that do not allocate transmission revenues in a manner that fully compensates a utility, as I&M fears, that is a matter that must be addressed at the federal level, and is not a reason for Michigan customers to pay twice for transmission upgrades. Furthermore, if no Michigan customers benefit from the upgrades, there may be no basis under Section 10v(3) to approve any cost recovery. Finally, given the uncertainty about whether, when, and how the FERC will provide recovery for any of the utilities, the Commission is not in a position to set a time by which the utilities must file to seek any recovery from Michigan retail customers.

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 AACRS, R 460.17101 et seq.

b. These dockets should be closed.

THEREFORE, IT IS ORDERED that these dockets are closed, as discussed above.

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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**GREAT LAKES ENERGY COOPERATIVE.** )  
\_\_\_\_\_ )

Case No. U-12781

Suggested Minute:

“Adopt and issue order dated November 20, 2001 closing these dockets in which Consumers Energy Company, The Detroit Edison Company, and Indiana Michigan Power Company filed plans to increase transmission capacity as required by 2000 PA 141, as set forth in the order.”