

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, for</b>	)	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, and</b>	)	Case No. U-12781
<b>GREAT LAKES ENERGY COOPERATIVE.</b>	)	
_____	)	

At the July 23, 2002 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**

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) submitted a plan in Case No. U-12780 and The Detroit Edison Company (Detroit Edison), Consumers Energy Company

(Consumers), and Great Lakes Energy Cooperative submitted another plan, called the Joint Report, in Case No. U-12781.

On November 20, 2001, the Commission issued an order closing both dockets, and stated as follows:

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 some of the parties about allocating use of the new transmission capacity and assuring that the new capacity enhances competition in 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).

Order, pp. 5-6. The Commission also concluded that it should not address cost recovery at that time because Section 10v requires that the utilities first seek recovery through transmission rates approved by the Federal Energy Regulatory Commission.

On December 20, 2001, Consumers Energy Company filed a petition for rehearing. It argues that it was legal error for the Commission to fail to rule that (1) the Joint Report is in compliance with Section 10v, (2) once a utility has completed the projects identified in the Joint Report, it 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.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, R460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party

to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission's determination in the November 20, 2001 order that a hearing on the Joint Report was not required because the utilities had reached agreement on a transmission capacity expansion plan was not a finding that the proposed plan did not comply with Section 10v nor was it a finding that a utility that completed the projects required by the plan would not be in compliance with Section 10v. Nevertheless, it appears from Consumers' petition for rehearing that the order was not sufficiently clear. The Commission therefore grants rehearing in part.

First, the Joint Report technically complies with Section 10v because the record shows that it will achieve the required increase in transmission capacity. Second, once a utility has completed the projects identified in the Joint Report for its system and submitted appropriate verification, it will be deemed to be in technical compliance with Section 10v. Third, the projects identified in the Joint Report are, for purposes of compliance with Section 10v, reasonable and prudent. On the other hand, the Commission declines to address the issue of whether the costs are reasonable and prudent. As the Commission previously concluded, Section 10v requires that the utilities first seek recovery through transmission rates approved by the Federal Energy Regulatory Commission. It would not be appropriate for the Commission to rule on whether costs to be recovered through those rates are reasonable and prudent.

The Commission has reviewed with care the specific language in Section 10v of the Customer Choice and Electricity Reliability Act. Although the Act does not specifically require that the 2000 megawatts of increased available transmission capability (ATC) result in 2,000 megawatts being available and used by Michigan customers, that is a logical expectation and outcome

flowing from legislation enacted by the Michigan Legislature. The Commission is therefore concerned that much of the increased ATC will benefit customers in other states and will not benefit Michigan's customer choice program. Indeed, the slowdown in the economy and the corresponding lower demand for electricity has made more import capability available to alternative electric suppliers even as the projects identified in the Joint Report are being used largely to serve markets other than Michigan. The Commission expects that all affected parties will begin now to take the actions that are necessary to ensure that, when the economy improves, alternative electric suppliers in Michigan will have access to at least 2,000 MW more transmission capability than on January 1, 2000, as required by Section 10v. The Commission will continue to work closely with the FERC, MISO, PJM, and other interested and affected parties to ensure that open and competitively neutral access to transmission service benefits all types of customers in the state. Any cost recovery beyond that authorized by the FERC would depend on whether the costs incurred are "reasonable and prudent" and are attributable to "benefiting customers," as required by Section 10v(3).

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 AACS, R 460.17101 et seq.
- b. The petition for rehearing should be granted in part.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Consumers Energy Company is granted in part 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 July 23, 2002.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-12780

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**CONSUMERS ENERGY COMPANY,** and )  
**GREAT LAKES ENERGY COOPERATIVE.** )  
\_\_\_\_\_ )

Case No. U-12781

Suggested Minute:

“Adopt and issue order dated July 23, 2002 granting in part the petition for rehearing filed by Consumers Energy Company, as set forth in the order.”