

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the proposal of the)
CHOICE ADVISORY COUNCIL for a statewide)
customer education program and other related) Case No. U-12133
matters.)
_____)

At the April 17, 2003 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

The Commission has issued a series of orders in this docket to implement a customer education program consistent with the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141), MCL 460.10 et seq. The foundation for the program was the work of the CHOICE Advisory Council, which resulted in a settlement agreement that was filed on April 27, 2001. On October 11, 2001, the Commission gave its final approval to the agreement, although it reaffirmed that the education program should not commence yet in light of current market conditions. The Commission Staff (Staff) continued to work with the CHOICE Advisory Council subcommittee (representatives of the utilities, alternative electric suppliers, and customers) and agencies selected to carry out the education program (the contractors) to develop the education program, and the Commission continued to monitor the development of competition in Michigan.

On August 20, 2002, the Commission issued an order noting that contract negotiations between the utilities and the contractors were not completed and that there were unresolved issues preventing the parties from signing a contract. Nevertheless, the Commission concluded that the education program should begin for the purposes of (1) informing commercial electric customers about customer choice, (2) informing commercial and residential electric customers about the availability of green power and related tariff offerings, and (3) informing potential alternative electric suppliers of the opportunities to participate in the customer choice program in Michigan. The Commission directed the subcommittee to implement the education program approved on October 11, 2001, modified as necessary, to accomplish those three purposes. The Commission also indicated that it would review and approve cost recovery for the prudent costs of this portion of the overall program in a later order. The Commission directed the utilities to work with the Staff and the subcommittee to develop a methodology for evaluating the effectiveness of the program in relevant market areas and within customer categories. Finally, the Commission directed the utilities and contractors to enter into a contract within two months that would permit implementation of the education program as soon as possible.

On September 19, 2002, the Michigan Electric Cooperative Association (MECA), the Michigan Electric & Gas Association (MEGA), The Detroit Edison Company (Detroit Edison), and Consumers Energy Company (Consumers) filed a petition for rehearing of the August 20 order seeking rehearing or clarification related to (1) language in the order that they think may have modified the cost recovery mechanism, (2) how to determine the specific changes to the program contemplated by the order, (3) whether the changes are consistent with Act 141 and how the changes affect the settlement agreement previously approved by the Commission, and (4) the requirement to enter into the implementation contract within two months.

The Commission intended the August 20 order to jump start implementation of selected portions of the education program. Although recognizing that the parties would need time to adjust the program to accomplish the three purposes identified in the order, the Commission anticipated that such adjustments could be accomplished within a matter of weeks. With this in mind, the Commission imposed a two-month deadline for the utilities and contractors to enter into a contract regarding implementation of the education program. Unfortunately, despite the passage of nearly 8 months, the required contract has not been executed and little apparent progress has been made.

The inability of the parties to execute the contract in a more timely manner as directed in the August 20 order is a matter of considerable disappointment to the Commission. It has been almost six years since the June 5, 1997 order in Case No. U-11290, wherein the Commission first recognized the importance of a customer education program to the restructuring of the electric utility industry and directed the Staff to report to the Commission regarding consumer education issues. In the interim, the Commission, its Staff, and the CHOICE Advisory Council participants have expended considerable time and effort in the preparation and review of various proposals that have come to naught.

Of more concern, for the past 15 months, the ratepayers of the MEGA companies, which include Alpena Power Company (Alpena), Indiana Michigan Power Company d/b/a American Electric Power Company (I&M), Edison Sault Electric Company (Edison Sault), Upper Peninsula Power Company (UPPCo), Wisconsin Electric Power Company (Wisconsin Electric), Wisconsin Public Service Corporation (WPS Corp), and Northern States Power Company-Wisconsin d/b/a Xcel Energy (Xcel), have been charged 18¢ per meter per month for a consumer education program that remains stalled. Reports filed in this docket indicate that during 2002 these

companies collected over \$542,000 and incurred no expenses.¹ Moreover, although these funds continue to be collected, there now appears no reasonable likelihood that the primary purpose of their collection will be realized in the foreseeable future.

Given the lack of progress and the inability of the parties to meet the deadline for execution of a contract between the contractors and the utilities, the Commission is persuaded that it is time to unilaterally institute measures designed to accomplish at least a portion of the goal intended by passage of Act 141 and to relieve customers from the obligation to continue to contribute to the CHOICE Advisory Council educational program under the current circumstances. Accordingly, the Commission finds that the cost recovery mechanism described in ¶ 6 of the April 27, 2001 settlement agreement, which was reviewed and approved by the July 25 and October 11, 2001 orders in this docket, should be prospectively suspended to the extent that it applies to the MEGA companies.

Having determined that ¶ 6 of the settlement agreement, which is the regulatory basis for continued collection of the 18¢ per meter per month for consumer education activities described in the August 20 order, should be prospectively suspended with regard to the MEGA companies, the Commission finds that Alpena, I&M, Edison Sault, UPPCo, Wisconsin Electric, WPS Corp, and Xcel should cease collecting the 18¢ per meter per month from their customers as soon as practicable following issuance of this order.

Not later than August 1, 2003, each of the above-named MEGA companies shall fulfill the reconciliation obligation imposed by ¶ 14 of the settlement agreement by submitting a report regarding the amounts collected during 2003 pursuant to the cost recovery mechanism described in

¹ The amounts collected by each company are as follows: Alpena (\$34,414), Edison Sault (\$48,934), I&M (\$263,329), UPPCo (\$103,265), Wisconsin Electric (\$56,250), WPS Corp (\$18,083), and Xcel (\$18,572).

¶ 6 of the April 27, 2001 settlement agreement together with a description of any amounts expended during 2003 in conjunction with the CHOICE Advisory Council education program. The reports should also identify the total amount of money collected by each company since January 1, 2002.

Because the Commission is persuaded that the monies collected by the MEGA companies should not lie fallow indefinitely, each of the MEGA companies that collected funds pursuant to ¶ 6 of the settlement agreement shall file an application simultaneously with the filing of its August 1, 2003 reconciliation report. These applications shall propose how each of the MEGA companies could promote green power, which was one of the program objectives identified in the August 20 order. Because most of the MEGA companies should have the ability to offer green power and related tariff offerings by that time, the Commission encourages these utilities to focus their efforts in that direction. While the Commission recognizes that spending all of the funds collected to date exclusively on green power education programs could be excessive, the Commission finds that at least a portion of the funds should be used for this purpose if the utility has the capability to provide green power to its customers.

Section 10r(2) of Act 141, MCL 460.10r(2), requires establishment of a funding mechanism to educate customers about “changes in the provision of electric service, including, but not limited to, the availability of alternative electric suppliers.” MCL 460.10r(2)(a). One recent change in electric service is the availability of green power via tariff. The December 20, 2002 order in Case No. U-13497, which approved a new “Green Rate” for UPPCo that allows customers to voluntarily purchase power from renewable energy resources, is an example of such developments. Accordingly, the Commission concludes that the funds collected pursuant to the 18¢ per meter per month surcharge for consumer education activities may properly be spent to promote

green power and to educate customers regarding the availability of green power and related tariff offerings.

If a utility does not offer a green power option, or if a utility determines that spending all of the funds collected pursuant to the 18¢ per meter per month surcharge for that purpose is not reasonable or necessary, it may propose in its application a methodology to refund any unexpended funds to its customers.

The Commission also finds that further activities by the CHOICE Advisory Council subcommittee, which was approved by the Commission's July 25, 2001 order, should be terminated at this time. The purposes of the subcommittee as set forth in ¶ 11 of the settlement agreement were to (1) ensure the competitive neutrality, objectivity, and consistency of the educational program, (2) review contracts between the utilities and the contractors, (3) verify expenditures, and (4) submit invoices for grants. Because the Commission has suspended collection of the 18¢ per meter per month surcharge from the MEGA companies and provided direction regarding how such funds may be spent or refunded, and because Detroit Edison and Consumers will not begin to collect any surcharges until the termination of the rate caps imposed by MCL 460.10d, the Commission finds that the CHOICE Advisory Council subcommittee is no longer necessary.

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 denied as moot.

c. The cost recovery mechanism described in ¶ 6 of the April 27, 2001 settlement agreement should be prospectively suspended to the extent that it applies to the MEGA companies.

d. Continued collection of the 18¢ per meter per month for consumer education activities described in the August 20 order should be prospectively suspended with regard to the MEGA companies.

e. No later than August 1, 2003, each of the MEGA companies should submit a report regarding the amounts collected or expended during 2003 pursuant to the cost recovery mechanism. Simultaneously with the filing of the 2003 reconciliation report, each MEGA company should file an application proposing how it intends to use the funds collected pursuant to the CHOICE Advisory Council program to promote green power or how it will refund such funds to its customers.

f. Further activities by the CHOICE Advisory Council subcommittee, which was approved by the Commission's July 25, 2001 order, should be terminated.

THEREFORE, IT IS ORDERED that:

A. The September 19, 2002 petition for rehearing of the August 20, 2002 order is denied.

B. The cost recovery mechanism described in ¶ 6 of the April 27, 2001 settlement agreement is prospectively suspended to the extent that it applies to Alpena Power Company, Indiana Michigan Power Company d/b/a American Electric Power Company, Edison Sault Electric Company, Upper Peninsula Power Company, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Northern States Power Company-Wisconsin d/b/a Xcel Energy.

C. Continued collection of the 18¢ per meter per month for consumer education activities described in the August 20, 2002 order is prospectively suspended with regard to Alpena Power Company, Indiana Michigan Power Company d/b/a American Electric Power Company, Edison

Sault Electric Company, Upper Peninsula Power Company, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Northern States Power Company-Wisconsin d/b/a Xcel Energy.

D. No later than August 1, 2003, Alpena Power Company, Indiana Michigan Power Company d/b/a American Electric Power Company, Edison Sault Electric Company, Upper Peninsula Power Company, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Northern States Power Company-Wisconsin d/b/a Xcel Energy shall submit a report regarding the amounts collected or expended during 2003 pursuant to the cost recovery mechanism. Simultaneously with the filing of the 2003 reconciliation report, each of these companies shall file an application proposing how it intends to use the funds collected pursuant to the CHOICE Advisory Council program to promote green power or how it will refund such funds to its customers.

E. Further activities by the CHOICE Advisory Council subcommittee, which was approved by the Commission's July 25, 2001 order, are terminated.

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 April 17, 2003.

/s/ Dorothy Wideman
Its Executive Secretary

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

Chairman

Commissioner

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By its action of April 17, 2003.

Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated April 17, 2003 denying the petition for rehearing of the August 20, 2002 order regarding the CHOICE Advisory Council, revising the implementation of the customer education program, suspending further collection of the program surcharge, terminating the CHOICE Advisory Council subcommittee, and ordering certain utilities to either refund previously collected program funds to their customers or to use such funds to promote green power programs, as set forth in the order.”