

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 <b>CONSUMERS ENERGY COMPANY</b>	)	Case No. U-12134
and <b>THE DETROIT EDISON COMPANY.</b>	)	
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At the January 21, 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**

On December 4, 2000, the Commission issued an order adopting a code of conduct for electric utilities and alternative electric suppliers, as required by Section 10a(4) of the Customer Choice and Electricity Reliability Act, MCL 460.10a(4). Among other things, the order required the filing of compliance plans and permitted the filing of requests for waivers. On October 3, 2002, the Commission issued a series of orders addressing the compliance plans and requests for waivers that had been filed by electric utilities and alternative electric suppliers.

On October 30, 2002, Alpena Power Company (Alpena) filed a request for another waiver. On November 4, 2002, Northern States Power Company-Wisconsin, d/b/a Xcel Energy, (NSP-W) and Wisconsin Public Service Corporation (WPS Corp) each filed a petition for rehearing of the October 3, 2002 order. On November 25, 2002, the Commission Staff filed responses to the petitions for rehearing.

### Alpena Power Company

Alpena requests a waiver of section II.A of the code to permit it to provide (1) water meter reading services to the City of Alpena, (2) computer hardware and software for water utility billing by the City of Alpena, (3) electric system-related construction and repair of non-public utility electric systems owned by unaffiliated parties, and (4) routine construction services for other utilities (telecommunication and cable television) performed in conjunction with work on Alpena's distribution system. Alpena represents that these services generate relatively little revenue, that it does not market or subsidize the services, that it may be the only provider in the area, and that its provision of these services permits it to share efficiencies with the city and other utilities for the benefit of their mutual customers.

The Commission finds that the requested waiver is reasonable and in the public interest so long as the company adheres to the remaining provisions of the code, including maintaining separate books and accounts for regulated and unregulated operations, and properly and fully allocates the costs of providing these services between regulated and unregulated operations. In all other respects, Alpena remains subject to the code of conduct and the October 3, 2002 order.

### Northern States Power Company-Wisconsin

In its petition for rehearing, NSP-W requests that the Commission reopen the record and reconsider its decision to deny the requested waiver of section III.C of the code, which governs the pricing of goods and services provided to or received from an affiliated entity. It says that its parent company, Xcel Energy Inc., is a holding company registered with the Securities and Exchange Commission (SEC) and that the Commission's decision to deny the waiver has the unintended consequence of preventing NSP-W from simultaneously complying with the rules and orders of both the Commission and the SEC. The Staff supports the requested waiver.

The Commission concludes, in light of the additional information provided by NSP-W, that it should grant the waiver to avoid placing NSP-W in a position where it may be unable to comply with both the transfer pricing provisions of the Michigan code of conduct and the pricing standards enforced by the SEC. In all other respects, NSP-W remains subject to the code of conduct and the October 3, 2002 order.

### WPS Corp

In its petition for rehearing, WPS Corp requests waivers of sections II.A, II.D, II.E, III.A, and III.C of the code of conduct for specific unregulated services that it provides to its affiliate, WPS Energy Services, Inc., (WPS Energy) as it had requested in its amended waiver request filed on July 30, 2002. It represents that it provides to WPS Energy corporate support (such as benefits administration and employee recruitment), information technology, printing services, and distribution engineering assistance related to facilities that WPS Corp does not own or operate. It says that granting the requested waivers will not inhibit the development or functioning of the competitive market and that transactions between the two are already governed by Wisconsin laws that are intended to prevent cross-subsidization, information sharing, and preferential treatment. It represents that the affiliate interest agreement filed with and approved by the Wisconsin commission requires it to separately account for the services on a fully allocated basis and prohibits it from providing the services if there will be an increase in costs to its ratepayers. Further, it says that granting the waivers of sections III.A and III.C will avoid jurisdictional inconsistencies.

The Staff opposes the request with respect to sections III.A and III.C. With respect to section III.A, it says that the existence of a Wisconsin rule prohibiting discrimination is not a sufficient reason to exempt WPS Corp from a similar rule in Michigan. With respect to

section III.C, it says that WPS Corp, unlike NSP-W, is not governed by the SEC's rules on transfer pricing, and therefore should be subject to the affiliate pricing standard in the code of conduct.

The Commission agrees with the Staff that WPS Corp has not provided sufficient justification for waivers of sections III.A and III.C. In the October 3, 2002 order, at page 3, the Commission denied WPS Corp's request for a waiver of section III.C, stating: "This provision represents a fundamental regulatory pricing requirement, and is one of the most effective tools for preventing ratepayer subsidization of a utility's unregulated operations." WPS Corp has not persuaded the Commission that its decision to deny the waiver was in error. Furthermore, unlike NSP-W, WPS Corp is not part of a holding company subject to SEC regulation of transfer pricing. As to a waiver of section III.A, WPS Corp has not shown any inconsistency in being subject to antidiscrimination standards in both Wisconsin and Michigan. As to the remaining waiver requests (sections II.A, II.D, and II.E), the Commission finds those to be reasonable and in the public interest so long as the company adheres to the remaining provisions of the code, including maintaining separate books and accounts for regulated and unregulated operations, and properly and fully allocates the costs of providing these services between regulated and unregulated operations. In all other respects, WPS Corp remains subject to the code of conduct and the October 3, 2002 order.

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. Alpena's request for a waiver should be granted.

c. NSP-W's petition for rehearing and request for waiver should be granted.

d. WSP Corp's petition for rehearing and request for waivers should be granted in part and denied in part.

THEREFORE, IT IS ORDERED that

A. Alpena Power Company's request for a waiver is granted.

B. The petition for rehearing and request for waiver filed by Northern States Power Company-Wisconsin, d/b/a Xcel Energy, is granted.

C. The petition for rehearing and request for waivers filed by Wisconsin Public Service Corporation is granted in part and denied in part.

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 E A L )

/s/ Laura Chappelle  
Chairman

By its action of January 21, 2003.

/s/ David A. Svanda  
Commissioner

/s/ Dorothy Wideman  
Its Executive Secretary

/s/ Robert B. Nelson  
Commissioner

- c. NSP-W's petition for rehearing and request for waiver should be granted.
- d. WSP Corp's petition for rehearing and request for waivers should be granted in part and denied in part.

THEREFORE, IT IS ORDERED that

- A. Alpena Power Company's request for a waiver is granted.
- B. The petition for rehearing and request for waiver filed by Northern States Power Company-Wisconsin, d/b/a Xcel Energy, is granted.
- C. The petition for rehearing and request for waivers filed by Wisconsin Public Service Corporation is granted in part and denied in part.

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

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Case No. U-12134

Suggested Minute:

“Adopt and issue order dated January 21, 2003 granting the request for waiver filed by Alpena Power Company, granting the petition for rehearing and request for waiver filed by Northern States Power Company-Wisconsin, d/b/a Xcel Energy, and granting in part and denying in part the petition for rehearing and request for waivers filed by Wisconsin Public Service Corporation, as set forth in the order.”