

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of )  
**FORD MOTOR COMPANY** and **ROUGE** )  
**STEEL COMPANY** against **THE DETROIT** )  
**EDISON COMPANY.** )  
\_\_\_\_\_ )

Case No. U-12980

At the March 12, 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**

History of Proceedings

On June 12, 2001, Ford Motor Company (Ford) and Rouge Steel Company (Rouge) filed a complaint against The Detroit Edison Company (Detroit Edison) relating to Ford’s and Rouge’s arrangement with Dearborn Industrial Generation, L.L.C., (DIG) to supply their power needs at the Rouge Complex. The complaint disputes Detroit Edison’s attempts to assess the charges provided in its retail access service tariff against Ford’s and Rouge’s usage and to collect stranded cost or transition charges.

At a prehearing conference on November 8, 2001, Administrative Law Judge James N. Rigas (ALJ) granted leave to intervene to DIG and CMS MS&T Michigan L.L.C. (collectively, CMS), which are both wholly owned subsidiaries under the holding structure of CMS Enterprises

Company.<sup>1</sup> The Commission Staff (Staff) also appeared at the prehearing conference and participated in the proceedings.

The ALJ conducted an evidentiary hearing on July 1, 2002. Thereafter, the parties filed briefs and reply briefs.

On October 14, 2002, the ALJ issued a Proposal for Decision (PFD) setting forth two principal determinations. First, he found that using electricity generated by DIG to serve Rouge's load is "self-service power" under Section 10a(6)(a) of the Customer Choice and Electricity Reliability Act, MCL 460.10a(6)(a), and is thus exempt from retail access service charges in Detroit Edison's tariffs. He reasoned that Rouge's manufacturing plants and DIG's cogeneration facility are located on the same land, which Rouge owns, so that DIG's electrical output qualifies as "[e]lectricity generated and consumed at an industrial site" under Section 10a(6)(a).<sup>2</sup> However, he further determined that Ford, which is located on its own, separate premises within the Rouge Complex, cannot claim the self-service exemption. Thus, he recommended a grant of relief only with respect to Rouge.

Second, the ALJ determined that the energy generated by, and procured from, wholesale suppliers other than DIG did not qualify as self-service power. Thus, he concluded that the delivery of those purchases to Rouge or Ford is subject to Detroit Edison's retail access service charges.

Ford and Rouge (collectively, Ford/Rouge), CMS, and the Staff filed exceptions to the PFD. Ford/Rouge, Detroit Edison, and the Staff filed replies to exceptions.

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<sup>1</sup> CMS Enterprises is an indirect wholly owned subsidiary of CMS Energy Corporation. In this order, "CMS" may refer to any of the various affiliates that played a role in the DIG arrangement.

<sup>2</sup> The ALJ's finding regarding Rouge's operations includes the Ladle Metallurgical Furnace, which Rouge owns and operates on the site of the Rouge Complex.

## Statement of Facts

For the most part, the factual circumstances and events giving rise to this complaint are not in dispute, although the parties do dispute their legal and regulatory consequences.

Ford has been conducting a variety of industrial operations related to automotive manufacturing at the Rouge Complex site since the 1920s. In addition to an automotive assembly plant and other industrial facilities, Ford developed steelmaking operations on the site. Ford also constructed a 345 megawatt (MW) powerhouse, which began to supply its electrical requirements at the Rouge Complex in 1931. Ford and Detroit Edison made arrangements to interconnect the powerhouse with Detroit Edison's electrical system at two separate points, and Detroit Edison provided Ford with backup power.

Ford and Detroit Edison took a series of steps to bring their arrangement into formal compliance with the requirements of federal and state law, as those requirements developed over time. Thus, in 1974, Ford and Detroit Edison signed a power interchange agreement that superseded their prior agreements. Among other things, the agreement provided for each party to sell energy to the other on a short-term basis or under other specified circumstances. In the March 17, 1975 order in Case No. U-4772, the Commission approved the agreement as a special contract. A few years later, it was determined that the incidental sale of electricity to Detroit Edison implicated the jurisdiction of the Federal Energy Regulatory Commission (FERC) under the Federal Power Act, 16 USC 791a et seq. The parties sought and obtained the FERC's approval of the sales in 1990.

In the late 1980s, Ford decided to disaffiliate itself from the Rouge steelmaking business. Rouge became an independent company in 1989, Ford relinquished all of its remaining ownership interests in Rouge in 1992, and Rouge became publicly traded in 1994. Rouge, however,

continues to supply steel to Ford. After the Rouge divestiture, Ford and Rouge operated the powerhouse as tenants in common, and Rouge assumed rights and obligations comparable to Ford's under an interconnection agreement with Detroit Edison.

On February 1, 1999, a catastrophic explosion irreparably damaged the powerhouse. However, even before that incident, Ford and Rouge had been making plans to replace the powerhouse with a new facility. After soliciting interest from potential providers of generation services, Ford and Rouge accepted a proposal on behalf of CMS to construct a gas-fired cogeneration facility that would supply electricity and steam to the Rouge Complex. CMS formed DIG as a subsidiary to design, build, own, and operate the cogeneration facility. Ford and Rouge memorialized their arrangement with DIG in an agreement signed on January 13, 1999, which calls for DIG to provide up to 300 MW of capacity to serve the combined loads of Ford and Rouge.

At 710 MW, the design capacity of the DIG facility is well in excess of the electrical requirements of the Rouge Complex, which typically vary between 180 MW and 260 MW. Ex. S-7, Disc. Resp. FR/11. The reason for constructing more capacity than needed was to sell the excess capacity into wholesale markets. To facilitate its wholesale activities, DIG obtained a FERC determination on June 21, 2000 that the project qualifies as an exempt wholesale generator (EWG) under 15 USC 79z-5a. Ex. I-11. Because a condition of federal law is that the project operator must make sales exclusively at wholesale, DIG decided to assign its contractual interests in selling power to Ford and Rouge to CMS MS&T Michigan. To operate in accordance with its EWG status, DIG now makes wholesale sales to CMS MS&T Michigan, which resells the power to Ford and Rouge, although DIG continues to guarantee the contractual obligations assumed by

CMS MS&T Michigan. Another affiliate, CMS Marketing, Services and Trading Company (CMS MS&T), markets DIG power to other wholesale customers.

The DIG cogeneration facility is located across Miller Road from Ford's and Rouge's plants within the Rouge Complex. The parcel of land occupied by the DIG facility is owned by Rouge, which leases it to DIG. Rouge also owns the land immediately across Miller Road from DIG. The electrical lines connecting the DIG facility and the various loads within the Rouge Complex belong to DIG, Rouge, or Ford. The Rouge Complex's electrical system maintains 230 kilovolt (kV) interconnections with the public utility system at two locations. One point of interconnection is Detroit Edison's Baxter Substation, located to the west of the Rouge Complex, and the other is a radial line that taps off of the Waterman-Navarre line and terminates at the DIG facility's switchyard.

The DIG facility began commercial operation in July 1999, but it did not begin to fulfill its contractual obligations to supply Ford's and Rouge's requirements until April 2001. Detroit Edison provided electric sales service to Ford and Rouge in the meantime.

According to Ford/Rouge, the DIG project was to have supplied all of their requirements, but they later determined that it would be more economical to purchase power from off-site suppliers during off-peak hours instead of running the DIG generators constantly. There is also an occasional need to purchase replacement power to serve the Rouge Complex, e.g., when a DIG generator has an outage. When the parties to the DIG arrangement sought to wheel their power purchases to the Rouge Complex,<sup>3</sup> Detroit Edison required, as a condition of access to its system, that Ford and Rouge enroll in the utility's retail open access program and agree to pay the retail

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<sup>3</sup> According to CMS, CMS MS&T Michigan purchases the power from CMS MS&T and delivers it to the Rouge Complex. CMS MS&T makes the wholesale purchases from third-party suppliers. CMS exceptions at 7-8.

access service charges in its tariffs. Ford and Rouge did sign retail open access agreements with Detroit Edison, which became effective on April 1, 2001, but they claimed a right to contest those charges.

### Discussion

Ford/Rouge claim that their electrical usage at the Rouge Complex qualifies as self-service power under Section 10a(6), which was added to Public Act 3 of 1939 (Act 3) by Public Act 141 of 2000 (Act 141). Section 10a(6) provides:

This act does not prohibit or limit the right of a person to obtain self-service power, and it does not impose a transition, implementation, exit fee, or any other similar charge on self-service power. A person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business. As used in this subsection, “self-service power” means any of the following:

- (a) Electricity generated and consumed at an industrial site or contiguous industrial site or single commercial establishment or single residence without the use of an electric utility’s transmission and distribution system.
- (b) Electricity generated primarily by the use of by-product fuels, including waste water solids, and the electricity is consumed as part of a contiguous facility, with the use of an electric utility’s transmission and distribution system, but only if the point or points of receipt of the power within the facility are not greater than 3 miles distant from the point of generation.<sup>[4]</sup>
- (c) A site or facility with load existing on the effective date of the amendatory act that added this section that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement of

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<sup>4</sup> Although three of the boilers in the DIG cogeneration facility can burn the blast furnace gas given off as a byproduct of Rouge’s steelmaking operations, Ford/Rouge are not pressing a claim that the arrangement qualifies as self-service power under subdivision (b) of Section 10a(6). Their claim to self-service status rests on subdivision (a), as modified by subdivisions (c) and (d). The Staff raises one exception relating to blast furnace gas, but that exception does not affect the findings and conclusions reached in this order.

this subdivision regardless of whether self-service power was being generated on the effective date of the amendatory act that added this section.

(d) A commercial or industrial facility or single residence that meets the requirements of subdivision (a) or (b) meets this definition whether or not the generation facility is owned by an entity different from the owner of the commercial or industrial site or single residence.

MCL 460.10a(6). Ford and Rouge contend that, as users of self-service power, they are statutorily exempt from paying Detroit Edison's tariff charges.

As already described, Ford's and Rouge's arrangement with DIG uses two types of electrical energy: energy that is generated by the DIG facility, and energy that a CMS affiliate purchases from other suppliers connected to the transmission grid. Each type of transaction raises different issues.

a. DIG generation

In concluding that DIG-generated electricity used by Rouge, but not Ford, qualifies as self-service power, the ALJ determined that the land and facilities owned by Rouge, including the premises it leases to DIG, constitute a single, contiguous industrial site within the meaning of Section 10a(6)(a). PFD at 13. He further found that land separately owned by Ford did not qualify as part of the contiguous site because, he reasoned, self-service power means that the customer using the power must also own the premises occupied by the generator. Id. at 14. In reaching this determination, he rejected Ford/Rouge's claim that a contiguous industrial site suggests "a spatial relationship" among two or more separately owned tracts. Id. at 15. He said that Ford/Rouge's interpretation would allow a self-service arrangement to expand without limit to other properties, as long as each property borders another in a chain that eventually leads to the generation site (and the electrical connection to the generator does not belong to the electric

utility). He noted that Section 10a(6) provides that “[a] person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business,” which, in his view, prohibits the DIG facility from acting as an electric supplier to Ford. Id. He observed that Section 10a(6) refers to a “site” only in the singular. Id.

Ford/Rouge take exception to the conclusion that their arrangement with DIG to supply Ford’s power needs does not meet the requirement that the “[e]lectricity [be] generated and consumed at an industrial site or contiguous industrial site.” MCL 460.10a(6)(a). They take the position that the Rouge Complex, in its entirety, is a single industrial site. They recite the historical development of the complex as an integrated system of industrial plants, each making a contribution to Ford’s primary business of manufacturing automobiles. They claim that the Rouge Complex continues to function as an integrated industrial operation to this day and that, notwithstanding intervening changes in Rouge’s ownership, Rouge continues to supply Ford with steel. They observe that a system of tunnels, conduits, utilities, and other structures continues to link the various plants and facilities on the site. They say that both companies are similarly situated as customers of the DIG facility’s generation services.

Ford/Rouge argue that a self-service requirement based on unitary land ownership finds no textual support in Section 10a(6). They say that subdivision (d) of Section 10a(6) expressly states that it does not matter if different entities own the generation and the end-use facilities. They contend that Section 10a(6)(a) makes a deliberate distinction between “an industrial site or contiguous industrial site,” on the one hand, and a “single commercial establishment or single residence,” on the other, in that the phrasing limits residential and commercial customers using self-service power to a “single” establishment or residence, but it avoids using the word “single” to describe a qualifying industrial site. They argue that unitary land ownership is not implicit in the

meaning of the word “contiguous.” They note that the Court in Consumers Power Co v Lansing Bd of Water & Light, 200 Mich App 73; 503 NW2d 680 (1993), discussed the meaning of “contiguous” in addressing a relationship between the boundaries of two separate political subdivisions.

Ford/Rouge claim that electricity generated by the DIG facility and used at the Rouge Complex does not flow over or touch any lines or other facilities belonging to Detroit Edison. On the basis of this claim, they contend that Detroit Edison is not providing any services for which either of them should pay charges. They also argue that imposing undue restrictions on self-service arrangements would interfere with the legislative purpose, stated in MCL 460.10(2)(c), to encourage the development of merchant plants. Notwithstanding the ALJ’s objection, they argue that using self-service power to serve expanding clusters of unaffiliated customers would comport with Act 141’s competitive policies and that the only restrictions should be those contained in the statute itself. They further contend that the statutory requirements of contiguity and non-use of utility lines impose adequate brakes on undue expansion of self-service arrangements.

Ford/Rouge say that Section 10a(6), by providing that “[a] person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business,” creates an exemption from certain regulatory obligations. They say that, contrary to the PFD, that provision does not prohibit anything, let alone Ford’s self-service arrangement with the DIG facility.

CMS also takes exception to the ALJ's finding that the DIG facility cannot provide self-service power to Ford. CMS argues that Ford's and Double Eagle Steel Coating Company's<sup>5</sup> real estate within the Rouge Complex, together with Rouge's, forms a contiguous industrial site. CMS emphasizes the absence of any statutory language to support a requirement of common ownership of the land underlying the generator and the customer's load.

The Staff also maintains that the phrase "contiguous industrial site" does not require common ownership. The Staff says that Section 10q(4), MCL 460.10q(4), lends credence to Ford's and Rouge's use of a private distribution system to accommodate self-service power and further contends that it should be permissible for other electric users located contiguous to a private system to use self-service power as well. The Staff suggests that Detroit Edison is attempting to impede an arrangement that promises to benefit other potential self-service customers and promote industrial development. The Staff says that requiring unity of land ownership might cause industrial users to shift the title to their real estate or adopt different configurations of generators, even if those measures erode the cost or engineering efficiencies of a self-service arrangement. As an alternative to common ownership, the Staff proposes that end users located on a contiguous industrial site connected to a self-service generator should be required to show that they are taking power under a direct contractual relationship with the generator. Staff brief at 20.

In support of the ALJ's determinations, Detroit Edison contends that Section 10a(6) consistently refers to a customer site in the singular and thus restricts self-service power to one site owned by only one customer. Although it acknowledges that the statute does not define "contiguous," Detroit Edison says that nothing suggests that multiple customers could participate

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<sup>5</sup> Double Eagle Steel Coating Company (a joint venture of Rouge and USX Corporation) is a separate company, holds title to separate premises within the Rouge Complex, and signed its own agreement with DIG. Because it is not a named party to the complaint, this order does not directly adjudicate its rights or obligations.

in a self-service arrangement using a generator located on only one customer's premises. It says that the statute makes no exception for the historical development of the Rouge Complex under Ford's sole ownership prior to 1989. It distinguishes Consumers Power Co v Lansing Bd of Water & Light on the ground that the statute in that case used the word "contiguous" in describing a relationship between two clearly identified political subdivisions.

The circumstances of this dispute make it appropriate for the Commission to decide the case on the narrow ground that Section 10a(6) accommodates self-service power when generated at the DIG facility and used by either Ford or Rouge at the Rouge Complex. As described in the record, the arrangement meets the statutory requirement that self-service power be generated and consumed "at an industrial site or contiguous industrial site." MCL 460.10a(6)(a). The key word in the statute is "contiguous." At a minimum, it means that a self-service arrangement may encompass two parcels of land owned by different end users if they have a common boundary. Because the statute expressly provides for contiguity, the Commission need go no further than to decide that the Ford- and Rouge-owed premises within the Rouge Complex are contiguous and that the generation source of the self-service power resides on one of those customers' premises. Given these facts, this order need not address the policy preferences expressed by some parties regarding whether expanding clusters of properties could or should be served by a self-service arrangement, or whether the expansion of such arrangements would be subject to other restrictions.

The word "contiguous" is best understood by its lay meaning, as no one has suggested that it has a different technical or legal meaning. In Consumers Power Co v Lansing Bd of Water & Light, the Court interpreted MCL 124.3, which permitted a municipally owned utility to provide retail service within any city, village, or township that is "contiguous" to the corporate limits of the

owning municipality.<sup>6</sup> The City of Lansing, which owns the Board of Water and Light, sought to provide electric service in Watertown Township, with which it had a common boundary at only a single point (not a line). The Court’s holding—that the service was permissible under the statute because a single point of contact qualified as contiguous—is not directly applicable to this case, but the meaning attached by the Court to the word “contiguous” is instructive. The Court reasoned as follows:

No definition of the word “contiguous” is contained within the statute. Under these circumstances, the word must be afforded its plain and ordinary meaning. Where, as here, a term is not defined by the statute in which it appears, it is appropriate for this Court to review the dictionary definition of the word. The Random House College Dictionary: Revised Edition (1988), p 290 defines “contiguous” as “1. touching; in contact. 2. in close proximity without touching; near.” The “point contiguity” in this case satisfies the common dictionary definition of the term “contiguous.”

Clearly, the point of contact between the southeast corner of Watertown Township and the northwest corner of the City of Lansing constitutes a “touching” or “contact” under the standard dictionary definition of the term “contiguous.”<sup>7</sup> Furthermore, we find nothing in [MCL 124.3] itself that would negate this interpretation.

200 Mich App 76 (citations omitted). As in that statute, no definition of “contiguous” appears in Section 10a or elsewhere in Act 141 or Act 3. It is thus appropriate to construe “contiguous” in an everyday sense, as typically provided in a dictionary.

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<sup>6</sup> The substantive provisions of MCL 124.3 have since been amended, 2000 PA 155, although the current statute retains the word “contiguous.”

<sup>7</sup> This order does not address whether a single point of intersection between two premises would qualify as “contiguous” for purposes of Section 10a(6).

The dictionary definition of “contiguous,” as set forth by the Court above, speaks to a relationship between two distinct things.<sup>8</sup> A tract of land is contiguous in the sense that it stands in some type of geometrical configuration with another. Unless the word is to lose its independent meaning, it is reasonable to construe the statute to encompass two constituent parcels or tracts. Thus, a contiguous industrial site describes both Ford’s and Rouge’s premises within the Rouge Complex, and Section 10a(6)(a) recognizes that Ford can be served by self-service power generated on Rouge’s contiguous premises.<sup>9</sup>

Detroit Edison’s reliance on the statutory reference to “[e]lectricity generated and consumed at an industrial site or contiguous industrial site” to exclude multiple ownership of land relies to a large extent on the singular form of the word “site.” MCL 460.10a(6)(a). However, Section 10a(6) does not explicitly make land ownership a criterion for self-service power or otherwise imply that the title to the real estate is somehow important in establishing self-service arrangements. In point of fact, the only statutory reference to ownership is subdivision (d), which indicates that ownership of the generation facility by an entity different from the owner of the premises being served is not relevant in determining whether an arrangement qualifies as self-service power.

Given the common meanings attached to the words used in the statute, it is reasonable to construe “contiguous,” in conjunction with an “industrial site,” so that a self-service arrangement encompasses multiple parcels of land, whether or not they are separately owned. It may be, as the

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<sup>8</sup> The definitions of “contiguous” in the dictionaries consulted in the drafting of this order are to the same effect. Webster’s New World Dictionary, Third College Edition (1988), p. 301; The American Heritage Dictionary, Second College Edition (1985), p. 316; Funk & Wagnalls New Standard Dictionary of the English Language (1963), p. 568; Black’s Law Dictionary (7th ed. 1999), p. 315.

<sup>9</sup> Subdivision (c) indicates that Miller Road or other public rights-of-way crossing the site do not negate contiguity.

Staff suggests, that a single industrial site could refer to an industrial park or subdivision with multiple tenants or owners. The statute provides no definition of “site,” but the word does not necessarily implicate the notion of a single title to the real estate. Or the statute’s equating of self-service power with “[e]lectricity generated and consumed at an industrial site or contiguous industrial site” may mean an arrangement covering two industrial properties located next to each other, as in “electricity generated [at an industrial site] and consumed at an [i.e., the same] industrial site or [another] contiguous industrial site.” Either reading avoids the flaw in Detroit Edison’s interpretation, which strips the phrase “or contiguous industrial site” of any independent meaning and effectively excises it from the statute. Detroit Edison’s interpretation is contrary to the principle that every word in a statute should be read to give it meaning and that a construction that would render any part surplusage or nugatory is to be avoided. In re MCI Telecommunications, 460 Mich 396, 414; 596 NW2d 164 (1999).

Although the narrow basis for deciding this dispute is a textual reading of Section 10a(6), it is important to note that the Commission’s statutory construction furthers the purposes and policies of Act 141. As Ford/Rouge and the Staff point out, some of the important policies of Act 141 are to promote the development of merchant plants and alternative sources of electric supply and to rely more on deregulated market forces in supplying power needs. Moreover, the explicit provision made for self-service power in Section 10a(6) is itself a policy choice, as there was no provision relating to self-service power prior to Act 141. It would be incongruous to interpret Act 141 as barring Ford’s use of self-service power, given the Rouge Complex’s longstanding reliance on self-service arrangements under the prior law.<sup>10</sup>

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<sup>10</sup> Prior to Act 141, the Commission did not regulate self-service power on the rationale that a self-service provider was not a public utility. Order dated February 8, 1988, Case No. U-8930 (declaratory ruling granted to The Detroit Medical Center).

To qualify as self-service power, Section 10a(6)(a) also requires that the DIG facility's output be generated and consumed "without the use of an electric utility's transmission and distribution system." The ALJ rejected Detroit Edison's claim that Ford and Rouge are using Detroit Edison's distribution system simply by being electrically interconnected with those facilities. The ALJ said that interconnection enables a self-service arrangement to avoid operating on a stand-alone basis. PFD at 16. He also stated that it is reasonable to allow self-service providers to sell power at wholesale (using the utility interconnection to access the grid) when their capacity exceeds on-site requirements. Id.

Detroit Edison did not file exceptions to challenge the ALJ's finding and now concedes that the interconnection of its system with a self-service generator does not, by itself, disqualify customers from receiving self-service power. Detroit Edison replies to exceptions at 34. Therefore, the Commission adopts this finding and further finds that Ford's and Rouge's usage of the DIG facility's electrical output at the Rouge Complex meets the requirements for self-service power in Section 10a(6)(a).

Section 10a(6) provides that Act 141 (and, by extension, Act 3) does not impose "a transition, implementation, exit fee, or any other similar charge" for using self-service power. In addition to any applicable stranded cost or transition charges, the Commission finds that self-service power is exempt from the retail access service charges in Detroit Edison's tariff. The purpose of the tariff is to compensate Detroit Edison when it provides the types of services that self-service power displaces. (Notably, a self-service arrangement does not necessarily or always displace any standby, backup, or other bundled sales services provided by an electric utility to end-use customers.) If, as Detroit Edison alleges, there are cost implications of interconnecting self-service generation with its system that it cannot otherwise recover under its current service

arrangements with Ford, Rouge, and DIG, Detroit Edison should file an application proposing tariff or rate revisions that identify and justify those costs as well as appropriate cost recovery mechanisms.

b. Wheeled-in power

The ALJ found that the power that CMS affiliates purchase from off-site sources and wheel to the Rouge Complex does not qualify as self-service power under Section 10a(6). He further found that arrangements to wheel power to the Rouge Complex require access to the local utility's transmission and distribution system and are therefore subject to Detroit Edison's retail access service charges. PFD at 16-17. He reasoned that any end user that is located in Detroit Edison's service territory and connected to the system is a retail customer of Detroit Edison. *Id.* at 17.

In their exceptions, Ford/Rouge contend that they ceased to be retail customers of Detroit Edison when they signed their power supply contracts with DIG and stopped taking any services from Detroit Edison. Because they deal only with DIG and other CMS affiliates, Ford/Rouge say, they are not parties to the wholesale power purchase and wheeling transactions arranged by CMS under FERC-authorized tariffs and do not themselves make use of any of Detroit Edison's facilities. They say that Detroit Edison's role, together with the International Transmission Company (ITC),<sup>11</sup> is limited to providing the transmission and distribution services necessary to wheel purchased power to the DIG facility. They claim that the last step of the arrangement—the delivery of the power by CMS to the Rouge Complex—uses only private lines and facilities that do not belong to Detroit Edison.

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<sup>11</sup> ITC owns transmission facilities in Detroit Edison's service territory. ITC, in turn, was recently divested by Detroit Edison's parent company and is now owned by ITC Holdings Corp. Detroit Edison purchases the transmission services it requires under a FERC-authorized open access transmission tariff.

Ford/Rouge contend that their electrical usage, facilities, and 230 kV interconnections have all the appearance and service characteristics of a large wholesale customer connected to the transmission grid. They argue that, as in the case of the powerhouse historically, they should be treated as a public utility subject to the FERC's jurisdiction, and not as retail customers of Detroit Edison.

Detroit Edison argues that wheeling power from remote generators cannot qualify as "[e]lectricity generated and consumed at an industrial site or contiguous industrial site" under Section 10a(6) and that the statute's exemption from paying "transition, implementation, exit fee, or any other similar charges" therefore does not apply. Detroit Edison says that wheeling access to the Rouge Complex requires the use of its electrical lines and that its retail access service tariff provides the only means of obtaining necessary wheeling services. Detroit Edison also claims that Ford and Rouge are its retail customers because they are end users that can require it to fulfill its obligation as a public utility to provide them with generation services if the DIG facility does not. In fact, Detroit Edison claims, Ford and Rouge have always been its retail customers, notwithstanding their past reliance on the powerhouse for most of their electric supply, because Detroit Edison has historically supplied some portion of their electric needs.

According to Detroit Edison, wheeling arrangements make extensive use of its system, not only to obtain retail open access, but also to obtain the ancillary services needed to make a large, interconnected industrial load work efficiently. Specifically, Detroit Edison says that it maintains two 230 kV radial distribution feeds that provide electrical interconnections with the Rouge Complex. Given the cost effects of interconnection, Detroit Edison continues, it is reasonable for Ford and Rouge to compensate Detroit Edison as provided in the retail access service tariff (which includes securitization charges). Detroit Edison contends that there is no statutory basis to claim a

right to bypass its retail open access charges when power is being wheeled in to an end user via the public utility system, even if the customer also uses self-service power and uses privately owned lines to deliver wheeled-in power.

As Ford/Rouge concede, their usage of power that CMS purchases and wheels to them cannot qualify as self-service power under Section 10a(6). Ford/Rouge exceptions at 20 n.14. Detroit Edison owns distribution facilities that are necessary to deliver power purchases for end use at the Rouge Complex. Tr. 99-101, 179-80; Ex. S-7, Disc. Resp. MPSC FR/8. Thus, Ford and Rouge use retail open access service provided by Detroit Edison and are subject to the charges in Detroit Edison's retail access service tariff when they use power wheeled in from generation sources other than the DIG facility. Ford and Rouge cannot avoid their obligations as retail open access customers by engaging a CMS affiliate to enter into power purchases and wheeling transactions on their behalf in wholesale markets. Nor can they avoid those obligations by arranging for DIG or another CMS affiliate to own the switchyard or other facilities that may provide an intermediate physical link between Detroit Edison's facilities and the Rouge Complex. Detroit Edison's retail access service tariff applies by its own terms in these circumstances, and the charges in the tariff compensate Detroit Edison for the services that it provides in making retail access available to the Rouge Complex.

It is also noteworthy that the FERC has ruled that the obligation to pay retail open access charges is not dependent upon whether Detroit Edison owns the local facilities that interconnect with DIG's facilities or the Rouge Complex. In asserting the jurisdiction conferred by the Federal Power Act over Detroit Edison's interconnection agreement with DIG, the FERC rejected DIG's argument that federal jurisdiction should negate any obligation to pay state-imposed retail wheeling charges. The FERC stated:

While we find the Interconnection Agreement jurisdictional, we make no findings here as to any retail access charges that may be recoverable under Detroit Edison's Retail Tariff. As we explained in Order No. 888, "while we believe in most cases there will be identifiable local distribution facilities subject to state jurisdiction, we also believe that even where there are no identifiable local distribution facilities, states nevertheless have jurisdiction in all circumstances over the service of delivering energy to end users."<sup>12</sup> Any liability [DIG] may have for such charges is enforceable under state law, not by means of a FERC jurisdictional agreement. Thus, on compliance, Detroit Edison should delete from the Interconnection Agreement the obligation for [DIG] to pay retail access charges.

Detroit Edison Co, 95 FERC ¶61,415, at p. 62,536 (2001) (footnote omitted). Thereafter, DIG requested rehearing on the basis of its claim that Detroit Edison's 230 kV interconnection facilities should be reclassified as transmission facilities subject to federal jurisdiction.<sup>13</sup> The FERC denied rehearing, reiterating that:

[I]n finding that the facilities would be subject to our jurisdiction regardless of the nominal classification, we made no findings in the June 15 Order [quoted above] as to any retail access charges that may be recoverable under Detroit Edison's Retail Tariff. We directed Detroit Edison to delete from the Interconnection Agreement the obligation for [DIG] to pay retail access charges since any liability [DIG] may have for such charges is enforceable under state law, not by means of a FERC jurisdictional agreement.

Detroit Edison Co, 96 FERC ¶61,309, at p. 62,195 (2001) (footnotes omitted). Under the circumstances of this case, the Commission finds that it is reasonable and appropriate for Detroit Edison to impose the charges in its retail access service tariff against power that is purchased from

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<sup>12</sup> Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats & Regs ¶31,036, at 31,783 (1996), aff'd in relevant part sub nom Transmission Access Policy Study Group v FERC, 343 US App DC 151; 225 F3d 667 (2000), aff'd sub nom New York v FERC, 535 US 1; 122 S Ct 1012; 152 L Ed 2d 47 (2002).

<sup>13</sup> The appropriate jurisdictional classification and treatment of the facilities remain in dispute. See International Transmission Co, 99 FERC ¶61,211 (2002); ITC Holdings Corp, 102 FERC ¶61,182 (2003).

remote generation sources and wheeled over the transmission or distribution facilities of Detroit Edison or ITC (or both) to the Rouge Complex.

Assessing retail access service charges in this instance is also consistent with the authority granted to the Commission in Act 141 to establish “the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier.” MCL 460.10a(1). Even if Ford/Rouge can claim that the Rouge Complex or the DIG cogeneration facility is a public utility under the Federal Power Act when making wholesale sales, Ford and Rouge are retail customers subject to state jurisdiction when they acquire power for end-use purposes. The FERC’s Order No. 888, as discussed above, supports this determination. The fact that an industrial customer has a large load is not determinative under state or federal law for jurisdictional purposes.

c. DIG’s status under Act 141

The ALJ determined that the DIG cogeneration facility meets the definition of a “merchant plant” in Section 10g(1)(d) as “electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in this state that are not owned and operated by an electric utility.” MCL 460.10g(1)(d). He further reasoned that it is permissible for DIG to sell its generation at both wholesale and retail, finding that its dual roles as an EWG under federal law and an alternative electric supplier under state law are compatible. However, he concluded that DIG’s claim to be a provider of self-service power to the Rouge Complex would best be clarified if DIG were to apply to the Commission for a license as an alternative electric supplier pursuant to Act 141. PFD at 17-19.

CMS and Ford/Rouge argue that forcing DIG to seek a license as an alternative electric supplier would be contrary to federal law, which requires an EWG to sell exclusively at wholesale.

They explain that they restructured DIG's original agreement with Ford and Rouge in order to comply with EWG status. Under the arrangement as restructured, DIG now sells generation designated for the Rouge Complex to CMS MS&T Michigan, which in turn makes the retail sale of the electricity to Ford and Rouge. CMS says that it explained the restructuring to the FERC when applying for EWG status, which the FERC granted. CMS adds that both CMS MS&T and CMS MS&T Michigan hold Commission-issued licenses as alternative electric suppliers. CMS and Ford/Rouge therefore contend that the ALJ erred in finding that the Commission should regulate DIG as an alternative electric supplier.

The Staff takes the position that DIG, as a provider of self-service power to more than one customer, is also a merchant plant providing retail service. It says that DIG is subject to the licensing requirements imposed by Act 141 on alternative electric suppliers.

In defining an alternative electric supplier as "a person selling electric generation service to retail customers in this state," Section 10g(1)(a) makes an express exclusion for "a person who physically delivers electricity directly to retail customers." MCL 460.10g(1)(a). The electricity generated by the DIG facility is physically delivered directly from the facility to the Rouge Complex. The definitional exclusion is consistent with the requirement that self-service power, as qualified under Section 10a(6)(a), must be generated and consumed "without the use of an electric utility's transmission and distribution system."<sup>14</sup> Moreover, there is no policy-based reason advanced by any party for imposing a licensing requirement on DIG. To the extent that the various CMS affiliates fulfill their contractual obligations to Ford and Rouge by wheeling in power from other sources, the alternative electric supplier licenses held by other CMS affiliates

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<sup>14</sup> Section 10a(6) does not impose self-service power requirements based on the regulatory status of the owner of the generation facility. In point of fact, subdivision (d) suggests that who owns the generator is largely irrelevant.

who directly sell the power to Ford and Rouge satisfy any regulatory concerns implicated by Act 141.

Within the context of this complaint, it is not necessary to decide whether DIG or the cogeneration facility it owns is a merchant plant, or whether the restructuring of the sales arrangement to interpose other CMS affiliates in place of DIG as the party making retail sales to Ford and Rouge is permissible.<sup>15</sup> It is not necessary for the Commission to address whether DIG's activities are compatible with its EWG status, as that is a matter entrusted to the FERC by federal law.

The ALJ highlighted an additional concern regarding the use of Ford's and Rouge's private distribution lines to obtain access to off-site power generated by third parties. The ALJ commented that this arrangement may not comply with the second sentence in Section 10q(4), which he read to reserve the use of non-utility distribution facilities for "the sole purpose of providing or utilizing self-service power." MCL 460.10q(4). Section 10q(4) provides as follows:

Only investor-owned, cooperative, or municipal electric utilities shall own, construct, or operate electric distribution facilities or electric meter equipment used in the distribution of electricity in this state. This subsection does not prohibit a self-service power provider from owning, constructing, or operating electric distribution facilities or electric metering equipment for the sole purpose of providing or utilizing self-service power. This act does not affect the current rights, if any, of a nonutility to construct or operate a private distribution system on private property or private easements. This does not preclude crossing of public rights-of-way.

Ford/Rouge contend that the electrical facilities that they share with the DIG facility independently qualify as a private distribution system under the third sentence of Section 10q(4), notwithstanding any limitation imposed by the second sentence. The Commission agrees that the

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<sup>15</sup> According to CMS, DIG owns the cogeneration facility, but yet another affiliate, Dearborn Generation Operating, L.L.C., operates it. CMS exceptions at 7.

facilities in question appear on this record to be a private distribution system operated by a non-utility and thus their use does not constitute any act otherwise prohibited in Section 10q(4).

d. Metering

The ALJ recommended that Ford and Rouge be directed to cooperate with Detroit Edison in installing meters at the Rouge Complex that account for the energy flows that qualify as self-service power and those that do not. PFD at 19. Ford/Rouge suggest that the absence of any facilities owned by Detroit Edison within the Rouge Complex makes metering unnecessary.

The Commission adopts the ALJ's recommendation regarding metering. Both Detroit Edison's retail access service tariff and the Commission's rules require metering. Detroit Edison Retail Access Service Tariff, M.P.S.C. No. 9, sec. 2.8; R 460.3301.

Applications for Leave to Appeal

On January 14, 2002, Ford/Rouge filed an application for leave to appeal the ALJ's denial of their motions to order Detroit Edison to collect retail access service tariff charges under bond, and subject to refund, during the pendency of this case. With the issuance of this order adjudicating the complaint on its merits, the request to impose a bonding requirement is moot. In any event, the decision reached in this case—that Ford and Rouge are responsible to pay retail access service tariff charges on wheeled-in power from off-site sources, but not on self-service power generated by the DIG facility—is consistent with Detroit Edison's billing since the DIG facility began providing service. See Ex. I-15, Disc. Resps. STDE 1.5/78, STDE 1.7/80. No retroactive billing adjustment is at issue.

On July 15, 2002, the Staff filed an application for leave to appeal the ALJ's ruling excluding proposed Exhibit S-13 from evidence. The exhibit contains discovery responses, some of which

were admitted as part of Exhibit I-15. Because the others would not affect the findings and determinations made by the Commission in this case, the application is denied.

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. Ford and Rouge incur the charges in Detroit Edison's retail access service tariff for their usage of power that is wheeled in from off-site generators, but not for self-service power generated at the DIG facility.

c. The applications for leave to appeal should be denied.

THEREFORE, IT IS ORDERED that:

A. Ford Motor Company and Rouge Steel Company are obligated to pay applicable charges in the retail access service tariff of The Detroit Edison Company when they use power that is wheeled in from off-site generators, but not when they use self-service power generated at the cogeneration facility operated by Dearborn Industrial Generation, L.L.C.

B. The applications for leave to appeal are denied.

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 March 12, 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

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Commissioner

\_\_\_\_\_  
Commissioner

By its action of March 12, 2003.

\_\_\_\_\_  
Its Executive Secretary

In the matter of the complaint of )  
**FORD MOTOR COMPANY** and **ROUGE** )  
**STEEL COMPANY** against **THE DETROIT** )  
**EDISON COMPANY.** )  
\_\_\_\_\_ )

Case No. U-12980

Suggested Minute:

“Adopt and issue order dated March 12, 2003 granting in part and denying in part the relief requested in a complaint filed by Ford Motor Company and Rouge Steel Company against The Detroit Edison Company and determining that the complainants must pay retail access service charges when they use power that is wheeled in from off-site generators, but not when they use self-service power generated at the cogeneration facility operated by Dearborn Industrial Generation, L.L.C., at the Rouge Complex site, as set forth in the order.”