

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to consider guidelines or standards to govern	)	
transactions between <b>THE DETROIT EDISON</b>	)	Case No. U-13502
<b>COMPANY</b> and its affiliates.	)	
_____	)	

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

**ORDER APPROVING SETTLEMENT AGREEMENT**

On August 20, 2002, the Commission issued an order in response to the Michigan Court of Appeals' decision in Michigan Electric & Gas Ass'n v Public Service Comm, \_\_\_\_\_ Mich App \_\_\_\_\_; \_\_\_\_\_ NW2d \_\_\_\_\_ (2002), which vacated the Commission's May 3, 2000 order in Case No. U-11916. In so doing, the Commission commenced this matter as a contested case proceeding to consider whether affiliate guidelines and standards should be adopted for The Detroit Edison Company (Detroit Edison) and if so, what the terms of those guidelines should be.

Pursuant to due notice, a prehearing conference was held on October 16, 2002 before Administrative Law Judge James N. Rigas. Detroit Edison, the Commission Staff (Staff), the Michigan Electric and Gas Association (MEGA), Energy Michigan, the National Energy Marketers Association (NEMA), the Association of Businesses Advocating Tariff Equity

(ABATE), and the Michigan Alliance for Fair Competition (MAFC) participated in the proceedings.

Subsequently, Detroit Edison, the Staff, MECA, and MEGA submitted a settlement agreement resolving all issues in this case. Although they did not sign the settlement agreement, NEMA, MAFC, ABATE, and Energy Michigan indicated that they would not contest or otherwise object to the terms of the settlement. However, on November 12, 2002, MAFC submitted a written statement further explaining its statement of non-objection.

According to the terms of the settlement agreement, attached as Exhibit A, the parties agree that Detroit Edison shall adopt the affiliate transaction guidelines applicable to Michigan Consolidated Gas Company, which were originally set forth and adopted on pages 125 and 127 of the Commission's October 28, 1993 order in Cases Nos. U-10149 and U-10150. The parties also agree that upon approval of the settlement agreement, by the Commission, Detroit Edison shall immediately withdraw its petition filed in Ingham County Circuit Court Case No. 02-1438-AA.

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 settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. The affiliate transaction guidelines set forth in the settlement agreement shall apply to The Detroit Edison Company effective 30 days after the date of this order.

C. The Detroit Edison Company shall effectuate the immediate withdrawal of its petition filed in Ingham County Circuit Court Case No. 02-1438-AA.

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 January 21, 2003.

/s/ Dorothy Wideman  
Its Executive Secretary

B. The affiliate transaction guidelines set forth in the settlement agreement shall apply to The Detroit Edison Company effective 30 days after the date of this order.

C. The Detroit Edison Company shall effectuate the immediate withdrawal of its petition filed in Ingham County Circuit Court Case No. 02-1438-AA.

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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Commissioner

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By its action of January 21, 2003.

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Case No. U-13502

**SETTLEMENT AGREEMENT**

On July 19, 2002 the Michigan Court of Appeals published its decision in Michigan Electric and Gas Association v Michigan Public Service Commission, \_\_\_\_ Mich App \_\_\_\_ (2002). The Court's July 19 decision vacated the Commission's Order in Case No. U-11916 that had established affiliate transaction guidelines that were applicable to, among other parties, Detroit Edison. On August 20, 2002, the Michigan Public Service Commission issued an order on its own motion responding to the Michigan Court of Appeals July 19, 2002, decision. In its August 20, 2002 Order, the Commission stated that this proceeding, Case No. U-13502, would be a contested case proceeding with Detroit Edison as the named party to consider whether affiliate guidelines and standards should be adopted for Detroit Edison and if so, what the terms of those guidelines should be. In its August 20 order the Commission also expressed concern that as a result of the Court of Appeals decision no affiliate transaction guidelines currently apply to The Detroit Edison Company (Edison), and that the Commission is interested in having the same affiliate transaction guidelines apply to all electric and gas utilities in Michigan.

Accordingly, Edison and the other Parties to this Settlement Agreement believe that Edison's adoption of the Affiliate Transaction Guidelines currently applicable to

Michigan Consolidated Gas Company (MichCon), as set forth in the Commission's October 28, 1993, Order in Case No. U-10150, will satisfy both of the Commission's stated objectives, and thereby provide a reasonable resolution of all issues the Commission sought to address in this proceeding. In support of Edison's adoption of MichCon's current affiliate Transaction Guidelines the Parties to this Settlement agree as follows:

1. Edison agrees that the Affiliate Transaction Guidelines ("Guidelines") as set forth and adopted on pages 125 through 127 of the Commission's October 28, 1993, Order in Consolidated Cases U-10149 and U-10150 (a copy of which is included as Attachment A to this Settlement Agreement) will become effective thirty (30) days after a Commission Order approving this Settlement, without modification. During the thirty days following the aforementioned Commission order Edison will implement the internal processes and procedures necessary to adopt and abide by the Guidelines.

2. This Settlement Agreement has been made for the sole and express purpose of reaching a compromise among the positions of the signatories, without prejudice to their rights to take new or different positions in other proceedings. All offers of settlement and discussions relating to this Settlement Agreement shall be considered privileged under MRE 408. If the Commission approves this settlement Agreement without modification, neither the parties to this settlement Agreement nor the Commission shall make any reference to or use this Settlement Agreement or the order approving it as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding, or as an admission

against the interest of any signatory in any other case or proceeding, provided however, such references or use may be made to enforce the Agreement and order.

3. Upon issuance of a Commission order approving this Settlement Agreement without modification, Edison agrees to immediately withdraw its Petition for Interlocutory Review and Complaint for Declaratory Relief filed on September 18, 2002 in the Circuit Court for Ingham County, Michigan.

4. A party's signature on this Agreement does not constitute a waiver of that party's right to take a different position or challenge the Commission's authority or jurisdiction over the subject matter of this Agreement in any future proceeding where the subject matter includes or is related to Affiliate Transaction Guidelines.

5. This Settlement Agreement is reasonable and in the public interest, and will reduce the time and expense of the Commission, its Staff, Edison and the other parties to this proceeding. The Parties waive any rights under Section 81 of 1969 PA 306, as amended and agree not to appeal or otherwise contest a Commission order approving this settlement without modification.

6. This Settlement Agreement may be executed in any number of counterparts, each considered an original, and all counterparts that are executed shall have the same effect as if they were the same instrument.

**THE DETROIT EDISON COMPANY**

By: *Richard P. Middleton* Dated: October 29, 2002  
Print: \_\_\_\_\_  
Its: Attorney

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF**

By: *S.D. Hughes* Dated: Oct. 22, 2002  
Print: STEVEN D. HUGHES  
ASSISTANT ATTORNEY GENERAL  
Its: ATTORNEY

**ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

**MICHIGAN ALLIANCE FOR FAIR COMPETITION**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

**ENERGY MICHIGAN**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

**MICHIGAN ELECTRIC AND GAS ASSOCIATION**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_


Its: \_\_\_\_\_

**NATIONAL ENERGY MARKETERS ASSOCIATION**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_

Its: \_\_\_\_\_

**MICHIGAN ELECTRIC COOPERATIVES ASSOCIATION**

By:  Dated: October 22, 2002  
Print: Daniel J. O'Grady

Its: Counsel

**MICHIGAN ELECTRIC AND GAS ASSOCIATION**

By: Sherril A. Wellman Dated: Oct 28, 2002  
Print: Sherril A. Wellman

Its: Attorney

**NATIONAL ENERGY MARKETERS ASSOCIATION**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_

Its: \_\_\_\_\_

**MICHIGAN ELECTRIC COOPERATIVES ASSOCIATION**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2002  
Print: \_\_\_\_\_

Its: \_\_\_\_\_

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### Guidelines for Affiliate Transactions

The Staff proposed the adoption of seven conditions designed to ensure that the Commission can effectively safeguard the public interest while Mich Con's parent company, MCN, pursues corporate diversification. These conditions, which were adopted by the Commission's December 7, 1989 order in consolidated Cases Nos. U-8678, U-8924, and U-9197 (concerning Consumers' Gas Division), its June 19, 1990 order in Case No. U-9323 (concerning Michigan Gas Company), and its May 7, 1991 order in Case No. U-9346 (concerning Consumers' Electric Division), are as follows:

- "1. That the utility ensure that the Commission has access to books and records of the holding company and each of its affiliates and their joint ventures. Any objections to not providing all books and records must be raised before the Commission and the burden of showing that the request is unreasonable or unrelated to the proceeding is on the respondents.
- "2. Each utility, holding company, and each of its subsidiaries and the joint ventures of the holding company and/or its subsidiaries shall employ accounting and other procedures and controls related to cost allocations and transfer pricing to ensure and facilitate full review by the Commission

and to protect against cross-subsidization of non-utility activities by the utility's customers.

- "3. The holding company and each of its subsidiaries and the joint ventures of the holding company and/or its subsidiaries shall keep their books in a manner consistent with general accounting principles and, where applicable, consistent with the Uniform System of Accounts.
- "4. The utility shall furnish the Commission with:
  - a. The quarterly and annual financial statements of the consolidated utility and/or its parent holding company;
  - b. Annual statements concerning the nature of intercompany transactions concerning the utility and a description of the basis upon which cost allocations and transfer pricing have been established in these transactions;
  - c. Annual balance sheets and income statements of the non-regulated subsidiaries of the utility and/or the non-consolidated subsidiaries of the holding company;
  - d. As a separate exhibit in its next general rate case, an audit report of its transactions between the utility and its non-utility affiliates;
  - e. Federal income tax on a consolidated or non-consolidated basis depending on filing.
- "5. The utility shall avoid a diversion of management talent that would adversely affect the utility. An annual report identifying personnel transferred from the utility to non-utility subsidiaries is required.
- "6. The utility shall notify the Commission in writing within thirty days prior to any transfer to non-utility affiliates of any utility assets or property exceeding a fair market value of \$100,000. Asset transfers from regulated to non-regulated shall be at the higher of cost or fair market value and non-regulated to regulated shall be at the lower of cost or fair market value. All services and supplies provided by non-regulated enterprises shall be at market price or 10% over fully allocated cost, whichever is less.
- "7. Market, technological, or similar data transferred, directly or indirectly, from the utility to a non-utility affiliate shall be transferred at the higher of cost or fair market value." (Exhibit S-72, Schedule D-5, pp. 14-15.)

Mich Con stated that, although it did not feel that they were necessary, it was willing to follow the Staff's proposed guidelines as they have been construed, and partially revised, by the Court of Appeals in Midland Cogeneration Venture Limited Partnership v Public Service Commission, 199 Mich App 286 (1993). The utility therefore requested that the Commission recognize the Court's interpretations and modifications if it elects to impose these seven conditions on Mich Con. It further requested delaying implementation of these guidelines for six months. The utility asserted that it needs this time to establish new recordkeeping and reporting procedures. (Mich Con's reply brief, p. 146.)

Based on the utility's arguments, the ALJ recommended adopting the Staff's proposed guidelines, but only as interpreted and modified by the Court of Appeals. However, she disagreed with Mich Con's assertion regarding the need to delay their implementation. According to the ALJ, the utility (1) had been advised of the Staff's proposal throughout the course of these proceedings, (2) was aware that identical conditions have been imposed on other Michigan utilities, and (3) had notice of the Court of Appeals' decision since April 1993. (PFD, p. 131.) She therefore recommended that the Commission reject Mich Con's proposed delay.

None of the parties except to these recommendations. The Commission finds that the Staff's guidelines should be approved, as interpreted and revised by the Court of Appeals. It also finds that, although application of these conditions should be prospective, there is insufficient reason to delay their implementation. Thus, Mich Con's request for a six-month delay should be rejected.