

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
WOLVERINE POWER SUPPLY COOPERATIVE,)	
INC., for the ex parte determination of the proper)	Case No. U-13739
classification of its transmission and distribution)	
facilities.)	
_____)	

At the June 5, 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 DENYING REQUEST TO WITHDRAW APPLICATION

On March 17, 2003, Wolverine Power Supply Cooperative, Inc., (Wolverine) filed an application seeking an ex parte determination of the proper classification of its transmission and distribution facilities pursuant to the criteria set forth by the Federal Energy Regulatory Commission (FERC) in its Order No. 888.¹

On April 4, 2003, the Commission’s Executive Secretary directed Wolverine to provide affected parties with a notice of opportunity to comment.

¹ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed Reg 21,540; FERC Stats & Regs, Regulations Preambles Jan. 1991 to June 1996 ¶ 31,036 (1996). Thereafter, the FERC issued Order No. 888-A, which addressed requests for rehearing of Order No. 888 and reaffirmed the FERC’s findings regarding the jurisdictional delineation between transmission and local distribution facilities. 62 Fed Reg 12,274; III FERC Stats and Regs ¶ 31,048, at pp. 30,181-82, 30,335-46 (1997).

On April 8, 2003, Consumers Energy Company (Consumers) filed a petition to intervene and a request for a hearing. On April 14, 2003, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition to intervene and a request for a hearing. On April 30, 2003, ABATE filed a second request for a hearing.

On May 2, 2003, Attorney General Michael A. Cox (Attorney General) filed comments stating his belief that exclusive jurisdiction of the subject matter of this proceeding lies with the FERC, not this Commission.

On May 9, 2003, the Commission served notice that a prehearing conference would be conducted in this matter on June 4, 2003.²

On May 22, 2003, Wolverine filed a pleading entitled “Notice of Withdrawal.”

On May 22 and 30, 2003, respectively, Consumers and ABATE filed answers in opposition to Wolverine’s attempt to withdraw its application.

On June 4, 2003, Wolverine failed to attend the prehearing conference. There is no indication in the docket file that the directions from the Commission’s Executive Secretary regarding the provision of notice were followed.

The Commission is concerned that Wolverine’s failure to attend the scheduled prehearing conference in the wake of its May 22 filing is an indication that Wolverine is operating under the mistaken assumption that Wolverine, not this Commission, controls the Commission’s schedule. It is well established that an applicant cannot withdraw from an administrative proceeding without permission to do so. Once an application has been filed, the decision rests with the Commission on whether the matter may be withdrawn. See, the April 26, 1988 order in Case No. U-8643 and the April 23, 1999 order in Case No. U-11936.

² A revised notice that was served on May 13, 2003 also indicated that a prehearing conference had been scheduled for June 4, 2003.

The Commission is aware that Administrative Law Judge James N. Rigas, who presided over the June 4, 2003 prehearing conference, has rescheduled that matter for June 17, 2003 at 1:30 p.m. The Commission directs Wolverine and the other participants to the proceeding to attend the June 17 prehearing conference for the purpose of addressing the issues presented by Wolverine's application, including the provision of notice in compliance with the directions of the Commission's Executive Secretary. Accordingly, the Commission finds that Wolverine's attempt to withdraw its application should be denied without prejudice to having the issue revisited at the June 17, 2003 prehearing conference.

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, 1999 AC, R 460.17101 et seq.

b. Wolverine's request to withdraw its application should be denied without prejudice to having the issue revisited at the June 17, 2003 prehearing conference.

c. Wolverine and the other participants to the proceeding should be directed to attend the June 17, 2003 prehearing conference for the purpose of addressing the issues presented by Wolverine's application, including compliance with the directions by the Commission's Executive Secretary regarding notice.

THEREFORE, IT IS ORDERED that:

A. Wolverine Power Supply Cooperative, Inc.'s, May 22, 2003 request to withdraw its application is denied without prejudice to having the issue revisited at the June 17, 2003 prehearing conference.

B. Wolverine Power Supply Cooperative, Inc., and other participants in this proceeding are directed to attend the June 17, 2003 prehearing conference scheduled by Administrative Law Judge James N. Rigas for the purpose of addressing the issues presented by Wolverine's application, including compliance with directions by the Commission's Executive Secretary regarding notice.

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

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 June 5, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

THEREFORE, IT IS ORDERED that:

A. Wolverine Power Supply Cooperative, Inc.'s, May 22, 2003 request to withdraw its application is denied without prejudice to having the issue revisited at the June 17, 2003 prehearing conference.

B. Wolverine Power Supply Cooperative, Inc., and other participants in this proceeding are directed to attend the June 17, 2003 prehearing conference scheduled by Administrative Law Judge James N. Rigas for the purpose of addressing the issues presented by Wolverine's application, including compliance with directions by the Commission's Executive Secretary regarding notice.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of June 5, 2003.

Its Acting Executive Secretary

In the matter of the application of)
WOLVERINE POWER SUPPLY COOPERATIVE,)
INC., for the ex parte determination of the proper)
classification of its transmission and distribution)
facilities.)
_____)

Case No. U-13739

Suggested Minute:

“Adopt and issue order dated June 5, 2003 denying Wolverine Power Supply Cooperative, Inc.’s, request to withdraw its March 17, 2003 application and directing it to appear at a prehearing conference scheduled for June 17, 2003, as set forth in the order.”