

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 )  
classification of its transmission and distribution )  
facilities. )  
\_\_\_\_\_ )

Case No. U-13739

At the August 26, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**OPINION AND ORDER**

On March 17, 2003, Wolverine Power Supply Cooperative, Inc., (Wolverine) filed an appli-  
cation for an ex parte determination of the proper classification of its transmission and distribution  
facilities, pursuant to the criteria set forth by Federal Energy Regulatory Commission (FERC)  
Order No. 888.

Consumers Energy Company (Consumers) and the Association of Businesses Advocating  
Tariff Equity (ABATE) filed petitions to intervene on April 8 and April 14, 2003, respectively.

On May 12, 2003, the Commission issued a notice of hearing to consider Wolverine's  
application.

On May 21, 2003, Wolverine filed a notice of withdrawal of its application.

On June 4, 2003, Wolverine did not attend a scheduled prehearing conference.

On June 5, 2003, the Commission issued an order denying Wolverine's request to withdraw its application.

At the subsequent prehearing conference held on June 17, 2003, Administrative Law Judge James N. Rigas (ALJ) denied Wolverine's motion for dismissal for lack of jurisdiction, noting: "the FERC has expressed a desire to give deference to a state's interpretation of the seven-factor test, that suggests such an investigation by the Commission is an acceptable activity." Tr. p. 56. The ALJ also denied Wolverine's request that it be allowed to withdraw its application because "the State of Michigan has a compelling interest in a resolution of that transmission/distribution split." Tr. p. 57.

On June 24, 2003, Wolverine filed an application for leave to appeal the ALJ's denial of the motions to withdraw its application and/or dismiss for lack of subject matter jurisdiction.

On July 1, 2003, ABATE and Consumers filed replies to Wolverine's application for leave to appeal.

Wolverine's application should be dismissed.<sup>1</sup>

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 application should be dismissed.

---

<sup>1</sup> In an order issued today in Case No. U-13862, the Commission, on its own motion, made an administrative determination of the proper classification of Wolverine's transmission and distribution facilities.

THEREFORE, IT IS ORDERED that:

A. Wolverine Power Supply Cooperative, Inc.'s March 17, 2003 application for an ex parte determination of the proper classification of its transmission and distribution facilities is dismissed.

B. Wolverine Power Supply Cooperative, Inc.'s appeal of Administrative Law Judge James N. Rigas' denial of its motion to dismiss for lack of subject matter jurisdiction is moot and is also dismissed.

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/ J. Peter Lark

Chair

( S E A L )

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of August 26, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

THEREFORE, IT IS ORDERED that:

A. Wolverine Power Supply Cooperative, Inc. 's March 17, 2003 application for an ex parte determination of the proper classification of its transmission and distribution facilities is dismissed.

B. Wolverine Power Supply Cooperative, Inc.'s appeal of Administrative Law Judge James N. Rigas' denial of its motion to dismiss for lack of subject matter jurisdiction is moot and is also dismissed.

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

---

Chair

---

Commissioner

---

Commissioner

By its action of August 26, 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 August 26, 2003 approving the dismissal of Wolverine Power Supply Cooperative, Inc.’s application for the ex parte determination of the proper classification of its transmission and distribution facilities, as set forth in the order.”