

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>GREAT LAKES ENERGY COOPERATIVE</b>	)	
for approval of a supplement to a special contract	)	Case No. U-13743
with <b>IMC USA INC., LLC.</b>	)	
_____	)	

At the October 23, 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

**ORDER APPROVING SPECIAL CONTRACT**

In the December 6, 1999 order in Case No. U-12139, the Commission approved a special contract between Great Lakes Energy Cooperative (Great Lakes) and IMC USA Inc., LLC, f/k/a IMC Kalium Ltd (IMC). The special contract provided for Great Lakes to supply electric service to IMC's mining and related facilities located in Hersey Township, Osceola County, Michigan.

On March 20, 2003, Great Lakes filed an application for ex parte approval of a supplement to a special contract to provide electric service to IMC. On July 30, 2003, Great Lakes filed an amended application and an addendum to the supplement. Pursuant to the addendum to the supplement, the parties agreed that service provided to IMC will have a demand charge of \$6.75 per kilowatt (kW). Further, the parties agreed that the end-use energy should be 3.25¢ per kilowatt-hour (kWh) through October 2003; and 2.922¢ per kWh thereafter through February 2006.

In an order issued on August 26, 2003, the Commission found that it should not grant the application in its entirety without a hearing to determine whether the supplement to the special contract is just and reasonable and in the public interest. In addition, the Commission expressed concern about the effect that the supplement to the contract could have on IMC's ability to participate in the electricity generation market within a reasonable time because all customers with a load greater than 1 megawatt currently have the right to choose an alternative electric supplier pursuant to MCL 460.10a(1), MCL 460.10x(1). The Commission placed on the parties to the contract the burden of demonstrating that the contract does not unduly limit IMC's ability to choose an alternative electricity supplier. However, out of concern for the parties' desire to preserve the benefits of the agreement, the Commission granted provisional approval of the supplement to the special contract, which was to expire at the time a final Commission order is issued in this case or on December 15, 2003, whichever is earlier. A hearing was set for September 8, 2003.

On September 8, 2003, Administrative Law Judge Barbara A. Stump (ALJ) conducted an evidentiary hearing attended by Great Lakes and the Commission Staff (Staff). One witness testified and three exhibits were received into evidence. Before the record was closed, the Staff made a statement indicating that it had examined the supplement to the special contract and found it to be consistent with other special contracts previously approved by the Commission. Subsequently, Great Lakes filed a brief in support of its application. A Proposal for Decision was not prepared because the Commission previously indicated that it would read the record.

The sole witness was Patrick A. Anzell, Great Lakes' Vice President, Marketing, Rates and Regulatory Affairs. He testified that IMC, which is Great Lakes' largest customer, entered into an

all requirements special contract with Great Lakes on August 19, 1999. The Commission approved that arrangement on December 6, 1999 in Case No. U-12139.

According to Mr. Anzell, because the special contract was to expire in August 2003, the parties began negotiations in February 2003 regarding a contract extension. Mr. Anzell explained that the negotiations led to an agreement that caused Great Lakes to enter into a market-based wholesale power sales agreement with its wholesale power supplier. He indicated that Great Lakes' wholesale supplier was required to make significant commitments to accommodate Great Lakes' agreement with IMC, but that the supplier demanded assurance of a stream of revenue. He also indicated that Great Lakes was willing to provide its wholesale supplier with such assurance so long as IMC was willing to commit to comparable assurance of a stream of revenue to Great Lakes.

Mr. Anzell stated that on March 20, 2003, Great Lakes submitted its application for approval of the special contract. However, on April 17, 2003, the Commission issued an order in Case No. U-13607 with respect to Upper Peninsula Power Company (UPPCo), wherein the Commission approved a comparable special contract, but only after it was revised to allow the special contract customer to terminate the contract early by paying minimum charges for only five months. Mr. Anzell testified that the UPPCo case caused the Staff to encourage Great Lakes to incorporate a similar "five month provision" into its special contract. Facing an August 2003 deadline and the prospect of losing its lower cost wholesale power supply arrangement, Great Lakes agreed to add the following provision to its special contract with IMC:

**10.1 General Restrictions on Alternative Power Supply Source.** In recognition of the substantial investment made by the *COOPERATIVE* to serve the *CUSTOMER's* needs, the *CUSTOMER* shall take no steps during the term of the Agreement to obtain electric service from another electric power supplier or to itself install any additional generating capacity over and above the 2,120 kW generating capacity which *CUSTOMER* has in operation as of the date of this

Supplement No. 1, other than backup generations as defined below, for the *CUSTOMER*'s facilities or property anywhere on the *SITE* served by the *COOPERATIVE* under this Agreement without the written permission of the *COOPERATIVE*. In the event that the *CUSTOMER* initiates purchases from an Alternative Energy Supplier (*i.e.*, not through *COOPERATIVE*), the *CUSTOMER* will be required to pay *COOPERATIVE* the applicable Open Access charges as well as the Monthly Facilities Charge included in the Contract Rate Schedule - Appendix A through the end of the term of this Agreement. In such event, the Minimum Demand charge would apply for five calendar months following actual switch date except that in no event would the Minimum Demand charge be applicable after February 28, 2006.

Exhibit A-1, p. 4.

Mr. Anzell asserted that the addendum allows IMC to participate in the electricity generation market at any time, although IMC could incur costs in the event that it chooses to do so.

Mr. Anzell argued that IMC voluntarily agreed to these provisions, which he maintained did not unduly limit IMC's ability to select another power supplier in the future.

Finally, the Commission notes that Great Lakes submitted as Exhibit A-3, a letter to Mr. Anzell from Robb Aultman, IMC's General Manager. Mr. Aultman's letter indicates that approval of the application will allow his company to maintain "an electricity and power relationship with utilities that we trust and have shown flexibility and responsiveness in meeting our unique needs; offering relative price certainty, and maintaining high reliability." Exhibit A-3, p. 1. Mr. Aultman's letter also indicates that IMC (1) carefully analyzed its ability to participate in the generation market, (2) made an informed decision to stay in its existing relationship with Great Lakes, and (3) does not feel that it is unduly limited from choosing another supplier of electricity. Finally, Mr. Aultman urged the Commission to approve Great Lakes' application.

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. The supplement to the contract, as modified by the addendum, between Great Lakes and IMC should be approved.

THEREFORE, IT IS ORDERED that the supplement to the contract, as modified by the addendum, between Great Lakes Energy Cooperative and IMC USA Inc., LLC, is approved.

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 October 23, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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Case No. U-13743

Suggested Minute:

“Adopt and issue order dated October 23, 2003 granting approval of a supplement to the special contract between Great Lakes Energy Cooperative and IMC USA Inc., LLC, as modified by the addendum filed July 30, 2003, as set forth in the order.”