

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to promulgate rules governing the interconnection)
of independent power projects with electric utilities.)
_____)

Case No. U-13745

At the September 11, 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 DENYING REHEARING AND ADOPTING RULES

On July 8, 2003, the Commission issued an order adopting revisions to proposed rules governing electric interconnection standards in response to the comments of interested persons and submitting the rules, as revised, to the Legislative Service Bureau and the Office of Regulatory Reform for their approval, which was granted on July 23 and 28, 2003, respectively. The rules were filed with the Joint Committee on Administrative Rules on August 4, 2003.

On August 7, 2003, the Michigan Electric and Gas Association, the Michigan Electric Cooperative Association, Consumers Energy Company, and The Detroit Edison Company (collectively, the utilities) filed a petition for rehearing or clarification of the July 8, 2003 order or reopening of the proceedings. The Michigan State Conference of the International Brotherhood of Electrical Workers filed an answer in support of the petition for rehearing.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant rehearing.

In their petition for rehearing, the utilities again claim that the Commission should have adopted their proposed rule language indicating that there is no obligation "to interconnect with generating facilities with a capacity of less than 100 kilowatts for parallel operation." They say that this language recognizes that the interconnection obligations imposed upon them by MCL 460.10e are limited to "merchant plants," which excludes plants with a generating capacity of 100 kilowatts (kW) or less. The utilities note that the rules, as they now stand, apply to "projects," a term that ignores the 100 kW cutoff. However, the utilities acknowledge that it is appropriate and reasonable to apply consistent technical and procedural standards to projects of less than 100 kW, if a utility were to consent voluntarily to an interconnection, but they insist that the rules recognize that they are under no statutory obligation.

The Commission is not persuaded that the rules should carve out a new provision for generating plants with less than 100 kW of capacity. As the utilities observe, the statute states that "[t]he standards shall not require an electric utility to interconnect with generating facilities with a capacity of less than 100 kilowatts for parallel operation." MCL 460.10e(3). The rules are consistent with the statute. They do not impose a substantive obligation to interconnect with those projects, but instead they establish procedural requirements to facilitate situations in which a utility voluntarily

undertakes such interconnections. The utilities' substantive rights and obligations remain as provided in the statute. As stated in the July 8, 2003 order at 3-4, to incorporate the text of the statute word for word into the rules would be duplicative.

As a practical matter, many utilities are already interconnected with small projects and maintain tariff provisions that govern some of those dealings. Smaller projects generally pose lesser technical and engineering burdens, and their interconnection can be more easily accommodated, than larger projects. Given this situation, the rules meet a need for more uniformity in a process that already exists, even if interconnection with such projects is not necessarily a statutory obligation. In addition, Section 10b(1) of the Customer Choice and Electricity Reliability Act, MCL 460.10b(1), requires the Commission to "establish rates, terms, and conditions of electric service that promote and enhance the development of new generation, transmission, and distribution technologies." The rules, in their application to smaller projects, help to satisfy this requirement.

The utilities renew their objections to the deadlines imposed in Rule 6 for completing the interconnection process, as applied to projects of 750 kW or more. (For purposes of rehearing, the utilities are not objecting to the deadlines applicable to projects smaller than 750 kW.) They argue that the deadlines do not accommodate the time necessary to process larger, more complex projects. They say that inevitable disputes with project developers over who is responsible for delays could have the perverse effect of prolonging the process. They reiterate their proposal to provide separate deadlines for each of the two major phases of the interconnection process, the engineering study phase and the design and construction phase. They also propose that the Commission amend Rule 6 to provide a mechanism that requires the giving of notice to a project developer when the utility determines that it cannot meet a deadline.

In the July 8, 2003 order at 10-11, the Commission adopted several rule revisions in response to utility concerns regarding tight deadlines. It made allowances for delays attributable to governmental permitting processes. It lengthened somewhat the deadlines for the two larger project classifications. Rule 6(2) relieves a utility from responsibility for delays attributable to a project developer. However, the Commission also recognized that deadlines are necessary as a means of spurring the parties on to the timely completion of projects and thus did not make any revision that could allow for indefinite delays. For the most part, the utilities, in their petition for rehearing, are renewing arguments they previously made. The Commission is not persuaded that its earlier decisions relating to Rule 6 were in error. The Commission also does not find it necessary to amend the rules to provide an explicit notice mechanism for lapsed deadlines.

The utilities renew their objections to Rule 7(3), which precludes them from requiring, or imposing charges for, an engineering study if the project's aggregate export capacity is less than 15% of the line section peak load and it does not contribute more than 25% of the maximum short circuit current at the point of interconnection. The utilities contend that this provision may force them to absorb the costs they incur for performing engineering studies that are necessary to maintain reliability and safety. Therefore, they argue, it is contrary to MCL 460.10e(3), which states that "the merchant plant will be responsible for all costs associated with the interconnection unless the commission has otherwise allocated the costs and provided for cost recovery." They argue that Rule 7(3) could be interpreted as forcing them to maintain more than a 15% thermal loading margin and a 25% fault-interrupting margin. They further argue that denial of the recovery of the costs they incur to comply with the rules would deprive them of their opportunity to earn a fair return on their investment. They claim that there is no record support for the premise that Rule 7(3) is necessary to

deter them from attempting to use unnecessary studies and costs as a means of thwarting competition.

The utilities' objections to Rule 7(3) do not warrant a rehearing of this issue. In the July 8, 2003 order at 12, the Commission explained that Rule 7(3) described a situation in which engineering studies should not be a prerequisite for interconnection of the project. It also observed that there was no showing of potential projects fitting within Rule 7(3) that might otherwise justify a costly engineering study. The rule provision does not violate MCL 460.10e(3), which recognizes that the Commission may alter the means of recovering interconnection costs by allocating them away from the charges payable by project developers. If in fact Rule 7(3) were to produce some amount of prudently incurred costs that cannot be recovered from project developers, the utility would have the means to propose alternate recovery mechanisms in rate proceedings.

Nothing in Rule 7(3) imposes a technical standard regarding the utilities' operation or maintenance of their distribution systems. The rule defines a situation in which engineering studies and their costs may not be imposed on project developers.

The utilities continue to object to the self-help provisions in Rule 7(5). They say that the rule provisions violate MCL 460.10q(4), which states that only utilities "shall own, construct, or operate electric distribution facilities or electric meter equipment used in the distribution of electricity." They say that the self-help provisions are not limited to the construction of facilities owned by the project developer, but that they would empower the developer, acting through an approved contractor, to make physical modifications directly to the utility's distribution system. In addition, the utilities claim, the participation of a contractor selected by the developer would require coordination with the utility's own systems and personnel and would thus contribute further delay. The utilities suggest that the rule provisions could be contrary to the interests of worker safety.

The self-help provisions in Rule 7(5) come into play only when the utility is in default of its deadlines for interconnection obligations. Thus, the rule is a remedial measure to foreclose indefinite delay. As revised in the July 8, 2003 order, the rule now requires a developer that invokes the self-help option to act only through the medium of a utility-certified contractor that is capable of meeting the utility's specifications. Because a certified contractor is directly accountable to the project developer, but it would function in all other respects as the equivalent of the utility itself performing the services, the rule is consistent with MCL 460.10q(4). The utility retains the authority and responsibility for determining whether the work performed to effect an interconnection is suitable on an ongoing basis for the safe, reliable ownership, construction, and operation of its distribution system.

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 petition for rehearing should be denied.
- c. The requirements of the Administrative Procedures Act of 1969, MCL 24.201 et seq., have been satisfied, and the rules governing electric interconnection standards should be adopted.

THEREFORE, IT IS ORDERED that:

- A. The petition for rehearing is denied.
- B. The rules governing electric interconnection standards, attached to this order as Exhibit A, are formally adopted.

C. Copies of these administrative rules, bearing the required certificates of approval and adoption, shall be transmitted to the Michigan Department of State, Office of the Great Seal.

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 September 11, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of September 11, 2003.

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Suggested Minute:

“Adopt and issue order dated September 11, 2003 denying a petition for rehearing filed by Michigan electric utilities and formally adopting rules governing electric interconnection standards, as set forth in the order.”