

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
UP POWER MARKETING LLC for a)	Case No. U-14594
license as an alternative electric supplier.)	
_____)	

At the August 16, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

OPINION AND ORDER

On December 29, 2004, UP Power Marketing LLC submitted an application, pursuant to the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141), MCL 460.10 *et seq.*, for a license as an alternative electric supplier (AES). An AES is a person selling electric generation service to retail customers in this state, other than a person who physically delivers electricity directly to retail customers. MCL 460.10g(a). With its application, UP Power Marketing submitted information designed to show its compliance with the statutory requirements for an AES.

Act 141 requires the Commission to ensure that an AES has the necessary financial capability, possess technical competence to engage in energy transactions, is capable of meeting safety requirements for electric operations, and complies with all other lawful obligations. Additionally,

by the June 19, 2000 order in Case No. U-11915, each AES is required to maintain an office within Michigan.

The Commission Staff (Staff) is responsible for review of the application and for making a recommendation regarding a license for an applicant. In its application, UP Power Marketing requested an exemption from certain reporting and credit requirements, and the Staff concurs with its request. UP Power Marketing desires to operate as an AES marketer in a very limited fashion, buying power from its affiliate White Pine Electric Power LLC, and selling to its affiliate White Pine Copper Refinery, Inc., in White Pine, Michigan. The structure of the AES operation simply represents a change in an existing operating arrangement for the 40 megawatt generator that was restarted in 2003 at the White Pine site.

The Staff recommends that UP Power Marketing should be granted an AES license for limited use with the following conditions:

1. UP Power Marketing's AES license is restricted to selling retail power to the White Pine Copper Refinery site in White Pine, Michigan.

2. UP Power Marketing's bond or letter-of-credit requirement is waived, and it is also exempt from the Commission's AES reporting requirements, except that the company must report annually its calendar year retail sales and environmental disclosure as required in Section 10r(3) and 10r(4) of Act 141, as outlined in Case No. U-12487.

For the limited purpose of supplying retail power to the White Pine Copper Refinery at its White Pine, Michigan site, the Commission finds the Staff recommendation is appropriate for this operation. With respect to financial capability or the associated letter-of-credit requirement, the affiliate relationship of the AES and customer and the fact that the power supply is expected to come from another affiliate from an existing power plant removes any concern regarding the ability of UP Power Marketing to procure power or deliver on its contract obligations. Second, with respect to technical capability, UP Power Marketing will not generate its own power but will

obtain it from its affiliate. Further, the energy transactions under the proposed operating structure do not reflect concerns of operating and delivering power to a large non-affiliate customer base. Therefore, it is appropriate to waive the bond or letter-of-credit requirement in this instance.

The Commission agrees with the recommendation that certain reporting requirements be waived under this limited AES operation. The environmental disclosure cannot be waived but is required for all electric utilities and suppliers under Sections 10r(3) and 10r(4) of Act 141. Second, the submission of calendar year electricity sales provides information necessary for the Commission to monitor and follow trends in Michigan's evolving electricity markets, and so the submission of some basic information on sales or deliveries is necessary and appropriate.

After a review of the applicant's submission, the Commission finds that approval of the application is in the public interest. Accordingly, the application should be approved. The grant of a license is conditioned on compliance with all applicable provisions of the statute and the Commission's orders. Failure to comply fully may result in revocation of the license or other penalties. Further, the grant of a license is conditioned upon the provisions recommended by the Staff.

Should the applicant wish to expand its retail base beyond the White Pine Copper Refinery site in White Pine, Michigan, a supplemental filing should be made to this docket for Staff review. At such time, the current waiver and conditions will be reconsidered.

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. UP Power Marketing satisfies the statutory requirements to obtain an AES license.

THEREFORE, IT IS ORDERED that:

A. UP Power Marketing LLC is granted a license as an alternative electric supplier with the following conditions:

1. UP Power Marketing LLC is restricted under its alternative electric supplier license to selling retail power to operations at the White Pine Copper Refinery, Inc., in White Pine, Michigan.

2. UP Power Marketing LLC's bond or letter-of-credit requirement for this license is waived, and it is also exempt from the Commission's alternative electric supplier reporting requirements, except that the company must report annually its calendar year retail sales and the environmental disclosure as required in Section 10r(3) and 10r(4) of 2000 PA 141, as set forth in Case No. U-12487.

B. UP Power Marketing LLC shall operate as an alternative electric supplier in compliance with the regulatory requirements specified in the Customer Choice and Electricity Reliability Act, 2000 PA 141, MCL 460.10 *et seq.*, and the Commission's orders.

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
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of August 16, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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Commissioner

By its action of August 16, 2005.

Its Executive Secretary