

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to conduct a proceeding in accordance with)	
Section 1251 of the Energy Policy Act of 2005)	Case No. U-15316
to consider implementation of standards for net)	
metering, fuel sources, and fossil fuel generation)	
efficiency.)	
_____)	

At the August 6, 2008 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

Findings of Fact

On August 8, 2005, Public Law 109-58 became effective. Among other things, this legislation, which is known generally as the Energy Policy Act of 2005 (EPAAct 2005), added subsections 11, 12, and 13 to 16 USC 2621(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA). These subsections provide for the Commission to complete its consideration of whether to implement the following standards by August 8, 2008:

(11) Net metering -- Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

(12) Fuel sources -- Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

(13) Fossil fuel generation efficiency -- Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

On January 2, 2008, the Commission issued an order providing an opportunity for public comment on the proposed standards. Written comments were received from Representative Paul E. Opsommer (93rd District); City of Ann Arbor; David Wright; Brion Dickens; Mel L. Barclay, M.D.; Michigan Milk Producers Association; Michigan Farm Bureau; William Stockhausen; Roger Eberhardt; Michigan Regulated Electric Utility Service Providers (providers);¹ International Transmission Company d/b/a ITC *Transmission* and the Michigan Electric Transmission Company, LLC (collectively ITC); and the Commission Staff (Staff). A public hearing was held on February 6, 2008, at which testimony was received from Mel Barclay; Joshua Barclay; Tony D'Alecy; Steve Szilvagy; Jennifer Alvarado; Bruce Lowstuter; Norma McDonald; Scott Decker; Mark Bauer; and Jan O'Connell (on behalf of the Sierra Club).

ITC comments that, as more transmission is added to the system, line losses are reduced, thus making the system more efficient. ITC comments that an efficient high voltage transmission system results in reducing generation requirements. ITC notes that wind power presents

¹The MEGA members include Alpena Power Company, Edison Sault Electric Company, Indiana Michigan Power Company, Upper Peninsula Power Company, We Energies, Wisconsin Public Service Corporation and Xcel Energy. The other industry participants in the comments are The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), and the Michigan Electric Cooperative Association (MECA) on behalf of Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy, HomeWorks Tri-County Electric Cooperative, Midwest Energy Cooperative, Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, Thumb Electric Cooperative, Wolverine Power Cooperative, and Wolverine Power Marketing Cooperative.

challenges for transmission systems by causing fluctuations in generation related to short term wind pattern changes.

The providers comment that the Commission has already carried out an investigation into net metering standards, culminating in the March 29, 2005 order in Case No. U-14346 that approved a statewide net metering program pursuant to a consensus agreement. The providers argue that this investigation, along with the investigation into interconnection issues in Case No. U-15113, constitutes a prior state action that fulfills the requirements of EAct 2005 with reference to net metering standards.

The providers further argue that the Commission should decline to adopt the federal standards for fuel source diversity and fossil fuel generation efficiency because those topics are already addressed through individual utility resource planning, in rate cases, or in annual power supply cost recovery (PSCR) proceedings.

The Staff offers comments that culminate in a proposal to change Michigan's current net metering options to a program that is, by the Staff's own description, halfway between true net metering and the current system in use in the state. The Staff advocates adoption of the federal proposals for fuel source diversity and fossil fuel generation efficiency.

All of the remaining individuals and organizations that provided comments have either attempted to carry out net metering in Michigan, or represent companies that produce renewable energy related products and are involved in net metering projects. The majority of these comments address only net metering, although a few commenters also address fuel source diversity and fossil fuel generation efficiency. All of these commenters support adoption of the federal standards, and comment that, for the most part, the current net metering options available in Michigan are inadequate. These commenters call for a much simpler system that allows for the

use of one bi-directional meter (or two, at the most), and authorizes the participant to sell excess generation back to the utility at the same price that the participant pays for generation, or, at a minimum, for a price that represents a fair rate of return. Many of these commenters suggest that the Commission adopt a 2 megawatt (MW) program; that the same program be offered by all the utilities; that the process be made easier; that start-up costs be minimized; and that the system cap be increased.

Conclusions of Law

The Amendments to PURPA

Title XII, Subtitle E, of EPAct 2005, sections 1251, 1252, and 1254, amends Title I of PURPA. PURPA sets forth standards that state commissions and unregulated utilities are required to consider, and the amendments set forth the three new standards considered in this proceeding. State authorities may, after consideration, implement any standard, decline to implement any standard, or adopt different or modified standards from those described in the statute. 16 USC 2621(c); 16 USC 2627(b). State commissions may also take into account prior determinations on the proposed standards, if those determinations comply with the requirements of Title I. 16 USC 2622(a), (d). For the three determinations at issue in this proceeding – net metering, fuel diversity, and fossil fuel generation efficiency – state authorities are required to make a determination by August 8, 2008, or no later than the next rate case for a regulated utility that commences after August 8, 2008. With this order the Commission adopts all three PURPA standards.

Net Metering

The net metering standard proposed for consideration in PURPA states:

(11) Net metering -- Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For

purposes of this paragraph, the term “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

16 USC 2621(d)(11).

The consideration of voluntary net metering standards began four years ago in Michigan. On May 18, 2004, the Commission issued an order in Case No. U-12915 directing the Staff to work with the newly created Michigan Renewable Energy Program’s (MREP) ratemaking and net metering committee to develop a consensus agreement on statewide net metering for the Commission’s consideration. A consensus agreement between the Staff and regulated utilities was arrived at and, with some modifications, was approved by the Commission on March 29, 2005 in Case No. U-14346. All signatories to the consensus agreement submitted tariffs for net metering (with the exception of We Energies and Xcel Energy, who opted to continue offering net metering service under programs in existence prior to the consensus agreement). March 29 order, p. 9.

The consensus agreement allows utilities to individually design net metering program parameters that track eligible costs to the extent desired by the utility. All net metering offerings in Michigan currently have only two common requirements: (1) the customer’s generation is sized to meet the customer’s requirements and not to provide income through the sale of electricity, and (2) the combined capacity of all net metered generators on any utility’s system does not exceed 100 kW or 0.1% of the utility’s peak system demand, whichever is greater. Beyond that, programs vary, with some being extremely restrictive. The programs differ in the number and types of meters required; costs related to labor, installation and equipment; and billing parameters. Some programs require a significant investment by the customer in equipment in order to net meter. Some programs require up to three meters, and many utility offerings are best described as net

billing rather than net metering.² The net metering tariffs have, understandably, seen very little use.³

In its comments, the Staff states that the type of net metering described in the proposed standard is a simple netting on a one-to-one kilowatt-hour (kWh) basis of electricity delivered by the utility to the customer and electricity delivered by the customer to the utility, at least to the point of zero net usage. The Staff states that only two of the current utility net metering tariffs in Michigan appear to comply with this definition – those being the tariffs offered by We Energies and Xcel Energy (which match net metering programs offered by those companies in their service territories in adjoining states). Staff’s comments, p. 2.

Because participation in the consensus agreement has always been voluntary and the agreement failed to establish net metering as envisioned under federal law, the Commission finds that its prior actions do not comply with Title I of PURPA with respect to consideration of the net metering standard. *See*, 16 USC 2622(d).

The stated goals of PURPA are to encourage (1) conservation of energy supplied by electric utilities, (2) optimal efficiency of electric utility facilities and resources, and (3) equitable rate for electric consumers. 16 USC 2611. The Commission agrees with the Staff that the type of net metering described in the proposed standard is a simple netting on a one-to-one kWh basis of electricity delivered by the utility to the customer and electricity delivered by the customer to the

²*See*, Rose, Kenneth, and Karl Meeusen, *Reference Manual and Procedures for Implementation of the “PURPA Standards” in the Energy Policy Act of 2005*, March 22, 2006, p. 37, Washington DC: American Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, and National Rural Electric Cooperatives Association; available at http://www.puc.state.mn.us/docs/purpa_manual.pdf.

³The latest MREP report shows eight customers engaging in net metering in Michigan. *See*, the April 1, 2008 order in Case No. U-15440, p. 9. This number has, more recently, risen to 23. Staff’s comments, p. 4. By comparison, California has approximately 1 of every 1,000 eligible customers participating in net metering. *Id.*, p. 6.

utility, at least to the point of zero net usage. The PURPA standard also provides that net metering be made available to all customers upon request. Against this background, and after consideration of the evidence presented in the written and oral comments, the Commission finds that the current assortment of voluntary net metering programs available in Michigan does not conform to the type of net metering envisioned in PURPA.

The Commission directs all regulated electric utilities to file an application for approval of a new net metering tariff by December 31, 2009. Companies that file a rate case before that date or that have a rate case pending on the date of issuance of this order may include the new tariff in that case and do not need to file a separate application.

Fuel Diversity Standard

The amendments to PURPA direct the Commission to consider the following:

(12) Fuel sources -- Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

16 USC 2621(d)(12). The Commission agrees with the Staff and finds that this standard should be adopted. Michigan's generation portfolio consists largely of coal (60%) and nuclear (26%) power. Section 10r(6) of 2000 PA 141 (Act 141), MCL 460.10r(6), provides for the Commission to establish a renewable energy program designed to promote the use of existing renewable energy sources and encourage the development of new facilities, but Act 141 did not provide any mechanism for funding such a program. *See, Attorney General v Public Service Comm*, 269 Mich App 473, 713 NW2d 290 (2005). The Commission finds that greater diversification of our state generation resources, in particular renewable generation, will benefit the citizens of the state by ensuring a safer energy supply and providing more energy with fewer environmental detriments.

As the Staff points out, the benefits of a diverse fuel portfolio include “fuel price-spike mitigation, reduced emissions, reduced impacts due to fuel supply problems, and flexibility in operations.” Staff’s comments, p. 12. With this order the Commission opens a docket in Case No. U-15630. Jurisdictional utilities are directed to file plans consistent with the PURPA fuel source diversity standard in that docket by December 31, 2008. The plans should include proposals for regular review of the utility’s progress towards meeting its diversity goals in all future PSCR proceedings, capacity adequacy reviews, and rate cases.

Fossil Fuel Generation Efficiency Standard

The amendments to PURPA direct the Commission to consider the following:

(13) Fossil fuel generation efficiency -- Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

16 USC 2621(d)(13). The Commission finds that this standard should also be adopted. The Commission adopts the mode of implementation recommended by the Staff. With this order the Commission opens a docket in Case No. U-15631 for the receipt of generation efficiency plans. Utilities with fossil fuel generation are directed to file 10-year fossil fuel generation efficiency plans with the Commission by December 31, 2008, in that proceeding. These plans should include a comprehensive technical and economic analysis of the consequences resulting from the potential retirement of existing fossil fuel generation facilities, and plans for repair or replacement of units. In addition to cost and service issues, the analysis should address environmental concerns including potential greenhouse gas abatement measures.

All documents filed in the two proceedings commenced by this order shall be submitted electronically through the Commission’s E-Dockets Website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help

page. Documents may also be submitted, in Word or PDF format, as an attachment to an e-mail sent to mpscedockets@michigan.gov. If any party requires assistance prior to e-filing, contact Commission staff at (517) 241-6170 or by e-mail at mpscedockets@michigan.gov.

THEREFORE, IT IS ORDERED that:

A. Regulated electric utilities shall file an application for approval of a new net metering tariff by December 31, 2009. Companies that file a rate case before that date or that have a rate case pending on the date of issuance of this order do not need to file a separate application for the new tariff.

B. Regulated electric utilities shall file plans consistent with the fuel source diversity standard proposed in 16 USC 2621(d)(12) in Case No. U-15630 by December 31, 2008.

C. Regulated electric utilities with fossil fuel generation shall file 10-year fossil fuel generation efficiency plans consistent with the standard proposed in 16 USC 2621(d)(13) in Case No. U-15631 by December 31, 2008.

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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of August 6, 2008.

Mary Jo Kunkle, Executive Secretary