

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.)	
_____)	

In the matter, on the Commission’s own motion, to)	
require regulated utilities to file fuel source diversity)	
plans in accordance with the fuel source diversity)	Case No. U-15630
standard proposed in 16 USC 2621(d)(12).)	
_____)	

In the matter, on the Commission’s own motion, to)	
require regulated utilities with fossil fuel generation)	
to file 10-year fossil fuel generation efficiency plans)	Case No. U-15631
consistent with the standard proposed in)	
16 USC 2621(d)(13).)	
_____)	

At the October 21, 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

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.

On August 6, 2008, the Commission issued an order adopting all three PURPA standards. The order directed regulated electric utilities to file an application for approval of a new net metering tariff by December 31, 2009; to file plans consistent with the fuel source diversity standard in Case No. U-15630 by December 31, 2008; and (for those regulated electric utilities with fossil fuel generation) to file 10-year fossil fuel generation efficiency plans in Case No. U-15631 by December 31, 2008.

On September 5, 2008, the Michigan Regulated Electric Utility Service Providers (providers)¹ filed a petition for rehearing and clarification of the August 6 order. The providers bring their petition under 1999 AC, R 460.17403 (Rule 403), and state that the petition is based on claims of error, facts and circumstances arising subsequent to the comment date, and unintended consequences resulting from compliance with the August 6 order. The “petition is primarily concerned with the portion of the order addressing net metering.” Petition, p. 2.

The petition states that new circumstances include the Legislature’s consideration of a bill addressing net metering (SB 213), as well as bills addressing 2000 PA 141 reform (HB 5524), energy efficiency (HB 5525), and renewable energy (HB 5548-5549).

The providers argue that HB 5524 provides for an integrated resource planning (IRP) process which, along with the renewable energy bills, will address fuel source diversity and energy efficiency. In light of this legislation, the providers argue, the Commission should reconsider any need for reporting on fuel diversity or energy efficiency under a federal standard.

With respect to net metering, the providers also argue that the August 6 order should be reconsidered in light of new legislation. The providers further argue that: (1) the Commission made an error of fact in finding that net metering programs in Michigan are receiving little use, because the number of net metering customers has tripled (to 23) and continues to grow; (2) the Commission committed an error of law in finding that it had not already approved a net metering

¹The providers include the Michigan Electric and Gas Association (MEGA), The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), and the Michigan Electric Cooperative Association (MECA). The 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 MECA members include 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.

standard comparable to the federal standard (*see*, 16 USC 2622(d)); (3) the Commission is not authorized by state or federal law to impose a new net metering program on regulated entities; (4) the net metering tariffs already adopted under the voluntary program authorized by Case No. U-14346 are compliant with the federal standard laid out in PURPA; and (5) the Commission gave controlling weight to the comments filed by the Commission Staff (Staff), and ignored the providers' comments. The providers request that the Commission either amend the August 6 order to find that the three PURPA standards are not adopted because they have already been addressed by state law, or put the August 6 order in abeyance until the Legislature has taken action on the aforementioned bills.

On September 8, 2008, Wayne Appleyard filed comments in opposition to the providers' petition, requesting that the Commission refuse to delay the new requirements, and shorten the time for filing new net metering tariffs to the end of 2008, rather than 2009.

On September 22, 2008, Steve Szilvagyfi filed comments in opposition to the providers' petition, noting that the Commission should adopt true net metering.

On September 26, 2008, the Staff filed a response to the providers' petition. The Staff notes that on September 18, 2008, the Legislature passed SB 213, the Clean, Renewable, and Efficient Energy Act. The Staff points out that Section 173(1) of SB 213 directs the Commission to establish a statewide net metering program by order, and to promulgate net metering rules, within 180 days of the date of enactment. The Staff notes that the basic design elements of the net metering program are included in the bill. The Staff recommends that, after SB 213 becomes effective, the Commission withdraw the requirement for utilities to file new net metering tariffs under the August 6 order, and direct the establishment of the statewide net metering program as provided for in the bill.

With respect to the fuel source and fossil fuel generation efficiency reports, the Staff notes that details of report filing requirements under the new legislation are not yet established, and, in light of that, recommends that the August 6 order remain in effect until such time as the Commission modifies reporting requirements in light of the new legislation.

On October 6, 2008, Governor Jennifer M. Granholm signed SB 213 into law, enacting 2008 PA 295 (Act 295), the Clean, Renewable, and Efficient Energy Act. Section 173(1) of Act 295 directs the Commission to establish a statewide net metering program by order, and to promulgate net metering rules, within 180 days of the date of enactment, or by April 6, 2009.² In light of the comprehensive nature of the new net metering legislation and the short time frame for its implementation, the Commission finds that the petition for rehearing should be granted, and the August 6 order should be amended to delete any requirement to file applications for net metering tariffs by December 31, 2009. The Commission will have issued a detailed order laying out the net metering program provided for in Act 295 (as well as net metering rules) long before that date. The Commission finds that the net metering provisions of Act 295 are consistent with the PURPA standard. The Commission looks forward to working with regulated electric utilities over the next year to implement the new net metering program. To that end, the Commission issued an order on October 17, 2008 in Case No. U-15803 soliciting comments on the Act 295 net metering program.

To consider the effect of the additional new legislation, the Commission finds that the remainder of the petition for rehearing should also be granted. On October 6, 2008, the Governor also signed HB 5524 into law, enacting 2008 PA 286 (Act 286). Section 6s(11) of Act 286 provides that an IRP shall be filed whenever a utility files an application for a certificate of necessity (CON) to construct a new electric generation facility, make a significant investment in or

² The 180-day period ends on April 4, 2009, which is a Saturday.

purchase an existing generation facility, or enter into a power purchase agreement of six years or longer. Thus, the CON/IRP filing occurs only when a utility has determined to take on a major new construction or investment project. In light of the fact that these filings may be infrequent and are at the utility's option, the Commission finds that these new legislative provisions should not trump the PURPA standards adopted in the August 6 order. Therefore, the fuel source diversity and fossil fuel efficiency reports remain due on December 31, 2008.

THEREFORE IT IS ORDERED that the petition for rehearing filed by the Michigan Regulated Electric Utility Service Providers is granted, and the August 6, 2008 order is amended to delete the requirement for regulated electric utilities to file applications for net metering tariffs by December 31, 2009.

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

By its action of October 21, 2008.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner