

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)	
to implement the provisions of Section 10a(1) of)	Case No. U-15801
2008 PA 286.)	
_____)	

At the August 25, 2009 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 ANNOUNCING PROPOSED PROCEDURES FOR IMPLEMENTATION OF MCL 460. 10a(1)(b)-(d) AND SCHEDULING A COLLABORATIVE CONFERENCE

On October 6, 2008, Governor Jennifer M. Granholm signed into law 2008 PA 286 (Act 286), an amendment to Public Act 3 of 1939. Section 10a(1)(a) of Act 286 provides that the Commission shall issue orders establishing that “no more than 10% of an electric utility’s average weather adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.”

Specifically, in Section 10a(1)(b)-(d) the Legislature provided that the orders to be issued by the Commission shall:

- (b) Set forth procedures necessary to administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis, and shall provide, among other things, that existing customers who are taking electric service from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility

served through an alternative electric supplier will be given next priority, with the remaining available load, if any, allocated on a first-come first-served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy allotments for the utility's distribution service territory is greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the date of allocation. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

(c) Notwithstanding any other provision of this section, customers seeking to expand usage at a facility that has been continuously served through an alternative electric supplier since April 1, 2008 shall be permitted to purchase electricity from an alternative electric supplier for both the existing and any expanded load at that facility as well as any new facility constructed or acquired after the effective date of the amendatory act that added this subdivision that is similar in nature if the customer owns more than 50% of the new facility.

(d) Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, shall be permitted to purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales.

On October 21, 2008, the Commission issued an order in this docket inviting interested persons to submit comments on the procedures to be adopted by the Commission regarding the allocation of the amount of load to be served by alternative electric suppliers. Consumers Energy Company, the Michigan Electric Cooperative Association, The Detroit Edison Company, Energy Michigan, Constellation NewEnergy, Inc., and Integrys Energy Services submitted comments.

The Commission Staff (Staff) has reviewed the comments and developed proposed procedures regarding implementation of MCL 460.10a(1)(b)-(d), which are attached to the order as Exhibit A. The Commission finds that interested persons and the Staff should have an opportunity to meet to discuss the proposed procedures. Toward that end, a collaborative discussion on the

proposed procedures has been scheduled for 1:00 p.m. on Tuesday, September 1, 2009 at the Commission's Lansing offices, 6545 Mercantile Way, Lansing, Michigan. All interested persons are invited to attend. In addition, any interested person may submit written or electronic comments regarding the proposed procedures in this docket by Thursday, September 10, 2009.

THEREFORE, IT IS ORDERED that:

A. A collaborative discussion on the proposed procedures to be adopted by the Commission pursuant to Section 10a(1) of 2008 PA 286 regarding allocation of the amount of load to be served by an alternative electric supplier, attached to this order as Exhibit A, has been scheduled for 1:00 p.m. on Tuesday, September 1, 2009 at the Commission's Lansing offices, 6545 Mercantile Way, Lansing, Michigan.

B. Interested persons may file written or electronic comments on the proposed procedures by 5:00 p.m. on September 10, 2009.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of August 25, 2009.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner

DEFINITIONS

- * **Annual Energy Allotment (“Allotment” or “Energy Allotment”)** means the level of megawatt-hours (MWh) assigned to a customer based on its actual sales during the most recent calendar year (January through December).
- * **Average Weather-Adjusted Retail Sales or Weather-Adjusted Retail Sales** means the level of MWh equal to the preceding calendar year sales of the utility adjusted for weather. The weather adjustment to be applied shall be based on the methodology employed by the utility in its most recent electric rate case application.
- * **Cap** means the level of MWh equal to ten percent (10%) of the weather-adjusted retail sales from the preceding calendar year.
- * **Customer.** As specified in MCL 460.10a(17)(a), Customer means the building or facilities served through a single existing electric billing meter and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or facilities.
- * **Choice Participation** means the combined level of MWh equal to the sum of (a) the MWh usage for the previous calendar year of the customers taking service from an alternative electric supplier (AES) and (b) the awarded allotments not yet being served by the AES. The level of Choice Participation shall not be adjusted for weather. The level of Choice Participation shall be updated each time the Cap is updated.
- * **Enrollment Queue or Queue** means the ranking system established and maintained by each utility when the level of Choice Participation is greater than the Cap or would exceed the Cap if an allotment were awarded. The utility shall maintain enrollment form submission records so that it can accurately identify a customer’s position within the queue.
- * **Facility or Customer Facility** shall be defined as a building or dwelling served through a single existing electric billing meter at a single site and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or dwelling. This shall be interpreted in the same manner as MCL 460.10a(17)(a), which provides the definition of “Customer.”
- * **First-Come First-Served Basis** means that enrollment form submissions are attended to by the utility in the order that they were submitted by the AES to the utility, without preference or bias.

- * **Group One Customer.** In accordance with MCL 460.10a(1)(d), a Group One Customer means any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of Michigan.
 - A. A Group One customer is allowed to increase its usage above the Cap.
 - B. The awarded allotments of a Group One Customer shall be included in the calculation of Choice Participation.

- * **Group Two Customer.** In accordance with MCL 460.10a(1)(c), a Group Two Customer shall be identified as a customer who has been continuously taking service through an AES since April 1, 2008.
 - A. A Group Two Customer is allowed to increase its usage above the Cap for both existing and any expanded load at that facility.
 - B. A Group Two Customer is allowed to increase its usage above the Cap for any new facility constructed or acquired after October 6, 2008 that is similar in nature to the existing facility if the more than 50% of the new facility is under common ownership with the existing facility.
 - C. A Group Two Customer that discontinues retail access service and returns to standard tariff service will lose its Group Two status.
 - D. The awarded allotments of a Group Two Customer shall be included in the calculation of Choice Participation.

- * **Group Three Customer.** As specified in MCL 460.10a(1)(b), a Group Three Customer shall be any customer who has been continuously taking service through an AES since October 6, 2008 but began taking such service after April 1, 2008.
 - A. Group Three Customer status is limited to existing load and subsequent increased load through meters served continuously by an AES since October 6, 2008. Expanded load at such a facility shall be classified as having Group Four Customer status.
 - B. A Group Three Customer that discontinues retail access service and returns to standard tariff service will lose its Group Three status.
 - C. The awarded allotments of a Group Three Customer shall be included in the calculation of Choice Participation.

- * **Group Four Customer.** Pursuant to MCL 460.10a(1)(b), a Group Four Customer is a customer seeking to expand usage at a facility served through an AES where expand means to connect new load through an existing meter.
 - A. The awarded allotments of a Group Four Customer shall be included in the calculation of Choice Participation.

- * **Group Five Customer.** Pursuant to MCL 460.10a(1)(b), a Group Five Customer shall be any customer who enrolled or began taking retail open access service after October 6, 2008 and who is not classified as a Group One, Two, Three or Four Customer.

A. The awarded allotments of a Group Five Customer shall be included in the calculation of Choice Participation.

- * **Preceding Calendar Year Sales** means the level of MWh Sold from January through December of the prior year and includes retail open access (ROA) sales. Each utility shall calculate its Preceding Calendar Year Sales using the methodology provided for in MPSC Form P-521, represented as:

$$\text{PLUS } \text{TOTAL}^1 \text{ MWh Sold (P-521, page 304)}^2 \\ \text{TOTAL}^7 \text{ MWh Sold (P-521, page 305)}^3$$

- * **Similar in Nature** means having a Standard Industrial Code⁴ that resides within the same division structure as an existing facility being served by an alternative electric supplier.

IMPLEMENTATION OF SECTION 10a(1) OF PA 286

1. Determine the level of the Cap by calculating the weather-adjusted retail sales for the preceding calendar year.
 - a. Each utility shall report the level of its preceding calendar year sales, its weather-adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support its calculations, within 5 days of the issuance of this order. The utility shall file its preceding calendar year sales, its weather-adjusted retail sales for the preceding calendar years and the resulting Cap data and all supporting documentation in the separate docket opened for that purpose.
 - b. Each subsequent calculation of the preceding calendar year sales, the weather-adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support the calculations, shall be provided to the Commission as outlined in the Determination of the Cap section of this document.
2. The utility shall assign energy allotments to its Group One and Group Two customers. If the Group One and Two allotments exceed the Cap, no additional allotments will be

¹ TOTAL is defined as Total Billed less Total Unbilled per MPSC Form P-521

² Page 304 of the MPSC Form P-521 is titled "Sale of Electricity by Rate Schedule"

³ Page 305 of the MPSC Form P-521 is titled "Customer Choice Sales of Electricity by Rate Schedule"

⁴ Standard Industrial Codes (SIC) are published by the Occupational Safety & Health Administration within the US Department of Labor and are located at http://www.osha.gov/pls/imis/sic_manual.html.

awarded to Group Three, Four and Five customers. All customers, including Group Three, Four, and Five customers may retain the allotments they had in the prior year.

3. The utility shall assign energy allotments to its Group Three customers. If the Group Three allotments exceed the Cap, no additional allotments will be awarded to Group Four and Five customers.
4. The utility shall assign energy allotments to its Group Four customers. If the Group Four allotments exceed the Cap, no additional allotments will be awarded to Group Five Customers.
5. The utility shall assign energy allotments to its Group Five customers on a first-come, first-serve basis pursuant to the guidelines of the Securing an Annual Energy Allotment section of this document.
6. Each utility shall establish a fully operational web-based Cap-Tracking System pursuant to the guidelines of the Cap-Tracking System section of this document.

DETERMINATION OF THE CAP

1. Each utility shall calculate the Cap based on the weather-adjusted retail sales of the preceding calendar year through a two step process.
 - a. Step One: Each utility shall file an initial Cap by January 1st of each year. The initial Cap shall be based on 11-months of weather-adjusted retail sales (January through November) and 1-month of estimated weather-adjusted retail sales for December of the same year. The initial Cap shall take effect on the first business day of January each year and is not subject to challenge.
 - b. Step Two: Each utility shall file a final Cap by February 1st of each year. The final Cap shall be based on the weather-adjusted retail sales from the preceding calendar year. The final Cap shall take effect on the first business day of February each year.
2. Any person wishing to challenge the level of a utility's final Cap shall file a complaint against the utility in a new docket on or before February 15th each year.
 - a. If the final Cap is not challenged, Commission action is not required and the Cap shall remain in effect for the remainder of that calendar year.
 - b. If the final Cap is challenged, the final Cap shall remain in effect until the Commission determines the appropriate Cap.
3. The Cap shall be updated on the utility's Cap-Tracking System on the first business day of January and February each year. The Cap shall also be updated on the first business day following a Cap determination by the Commission.

4. The Cap shall be submitted to the Commission through utility company filings in the separate docket opened for each utility for that purpose on or before January 1st and February 1st of each year.

SECURING AN ANNUAL ENERGY ALLOTMENT

1. Allotments shall be based on the customers previous year's 12-month annual usage (January thru December).
 - a. If the customer does not have 12-months of annual usage, its annual energy allotment shall be estimated by the utility based on the class and rate using information of similar customer types from the utility's standard tariff service.
2. The utility shall award and allocate allotments on a first-come, first-served basis after the allocation of energy allotments to its Group One, Two, Three and Four customers are complete and there is space available below the Cap.
 - a. The utility shall award and allocate allotments on a first-come first-served basis as measured by the date and time when a complete enrollment form is submitted by the AES to the utility. A complete enrollment form is an enrollment form that meets all utility company validation criteria and does not require resubmission to the utility by the AES.
 - b. An enrollment switch shall be processed without being subject to the annual energy allotment process as a customer may utilize its annual energy allotment with any AES it chooses.
 - c. The utility shall revoke the enrollment form and energy allotment for a customer that fails to become service-ready and begin taking service from an AES within its required time frame.
 - i. Except as provided in section 2(c)(ii), a customer shall have 90 days from the date of its awarded allotment to become service-ready and must begin taking service on the next billing cycle after becoming service-ready.
 - ii. A customer who requires high voltage protection, substation work or any similar work necessitating more than 90 days to complete shall have 270 days from the date of its awarded allotment to become service-ready and must begin taking service on the next billing cycle after becoming service-ready.
 - iii. In the event that an enrollment form and energy allotment is revoked, the customer shall no longer be entitled to its approved allotment. The customer must submit a new enrollment form request if it desires to re-secure an energy allotment. The most recent enrollment form date shall be treated as the key measurement date in situations of competing allotment requests.
3. If an allotment is awarded, the utility shall notify the AES within one business day of the submission of a complete enrollment form.
 - a. An allotment shall be awarded if the entire amount of the expected usage falls below the Cap. Once an annual energy allotment is awarded:

- i. An AES customer shall not be returned to utility service if the level of Choice Participation exceeds the Cap due to the reduction in sales of a utility in a subsequent year. This includes customers already taking service from an AES as well as those customers who have been awarded an annual energy allotment but have not yet began taking service.
 - ii. An AES customer shall not be returned to utility service if the level of Choice Participation exceeds the Cap due to the energy usage of the customer exceeding its annual energy allotment.
 - iii. That customer shall not be returned to utility service until that customer elects to discontinue taking service from an AES.
 - b. An allotment shall be awarded based on a customer's status in the enrollment queue in situations where the level of Choice Participation was above the Cap and subsequently falls below the Cap.
 - i. An allotment shall be awarded to the first customer in the enrollment queue if its entire annual energy allotment falls below the Cap.
 - ii. If the annual energy allotment of the first customer in the enrollment queue exceeds the Cap then the utility shall not award additional allotments until such time that the first customer in the queue is provided the opportunity to accept its allotment.
 1. If space below the Cap becomes available, the utility shall notify the AES within one business day. The AES shall then have one business day to notify the utility that the customer desires to accept its allotment.
 - iii. The utility shall award allotments from within the enrollment queue until the available energy allotments are exhausted or the queue is empty.
4. If an allotment is not awarded then it shall be deferred, and the utility shall notify the AES of the deferral within one business day of the submission of a complete enrollment form. If the deferral is based on Cap exceedance, the deferral notification shall provide notification of Cap exceedance and provide the AES with the customer's position within the queue in terms of the number of forms and MWh ahead of that customer within the queue.
 - a. An allotment shall be deferred if the level of Choice Participation is greater than the Cap or if the annual energy allotment would create a situation where the level of Choice Participation would be greater than the Cap if the allotment were to be awarded.
 - i. A Group One Customer shall be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap.
 - ii. A Group Two Customer may be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap.
 - b. A deferred enrollment shall be placed into the enrollment queue and shall remain in queue unless withdrawn by the AES or the customer in writing or electronic mail.
 - c. Provisions, if any, in either a utility tariff or an AES contract that impose sanctions on a customer in the event of the customer's (1) premature return to bundled service or (2) failure to take electric service from an AES for the term of

the contract shall be unenforceable if the reason for the customer's premature return to bundled service or failure to take electric service from the AES for the term of the contract is the 10% limitation on choice sales set forth in MCL 460.10a(1).

CAP-TRACKING SYSTEM ("CTS")

1. The CTS is required for utilities with active or enrolled choice load.
 - a. The CTS shall be web-based and made available at the utility's website.
 - b. The CTS must be available to the public and be free of charge.
2. Each utility shall publish uniform and accurate information concerning energy allotments on its website. At a minimum, the information contained on this website shall include:
 - a. Preceding Calendar Year sales.
 - b. Weather-Adjusted Retail Sales for the Preceding Calendar Year.
 - c. The Cap.
 - d. Current level of Choice Participation expressed in MWh and as a percentage of the weather-adjusted retail sales for the preceding calendar year. Note: the utility shall specify the level of MWh of usage for the previous calendar year of the customers taking service from an AES and the amount of awarded allotments not yet being served by an AES.
 - e. The amount of available energy allotments expressed in MWh and as a percentage of the weather-adjusted retail sales for the preceding calendar year.
 - f. The number of enrollment forms in queue.
 - g. The number of MWh in queue.
 - h. The date of the most recent update to the information contained on the web page.
 - i. A contact name and direct phone number or direct E-mail of a utility representative able to assist with questions about the contents of the website.
3. The utility shall update the information contained on the website on a monthly basis when the amount of available energy allotments is less than or equal to five percent (5%) of the weather-adjusted retail sales for the preceding calendar year.
4. The utility shall update the information contained on the website on a weekly basis when the amount of available energy allotments is greater than five percent (5%) but less than eight percent (8%) of the weather-adjusted retail sales for the preceding calendar year.
5. The utility shall update the information contained on the website on a daily basis when the amount of available energy allotments is greater than or equal to eight percent (8%) of the weather-adjusted retail sales for the preceding calendar year.
6. The CTS shall be fully operational within 30 days of the issuance of this order.