

On March 18, 2009, the Commission issued simultaneous orders in Case Nos. U-15803 and U-15787, adopting a statewide net metering program in the former, and approving interconnection and net metering rules in the latter. Today, the Commission issues an order in Case No. U-15787 formally adopting the net metering rules and transmitting them to the Secretary of State.

The March 18 order in Case No. U-15803 instituted the statewide net metering program that is reflected in the rules, with one exception. The rules require each electric utility to file applications for approval of proposed interconnection procedures and forms within 90 days of the effective date of the rules or by July 3, 2009, whichever is sooner. R 460.615(1). In the March 18 order in Case No. U-15803, the Commission directed that, no later than May 4, 2009, all electric utilities shall file proposed interconnection applications, interconnection agreements, and net metering applications, and alternative electric suppliers (AES) shall file proposed net metering applications, for category 1 projects only, in a new docket opened for the purpose of receiving these filings, in Case No. U-15919.

On April 17, 2009, The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), the Michigan Electric and Gas Association (MEGA), and the Michigan Electric Cooperative Association (MECA) (collectively, Petitioners) filed a petition for rehearing and clarification in all three dockets.¹

On April 27, the Michigan Sustainable Energy Coalition and the Environmental Law & Policy Center (MSEC/ELPC) filed a response in opposition to the petition.

On May 8, 2009, the Commission Staff (Staff) filed a response in opposition to the petition.

Petitioners argue that the Commission should reconsider the language of R 460.652, which provides that “Standby charges shall not be applied to customers with systems capable of

¹In this order the Commission will address the final orders in Case Nos. U-15787 and U-15803. Case No. U-15919 is not relevant to the petition for rehearing.

generating 150 [kilowatts] kW or less.” Petitioners point out that, during the comment phase of the rulemaking, they commented that all net metering customers with systems generating more than 20 kW should be required to pay standby charges, and that the Commission disagreed.

Petitioners argue that this rule results in the unintended consequence of prohibiting billing for “all non-power supply components of rates” for category 2 modified net metering customers (21 kW to 150 kW). Petition, p. 2. Petitioners argue that this rule allows category 2 customers to avoid all distribution charges, surcharges, and non-bypassable charges for net power purchases from the utility and for use of the utility distribution system. Petitioners contend that this departs from traditional standby tariff applications.

Petitioners further argue that the Act requires the Commission to establish standby charges for modified net metering customers (MCL 460.1007(j)), and provides that net metering customers with a system capable of generating more than 20 kW qualify for modified net metering. *See*, MCL 460.1007(j); MCL 460.1073(5)(e). Petitioners contend that the Commission is required to apply standby charges to the smaller customers. Petitioners argue that category 2 customers will be issued an unlawful credit for distribution charges as a result of the language of the rule.

Additionally, Petitioners contend that the Commission should clarify that unrecovered transmission and distribution costs associated with category 1 customers are program costs as defined in MCL 460.1175(1) and will be fully recovered by electric providers from the net metering customer class or all other customer classes.

Petitioners further argue that the Commission should clarify how securitization surcharges are to be recovered from net metering customers. Petitioners contend that the Commission has failed to protect securitization bondholder rights under 2000 PA 142.

MSEC/ELPC urges the Commission to deny the petition. MSEC/ELPC points out that, if the rules are withdrawn at this point in time, the Commission will have violated the mandates of the Act. MSEC/ELPC further notes that the rules are out of the Commission's hands now, and are in the hands of SOAHR, LSB, and JCAR. MSEC/ELPC argues that Petitioners must seek an appeal with these agencies.

MSEC/ELPC further points out that all of Petitioners' arguments were heard during the rulemaking proceeding and addressed in the March 18 orders. Thus, argues MSEC/ELPC, the petition fails to meet the standards of 1999 AC, R 460.17403 (Rule 403) for rehearing.

MSEC/ELPC argues that the Petitioners misread the statutory language regarding standby charges. MSEC/ELPC argues that standby charges have traditionally acted as a significant barrier to distributed generation and the Legislature evinced its intent to remove that barrier for small generators. MSEC/ELPC maintains that the clarifications that Petitioners seek are not necessary.

Finally, MSEC/ELPC contends that the Commission may order an offsetting adjustment to the bills of net metering customers, similar to the adjustments made to customers' charges in the original securitization financing orders, in order to allow Detroit Edison and Consumers to recover securitization charges and allow true net metering to take place.

The Staff also argues that the petition should be denied because it rehashes the Petitioners' previously-made arguments and does not meet the standards of Rule 403.

With respect to standby charges, the Staff argues that this departure from tradition was a change intended by the Legislature, and the Legislature's intent must be carried out.

The Staff points out that the recoverability of transmission and distribution charges will have to be determined in a general rate case, and will depend upon whether electric providers can demonstrate that these costs exist and are not recovered elsewhere in rates. The Staff maintains

that net metering customers should receive the full power supply component until the next utility rate case, “when such costs can be listed separately on the rate schedules.” Staff’s response, p. 4.

The Staff maintains that the March 18 order is clear that the Commission did not intend for net metering customers to pay surcharges on energy the customer generates. The Staff argues that placing surcharges on net usage for true net metering customers and on kilowatt-hours delivered by the utility for modified net metering customers does not constitute a bypass, but rather is no different from conserving electricity through other means such as energy efficiency. The Staff notes that the surcharges are fully reconciled, and may be adjusted upwards if they are undercollected.

Rule 403 of the Commission’s Rules of Practice and Procedure 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 a rehearing.

The Commission finds that each one of the arguments advanced by the Petitioners was noted and addressed by the Commission in the March 18 orders. Petitioners’ arguments regarding standby charges were addressed (Case No. U-15803, p. 20; Case No. U-15787, p. 21) and do not merit rehearing. Further, the orders do not require clarification regarding surcharges and program costs. The Commission noted Petitioners’ arguments and stated that “[s]ecuritization surcharges shall be paid on net usage (Case No. U-15803, p. 17), and “[t]he Commission expects electric providers to seek cost recovery in rate cases” (Case No. U-15803, p. 19). The Commission finds

that the petition for rehearing does not meet the standards required by Rule 403, and should be denied.

Additionally, the Commission finds that the docket in Case No. U-15239 should be closed. This docket was originally opened in order to commence a rulemaking on interconnection standards. The interconnection rules have since been revised in Case No. U-15787, and Case No. U-15239 no longer serves a purpose.

THEREFORE, IT IS ORDERED that:

- A. The April 17, 2009 petition for rehearing and clarification is denied.
- B. The docket in Case No. U-15239 is closed.

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 May 26, 2009.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner