

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the joint request of )  
**THE DETROIT EDISON COMPANY, INDIANA** )  
**MICHIGAN POWER COMPANY, THE** )  
**MICHIGAN ELECTRIC AND GAS ASSOCIATION** )  
**and CONSUMERS ENERGY COMPANY** to )  
initiate an investigation of the licensing rules, and )  
regulations needed to address the effect of the )  
participation of Michigan retail customers, including )  
those associated with aggregators of retail customers, )  
in a regional transmission organization wholesale )  
market. )  
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Case No. U-16020

At the September 29, 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**

On August 13, 2009, The Detroit Edison Company, Indiana Michigan Power Company, and Michigan Electric and Gas Association (Electric Utilities) filed an application seeking an order initiating an investigation into the rules and regulations governing the direct participation of Michigan retail customers into a Regional Transmission Organization (RTO) wholesale electric market, including those customers who choose to participate in conjunction with aggregators of retail customers. Additionally, the Electric Utilities seek a determination regarding necessary licensing requirements and appropriate rules and regulations related to the activities of these

customers. On August 21, 2009, Consumers Energy Company (Consumers) filed a letter of support for the application and joined the filing parties in seeking relief from the Commission.<sup>1</sup>

In support of their request, the Electric Utilities state that on October 17, 2008, the Federal Energy Regulatory Commission (FERC) issued a final rule known as Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC P 61,071 (2008) (Order 719). According to the Electric Utilities, Order 719 requires RTOs, including the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), to amend their market rules to allow aggregators of retail customers to bid demand response resources from retail customers directly into an RTO's organized wholesale energy and ancillary services markets in accordance with certain criteria. The Electric Utilities indicate that Order 719 provides that an RTO must allow bids into its markets "unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate."

The Electric Utilities state that Midwest ISO made a compliance filing implementing Order 719 requirements on April 28, 2009 in Docket ER09-1049-0000. According to them, as part of this compliance filing Midwest ISO provided "informational" draft tariff language related to the integration of aggregators of retail customers into the Midwest ISO markets, and indicated that final tariff language would be filed on or before August 31, 2009.<sup>2</sup>

The Electric Utilities stress that the Midwest ISO's "informational" filing did not address how aggregators of retail customers will interface with the load-serving entities (LSEs) responsible for serving the load of the affected customers. The Electric Utilities further state that, as part of a

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<sup>1</sup>In recognition of its support for the filing and its joining in the request for relief from the Commission, Consumers has been added to the caption of this proceeding. All references to the Electric Utilities are meant to include Consumers.

<sup>2</sup>Subsequently, Midwest ISO announced its intention to delay its FERC Order 719 filing for up to 30 days.

compliance filing made on June 17, 2009 (Docket Nos. ER08-394-007 and ER08-394-009) Midwest ISO also indicated that “Load Modifying Resource Market Participants (LMR MPs)” would be able to participate in the Midwest ISO markets. They point out that an LMR MP includes any Midwest ISO market participant that “has the right to control the energy demand or the energy production from a Load Modifying Resource.”

The Electric Utilities further state that PJM Interconnection, L.L.C. (PJM) filed proposed tariff revisions to implement Order 719 on February 10, 2009, and that protests filed in response to the February 10 filing raise the question of whether PJM’s proposed tariff properly interpreted Order 719. According to the Electric Utilities, there are legitimate concerns whether such proposed tariffs place an undue burden on LSEs and state commissions.

The Electric Utilities maintain that an LMR MP may be a single customer bidding a single site into an RTO market or a single customer aggregating multiple sites. Further, the Electric Utilities are concerned that a customer could bid into the RTO market by itself or through a third party.

While conceding that, in the context of an appropriate retail regulatory structure, LMR MPs and aggregators of retail customers could bring potential advantages to retail customers in Michigan by encouraging innovative demand response utilization or providing additional opportunity for retail customers to participate in demand response, the Electric Utilities assert that there are several concerns associated with such participation in the absence of appropriate rules and guidelines.

As examples of these concerns, the Electric Utilities cite the possibility that LMR MPs and aggregators of retail customers could create conflicts with existing demand response programs and have unintended detrimental financial consequences for non-participating retail customers. They also maintain that the extent to which LMR MPs and aggregators of retail customers may be

governed by the Commission is unclear. According to the Electric Utilities, absent defined rules and regulations regarding LMR MPs and aggregators of retail customers demand response activity, an LSE's ability to forecast energy and capacity requirements could be jeopardized. The Electric Utilities argue that LSE's serving distribution customers must be cognizant of when demand response events are scheduled and will be implemented to properly manage distribution load on a real time basis. Further, citing North American Electric Reliability Standards MOD-019-0 and MOD-020-0, the Electric Utilities insist that LSEs must know their forecasts and amounts of interruptible demand and direct control management available to transmission operators and reliability coordinators. According to the Electric Utilities, such requirements necessitate defined rules and regulations regarding LMR MPs and aggregators of retail customers demand response activity.

For all of these reasons, the Electric Utilities request that the Commission initiate an investigation regarding appropriate rules and regulations for the direct participation of Michigan retail customers into an RTO wholesale market. Pending completion of this investigation, the Electric Utilities suggest that the Commission temporarily restrict the participation of Michigan retail customers in RTO wholesale markets. According to the Electric Utilities, pending the outcome of this proceeding, only LSEs within Michigan should be allowed to aggregate retail customers to whom they supply electric retail supply service for RTO wholesale market participation.

The Commission is persuaded that the relief requested by the Electric Utilities should be granted. The Commission finds that an investigation should be commenced into appropriate rules and regulations for the direct participation of Michigan retail customers into an RTO wholesale market. Toward that end, the Commission has attached a draft notice of opportunity to comment

to this order as Exhibit A. The Electric Utilities seeking relief from the Commission shall be responsible for and are directed to arrange publication of the notice of opportunity to comment.

Any interested person may submit written or electronic comments regarding appropriate rules and regulations for the direct participation of Michigan retail customers into an RTO wholesale market. Initial comments must be filed with the Commission no later than 5:00 p.m. on December 4, 2009. Reply comments must be filed no later than January 6, 2010. All written comments shall be addressed to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments shall be e-mailed to [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov). All comments should reference Case No. U-16020. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company, Indiana Michigan Power Company, the electric utility members of the Michigan Electric and Gas Association, and Consumers Energy Company shall publish the notice of opportunity to comment, attached as Exhibit A, in newspapers throughout their service territories by October 22, 2009. These utilities shall file proofs of publication in this docket by November 5, 2009.

B. Interested persons shall have until 5:00 p.m. December 4, 2009 to submit comments in this docket.

C. Interested persons shall have until 5:00 p.m. January 6, 2010 to submit reply comments in this docket.

D. The Commission's Executive Secretary shall send a copy of the order to the Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C. as notice of the

pendency of this proceeding and the fact that the Commission intends to assert its jurisdiction over the matter.

E. Commencing immediately and until further order of the Commission, the participation of Michigan retail customers in any regional transmission organization wholesale market shall be temporarily restricted during the pendency of this proceeding.

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

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Steven A. Transeth, Commissioner

By its action of September 29, 2009.

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Mary Jo Kunkle, Executive Secretary

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Case No. U-16020

**NOTICE OF OPPORTUNITY TO COMMENT**

On August 13, 2009, The Detroit Edison Company, Indiana Michigan Power Company, and Michigan Electric and Gas Association (Electric Utilities) filed an application seeking an order initiating an investigation into the rules and regulations governing the direct participation of Michigan Retail Customers into a Regional Transmission Organization (RTO) wholesale electric market, including those customers who choose to participate in conjunction with aggregators of retail customers, and make a determination regarding necessary licensing requirements and appropriate rules and regulations related to the activities of these customers. On August 21, 2009, Consumers Energy Company filed a letter of support for the application and joined the filing parties in seeking relief from the Commission.

On September 29, 2009, the Commission issued an order commencing an investigation, soliciting comments on the relief requested in the application, and temporarily restricting participation of Michigan retail customers in any regional transmission organization wholesale markets during the pendency of this proceeding.

Copies of the application and the Commission’s order may be viewed at [www.michigan.gov/mpscedockets](http://www.michigan.gov/mpscedockets) .

Written and electronic comments by any interested person may be filed with the Commission and must be received no later than 5:00 p.m. on December 4, 2009. Reply comments must be submitted no later than January 6, 2010.

Written comments should be sent to the: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments should be e-mailed to: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) . All comments should reference Case No. U-16020. Comments received in this matter will become public information, posted on the Commission’s website, and subject to disclosure.

**[Utility name]**