

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission’s own motion, to)
 implement Section 6q(2) of 2008 PA 286, as it applies)
 to **ALPENA POWER COMPANY, CONSUMERS**)
ENERGY COMPANY, THE DETROIT EDISON)
COMPANY, EDISON SAULT ELECTRIC)
COMPANY, INDIANA MICHIGAN POWER)
COMPANY, NORTHERN STATES POWER)
COMPANY-WISCONSIN, UPPER PENINSULA)
POWER COMPANY, WISCONSIN PUBLIC)
SERVICE CORPORATION, WISCONSIN)
ELECTRIC POWER COMPANY; ALGER DELTA)
COOPERATIVE ELECTRIC ASSOCIATION,)
BAYFIELD ELECTRIC COOPERATIVE,)
CHERRYLAND ELECTRIC COOPERATIVE,)
CLOVERLAND ELECTRIC COOPERATIVE,)
GREAT LAKES ENERGY COOPERATIVE,)
MIDWEST ENERGY COOPERATIVE,)
ONTONAGON COUNTY RURAL)
ELECTRIFICATION ASSOCIATION,)
PRESQUE ISLE ELECTRIC AND CO-OP,)
THUMB ELECTRIC COOPERATIVE,)
TRI-COUNTY ELECTRIC COOPERATIVE;)
MICHIGAN CONSOLIDATED GAS COMPANY,)
MICHIGAN GAS UTILITIES CORPORATION,)
 and **SEMCO ENERGY, INC.**)

Case No. U-15795

At the January 25, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On October 6, 2008, Governor Jennifer M. Granholm signed 2008 PA 286 (Act 286),
amending 1939 PA 3. Section 6q of Act 286 addresses the merger and acquisition of jurisdictional

regulated utilities. Section 6q(2) of Act 286 provides that “After notice and hearing, the commission shall issue an order stating what constitutes acquisition, transfer of control, merger activities, or encumbrance of assets that are subject to this section.” MCL 460.6q(2). Jurisdictional regulated utilities are those electric and gas utilities whose rates are regulated by the Commission. MCL 460.6q(12)(b).

In order to implement Section 6q(2), the Commission issued an order on March 18, 2009, commencing a contested case proceeding on the issue of what constitutes acquisition, transfer of control, merger activities, or encumbrance of assets that are subject to Section 6q. A prehearing conference was held on May 5, 2009, before Administrative Law Judge Mark E. Cummins, at which the Michigan State Utility Workers Council was granted intervention. At a motion hearing on May 21, 2009, the Utility Workers Union of America, Local 223, was also granted intervention. On December 22, 2009, the parties filed a settlement agreement, attached to this order as Exhibit A, resolving all issues in the case.

The settlement agreement incorporates standards for implementation of Section 6q, and defines the types of transactions that will be subject to Section 6q approval requirements.

The Commission finds that the settlement agreement is reasonable and in the public interest, and should be approved, and this docket should be closed.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. The standards set forth on Attachment 1 to the settlement agreement are adopted and shall be applied in administering Section 6q of 2008 PA 286.
- C. This docket 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

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of January 25, 2010.

Mary Jo Kunkle, Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own)
 motion, to implement Section 6q(2) of)
 2008 PA 286, as it applies to Alpena Power)
 Company, Consumers Energy Company,)
 The Detroit Edison Company, Edison Sault)
 Electric Company, Indiana Michigan Power)
 Company, Northern States Power Company-)
 Wisconsin, Upper Peninsula Power)
 Company, Wisconsin Public Service)
 Corporation, Wisconsin Electric Power)
 Company, Alger Delta Cooperative Electric)
 Association, Bayfield Electric Cooperative,)
 Cherryland Electric Cooperative, Cloverland)
 Electric Cooperative, Great Lakes Energy)
 Cooperative, Midwest Energy Cooperative,)
 Ontonagon County Rural Electrification)
 Association, Presque Isle Electric and)
 Co-op, Thumb Electric Cooperative,)
 Tri-County Electric Cooperative, Michigan)
 Consolidated Gas Company, Michigan Gas)
 Utilities Corporation, and SEMCo Energy,)
 Inc.)
 _____)

Case No. U-15795

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 333 of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or “Commission”), the undersigned parties agree as follows:

WHEREAS, on March 18, 2009, the Michigan Public Service Commission (“Commission” or “MPSC”) issued an order commencing proceedings for the purpose of developing standards and issuing an order complying with MCL 460.6q(2) (“Section 6q(2)”);

WHEREAS, pursuant to due notice, the initial prehearing conference in this proceeding was held on May 5, 2009 before Administrative Law Judge Mark E. Cummins;

CASE NO. U-15795 SETTLEMENT AGREEMENT

WHEREAS, the parties to this proceeding have engaged in discussions in an effort to develop standards that, if adopted by the Commission, will comply with the Commission's obligations under Section 6q(2);

NOW THEREFORE, for purposes of settlement of Case No. U-15795, the undersigned parties agree as follows:

1. The standards set forth on Attachment 1 to this Settlement Agreement should be adopted by the Commission in satisfaction of its obligation under Section 6q(2) to "issue an order stating what constitutes acquisition, transfer of control, merger activities, or encumbrance of assets that are subject" to MCL 460.6q.

2. The signatories hereto agree that this Settlement Agreement will aid in the expeditious conclusion of this case and will minimize expense which would otherwise have to be devoted to litigating this case by the Commission and the parties, and are of the opinion that this settlement will promote the public interest.

3. This settlement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

CASE NO. U-15795 SETTLEMENT AGREEMENT

4. This Settlement Agreement is intended to represent the final disposition of Case No. U-15795. If the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement.

5. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

6. The Staff agrees that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

7. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies in this proceeding, if the Commission approves this Settlement Agreement without modification.

CASE NO. U-15795 SETTLEMENT AGREEMENT

WHEREFORE, the undersigned parties respectfully request the Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

MICHIGAN PUBLIC SERVICE
COMMISSION STAFF

By: _____
Bret A. Totoraitis, Esq. (P72654)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911

THE DETROIT EDISON COMPANY AND MICHIGAN CONSOLIDATED GAS COMPANY

By: _____
David Maquera, Esq. (P66228)
Michael J. Solo, Jr., Esq. (P57092)
The Detroit Edison Company and
Michigan Consolidated Gas Company
One Energy Plaza
Detroit, MI 48226

EDISON SAULT ELECTRIC COMPANY, ALGER DELTA COOPERATIVE ELECTRIC ASSOCIATION, CHERRYLAND ELECTRIC COOPERATIVE, CLOVERLAND ELECTRIC COOPERATIVE, GREAT LAKES ENERGY COOPERATIVE, MIDWEST ENERGY COOPERATIVE, ONTONAGON COUNTY RURAL ELECTRIFICATION ASSOCIATION, PRESQUE ISLE ELECTRIC & GAS CO-OP, THUMB ELECTRIC COOPERATIVE, AND TRI-COUNTY ELECTRIC COOPERATIVE

By: _____
Joseph J. Baumann, Esq. (P69261)
Dykema Gossett PLLC
201 Townsend Street
Lansing, MI 48933

CASE NO. U-15795 SETTLEMENT AGREEMENT

INDIANA MICHIGAN POWER COMPANY

By: _____
Richard J. Aaron, Esq. (P35605)
Fahey Schultz Burzych Rhodes PLC
4151 Okemos Road
Okemos, MI 48864

MICHIGAN GAS UTILITIES CORPORATION, NORTHERN STATES POWER COMPANY,
SEMCO ENERGY, INC., UPPER PENINSULA POWER COMPANY, WISCONSIN
ELECTRIC POWER COMPANY, AND WISCONSIN PUBLIC SERVICE CORPORATION

By: _____
Ronald W. Bloomberg, Esq. (P30011)
Miller, Canfield, Paddock and Stone, PLC
One Michigan Avenue, Suite 900
Lansing, MI 48933

MICHIGAN STATE UTILITY WORKERS COUNCIL,
UTILITY WORKERS UNION OF AMERICA, AFL-CIO

By: _____
David Gregory, Esq. (P53098)
Steven Weyhing, Esq. (P30749)
Kelley Cawthorne
208 North Capitol Avenue, Third Floor
Lansing, MI 48933

UTILITY WORKERS UNION OF AMERICA, LOCAL 223

By: _____
John R. Canzano, Esq.(P30417)
Klimist, McKnight, Sale, McClow &
Canzano, P.C.
400 Galleria OfficeCentre, Suite 117
Southfield, MI 48034

CASE NO. U-15795 SETTLEMENT AGREEMENT

CONSUMERS ENERGY COMPANY

By: _____
Jon R. Robinson, Esq. (P27953)
Attorney for Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

CASE U-15795
STANDARDS FOR IMPLEMENTATION OF MCL 460.6q

MCL 460.6q (“Section 6q”) gives the Commission new responsibilities in connection with the acquisition, transfer of control, or merger of jurisdictional regulated utilities, and in connection with certain sales, assignments, transfers or encumbrances of jurisdictional regulated utility assets. Section 6q also states that its application does not extend to transactions conducted in the normal course of business, or to the issuance of securities or other financing transactions that do not involve the acquisition, transfer of control, or merger of jurisdictional regulated utilities. Section 6q(2) requires the Commission to issue an order, after notice and hearing, stating what constitutes the type of transactions subject to Section 6q. The following sets forth the standards that will be applied in determining whether certain transactions will, or will not, be subject to Section 6q approval requirements. The definitions included in paragraph (2) below are an integral part of these standards.

(1) Section 6q applies as follows:

(a) The prior approval of the Commission is required: (i) if a person acquires or merges with a jurisdictional regulated utility, or (ii) for a transaction involving the transfer of control of a jurisdictional regulated utility.

(b) The prior approval of the Commission is required if a jurisdictional regulated utility sells, assigns, transfers, or encumbers assets to another person, except if such sale, assignment, transfer or encumbrance of assets occurs in the normal course of business.

(c) The prior approval of the Commission is not required for the issuance of securities or other financing transactions that are not directly or indirectly involved in an acquisition, merger, encumbrance, or transfer of control.

(2) For purposes of administering the statute, the Commission adopts the following definitions:

(a) “Acquire” or “acquisition” means to obtain an interest in a jurisdictional regulated utility through a transaction which results in a transfer of control of the jurisdictional regulated utility. An underwriter or broker-dealer that obtains an interest in securities solely for the purpose of facilitating a distribution of securities does not thereby “acquire” or make an “acquisition” of an interest in the jurisdictional regulated utility for purposes of Section 6q.

(b) “Asset” means real and personal property, including natural gas and electric distribution facilities, electric transmission and generation facilities, and natural gas transmission and storage facilities, owned by a jurisdictional regulated utility and used to directly provide natural gas or electric utility services to end users at rates regulated by the Commission. For purposes of these standards, asset does not include accounts receivable.

(c) “Assign” or “assignment” means the transfer to another person of any of the interest held in an asset or assets.

(d) “Encumber” or “encumbrance” or “encumber assets” means subjecting an asset or assets of a jurisdictional regulated utility to a lien or security interest for purposes other than to facilitate, directly or indirectly, financing of utility operations, or for purposes other than to facilitate, directly or indirectly, the provision of utility service. It does not include a refinancing of existing secured debts or securities to the extent that the amount refinanced is equal to or less than the amount of the existing secured debt or security.

(e) “Jurisdictional regulated utility” means a utility whose rates are regulated by the Commission. Jurisdictional regulated utility does not include a telecommunication provider as defined in the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2101 to 484.2604, or a motor carrier as defined in the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(f) “Merge” or “merger” means the combination or consolidation of a jurisdictional regulated utility with another person in a manner that results in a transfer of control of the jurisdictional regulated utility.

(g) “Original Book Cost” means the amount at which an asset is recorded in the books of accounts of the jurisdictional regulated utility, plus additions, without deduction of related provisions for accrued depreciation, amortization, securitization, write-downs, impairments, or for other purposes.

(h) “Person” means an individual, corporation, association, partnership, utility, or any other private or public entity. Person includes a jurisdictional regulated utility.

(i) “Normal course of business” means a transaction that is related to the transfer, sale, assignment or encumbrance of assets and that satisfies any one of the following criteria:

(1) With respect to utilities having 500,000 or more retail customers, a transaction that involves the transfer, sale or assignment of assets having an original book cost equal to or less than the dollar threshold identified below:

<u>Transaction Date</u>	<u>Dollar threshold</u>
Prior to December 31, 2020	\$50 million
January 1, 2021 to December 31, 2030	\$65 million
January 1, 2031 to December 31, 2040	\$85 million
January 1, 2041 to December 31, 2050	\$105 million
January 1, 2051 to December 31, 2060	\$135 million
January 1, 2061 to December 31, 2070	\$175 million
January 1, 2071 to December 31, 2080	\$225 million
January 1, 2081 and beyond	\$275 million

(2) With respect to utilities having fewer than 500,000 retail customers, a transaction that involves the transfer, sale or assignment of assets having an original book cost equal to or less than the dollar threshold identified below:

<u>Transaction Date</u>	<u>Dollar threshold</u>
Prior to December 31, 2020	\$10 million
January 1, 2021 to December 31, 2030	\$12.8 million
January 1, 2031 to December 31, 2040	\$16.4 million
January 1, 2041 to December 31, 2050	\$21 million
January 1, 2051 to December 31, 2060	\$26.9 million
January 1, 2061 to December 31, 2070	\$34.4 million
January 1, 2071 to December 31, 2080	\$44 million
January 1, 2081 and beyond	\$56.3 million

(3) With respect to all utilities, a transaction regardless of amount, to the extent that the transaction constitutes a sale, assignment, transfer or encumbrance of interests in fuel, natural gas, purchased power, electric or natural gas transmission capacity, natural gas storage services, or other commodities, if such transaction is otherwise subject to review for reasonableness and prudence in a gas cost recovery or power supply cost recovery proceeding, or a successor thereof.

(4) With respect to cooperative utilities whose rates are regulated by the Commission, an encumbrance of assets in which the total aggregate proceeds to the jurisdictional regulated utility from all of the currently outstanding encumbrances immediately following the encumbrance will not exceed \$5 million dollars.

A transaction described in (1), (2), (3), or (4) shall not be classified as normal course of business (i) if the transaction, either directly or indirectly, is in connection with the acquisition, transfer of control, or merger of a jurisdictional regulated utility, or (ii) if the transaction involves the transfer or sale of an electrical generating plant that has a Total Installed Generating Capacity (nameplate rating) of more than 20 megawatts.

(j) "Sell assets" means the transfer to another person of any of the interest in an asset or assets.

(k) "Transaction Date," for purposes of the tables found in sections (2)(i)(1) and (2) only, means the date on which a jurisdictional regulated utility and another party to the transaction execute a final agreement for the transfer, sale, or assignment of an asset of the jurisdictional regulated utility.

(l) "Transfer assets" means the sale or assignment to another person of any of the interest in an asset or assets. It does not include the transfer of pension plan or other retirement assets done to facilitate a change in the management of such assets.

(m) "Transfer of control" means the transfer to another person of the power to direct or cause the direction of the management and policies of a jurisdictional regulated utility, whether

through the ownership of voting interests or voting securities, by contract including acquisition of assets, or otherwise. Transfer of control is presumed to occur if:

(1) After the transfer, the transferee, by formal or informal arrangement, device, or understanding, directly or indirectly, owns, controls, holds with the right to vote, or holds proxies representing 50% or more of the outstanding voting interests or voting securities that are entitled to elect a majority of the board of directors or other governing body of the jurisdictional regulated utility; or

(2) After the transfer, the transferee, by formal or informal arrangement, device, or understanding, directly or indirectly, owns, controls, holds with the right to vote, or holds proxies representing 20% or more of the outstanding voting interests or voting securities that are entitled to elect a majority of the board of directors or other governing body of the jurisdictional regulated utility, if such transferee is, after the transfer, the largest holder of such voting interests.

(3) The presumption of a transfer of control described in (1) or (2) may be rebutted.