

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
DUKE ENERGY RETAIL SALES, LLC, for a) Case No. U-16517
license as an alternative electric supplier.)
_____)

In the matter, on the Commission’s own motion,)
regarding the regulatory reviews, determinations,)
and/or approvals necessary for **DUKE ENERGY**) Case No. U-16767
RETAIL SALES, LLC, to fully comply with Public)
Act 295 of 2008.)
_____)

At the April 26, 2011 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 December 8, 2010, Duke Energy Retail Sales, LLC, (DERS) submitted an application pursuant to the “Customer Choice and Electricity Reliability Act,” 2000 PA 141, MCL 460.10 *et seq.* (Act 141), for a license as an alternative electric supplier (AES). An AES is a person selling electric generation service to retail customers in this state, other than a person who physically delivers electricity directly to retail customers. MCL 460.10g(a). With its application, DERS submitted information designed to show its compliance with the statutory requirements for an AES.

Act 141 requires the Commission to ensure that AESs have the necessary financial capability, possess technical competence to engage in energy transactions, are capable of meeting safety requirements for electric operations, and comply with all other lawful obligations. Additionally, the June 19, 2000 Commission order in Case No. U-11915 requires AESs to maintain an office within Michigan.

On October 6, 2008, Public Act 295 of 2008, MCL 460.1001 *et seq.*, the “Clean, Renewable, and Energy Efficiency Act,” was signed into law (Act 295). The Commission issued an order in Case No. U-15800 on December 4, 2008, which provides requirements for implementing Act 295. Among other things, Act 295 requires all providers of electric service in this state, including AESs, to establish renewable energy programs.

Act 295 also requires the Commission to establish a statewide net metering program. Pursuant to Section 173(1) of Act 295, the Commission promulgated rules entitled “Electric Interconnection and Net Metering Standards,” which were effective May 27, 2009. AESs are required to comply with the net metering requirements of Act 295 and the Commission’s rules.

The Commission Staff (Staff) is responsible for review of the application and for making a recommendation regarding a license. The Staff reviewed the information submitted by DERS and recommends that the Commission grant DERS a license to operate as an AES.

According to the application, DERS is currently licensed as a Competitive Retail Electric Service provider and as a Competitive Retail Natural Gas Marketer in Ohio and as an electric generation supplier in Pennsylvania. DERS currently serves about 100,000 retail electric customers mostly in Ohio. DERS is a wholly-owned subsidiary of the Duke Energy Corporation (DEC), a public utility holding company. DEC is the third largest electric power holding company

in the United States based on kilowatt-hour sales. DEC utility companies serve approximately four million gas and electric customers.

DERS is a Delaware limited liability company and has its principal location at 139 East Fourth Street, Room EA 600, Cincinnati, Ohio. DERS was incorporated on December 9, 2003, and is a registered corporation in Michigan.

After reviewing DERS's personnel descriptions and histories, the Staff determined that DERS has sufficient experience and expertise to manage risk and to reliably supply electricity in Michigan's electric choice market. Based on the information provided and the recommendation of the Staff, the Commission finds that DERS possesses the appropriate managerial and technical capabilities to serve customers within Michigan.

The Staff reviewed DERS's financials for the last three years. DERS also provided the Staff with a bond in the amount of \$100,000. Based upon its review of the financial statements and the bond, the Staff determined that DERS's financial capabilities meet the Act 141 requirements. The Commission agrees.

The Commission requires AESs to maintain an office in Michigan. DERS has an established office in Lansing, Michigan. The Staff determined that DERS has complied with the Michigan-office requirement. The Commission agrees.

After review of DERS's application, the Commission finds that approval of the application is in the public interest. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of the state. Approval of the request for a license as an AES will expand the opportunities for competition. Accordingly, the application should be approved. The grant of an AES license is conditioned on compliance with all applicable provisions of the statute and the Commission's orders. Failure to comply fully may result in revocation of the license or

other penalties. Further, the grant of a license is conditioned upon the provision of service to customers within a reasonable time. Failure to do so may result in revocation of the license.

The Commission also finds that, as a licensed AES in Michigan, DERS is required by Act 295 to file a renewable energy plan (REP) with the Commission. However, the Commission notes that the original deadline set by Act 295 and the order in Case No. U-15800 for filing a REP has passed. Therefore, in consideration of the fact that DERS's AES license was granted today, the Commission today has opened a separate docket for DERS's REP, which shall be filed in Case No. U-16767 by July 25, 2011.

THEREFORE, IT IS ORDERED that:

- A. Duke Energy Retail Sales, LLC, is granted a license as an alternative electric supplier.
- B. Duke Energy Retail Sales, LLC, shall operate as an alternative electric supplier in compliance with the regulatory requirements specified in the "Customer Choice and Electricity Reliability Act," MCL 460.10 *et seq.*, and the Commission's orders.
- C. Duke Energy Retail Sales, LLC, is required to comply with the net metering requirements of Act 295 of 2008 and the Commission's rules.
- D. Duke Energy Retail Sales, LLC, shall file its initial renewable energy plan in Case No. U-16767 by July 25, 2011.

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, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of April 26, 2011.

Mary Jo Kunkle, Executive Secretary