

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of Indiana)
Michigan Power Company, d/b/a American)
Electric Power, for certain approvals in) Case U-12780
connection with 2000 PA 141, Section 10v.)
_____)

In the matter of the Application of)
International Transmission Company,)
Consumers Energy Company, and Great) Case U-12781
Lakes Energy Cooperative.)
_____)

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

This Brief is filed on behalf of Energy Michigan, Inc. (Energy Michigan) by its attorneys,
Varnum, Riddering, Schmidt & Howlett, LLP.

I. Introduction

Section 10v. of 2000 PA 141 (Act 141) requires that electric utilities serving more than 100,000 retail customers in Michigan file a Joint Plan with the Michigan Public Services Commission (Commission) to permanently expand, by June 5, 2002, available transmission capability by at least 2,000 megawatts (MW) over the available transmission capability in place as of January 1, 2000. Act 141 Section 10v. also provides that the Commission shall authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed pursuant to the requirements of Section 10v. that are not recovered through the Federal Energy Regulatory Commission (FERC) tariffs.

On June 6, 2001, AEP attorney Marc Lewis entered a statement into the record in Case Nos. U-12781 and U-12780 that Michigan's large electric utilities had developed a Joint Plan that satisfies the requirements of Act 141. He also asserted that AEP believes that as part of the approval of the Joint Plan and as provided for in Section 10v. of Act 141, the PSC must assure AEP and the other utilities that if their investments are not recovered from FERC-approved rates, recovery will come from Michigan retail customers benefitting from those improvements. *3 Tr 38-39.*

Several issues remain open in this proceeding, despite the stipulation by AEP to the Joint Plan sponsored by Consumers Energy *et al.* First, will implementation of the Joint Plan result in an increase in transmission import capability into the Lower Peninsula of at least 2,000 MW over the available transmission capability in place as of January 1, 2000? If not, what actions should the Commission take pursuant to Act 141? Second, if costs for the additional transmission facilities deployed to increase transmission import capability are not recovered in FERC-approved rates, to whom should those costs be assigned?

Summary of Energy Michigan Position

One of Energy Michigan's main issues in this proceeding, the need for the installation of a 765-345 kV transformer at AEP's Dumont Station, has been rendered moot with AEP's stipulation to the Joint Plan. Three other contested and intertwined issues remain. Energy Michigan respectfully requests that the Commission consider these issues in view of the legislative intent of Act 141 – that transmission facility upgrades bring the benefits of competition to Michigan electricity customers, and that any incremental costs for transmission facility improvements not recovered in FERC-approved tariffs be recovered only from Michigan retail customers who benefit from those improvements.

1. The Joint Plan calls for proposed system improvements for the Michigan Electric System (MECS)-Ontario Hydro (OH) interface. But it is not apparent that those improvements will necessarily support a more competitive market for Michigan energy consumers. Unless those improvements actually benefit Michigan consumers or result in a one-for-one decrease in

firm transmission reservations on the MECS southern interface, they should not count toward the incremental improvement of 2000 MW mandated by Act 141.

2. Act 141 Section 10v. provides that those costs incurred by utilities to upgrade transmission capability which are not recovered in FERC-approved rates are to be charged to Michigan customers benefitting from the transmission improvements. But it is not apparent that Michigan customers will necessarily benefit from transmission system improvements; nor is it apparent to what extent they will benefit, if a benefit is forthcoming. Accordingly, the Commission should assure that Michigan customers benefit from transmission system improvements before authorizing recovery from those customers of any costs not recovered through FERC-approved rates.
3. The record in this proceeding clearly demonstrates that the electric utilities maintain significant discretion regarding the calculation and apportionment of available transmission capacity to transmission customers, as well as regarding the scope and notice of offers of capacity to customers. Exercise of such discretion provides an independent basis, apart from the question of the extent to which Michigan customers will benefit from transmission expansion, for insulating Michigan customers from the costs of transmission improvements unless those customers directly benefit from the expansion by their use of the incremental transmission capacity.

In sum, Energy Michigan urges the Commission to require that the Joint Plan submitted by the electric utilities be modified to assure that it will result in the addition of 2,000 MW of available transmission capability. The addition of 2,000 MW of available transmission capability should benefit Michigan customers by increasing the import capability available to marketers and alternative energy suppliers. Michigan customers should only bear the cost of unrecovered incremental transmission improvements if they benefit from those improvements.

II. Issue Discussion

1. Because MECS-OH Interface Improvements Will Not Necessarily Support a More Competitive Market for Michigan Electricity Consumers, the Commission Must Otherwise Assure that Michigan Electricity Consumers Benefit.

Energy Michigan witness Blecker and ITC witness Vitez each question the effectiveness of improvements proposed in the Joint Plan for the Ontario Hydro—Detroit Edison (OH-MECS) interface. *3 Tr 63-64, 121-122*. Ontario Hydro does not maintain an active OASIS node, so parties cannot equitably compete for transmission service over that interface. Furthermore, as acknowledged by ITC witness Vitez, the opening of the Ontario market has been postponed several times, and it is uncertain that the market will open before June 5, 2002, the date of the improvements required under Act 141. Even if the market were to open by then, competition for transmission service over that interface is not assured to be equitable.

To address this deficiency, the Commission should not count the incremental transmission improvements associated with the MECS-OH interface toward the required 2,000 MW increase unless remedial actions are ordered. Energy Michigan witness Blecker suggests that, if the improvements cannot be used by alternate energy suppliers, the Commission should require that alternative means be provided alternative energy suppliers to assure marketer access to the legislatively mandated incremental capacity. One of his proposals calls for a reduction at the MECS southern interface of firm transmission reservations on a one-for-one basis with new transfer capacity added to the MECS-OH interconnection. *3 Tr 64*. If Consumers Energy witness Sparks' view prevails and the Commission concurs that transmission providers cannot cancel confirmed reservations in this manner (*3 Tr 149*), the Commission should adopt Blecker's alternative proposal that the utilities make in-state generation available to licensed alternative energy suppliers to the extent available import capability is not permanently increased. *3 Tr 58*.

4. In view of evidence that incremental transmission improvements will not necessarily benefit Michigan electricity consumers, the Commission should not allocate costs of such improvements to Michigan electricity consumers unless and until they benefit.

Other evidence of record points to the disturbing reality that the incremental transmission improvements identified in the Joint Plan will not necessarily benefit Michigan electricity consumers. *Exhibit I-15*. In addition to concerns regarding the benefits of the MECS-OH interface upgrades, the record shows that 500 MW of the available transfer capability increase of from 1,000 to 1,500 MW resulting from the addition of a 765-345 kV transformer at AEP's Dumont Station is already reserved by Exelon's marketing arm for delivery into Commonwealth Edison. The contractor for another block of 416 MW through Dumont reserved by Duke Energy Trading for delivery into MECS is unknown, although the size of the reservation provides a strong indication that the intended customer is not an independent marketer or open access customer. The capacity term for these arrangements begins in June 2002 and runs through June 2003. Thereafter, these long-term firm reservations of transmission capacity are subject to rollover rights that will preclude the availability to other marketers and alternative energy suppliers of the incremental transmission capacity they represent. *3 Tr 234*.

To make the point again, if implementation of the Joint Plan will not directly benefit Michigan electricity consumers, the Commission should take remedial action to assure that the legislative intent to enhance competition in Michigan is fulfilled. In any event, if Michigan electricity consumers do not directly benefit from the transmission improvements that are implemented, they should not be forced to pay for those investments unless and until they benefit.

AEP attorney Lewis acknowledges that installation of a second transformer at Dumont, as stipulated to by AEP and proposed by the Joint Plan, "is designed to facilitate competition throughout the entire lower peninsula [sic] by enabling alternate energy suppliers to complete [sic] for customers." *3 Tr 39*. Consumers Energy witness Sparks implies the same intent in his argument for installation of a second 765-345 kV transformer at Dumont, stating "If the intent of Section 10v. PA 141 is to provide an additional 2,000 MW of firm commercial capability into the Lower Peninsula of Michigan" then that transformer must be installed. *3 Tr 139*. Consumers Energy witness Ruhl acknowledges the same, stating that, "The intent of the Joint Plan is to benefit the end-users in the State of Michigan by increasing the import capability of the transmission systems." *3 Tr 162*.

But the Joint Plan will not necessarily benefit the end-users in the State of Michigan, nor facilitate competition throughout the entire Lower Peninsula. Section 10v. of Act 141 states that the Commission shall authorize recovery from benefitting customers (emphasis added) of all reasonable and prudent costs incurred by transmission owners to implement an approved Joint Plan that are not recovered through FERC transmission rates.

Energy Michigan submits that much of the transmission capacity increases provided by the Joint Plan will likely not facilitate competition in the Lower Peninsula, nor even be utilized by Michigan entities. Under these circumstances, Section 10v. of Act 141 does not compel the recovery of reasonable and prudent costs from Michigan customers of investments not recovered through FERC transmission rates.

Although AEP witness Curry has made clear that AEP is not seeking recovery of its incremental investments in this proceeding, Energy Michigan takes issue with AEP's suggestion (*3 Tr 170*) that the Commission should authorize at a future time a limited-term surcharge on the monthly electric bill of jurisdictional benefitting customers.

Cross-examination of AEP witness Bethel reveals that AEP has asked that FERC approve an alternative rate formula for transmission capacity utilizing the proposed Dumont 765-345 kV transformer at a rate of \$1,420/MW-month. With reservations for that time largely committed, AEP will have the means to collect the cost of transmission improvements from the benefitting parties if FERC accedes to the AEP request.

Energy Michigan also disagrees with Consumers Energy witness Ruhl's position that cost recovery from Michigan electricity consumers is warranted merely on the basis that "the proposed Section 10v improvements will increase the ability of the transmission system to support power transfers." *3 Tr 160-161*. As is demonstrated by Exelon's reservation of 500 MW of capacity through Dumont into Commonwealth Edison (*Exhibit I-15*), an increase in power transfer capability does not in and of itself benefit Michigan electricity consumers.

The litmus test legitimizing any recovery of reasonable and prudent costs from Michigan customers of transmission investments not recovered through FERC transmission rates must be a Michigan customer benefits test. The Commission should authorize no mechanism at this time for the recovery of such costs.

3. Utility exercise of discretion in the determination and allocation of available transfer capability (ATC), as well as regarding the scope and notice of offers of capacity to customers, renders doubtful the extent to which Michigan electricity customers will benefit from the transmission improvements proposed in the Joint Plan.

Consumers Energy witness Sparks confirms that utilities exercise significant discretion in establishing ATC values that bear directly on the extent to which Michigan electricity customers will benefit from transmission system improvements, despite NERC and ECAR oversight and review. NERC and ECAR accepted Detroit Edison and Consumers Energy allocations of monthly CBM values on the MECS transmission paths with other providers to 193% of the calculated CBM value. This allocation resulted in no ATC import capability into MECS during the summer months. Yet in April 2000, Consumers Energy and Detroit Edison lowered the CBM allocation amount from 193% to 100%, thereby creating in theory firm commercial import capability on all MECS transmission paths with outside Michigan transmission providers. *3 Tr 147-148*. While Energy Michigan is grateful for the modification of the ATC methodology, it would appear the discretion afforded utilities by NERC and ECAR in establishing CBM allocations could once again be employed in a manner contrary to the interests of competition in Michigan. As such, the Commission should refrain from authorizing recovery of any incremental transmission improvement costs until it is demonstrated that Michigan electricity customers have actually benefitted from those improvements.

Consumers Energy witness Sparks discounts Energy Michigan's concerns regarding the availability of import capability by asserting that transmission capacity within Michigan is already available but unused. He points out that Consumers Energy's offer to assign up to 100 MW of AEP firm point-to-point transmission service on the Cinergy to MECS path to several Open Access suppliers at cost for the period of June 1, 2001 through April 30, 2002 was not accepted by any Retail Access

Supplier. *3 Tr 145*. However, as the Nordic Marketing LLC response to Consumer Energy's offer illustrates (*Exhibit I-16, attached*), the offer was flawed in requiring capacity as of September 1, 2001 and more importantly in its limitation to one customer delivery area and its lack of rollover rights. Notably, the Consumers Energy offer provides further evidence of the extent of utility discretion to offer transmission capacity with restrictions that render it undesirable. Energy Michigan suggests that the Commission should require that, if they are to be construed as evidence that Michigan customers will benefit from transmission system upgrades, such offers be amended in the future to remove restrictions as to rollover rights, offer onset, and delivery area.

Like the Consumers Energy offer, AEP's presubscription of ATC associated with the proposed Dumont 765-345 kV transformer illustrates the discretion that utilities can exercise to the detriment of competition in Michigan. Cross-examination of AEP witness Bethel (*3 Tr 223-229*) and Exhibit I-14 reveal that on April 18th, AEP posted on its OASIS node a notice that an additional 765-345 kV transformer would be needed to be installed at the Dumont Station to increase power flows at the station during the summer months. In effect, the posting of the notice resulted in the presubscription of a large proportion of the incremental import capability that would have become available pursuant to Act 141 Section 10v. by virtue of the transformer addition. *Exhibit I-15*. Instead, as noted above, that capacity is being utilized to support a transaction that sinks to Commonwealth Edison.

The Commission should take note of the effect of the presubscription that resulted from the AEP notice by determining that Michigan customers will not bear the costs of unrecovered transmission system investments that do not directly benefit them. If Michigan electricity consumers are to bear such costs, the sponsors of the Joint Plan should be required to follow a procedure akin to that suggested by ABATE witness Dauphinais for the posting of anticipated available transmission capability. *3 Tr 94-95*. He proposes a coordinated posting of such capacity in such a manner that all market participants have access to the information at the same time, with no undue advantage accruing to any party. Energy Michigan also supports other suggestions offered by witness Dauphinais to render less arbitrary the current OATT procedures, including development of an auction for the expanded capability or allowing a flexible window for the receipt of transmission service requests such that all requests received within a certain time frame are treated as if they were received contemporaneously.

III. Conclusion and Prayer for Relief

Wherefore, Energy Michigan respectfully requests that the Commission:

1. Adopt the Energy Michigan proposal that the Joint Plan be amended to assure that 2,000 MW of import capability benefitting Michigan electricity consumers result from its implementation; and
2. Assure that Michigan electricity consumers are not charged for any transmission system improvements pursuant to Public Act 141 Section 10v. that do not actually benefit them.

Respectfully submitted,

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