STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the approval of a code of conduct for **CONSUMERS ENERGY COMPANY** and **THE DETROIT EDISON COMPANY**	))))	Case No. U-12134 (NSP-W)

At the October 3, 2002 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On December 4, 2000, the Commission issued an order adopting a code of conduct, as required by Section 10a(4) of the Customer Choice and Electricity Reliability Act:

> Within 180 days after the effective date of the amendatory act that added this section, the commission shall establish a code of conduct that shall apply to all electric utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, information sharing, and preferential treatment, between a utility's regulated and unregulated services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10bb.

MCL 460.10a(4). Among other things, the order required the filing of compliance plans and permitted the filing of requests for waivers.

On January 23, 2001, the Commission issued an order amending the code of conduct to require the filing of compliance plans within 60 days after the issuance of an order on rehearing of the December 4, 2000 order. On October 29, 2001, the Commission issued the rehearing order, and adopted a revised code of conduct. Northern States Power Company-Wisconsin, d/b/a Xcel Energy, (NSP-W) filed a compliance plan and requested waivers.

NSP-W states that it does not believe that the code governs transactions with affiliates if those transactions are regulated by other governmental agencies like the Federal Energy Regulatory Commission (FERC) or the Securities and Exchange Commission (SEC).

When a service or product is subject to a code of conduct approved by another governmental agency, or otherwise regulated by another agency, this code may be duplicative. Under these circumstances, as long as the FERC or other governmental agency requires adherence to a code or regulatory requirements that are equivalent to the Michigan code of conduct, it will not be necessary to adhere to this code. However, the Commission will make a decision on whether an alternate code is applicable after a waiver request has been made.

NSP-W believes that it falls within the exemption granted by section II.M because of the size of its Michigan staff. The Commission does not judge the size of NSP-W by the size of its Michigan staff alone. NSP-W is subject to all provisions of the code.

NSP-W requests a waiver of section II.A for various services provided to customers such as repairs to customer-owned systems to restore service, power quality assistance, and joint placement of utility facilities. Also, it requests a waiver for services that an affiliate might provide incidentally as a result of multi-state or broad-based marketing efforts of an affiliate in another state such as load management services and distributed generation products and services. It says that it is the only supplier of some of these services in its service territory, that it does so as a customer service, and that it does not actively market many of these services.

The Commission finds that the requested waiver is reasonable and in the public interest so long as the company adheres to the remaining provisions of the code of conduct, including maintaining separate books and accounts for regulated and unregulated operations and properly and fully allocating the costs of providing these services between regulated and unregulated operations.

NSP-W requests a wavier of sections II.D, II.E, and II.G to permit the holding company, Xcel Energy Services Inc., to continue sharing facilities, equipment, and employees when providing services to NSP-W, to permit NSP-W to continue working with its affiliates to provide service in Wisconsin, and to permit the transfer of employees between NSP-W and the holding company.

The Commission finds that the requested waiver is reasonable and in the public interest, and will not inhibit the development or functioning of a competitive market in Michigan. It therefore grants the waiver.

NSP-W requests a waiver of sections II.K and II.L to permit it to use generic language that can be used in other states when indicating that an affiliate or a service is not subject to regulation. It says that it does not own the "Xcel Energy" tradename and logo, and therefore cannot control their use by the holding company and it affiliates.

The Commission finds that the requested waiver is reasonable and in the public interest, and should be granted.

NSP-W states that its parent company is a registered holding company subject to the Public Utility Holding Company Act of 1935 (PUHCA). NSP-W states that the transfer pricing requirement, section III.C of the code, is covered by SEC requirements, authorized by PUHCA. It asks that the Commission confirm its belief that the SEC has jurisdiction over its transfer pricing policy or grant a waiver from the requirements of section III.C.

The Commission will not grant a waiver from section III.C. WSP-W has not demonstrated that compliance with sections III.C would cause the company to be in violation of SEC requirements.

All of the waivers apply narrowly to the programs described in the company's December 28, 2001 compliance plan. Any new programs or modifications to existing programs may require additional waiver requests on the part of NSP-W. Finally, none of the waivers granted today can be construed as applying to the relationship between NSP-W and an affiliated alternative electric supplier or other entity within the corporate structure offering unregulated electric service.

Finally, the Commission has provided flexibility to NSP-W (and other utilities) in this case by granting requests for waivers from selected provisions of the code. This additional flexibility requires the Commission and its Staff to be diligent in preventing cross-subsidization between utilities and their non-regulated operations and affiliates. A particularly helpful tool in doing so has been the prior reports required by the Commission and submitted by NSP-W, providing crucial information relating to affiliate relations and access to affiliate information. Information and access necessary cover the following:

(1) The utility shall ensure that the Commission has access to books and records of any holding company owning the utility and each of the holding company's affiliates and their joint ventures. Any objections to providing access as requested under this requirement must be raised before the Commission, and the burden of showing that the request is unreasonable or unrelated to the Commission's responsibilities is on the party seeking to deny or withhold access.

(2) Consolidated 10k reports and shareholders' reports of the consolidated utility and/or its parent holding company on an annual basis.

(3) Annual balance sheet and income statements of the non-regulated subsidiaries of the utility and/or the non-consolidated subsidiaries of the holding company.

(4) Reports of internal audits conducted regarding transactions between the utility and its nonutility affiliates. Such reports will be submitted every three years beginning with a report for the year 2003. The audit report shall address transactions occurring since the

last audit report and shall describe whether appropriate cost allocation procedures and transfer pricing methodologies were followed and whether the utility and its affiliates are maintaining records that are adequate to facilitate an effective audit of the transactions. The Commission Staff may require more frequent reports or additional audits when appropriate.

(5) A notification to the Commission 30 days prior to any transfer to non-utility affiliates of any utility assets or property exceeding a fair market value of $100,000. At the time notice is provided, the utility shall make available to the Commission information that demonstrates how the transfer price was determined.

(6) In its annual report, each utility shall provide information on any arrangement that allows an affiliate to obtain credit in a manner that permits a creditor, upon default, to have recourse to or in any way encumber the utility's assets.

As an additional condition for granting these waivers, the Commission will require NSP-W to continue to file these reports annually.

NSP-W requests a waiver of section VII.A to permit it to maintain documents related to compliance with the code outside of Michigan. It commits to making the documents available upon request.

The Commission finds that the requested waiver is reasonable and in the public interest, and should be granted.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The compliance filing should be accepted, subject to the discussion above.

c. The requests for waivers should be granted in part and denied in part, as discussed above.

THEREFORE, IT IS ORDERED that:

A. The compliance filing of Northern States Power Company-Wisconsin, d/b/a Xcel Energy, is accepted, subject to the discussion above.

B. The requests for waivers filed by Northern States Power Company-Wisconsin, d/b/a Xcel Energy, are granted in part and denied in part, as discussed above.

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

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of October 3, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Laura Chappelle

Chairman

Commissioner

Robert B. Nelson

Commissioner

By its action of October 3, 2002.

Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-12134
(NSP-W waivers)

County of Ingham)

Gloria P. Jones being duly sworn, deposes and says that on October 3, 2002, A.D. she served a copy of the attached Order by mailing copies thereof by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Gloria P. Jones

Subscribed and sworn to before me
this 3rd day of October 2002

Sharon Allen
Notary Public, Ingham, County, Michigan
My Commission expires August 16, 2004

SERVICE LIST FOR DOCKET # U - 12134-   CASE #
DATE OF PREPARATION: 10/04/2002

MR. THOMAS MCNISH
CONSUMERS ENERGY COMPANY
212 W. MICHIGAN AVENUE
ROOM 1074
JACKSON MI 49201

MS. SUSAN BEALE
THE DETROIT EDISON COMPANY
2000 SECOND AVENUE
DETROIT MI 48226

MR. DAVID M. GADALETO
ASSISTANT ATTORNEY GENERAL
6545 MERCANTILE WAY, 2ND FLOOR
LANSING MI 48910
ID MAIL

MR. HARAN C. RASHES
CLARK HILL PLC
2455 WOODLAKE CIRCLE
OKEMOS MI 48864 5941

MR. ROBERT A. STRONG
CLARK HILL PLC
255 S. WOODWARD AVE.
SUITE 301
BIRMINGHAM MI 48009

MR. JOHN C. SHEA
CONSUMERS ENERGY COMPANY
212 W. MICHIGAN AVENUE
JACKSON MI 49201

MR. ORJIAKOR N. ISIOGU
DEPT. OF ATTORNEY GENERAL
SPECIAL LITIGATION DIVISION
525 W. OTTAWA; 6TH FLOOR
G. MENNEN WILLIAMS BLDG.
LANSING MI 48933
ID MAIL

MR. JOHN M. DEMPSEY
DICKINSON WRIGHT PLLC
215 S. WASHINGTON AVENUE, SUITE 200
LANSING MI 48933

MR. ALBERT ERNST
DYKEMA GOSSETT PLLC
800 MICHIGAN NATIONAL TOWER
LANSING MI 48933

MR. MICHAEL S. ASHTON
FRASER, TREBILCOCK, DAVIS & FOSTER PC
1000 MICHIGAN NATIONAL TOWER
LANSING MI 48933

MR. JAMES D. FLORIP
GILLARD, BAUER, MAZRUM, FLORIP,
SMIGELSKI AND GULDEN
109 EAST CHISHOLM STREET
ALPENA MI 49707 2817

MR. MICHAEL J. BROWN
HOWARD & HOWARD
222 WASHINGTON SQUARE, SUITE 500
LANSING MI 48933 1817

MS. SHERRI A. WELLMAN
LOOMIS, EWERT, PARSLEY, DAVIS
& GOTTING, P.C.
232 S. CAPITOL AVE., SUITE 1000
LANSING MI 48933

MR. GEORGE SCHANKLER
PSC ALJ DIVISION
6545 MERCANTILE WAY
LANSING MI 48909
ID MAIL

MR. BRUCE R. MATERS
THE DETROIT EDISON COMPANY
2000 SECOND AVENUE 688 WCB
DETROIT MI 48226

MR. ERIC J. SCHNEIDEWIND
VARNUM, RIDDERING, SCHMIDT & HOWLETT
THE VICTOR CENTER
201 N. WASHINGTON SQUARE, SUITE 810
LANSING MI 48933