S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the proposal of the **CHOICE ADVISORY COUNCIL** for a statewide customer education program and other related matters.	)))))	Case No. U-12133

At the March 7, 2001 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 June 3, 1999, the CHOICE Advisory Council (Council), a working group of representatives from Michigan electric utilities, ratepayer interests, alternative energy suppliers, and the Commission Staff (Staff), submitted a proposal for a statewide customer education program concerning retail open access.[1] The proposal, which represents the consensus formed through a collaborative process, recommends a comprehensive communications effort to advise and educate electric customers about electric restructuring. The proposal includes a detailed outline of a

[1]The Council filed the CHOICE proposal in response to the March 8, 1999 order in Case No. U-11290 et al., at 41. The parties signing the proposal were the Michigan Community Action Agency Association, ENGAGE Energy, the Michigan Electric Cooperative Association, the Small Business Association of Michigan, Indiana Michigan Power Company, the Michigan Manufacturers Association, the Michigan Retailers Association, AARP, Consumers Energy Company, the Michigan Electric and Gas Association, Northern States Power Company-Wisconsin, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, the Michigan League for Human Services, Nordic Electric, The Detroit Edison Company, The Heat and Warmth Fund, and the Staff.

communications strategy, a proposed budget, and a plan for implementing its objectives. The program timetable for phasing in the educational and media activities assumes that all customers will be eligible to participate in retail open access at the beginning of 2002. Because the working group was unable to reach consensus on a mechanism for funding the program, the proposal did not make a recommendation on that point, and the Council requested that the Commission determine how to allocate total program costs among regulated electric companies.

In an order issued to commence this case on September 14, 1999, at 2, the Commission indicated that it was "favorably impressed" with the CHOICE proposal. Because the unresolved funding issues could have rate effects, the Commission decided to issue a notice of hearing and conduct a contested case hearing on the proposal.

On October 7, 1999, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) conducted a prehearing conference and granted leave to intervene to the Michigan Electric Cooperative Association (MECA); Energy Michigan; Exelon Energy, Inc., f/k/a Unicom Energy, Inc. (Exelon); Wisconsin Public Service Corporation, Upper Peninsula Power Company, Northern States Power Company-Wisconsin, and Wisconsin Electric Power Company (collectively, the Upper Peninsula utilities); Alpena Power Company (Alpena); the Association of Businesses Advocating Tariff Equity (ABATE); Indiana Michigan Power Company (I&M); The Detroit Edison Company (Detroit Edison); and Consumers Energy Company (Consumers). On February 10, 2000, the ALJ granted leave to intervene to Attorney General Jennifer M. Granholm (Attorney General).

On January 12, 2000, the Staff filed and served a settlement agreement on behalf of some of the parties. Parties signing the proposed settlement were Detroit Edison, Consumers, the Upper Peninsula utilities, Alpena, Exelon, I&M, and the Staff. The settlement adopts the CHOICE proposal, including its budgeted total cost of $26.7 million. As a basis for allocating the cost among the regulated electric utilities, the settlement uses the ratio of the meters served by each utility to their total meters. This approach assigned $10.2 million of the total cost to Consumers, $13.3 million to Detroit Edison, $1.6 million to the other investor-owned electric utilities, and $1.6 million to the electric cooperatives. The settlement states that Consumers' and Detroit Edison's assigned cost responsibilities are consistent with their participation in the program from its inception. However, the other utilities' allocations are ceilings on their projected shares of the expenditures. The settlement states that each utility, other than Consumers and Detroit Edison, will not be required to make expenditures until it has an open access plan available in its service territory. When that utility commences open access, the settlement requires it to file an application with the Commission for approval of its proposed costs and cost recovery methods. The settlement further requires an application on the part of any utility (other than Consumers or Detroit Edison) to justify any proposed deviations from the CHOICE program.

The settlement provides that all of the utilities will obtain funding for their program expenditures by assessing a surcharge to their retail customers that take either fully bundled or open access service. In the case of Consumers and Detroit Edison, the surcharge would be 17¢ per meter per month, with each residential customer limited to one meter, regardless of the actual number of meters used to serve him or her. The surcharge starts for those two utilities' customers in the second billing month after the Commission approves the settlement and ends once the utility collects its funding allocation, but no later than 36 months after the surcharge begins.

The settlement provides for oversight of program expenditures by establishing a CHOICE Council subcommittee to be appointed by the Commission. The seven-person subcommittee will have representatives from Consumers, Detroit Edison, the Michigan Electric and Gas Association, AARP, the Small Business Administration of Michigan (SBAM), the Michigan Manufacturers

Association, and the Staff (who is the designated chair). The subcommittee's responsibilities are (1) to ensure that the educational activities conducted and funded under the CHOICE program are competitively neutral, objective, and not promotional in nature and consistent with the approved program and budget, (2) to review contracts between Consumers and Detroit Edison and their contractors, and (3) to submit invoices to the companies for payments to organizations receiving program grants.

The settlement further directs the contractors and the subcommittee to negotiate and sign an agreement of understanding that governs program expenditures, among other things. The agreement of understanding must be submitted to the Commission for approval before it becomes effective. Thereafter, Consumers and Detroit Edison will consult with the subcommittee before making payments to contractors or vendors. If the subcommittee does not reach a consensus on any payment or proposed modification of a program activity, it may request the Commission to review the matter and may further request a delay in the implementation of related program activities pending the Commission's decision. Contractors are also subject to quarterly reporting requirements for their program activities, expenditures, and other matters.

In addition, the settlement provides that a utility's expenditures must be just and reasonable for it to be entitled to cost recovery. Each utility's expenditures are subject to an annual reconciliation to be reviewed by the Staff and followed by a Staff report. Thereafter, a party may request the Commission to conduct a contested case proceeding to review the Staff report, the utility's accounting for the expenditures, and the prudence of the expenditures, including expenditures that are alleged to be inconsistent with the approved agreement of understanding.

MECA and the Attorney General filed objections to the proposed settlement. ABATE and Energy Michigan did not file objections. The ALJ set the settlement for a contested case hearing in accordance with Rule 333 of the Commission's Rules of Practice and Procedure, R 460.17333.

On April 10, 2000, the ALJ conducted an evidentiary hearing on the settlement. Thereafter, ABATE, Alpena, the Attorney General, Consumers, Detroit Edison, MECA, the Staff, Exelon, and the Upper Peninsula utilities filed briefs, and the same parties, except for Alpena, filed reply briefs.

On June 5, 2000, Public Act 141 of 2000 (Act 141) became effective. Section 10r(2) of Act 141, MCL 460.10r(2); MSA 22.13(10r)(2), contains provisions that address the funding of educational programs. In an order issued on June 19, 2000, the Commission reopened this case to provide an opportunity for the parties to address the effect of Act 141 on funding issues. At a prehearing conference on July 13, 2000, the ALJ set a schedule for further briefing in response to the Commission's order. Alpena, ABATE, Consumers, Detroit Edison, the Staff, Exelon, the Upper Peninsula utilities, and MECA filed briefs, and the same parties and Energy Michigan filed reply briefs.[2]

On December 27, 2000, the ALJ issued a Proposal for Decision (PFD) recommending that the settlement agreement be approved with modifications. First, the ALJ rejected the settlement's allocation of costs based on customer meters and instead recommended the Attorney General's proposed rate design. The key assumption of the Attorney General's methodology is that the residential, small commercial, and industrial and large commercial rate classes cause the costs to

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[2]In addition, on August 17, 2000, the SBAM filed comments proposing $5 million in funding for a new Michigan Small Business Renewable Energy and Development Funding Program to provide entrepreneurs with research and development grants. While SBAM's proposal may have conceptual value as a means for stimulating innovation in energy technology, it is beyond the concerns that prompted the Commission to commence this case and is not related to the issues that prompt the Commission to reopen this case in this order.

be incurred in proportion to each class's expected number of customers participating in open access as a percentage of total participants. Applying this assumption on a statewide basis, the Attorney General proposed that residential customers pay 35% of total program costs, small commercial customers 55%, and industrial and large commercial customers 10%.[3] Although the ALJ agreed in principle, he recommended more precise ratios of 35.7% for residential customers, 57.2% for small commercial customers, and 7.1% for industrial and large commercial customers.[4]

Second, the ALJ noted that Section 10d(1) of Act 141, MCL 460.10d(1); MSA 22.13(10d)(1), froze the rates of Consumers and Detroit Edison, thus precluding a surcharge to recover program costs during the freeze period. The ALJ recommended that Consumers and Detroit Edison recover their costs through securitization, while maintaining the cost allocation methodology adopted in the PFD. As for the other utilities that are not subject to the rate freeze, the ALJ recommended that they fund their program expenditures through a per-meter surcharge.

Third, the ALJ noted that Section 10r(2) of Act 141 requires the Commission to "establish a funding mechanism for electric utilities and alternative electric suppliers to carry out an educational program for customers." Because the CHOICE proposal does not allocate any of the funding burden to alternative electric suppliers, the ALJ recommended that the proceedings be reopened to adjudicate those suppliers' statutory responsibilities. In all other respects, the ALJ found the settlement to be consistent with Act 141.

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[3]As indicated in Exhibit I-3, the settlement methodology based on customer meters would have the effect of allocating 89.9% of the total cost to residential customers, 9.8% to small commercial customers, and 0.3% to industrial and large commercial customers.

[4]The ALJ's recommended allocators are based on numbers of participating customers projected for 2001 in Exhibit I-3.

On January 17, 2001, MECA, the Attorney General, ABATE, Consumers, Detroit Edison, Energy Michigan, Exelon, the Upper Peninsula utilities, and the Staff filed exceptions. On or before February 7, 2001, the same parties, except for ABATE and the Upper Peninsula utilities, filed replies to exceptions.

Before addressing the issues raised by the parties' exceptions, it is necessary to make some observations that will affect the future implementation of customer education programs. As originally developed, the CHOICE proposal envisioned a series of coordinated educational activities to be implemented in stages over a four-year period ending in 2002. Since that time, there have been several developments, not the least of which is the restructuring legislation that created a statutory basis for educational programs and imposed a timetable for retail open access. Section 10d of Act 141 contains rate provisions that are incompatible with the cost recovery provisions for Consumers and Detroit Edison in the settlement. Moreover, more than two of the four years covered by the CHOICE proposal have passed, but the Council's educational program has yet to begin.

The Commission is generally pleased with the overall structure of the settlement and views the settlement as an appropriate framework for conducting the educational programs required by Act 141. However, the Commission also finds that it is appropriate to reopen the settlement in order to allow the parties to reach agreement on some limited revisions in response to changes in circumstances. Because the four-year timetable provided in the CHOICE proposal was not implemented in 1999, as originally envisioned, it is now outdated, at least in part. The Commission finds that the budgetary provisions that affect the timing of expenditures and program activities should be revised to defer some of those activities beyond the 2002 end date identified in the original proposal. At the same time, the program must have educational programs in place to assist customers prior to the January 1, 2002 commencement date for open access mandated by Section 10a of Act 141, MCL 460.10a; MSA 22.13(10a). The Commission now anticipates that the activities outlined in the CHOICE proposal will be completed within a time horizon of 2½ years from beginning to end.

From a broad perspective, the emergence of the power markets necessary to make customer choice effective, both in Michigan and nationwide, has progressed at a somewhat uneven pace. At this time, it is difficult to project with reasonable certainty when the development of those markets will reach a point that optimizes the benefits of retail open access for all customers. There may be a perception among some segments of the public, based on news accounts unrelated to circumstances in Michigan, that deregulation has been ineffective elsewhere. Thus, it may become necessary to intensify or refocus educational efforts as supply markets develop and customers move toward electric choice, and the parties should discuss further revisions to the settlement that are responsive to these concerns.

There are also concerns regarding the adequacy and reliability of the generation resources available to meet expected demands for electricity in Michigan. The transmission grid may also constrain the amount of power that can be imported from out of state. While the Commission does not regard the situation in Michigan as comparable to the supply constraints experienced in other regions, the Commission recognizes the need to monitor power supplies on an ongoing basis. It also believes that the effectiveness of open access depends in part upon power markets that offer customers a multiplicity and diversity of supply options. Therefore, the Commission finds that it should expand the CHOICE program to promote the development of competition in the supply side of power markets. Moreover, the Commission recognizes that stimulating the growth of generating resources, including renewable resources, that are available to alternative electric suppliers in Michigan is an economic development opportunity. To address the supply side of the market equation, the Commission directs the parties to budget for programs and activities that will promote the development of generation resources owned by or whose production is available to alternative electric suppliers. This should include both those entries already maintaining a business presence in Michigan and others who may be considering new investments to serve Michigan markets. Those efforts should be included as part of the revisions to the settlement agreement. As explained below in this order, there are several other changes related to the CHOICE funding mechanism and the CHOICE Council subcommittee that should be included in the revisions necessary to secure Commission approval of the settlement.

The Commission is also aware that there is a collaborative effort underway to develop a similar CHOICE proposal to educate customers regarding gas restructuring. If the parties to this proceeding have ideas for coordinating electric and gas educational programs that they could pursue in this case without causing any delay to the timetable for electric restructuring, they may present their suggestions during the reopened settlement discussions. Otherwise, it will be acceptable to address gas-related CHOICE issues in a separate docket.

Some of the exceptions challenge the educational program described in the Council's proposal. Noting that the proposal budgets \$22.7 million of funding for mass media advertising, the Attorney General and MECA argue that there is no competent evidence in the record to support the amount of the funding or to demonstrate why a lesser amount would be inadequate. (The Attorney General does not challenge the \$4.2 million of funding related to non-advertising expenditures.[5]) The Attorney General contends that the proposal itself, admitted into the record

[5]Attorney General's brief, filed April 18, 2000, at 8.

with the settlement as Exhibit S-1, cannot provide the evidentiary basis for its own assertions. MECA claims that the proposal's advertising provisions focus exclusively on Consumers and Detroit Edison and are irrelevant to the cooperatives' situation.

The Staff responds that the supporting testimony of its witness, William J. Celio, provided a substantial evidentiary basis for the advertising budget. The Staff says that, from a cost standpoint, advertising is an efficient medium for communicating with large numbers of customers and that the proposed budget falls within the middle of the range of other states that have implemented similar educational programs.

The CHOICE proposal, which is appended to the settlement, is a detailed document that summarizes the end results of a collaborative work effort subsuming a diversity of interests and perspectives. The proposal thoroughly explains the advertising plan and its objectives, incorporates the expertise of advertising professionals, and documents the funding to be devoted to mass media communications. It compares the budget to expenditures in other states for customer education. The Commission finds that Exhibit S-1, as supported by the testimony of Mr. Celio, is credible and justifies the advertising component of the proposal. Subject to the provisions stated earlier regarding revisions to the budgetary timetable, the Commission finds that the overall dollar amounts are reasonable. The Commission does not agree with MECA that the proposal is tailored to the two larger utilities' concerns, but it finds that the proposal lays the groundwork for providing customer education on a statewide basis.

The Attorney General faults the advertising plan for relying on contractors that have business relationships with Consumers and Detroit Edison. The Attorney General says that these contractors owe their primary allegiance to their existing clients, which creates a potential conflict of interest with the public interest objectives of the Council as a whole. The Attorney General suggests that the advertising services should be subject to competitive bidding.

Detroit Edison and the Staff say that the procedural safeguards provided in the settlement for oversight of advertising expenditures will ensure fairness and cost efficiency. They claim that previous utility contractors bring an existing base of expertise to the program. The Staff adds that the proposal provides for the flexibility necessary to accommodate changes in advertising activities as circumstances unfold.

The Commission finds that the oversight provisions of the proposal contain adequate safeguards to ensure against abuse of a contractor's relationship with the utilities. Expenditures will be subject to the agreement of understanding to be approved by the Commission. Moreover, an expenditure for an advertisement that did not meet the settlement's criteria of being competitively neutral, objective, and not promotional would be subject to disallowance under the reconciliation procedures. Under the settlement, program expenditures cannot be recovered unless they are just and reasonable. There are efficiencies in using the resources of contractors that have dealt with utilities and that have already provided assistance to the CHOICE working group.

MECA argues that the Commission does not have statutory authority to compel a public utility to undertake a customer education program, either under Act 141 or the law as it existed prior to Act 141. MECA interprets Section 10r(2) as authorizing the Commission to do only two things: create a funding mechanism and confirm that any proposed program meets the three criteria listed in parts (a)-(c) of Section 10r(2). MECA argues that the Commission cannot dictate a statewide program or require a utility to implement a specific program of the Commission's choosing. MECA claims that imposing an educational obligation on a utility over its objection would intrude upon the utility's right to manage its business. MECA adds that there is no evidentiary showing that the CHOICE program meets the Section 10r(2)(a)-(c) criteria.

In reply, the Staff contends that Act 141 eliminated any questions regarding whether retail open access was to be a voluntary proposition on each utility's part. The Staff says that Section 10r(2) creates a mandatory framework for the customer education effort that is necessary to make open access work.

Section 10r(2) of Act 141 provides:

> Before January 1, 2002, the commission shall establish a funding mechanism for electric utilities and alternative electric suppliers to carry out an educational program for customers to do all of the following:
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> (a) Inform customers of the changes in the provision of electric service, including, but not limited to, the availability of alternative electric suppliers.
>
> (b) Inform customers of the requirements relating to disclosures, explanations, or sales information for alternative electric suppliers.
>
> (c) Provide assistance to customers in understanding and using the information to make reasonably informed choices about which service to purchase and from whom to purchase it.

MCL 460.10r(2); MSA 22.13(10r)(2).

Section 10r(2) confers a substantial grant of authority to provide for customer education. The enactment of Section 10r was itself a legislative acknowledgment of the need to create customer awareness and educate customers about the sweeping changes that will accompany electric restructuring and retail open access, particularly as those changes affect relationships between providers of electric services and end-use customers. The statute recognizes that customer education will be vital, if not indispensable, for making these reforms effective and meaningful for all customers. The purpose of Act 141 is not to benefit only a few, but the Legislature envisioned a broad distribution of benefits to all customers located throughout Michigan.

In light of the legislative objectives expressed in Section 10r(2), the Commission finds MECA's interpretation to be unduly constrained and contrary to the statute's wording and purposes. The Commission regards Section 10r as eliminating any uncertainty concerning the legal basis for undertaking educational programs. Under Act 141, neither retail open access nor the customer education programs necessary to make informed electric choices is optional.

The Commission rejects MECA's claim that Section 10r(2) authorizes nothing more than funding for a program that a utility may choose, or not choose, to undertake. The statutory directive "to carry out" an educational program does not foreclose the Commission from participating in and influencing the development and content of the program. (The precise wording is ambiguous as to which entity–the Commission, electric utilities, or alternative energy suppliers–has the primary responsibility to do the "carrying out.") Moreover, achieving the level of customer awareness necessary to make open access effective would be impeded, if not frustrated altogether, if MECA's statutory interpretation were to prevail. The three criteria listed in parts (a)-(c) of Section 10r(2) are broadly stated objectives, not minimal informational thresholds. The first two criteria (parts [a] and [b]) require the Commission to ensure that the program conveys information that creates customer awareness of their alternatives under open access. The third criterion (part [c]) requires the Commission to ensure that the necessary resources will be in place to assist customers "in understanding and using the information to make reasonably informed choices about which service to purchase and from whom to purchase it." In other words, the Legislature has invested the Commission with the responsibility of enabling customers to become meaningful participants in retail open access. This requires more than simply checking that a proposed program contains certain basic information before approving it. Section 10r(2) instead requires the Commission and its Staff to become direct and active participants in the process of developing and implementing appropriate educational programs.

The Commission further finds that the basic framework for providing customer education set forth in the CHOICE proposal is consistent with the requirements and objectives of Section 10r and is a necessary and appropriate means of meeting the criteria concerning customer awareness and education. Although the proposal itself does not refer to the three statutory criteria by name, the Council drafted it prior to Act 141. A review of its substantive content persuades the Commission that the educational program it describes meets the criteria subsequently laid out in Act 141.

MECA argues that the CHOICE proposal fails to recognize that Section 10x of Act 141, MCL 460.10x; MSA 22.13(10x), exempts a cooperative from offering retail open access prior to 2005 or funding educational programs until the earlier of July 1, 2004 or the date that it voluntarily offers open access to all retail customers. MECA argues that it is inappropriate to subject the cooperatives to the same statewide program as Consumers and Detroit Edison, which are subject to a different timetable. MECA requests that the Commission exclude the cooperatives from this case and require each to propose its own educational program six months prior to its open access date.

The Staff responds that the CHOICE proposal is not in conflict with Section 10x. Detroit Edison suggests that the cooperatives be excluded.

The Commission rejects MECA's proposal to exclude the cooperatives from the CHOICE proposal. The settlement does not impose any obligation on a cooperative to contribute funding until it makes an open access plan available in its service territory. This is consistent with the open access timetable established in Section 10x.[6] Moreover, the settlement provides that a cooperative or utility (other than Consumers or Detroit Edison) must file an application for approval of its proposed costs and cost recovery methodology and that it may file an application to request a deviation from the program required by the CHOICE proposal. Thus, there is sufficient flexibility within the proposal's parameters to accommodate differences among utilities.

MECA says that the cooperatives should have a representative on the Council subcommittee charged with oversight of the educational program. MECA says that the cooperatives are unique, in that they are non-profit organizations formed to provide electric service to their members, who are also their owners. Energy Michigan makes a similar request for subcommittee representation on behalf of alternative electric suppliers.

The Staff responds that the MECA sought to preserve the cooperatives' monopoly over their customers by opposing open access. The Staff says that the cooperatives share a mutuality of interests with the investor-owned utilities and do not require separate representation on the subcommittee.

The Commission agrees with MECA and Energy Michigan that it is appropriate to expand the subcommittee to include representatives of both the cooperatives and the alternative electric suppliers. Both groups are important stakeholders in the electric restructuring process and merit representation on the subcommittee. However, the Commission recognizes that two additional

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[6]The second sentence of paragraph 2 of the settlement excludes utilities other than Consumers or Detroit Edison from "participat[ing] in or contribut[ing] to Program funding until an open access plan is available in their Michigan service territory." As applied to cooperatives, the Commission interprets the sentence to be consistent with Section 10x(1); i.e., a cooperative's obligations in the sentence begin on "July 1, 2004 or such time as it is providing choice to all of its retail customers, whichever is earlier." MCL 460.10x(5); MSA 22.13(10x)(5).

places on the subcommittee will upset the settlement's balance between provider and ratepayer interests, each of which had been accorded three seats, together with the Staff's seat as chair. Therefore, the Commission finds that two additional memberships should be created for ratepayer interests to maintain the balance. The subcommittee will thus have a total of 11 members. The Staff should recommend candidates to the Commission by March 16, 2001 to ensure that all members can participate in the process of revising the settlement, as provided in this order.

The Attorney General and ABATE argue that it is inadvisable for the Commission to go forward with an educational program under the present circumstances. They say that the utilities serve very little customer load under current direct access programs, that there are no alternative electric suppliers actively pursuing small commercial and residential customers, that market conditions do not permit customers to choose among several alternatives, and that it would be imprudent to spend the money now to advise customers of choices that do not exist. ABATE adds that there is a regional shortage of the generation that would be necessary to make open access viable. Although the Attorney General and ABATE both acknowledge that Section 10r(2) requires the Commission to establish a funding mechanism by January 1, 2002, they maintain that the statute does not prohibit the Commission from putting the program on hold until market conditions are more favorable.

Detroit Edison, Exelon, and the Staff oppose delay in implementing the CHOICE program. Detroit Edison says that the state's public policy should not be derailed by predicted market conditions, although care should be taken to ensure that the advertising activities and expenditures are reasonable in light of their objectives. The Staff and Exelon suggest that the timing and content of program advertising efforts can be altered as necessary to adjust to changes in circumstances. The Staff says that education will take time, so that it is necessary to begin the program now in order to be ready prior to open access.

As noted earlier, the Commission is aware of the difficulties experienced in other regions of the country. However, the Commission does not share the pessimistic assessment of market conditions projected by the Attorney General and ABATE. Nor does the Commission anticipate an extension of the statutory timetable for introducing retail open access. The Commission will proceed in accordance with that timetable.

In their exceptions, the Upper Peninsula utilities, Energy Michigan, ABATE, and the Staff object to the ALJ's recommendation to modify the settlement's cost allocation methodology, which apportions program costs on the basis of customer meters. These parties argue that the ALJ's recommendation to allocate costs initially among rate classes on the basis of each class's expected statewide percentage of the total number of customers participating in open access would have the effect of shifting costs from residential to commercial and industrial customers.[7] They claim that the recommendation ignores the principles of cost causation as they relate to customer education because the CHOICE program will focus primarily on residential and small commercial customers. Energy Michigan and the Staff say that larger customers are already more sophisticated in energy matters and will not rely on the resources of the CHOICE program to make informed choices. The Staff adds that even if large businesses obtain more of the cost savings from open

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[7]The Upper Peninsula utilities further note that the settlement does not prescribe how any utility other than Consumers or Detroit Edison will allocate its share of program costs among its own customers or customer classes. The settlement mandates that Consumers and Detroit Edison recover their costs on the basis of customer meter counts, but it indicates that the others should propose a method for cost recovery when they file applications relating to their implementation of the CHOICE program.

access, the need for customer education is unrelated to the distribution of the benefits. The Upper Peninsula utilities suggest that residential customers will benefit from being informed even when they do not choose open access.

In support of the ALJ's recommendation, MECA and the Attorney General note that an allocation based on customer meter counts would require large industrial customers, the primary advocates and beneficiaries of open access, to pay only 0.3% of the total program cost, as compared to a 90% cost allocation to the residential class. The Attorney General claims that commercial customers will be targeted as the primary beneficiaries of the educational programs and that those customers, as a class, will have the highest number of participants in open access. MECA says that it is unfair to allocate the same amount of cost to the individual meters of both a large industrial load and a retiree on a fixed income. MECA also notes that some seasonal customers of rural cooperatives maintain primary residences in Consumers' or Detroit Edison's service territory and will thus pay twice. As an alternative, the Attorney General suggests a uniform surcharge on kilowatt-hours of electric usage, which would allocate more than 50% of the program cost to the industrial class.

The Commission finds that the cost allocation provisions of the settlement are reasonable. By allocating the total program cost among the utilities and their customers on the basis of their meter counts, the settlement recognizes that the CHOICE program will focus on informing and assisting customers with smaller loads, who are less likely to have the time or resources to make themselves aware of open access. Consistent with Section 10r, the Council has designed the CHOICE program to promote consumer protection. It is not likely that larger non-residential customers will benefit to the same degree from the educational program, even if they do benefit to a larger extent from open access itself. The cost allocation methodology set forth in the settlement is a reasonable approximation of the principles of cost causation as applied to customer education.

Consumers, Detroit Edison, ABATE, and the Staff address the conflict between the settlement provision authorizing Consumers and Detroit Edison to assess a surcharge of 17¢ per meter per month and the rate freeze imposed by Section 10d. The ALJ recommended a modification to the settlement to fund the CHOICE program with cost savings from the two utilities' securitization programs. The ALJ stated that any unrecovered amounts after securitization should be collected in accordance with the terms of the settlement after the rate freeze expires.

Detroit Edison concurs with the ALJ and adds that it will treat any underrecovery as a regulatory asset and that cost recovery will remain subject to the settlement provisions relating to program expenditures and the reconciliation procedure.

Consumers says that the ALJ's recommendation is unworkable in light of the Commission's exclusion of CHOICE funding from Consumers' securitization cost savings in the October 24, 2000 order in Case No. U-12505. Consumers suggests that the funding commitment could be treated as a regulatory asset that would accrue a return on program expenditures. Consumers further proposes to recover the deferred costs, including carrying charges, as a surcharge after the rate freeze ends. The Staff supports deferred collection through a surcharge.

ABATE argues that the funding requirements should be applied as offsets against either the excess earnings produced by Consumers' and Detroit Edison's current rates or the recent reductions in their property taxes.

Energy Michigan comments that Detroit Edison's proposal to use securitization cost savings is contrary to the order in Case No. U-12505 authorizing Consumers' securitization program as well as the November 2, 2000 order in Case No. U-12478 granting a similar authorization to Detroit Edison. Energy Michigan supports Consumers' proposal to treat the costs as regulatory assets subject to deferred recovery through a per-meter surcharge. The Attorney General agrees that securitization cannot be used to fund the program and does not object to deferred recovery, as long as the expenditures are subject to audit and a prudence review. The Attorney General objects to Consumers' proposal to collect its carrying costs, given that present rates are producing excessive earnings. Exelon opposes Detroit Edison's suggestion to require further proceedings to amend the settlement, arguing that the Commission does not have authority to compel amendments.

Consumers, Detroit Edison, and the Staff oppose ABATE's suggestion to recover the costs as offsets against overearnings. The Staff says that ABATE's position requires retroactive ratemaking.

Section 10r(2) of Act 141 requires the Commission to establish a funding mechanism before January 1, 2002. Section 10d of Act 141 forecloses an immediate surcharge to secure the funding. The Commission agrees with Consumers, Detroit Edison, and the Staff that deferring the funding requirement by recording the program expenditures as regulatory assets on the utilities' books is reasonable and appropriate as a means of harmonizing the two statutory provisions. The Commission further finds that imposing a surcharge after Act 141's rate constraints expire is a reasonable mechanism for deferred cost recovery. See MCL 460.10d(3); MSA 22.13(10d)(3), which permits deferral of "expenses incurred as a result of . . . other state or federal governmental actions incurred by electric utilities" under the circumstances described in the statute. Eventual recovery of the program costs will remain subject to possible disallowance under the reconciliation procedure, prudence review, and other provisions of the settlement. To the extent necessary, Consumers and Detroit Edison should file applications for authority to use deferred cost accounting related to these costs. Consumers and Detroit Edison may file applications to collect the costs, including appropriate carrying charges, in their rates after the freeze expires. The settlement revision necessary to provide for authority to use deferred cost accounting will not apply to utilities that are not subject to the rate freeze.

The Commission rejects ABATE's suggestion to fund the program by offsetting the costs against current rates. This approach would require a finding that changes in each utility's revenue requirement since their last base rate case have produced an overearnings situation. The Commission has no basis to make such a finding at this time. If, however, a rate case is pending or filed by a utility at the time that recovery of deferred costs is sought, the recovery issue will be considered in the context of the comprehensive rate review.

Because Section 10r(2) relates the funding mechanism to "electric utilities and alternative electric suppliers" in carrying out an educational program, the ALJ recommended that the proceedings be reopened to make provision for alternative electric suppliers to contribute to the funding. Exelon, Energy Michigan, and the Staff object and argue that the settlement should not be modified in this respect. Exelon says that the settlement contemplates that the funding will ultimately come from the utilities' entire customer base, regardless of whether individual customers take their service on a fully bundled basis or under open access. Exelon views the utilities as being in the best position to collect the funding requirement by spreading it over the entire customer base. The Staff says that if the Commission were to divide the funding requirement between the utilities and alternative electric suppliers, there is a risk that open access customers could pay twice if the utilities and suppliers both pass their costs on to those customers. Exelon and Energy Michigan interpret Section 10r(2) as requiring alternative suppliers to participate in the educational process, but not in the funding mechanism.

Detroit Edison argues that Section 10r(2) requires alternative electric suppliers to participate in the educational programs, but that the statute does not require the settlement to be modified in order to assess a funding contribution from the suppliers. Detroit Edison says that alternative suppliers presented their views and influenced the development of the CHOICE program through their participation in the collaborative.

The Commission finds that it is unnecessary to include alternative electric suppliers in the funding mechanism. The settlement provides efficient mechanisms for collecting the funding requirement by spreading it over the base of electric customers in Michigan. Introducing alternative suppliers into the funding equation could be an unnecessary complication possibly leading to a double recovery of costs and could act as a deterrent to market entry. The Commission does not interpret the reference to "alternative electric suppliers" in Section 10r(2) as necessarily requiring those suppliers to contribute some of the funding, although the statute does make their participation and cooperation in the educational programs mandatory.

To conclude, the Commission is remanding the settlement to the parties for further discussions to draft certain revisions as set forth in this order. In view of the time constraints imposed by Act 141 and the familiarity of the parties with the issues presented in this case, the Commission expects this case to be completed on an expedited basis. On remand, the parties should attempt to resolve the issues requiring revision and sign a revised settlement agreement within approximately 45 days from the date of this order. If further proceedings are necessary in order to submit the revised settlement to the Commission for approval pursuant to R 460.17333, the Commission expects those proceedings to be conducted so that a final order can be issued in July 2001. The parties shall not relitigate issues that have already been decided in this order, raise issues that have been already litigated in the previous hearing, or introduce new issues beyond those discussed in this order.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. These proceedings should be reopened, so that the proposed settlement may be remanded to permit the parties to make certain revisions as set forth in this order.

THEREFORE, IT IS ORDERED that these proceeding are reopened, so that the proposed settlement agreement may be remanded to permit the parties to make certain revisions as set forth in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

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 March 7, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of March 7, 2001.

Its Executive Secretary

In the matter of the proposal of the **CHOICE ADVISORY COUNCIL** for a statewide customer education program and other related matters.	)))))	Case No. U-12133

<u>Suggested Minute</u>:

> "Adopt and issue order dated March 7, 2001 reopening the proceedings and directing the parties to make revisions to the CHOICE Advisory Council's statewide education program and a proposed settlement agreement providing for its implementation, as set forth in the order."