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 (WPS Corp/UPPCo)

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. Wisconsin Public Service Corporation (WPS Corp) and Upper Peninsula Power Company (UPPCo) filed compliance plans and requested waivers.

WPS Corp requests waivers of sections II.A, II.B, II.C, II.D, II.E, III.A, and III.C for various services it performs for or receives from UPPCo. UPPCo requests similar waivers for various services it performs for or receives from WPS Corp. They suggest that waivers may not be required because both companies are regulated.

The Commission agrees that waivers are not required for the services that each provides to the other because the code of conduct applies only to a regulated service provider and its unregulated affiliates or separate corporate divisions providing unregulated services.

WPS Corp requests waivers of sections II.A, II.B, II.C, II.D, II.E, III.A, and III.C for services provided for and received from American Transmission Company LLC (ATC). UPPCo requests similar waivers. They suggest that waivers may not be required because they and ATC are regulated. They also say that their relationship to ATC is governed by Wisconsin law on affiliate transactions.

When a service or product is subject to a code of conduct approved by the Federal Energy Regulatory Commission (FERC), or is otherwise regulated directly by the FERC or through a regional transmission organization such as Midwest Independent System Operator, Inc., (MISO) this code of conduct may be duplicative. Under these circumstances, as long as the FERC or another governmental regulatory 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 by a utility.

ATC does not provide a regulated service within the meaning of the code of conduct. However, because ATC is regulated by the FERC, operates under a FERC-approved open access transmission tariff, and must adhere to the requirements of the MISO, and because WPS Corp and UPPCo have requested waivers, the Commission will grant waivers for the ATC-related services described in the compliance plans.

WPS Corp requests waivers of sections II.A, II.B, II.C, II.D, II.E, and III.C for services provided to unregulated affiliates in Michigan. Section II.B explicitly prohibits a utility from subsidizing in any manner, the business of its unregulated affiliates or other separate entities. Moreover, a major purpose of this code is to prevent cross-subsidization between regulated and unregulated operations of a utility and its affiliates. Therefore, the Commission will not grant a waiver of section II.B of the code of conduct. Neither will the Commission grant a waiver of section II.C, which requires the utility to maintain separate books and records from its unregulated affiliates. The company has provided no explanation to support this waiver request. Finally, the Commission will also deny a waiver of section III.C, the affiliate pricing standards. This provision represents a fundamental regulatory pricing requirement, and is one of the most effective tools for preventing ratepayer subsidization of a utility's unregulated operations.

The remaining waiver requests, sections II.A, II.D, and II.E, may be granted when WPS Corp provides information about the type and location of businesses undertaken by its affiliates in Michigan.

WPS Corp and UPPCo request waivers of sections II.A, II.B, II.D, and II.E for services provided to customers and unaffiliated third parties, such as installation and maintenance of street lighting, underground cable inspection, and power quality services. According to WPS Corp and UPPCo, they are the only suppliers of some of these services in their service territories and they do not actively market many of these services. They also state that Wisconsin law prohibits cross-subsidization, information sharing, and preferential treatment. Section II.B explicitly prohibits a utility from subsidizing the business of its unregulated affiliates and other separate entities. Moreover, a major purpose of this code is to prevent cross-subsidization between regulated and unregulated operations of a utility and its affiliates. WPS Corp asserts that it should be granted a waiver in part because it is subject to Wisconsin law that is intended to prevent cross-subsidization, the very thing that this waiver would permit. Therefore, the Commission will not grant a waiver of section II.B of its code of conduct.

The Commission finds that, with the exceptions discussed above, the waivers are reasonable and in the public interest so long as the companies adhere 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. Finally, all of the waivers apply narrowly to the programs described in the companies' December 28, 2001 compliance plans. Any new programs or modifications to existing programs may require additional waiver requests on the part of the companies.

Finally, the Commission has provided flexibility to WPS Corp and UPPCo (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 WPS Corp and UPPCo, 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 WPS Corp and UPPCo to continue to file these reports annually.

WPS Corp and UPPCo request waivers of section VII.A to permit them to maintain documents at the parent corporation's Green Bay, Wisconsin headquarters. They commit to making the documents available to the Commission in its Michigan offices upon request.

The Commission finds that the requested waivers are 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 filings 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 filings of Wisconsin Public Service Corporation and Upper Peninsula Power Company are accepted, subject to the discussion above.

B. The requests of Wisconsin Public Service Corporation and Upper Peninsula Power Company for waivers 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

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

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
(WPS Corp 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

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