

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

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

At the May 28, 2003 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 for electric utilities and alternative electric suppliers, as required by Section 10a(4) of the Customer Choice and Electricity Reliability Act, MCL 460.10a(4). Among other things, the order required the filing of compliance plans and permitted the filing of requests for waivers. On October 3, 2002, the Commission issued a series of orders addressing the compliance plans and requests for waivers.

On January 17, 2003, Wisconsin Electric Power Company (WEPCo) and Edison Sault Electric Company (Edison Sault) filed a request for additional waivers. On April 7, 2003, the Commission's Executive Secretary directed WEPCo and Edison Sault to publish a notice of an opportunity to comment on the request for waivers or to request a public hearing throughout each of the utilities' service territories. The notice was also provided to the utilities' customers and various

interested groups. Comments were to be filed with the Commission no later than May 5, 2003.

No written comments were received by the Commission.

Both utilities request waivers of sections II.A, II.B, II.C, II.D, II.E, III.A, and III.C of the code of conduct for transmission support services provided to and received from American Transmission Company, LLC (ATC). They say that, among other things, they provide engineering, construction, operation, and maintenance services for the transmission system in their service territories. They represent that the result is lower transmission rates. They also represent that they are the only entities in their service territories that can provide these services and that a grant of the waivers will not inhibit the development or functioning of the competitive market.

The Commission will grant the requested waivers for the ATC-related services. Although ATC does not provide a regulated service within the meaning of the code of conduct, ATC is regulated by the Federal Energy Regulatory Commission (FERC), it operates under a FERC-approved open access transmission tariff, and it must adhere to the requirements of the Midwest Independent System Operator, Inc. Furthermore, the Commission granted similar waivers related to ATC for Wisconsin Public Service Corporation and Upper Peninsula Power Company on October 3, 2002.

WEPCo and Edison Sault also request waivers of sections II.A, II.D, and II.E of the code of conduct for specific unregulated services that they provide to customers and municipalities. The services include customer substation maintenance, tree trimming, power quality, trenching, and rights-of-way clearing. They say that customers and municipalities occasionally request these services, although the utilities do not promote the services and do not solicit requests for the services. They say that they perform these services when a customer cannot find another vendor, there is a need to perform the work in a timely manner, or the service is incidental to other work

the utility is performing for a customer. They represent that they cannot economically perform these services without a waiver, that a competitive market for these services does not exist, and that the services are also governed by Wisconsin law.

The Commission finds the requested waivers to be reasonable and in the public interest so long as the companies adhere to the remaining provisions of the code, 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. In all other respects, WEPCo and Edison Sault remain subject to the code of conduct and the October 3, 2002 order.

Finally, the Commission notes that it may act on code of conduct waiver requests without comments or a hearing. The December 4, 2000 order in this docket approved the code of conduct, which explicitly provided for a waiver process in Section VI of the code. The Commission described the waiver procedure in its October 29, 2001 order by stating:

The code permits electric utilities and alternative electric suppliers to request waivers from one or more provisions of the code upon a demonstration that the waiver will not inhibit the development or functioning of a competitive market. That provision is sufficient to ensure that the code will not be applied in situations where it produces unreasonable results.

October 29, 2001 order, at pp. 15-16.

Nothing in Section 10a(4) of Act 141, the Commission's prior orders in this docket, or the code of conduct restricts the Commission's authority to grant waiver requests on an ex parte basis, if, in its discretion, the Commission determines that it is in the public interest to do so.

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 AACCS, R 460.17101 et seq.

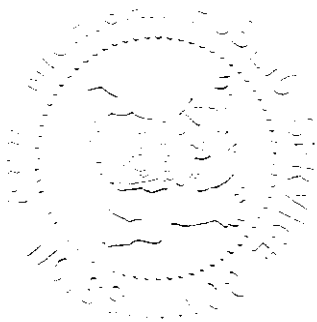
b. WEPCo's and Edison Sault's requests for waivers should be granted.

THEREFORE, IT IS ORDERED that the requests of Wisconsin Electric Power Company and Edison Sault Electric Company for waivers of sections II.A, II.B, II.C, II.D, II.E, III.A, and III.C and sections II.A, II.D, and II.E of the code of conduct, as described in the application, are granted.

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



Laura Chappelle
Chairman

W. J. S.
Commissioner

Robert B. Nelson
Commissioner

By its action of May 28, 2003.

Rosalyn Wideman by RWK
Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

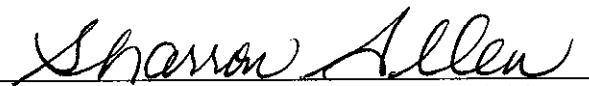
Case No. U-12134

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on May 28th, 2003, A.D. she served a copy of the Commission 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.

A handwritten signature in cursive script, reading "Patricia Fronta", written over a horizontal line.

Subscribed and sworn to before me
this 28th day of May 2003

A handwritten signature in cursive script, reading "Sharon Allen", written over a horizontal line.

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

SERVICE LIST FOR DOCKET # U - 12134-
DATE OF PREPARATION: 05/20/2003

CASE #

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PAGE: 1
DATE: 02/18/2003

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