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 **THE DETROIT EDISON COMPANY.**	)	Case No. U-12134

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. Those subject to the code of conduct have filed compliance plans, and some have requested waivers. Those filings will be addressed in this and other orders issued today.

Indiana Michigan Power Company

Indiana Michigan Power Company, d/b/a American Electric Power (I&M), commits to complying with the code by addressing each code section individually. Generally, the company has indicated that it is willing to comply with the code of conduct. There are some wording changes in I&M's compliance plan, however, that do not conform to the Commission's code. Among those is section III.F (I&M's #9). In section III.F, I&M may have modified the intent of the code by narrowing the scope to cover "unregulated" affiliates or "competitive" entities within the corporate structure "offering electric service in Michigan." Also, in section II.H (I&M's # 19) the company fails to commit to complying with a major portion of that requirement. In order to avoid any ambiguity regarding code implementation, the Commission will require I&M to adhere to the wording in the Commission's code of conduct.

I&M requests a waiver of section VII.A to permit it to maintain documents related to the code of conduct at its parent company's headquarters in Columbus, Ohio. It agrees to cover the travel costs for the Commission Staff (Staff) when an examination of the documents is necessary.

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

Alpena Power Company

Alpena Power Company (Alpena) requests a waiver of section II. F to permit it to finance or cosign loans for its affiliates Sunrise Side Energy, LLC, and West Dock Properties, LLC.

The primary purposes of section II.F are to avoid the anticompetitive effects of cross-subsidization and to protect the financial health of the utility. Given the nature of the business of the two subsidiaries and the utility's financial condition, the Commission finds that the requested waiver is reasonable and in the public interest, provided that Alpena maintains an equity ratio of at least 40% (calculated as the amount of common equity divided by the sum of equity and debt), adheres to all other provisions of the code, and ensures that its regulated operations do not subsidize its unregulated services, products, or affiliates.

Finally, the Commission has provided flexibility to Alpena (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 Alpena, 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 this waiver, the Commission will require Alpena to continue to file these reports annually.

Wolverine Power Marketing Cooperative

Wolverine Power Marketing Cooperative is a licensed alternative electric supplier serving customers in Michigan. Alternative electric suppliers are required to adhere to the Commission's code of conduct when they also provide regulated services or when they are affiliated with a regulated service provider. Wolverine Power Marketing states that it is not currently affiliated with a provider of regulated electric service, and is therefore not required to file a compliance plan, although it did so. The Commission is satisfied that Wolverine Power Marketing is sufficiently independent and not controlled by any regulated electric service provider, and is therefore not required to file a compliance plan.

WPS Energy Services, Inc.

WPS Energy Services, Inc., is a licensed alternative electric supplier affiliated with Wisconsin Public Service Corporation (WPS Corp) and Upper Peninsula Power Company (UPPCo). Alternative electric suppliers are required to adhere to the Commission's code of conduct when they also provide regulated services or when they are affiliated with a regulated service provider. WPS Energy filed a compliance plan committing to abide by the Commission's code of conduct.

WPS Energy Services requests waivers of sections II.D, II.E, and III.C for natural gas opportunity sales and technical support for the Pinnacle energy management and accounting system provided to WPS Corp. It also requests waivers of sections II.D, II.E, and III.C for gas opportunity sales made to UPPCo. It states that it is subject to Wisconsin law that prohibits unfair discrimination against any competing provider of a product or service and that its parent company has filed affiliated interest agreements with the Public Service Commission of Wisconsin.

The Commission will grant waivers of sections II.D and II.E but not 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 Commission understands that difficulties can be encountered when adhering to this requirement, especially when a service such as maintenance of unique software is at issue. Nevertheless, this condition is so vital to effective regulation that the Commission will insist that WPS Energy Services comply with section III.C.

WPS Energy Services also requests a waiver of section VII.A to permit it to keep documents related to the code of conduct at its Green Bay offices. It commits to making the documentation available to the Staff in a timely manner.

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

WPS Energy Services has not requested a waiver for its transactions with the American Transmission Company LLC (ATC).

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 or alternative electric supplier.

DTE Energy Services

DTE Energy Services filed a compliance statement indicating that it is not currently active, but committed to abide by the code of conduct if it recommences operations in Michigan.

Other Alternative Electric Suppliers

CMS Marketing, Services and Trading Company, CMS MS&T Michigan L.L.C., Dorman Energy L.L.C., Engage Energy America LLC, and Quest Energy, L.L.C., filed compliance plans committing to abide by the code of conduct.

MPGA's Petition for Rehearing

On November 28, 2001, the Michigan Propane Gas Association (MPGA) filed a petition for rehearing of the October 29, 2001 order. It asks that the Commission reconsider its denial of the

MPGA's late-filed petition for leave to intervene and several of the revisions that the Commission made to the code of conduct upon rehearing. It says that the code approved by the December 4, 2000 order fully complied with the requirements of the Act and that it therefore did not seek rehearing of that order's denial of its petition for leave to intervene. It says that it now seeks to become a party to the case because some of the changes made to the code by the October 29, 2001 order are in conflict with that order, are not discussed in the order, or are in conflict with the Act.

The Michigan Electric Cooperative Association (MECA), Consumers Energy Company (Consumers), and The Detroit Edison Company (Detroit Edison) filed responses in opposition to the petition for rehearing.

The Commission denies the petition for rehearing because the MPGA seeks rehearing of the Commission's denial of its petition for leave to intervene almost a year after the Commission issued the order, obviously well beyond the 30 days permitted for the filing of a petition for rehearing. Furthermore, the December 4, 2000 order fully discussed the Commission's reasons for not granting the MPGA's petition for leave to intervene. The MPGA's petition for rehearing simply expresses disagreement with that decision and, for that matter, as it relates to the substance of the October 29, 2001 order, the petition for rehearing simply expresses disagreement with the order.

MAFC's Petition for Rehearing

On November 21, 2001, the Michigan Alliance for Fair Competition (MAFC) filed a petition for rehearing of the October 29, 2001 order. It says that the order made changes to the code of conduct approved on December 4, 2000 that are in conflict with or are not discussed in the rehearing order, are inconsistent with the Act, or will have the effect of allowing cross-subsidization, information sharing, and preferential treatment between a utility's regulated and unregulated services. It argues that the code should apply to all of a utility's regulated and unregulated services. It objects to the changes to sections III.E and III.F, which it says limit the applicability of the code so that it does not fully prevent information sharing and preferential treatment by a regulated utility. It says that the change to section III.E also creates a conflict with section IV, which has a broader scope. It also objects to the deletion of language from section II.H that prevented a utility and its affiliates from giving the appearance that they speak for each other.

Consumers, Detroit Edison, and MECA filed responses in opposition to the petition for rehearing.

The Commission denies the petition for rehearing because it does not meet the standard for rehearing. The MAFC simply disagrees with the Commission's order, and seeks another opportunity to argue a view that it has already fully argued. Further, it is not entirely clear that the MAFC has correctly interpreted the provisions to which it objects. It should be noted, however, that the Commission has, in separate orders issued today, denied waivers requested by Detroit Edison and Consumers relating to their appliance service plans based on objections from the MAFC.

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 are accepted, subject to the discussion above.

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

d. The petitions for rehearing should be denied.

THEREFORE, IT IS ORDERED that

A. The compliance filings are accepted, subject to the discussion above.

B. The requests for waivers are granted in part and denied in part, as discussed above.

C. The petitions for rehearing filed by the Michigan Propane Gas Association and the Michigan Alliance for Fair Competition are denied.

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

THEREFORE, IT IS ORDERED that

A. The compliance filings are accepted, subject to the discussion above.

B. The requests for waivers are granted in part and denied in part, as discussed above.

C. The petitions for rehearing filed by the Michigan Propane Gas Association and the Michigan Alliance for Fair Competition are denied.

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

Commissioner

Robert B. Nelson
Commissioner

By its action of October 3, 2002.

D. Widema
Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-12134
(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

Sharron 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