STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **WISCONSIN ELECTRIC POWER COMPANY** and **EDISON SAULT ELECTRIC COMPANY** for approval of a plan to implement 2000 PA 141.	)))))	Case No. U-12649

At the December 20, 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

I.

HISTORY OF PROCEEDINGS

On October 2, 2000, implementation plans for electric retail customer choice were filed, pursuant to 2000 PA 141 (Act 141) and as directed in the Commission's June 19, 2000 order in Case No. U-12464, by the following utilities: Wisconsin Electric Power Company and Edison Sault Electric Company (collectively, Wisconsin Electric); Wisconsin Public Service Corporation and Upper Peninsula Power Company; Northern States Power Company-Wisconsin, d/b/a Xcel Energy; and Indiana Michigan Power Company, d/b/a AEP. Alpena Power Company filed its implementation plan on November 7, 2000. The five dockets arising from those filings were subsequently consolidated.

On December 5 and 20, 2000, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) conducted a pair of prehearing conferences that were attended by the utilities and the Commission Staff (Staff). In addition, International Paper Company (IP), Michigan Technological University (MTU), the Michigan Community Action Agency Association (MCAAA), the Michigan Environmental Council (MEC), and the Public Interest Research Group in Michigan (PIRGIM) intervened in some or all of those dockets.[1]

Subsequently, the Staff and the utilities entered into a settlement agreement that resolved all but one of the issues in these five dockets.[2] The only exception, expressly reserved in the settlement agreement for future determination, was the matter of what terms should cover a customer's return from an alternative energy supplier (AES) to full requirements service on Wisconsin Electric's system. The Commission therefore issued an order in the consolidated cases approving the settlement agreement and directing interested parties to participate in a contested case proceeding in Case No. U-12649 concerning how Wisconsin Electric should handle those return-to-service requests.

An evidentiary hearing was conducted in Case No. U-12649 on September 19, 2001, in which Wisconsin Electric, IP, and the Staff participated. Only Wisconsin Electric sponsored a witness at that hearing. The record consists of 213 pages of transcript and 7 exhibits, all of which were received into evidence.

Briefs and reply briefs were filed on October 12 and 26, 2001, respectively, by Wisconsin Electric, IP, and the Staff.

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[1]Bay Windpower submitted a late petition to intervene, which was never noticed for hearing or granted.

[2]IP, MTU, MCAAA, MEC, and PIRGIM filed statements of non-objection to the settlement agreement.

On November 28, 2001, the ALJ issued a Proposal for Decision (PFD) in which he recommended that the Commission approve, for inclusion as part of Wisconsin Electric's retail open access tariff, the revised return-to-service proposal submitted by the utility on August 10, 2001. IP filed exceptions to the PFD on December 12, 2001. On December 14, 2001, IP submitted a reformatted version of its exceptions. Replies to exceptions were filed on December 19, 2001 by Wisconsin Electric and the Staff.

II.

DISCUSSION

The return-to-service language at issue is set forth in Section 2.6 of Wisconsin Electric's proposed retail open access tariff. As noted by Wisconsin Electric's witness, Patrick E. Woodke, this proposed language establishes a return-to-service policy essentially identical to that adopted (via Commission approval of the settlement agreement) for use by all other utilities involved in the consolidated proceedings. 4 Tr. 163.

This proposed return-to-service policy draws a distinction between returning customers whose total electric load is less than 4 megawatts (MW) of maximum demand and those whose load is greater than or equal to 4 MW. In this regard, proposed Section 2.6.2 provides:

> All customers whose total load is less than 4 MW Maximum Demand shall return to Company Full Requirements Service on the same terms as any new customer applying for Full Requirements Service. Any such Customer returning to Full Requirements Service shall be ineligible to switch to an AES for a period of twelve months thereafter.

Exhibit A-1, p. 1. Moreover, Section 2.6.3 states:

> Customers whose total load is greater than or equal to 4 MW Maximum Demand ("large load Customers" as used herein) shall return to the Company's Default Service tariff initially and will not be eligible for Full Requirements Service until after a notice period, not to exceed 12 months, to allow the Company to secure

> incremental generating capacity to serve the returning large load Customer without adversely impacting Customers who have chosen to remain with the Company. The Company will return the large load Customer to Full Requirements Service from Default Service no later than 12 months after the Customer has returned to utility service. Customers may switch to another AES at any point during the period that they are on Default Service.

Id., p. 2.

Under the terms of Wisconsin Electric's "Default Service," all returning large load customers would be required to pay the greater of the utility's tariff rate for full requirements service or 110% of Wisconsin Electric's estimated cost of obtaining power supply for the prior month. Exhibit A-2, p. 1. However, as set forth in Section 2.6.4, an exception to imposition of the notice period will apply where the customer "is slammed by an AES from Full Requirements Service and desires to return to Full Requirements Service." See, id. Moreover, Mr. Woodke noted, any large load customer that gives the utility 12 months' notice of its intent to return to full requirements service would avoid application of the "Default Service" provisions and, instead, would be allowed to begin taking service under the same terms as a new customer.

In support of Wisconsin Electric's proposal, Mr. Woodke claims that use of the 4 MW threshold "represents a fair and equitable way to resolve the return to utility service in a restructured, competitive environment." 2 Tr. 163. This claim is based on the fact that any customer capable of imposing 4 MW of load on the system would represent approximately 4% of Wisconsin Electric's average peak demand in Michigan. See, 2 Tr. 168. This load is, Mr. Woodke continues, 800 times higher than a typical residential customer's maximum demand of 5 kilowatts (kW). Id. If a single customer of this size returns to Wisconsin Electric's full requirements service without reasonable notice, he continues, the utility and its power supply cost recovery (PSCR) customers could be forced to bear increased costs of up to $522,000 annually. 2 Tr. 167. Based on this testimony, Wisconsin Electric asserts that its proposed treatment of large load customers is necessary to protect its other PSCR customers.

The Staff agrees with Wisconsin Electric and asserts that the return-to-service provisions set forth in proposed Section 2.6 are reasonable and should be approved. In support of this assertion, the Staff points out that the 12-month notice period does not require a large load customer to ever rely on the utility's "Default Service." Rather, it notes, such a customer could give notice of its intent to return to Wisconsin Electric's full requirements service in the future and, in the meantime, rely on its current AES, a different AES, or self-generation to meet its electric needs. The Staff goes on to assert that the composition of Wisconsin Electric's customer base, in which three of its customers give rise to approximately 50% of its total load (See, 2 Tr. 205), makes it essential that the utility have adequate time to prepare for large load customers' return to full requirements service. For these and other reasons, the Staff advocates adopting the ALJ's recommendation and approving the utility's proposed language for use in Section 2.6.

In contrast to Wisconsin Electric and the Staff, IP asserts that proposed Section 2.6 should be rejected because it "would have the effect of making choice a practical impossibility for [the utility's] large load customers." IP's exceptions, p. 3. In support of this assertion, IP argues that exposing those customers to the potential of paying Wisconsin Electric's incremental cost of obtaining power "exponentially increases the risk" of electing choice. Id. IP further contends that the utility has provided "no meaningful explanation" as to why most of the restrictions set forth in proposed Section 2.6 should apply only to those customers with loads of 4 MW or more. Id. at 5. Overall, IP claims, the language set forth in proposed Section 2.6 (and particularly that concerning the notice requirement) is so restrictive of customer choice that it conflicts with Act 141. For these and other reasons, IP argues that the Commission should reject the ALJ's recommendation and strike Sections 2.6.3, 2.6.4, and 2.6.5 from Wisconsin Electric's proposed retail open access tariff.

The Commission does not find IP's exceptions well taken. It reaches this conclusion for the following three reasons.

First, notwithstanding IP's assertions to the contrary, Section 2.6 does not require every open access customer that leaves its AES to begin paying Wisconsin Electric's incremental cost of power. Rather, a customer that decides to cease taking service from its current AES has several means of avoiding that charge altogether. As noted earlier, these include (1) notifying Wisconsin Electric of its desire to return to full requirements service one year prior to the anticipated return date, (2) switching to another AES, or (3) relying on self-generation.

Second, IP incorrectly asserts that no meaningful explanation has been given for treating large load customers different from those whose load is less than 4 MW. As the ALJ specifically noted:

> Wisconsin [Electric] set the benchmark of 4 MW to define a large customer because this load represents about $1 million in revenue at the rate of $30/megawatt-hour. The $1 million in revenue represents more than 2.5% of Wisconsin [Electric's] annual Michigan retail revenue.

PFD, p. 8. Moreover, uncontroverted testimony provided by Mr. Woodke indicates that utility's incremental cost of serving a returning customer with a 4 MW load could be as much as $522,000 annually. Due to the utility's relatively small customer base in Michigan, this figure could have a noticeable effect on the PSCR costs imposed on the utility's other customers, thus further justifying adoption of the 4 MW threshold.

Third and finally, imposing a notice requirement like that set forth in Section 2.6 of the utility's proposed retail open access tariff is in no way inconsistent with Act 141. As noted by Wisconsin Electric, IP's argument in this regard ignores the directive set forth in Section 10(2)(d) of Act 141 to "ensure that all persons in this state are afforded safe, reliable electric power at a reasonable rate." MCL 460.10(2)(d). The restrictions proposed by Wisconsin Electric are designed to meet that objective by ensuring that the unannounced return of one or more large load customers to full requirements service neither shifts an unreasonable amount of costs to other PSCR customers nor undermines system reliability.

For these reasons, the Commission concludes that it should adopt the ALJ's recommendation, and approves Wisconsin Electric's proposed language for use in Section 2.6 of the utility's retail open access tariff.

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 ALJ's recommendation should be adopted.

c. Wisconsin Electric's proposed return-to-service language should be approved for use as part of its retail open access tariff.

THEREFORE, IT IS ORDERED that:

A. The return-to-service language proposed by Wisconsin Electric Power Company and Edison Sault Electric Company, and attached as Exhibit A to this order, is approved for use effective January 1, 2002.

B. Within 30 days, Wisconsin Electric Power Company and Edison Sault Electric Company shall file revised tariff sheets consistent with Exhibit A.

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 December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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Commissioner

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Suggested Minute:

> "Adopt and issue order dated December 20, 2001 approving for use as part of the utilities' retail open access tariffs the return-to-service language proposed by Wisconsin Electric Power Company and Edison Sault Electric Company, as set forth in the order."