

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
to implement the provisions of Section 10a(1) of ) Case No. U-15801  
2016 PA 341. )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-18372  
MCL 460.10a(1) by **ALGER DELTA** )  
**COOPERATIVE ELECTRIC ASSOCIATION.** )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16086  
MCL 460.10a(1) by **ALPENA POWER COMPANY.** )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-18373  
MCL 460.10a(1) by **BAYFIELD ELECTRIC** )  
**COOPERATIVE.** )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-18374  
MCL 460.10a(1) by **CHERRYLAND ELECTRIC** )  
**COOPERATIVE.** )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-18375  
MCL 460.10a(1) by **CLOVERLAND ELECTRIC** )  
**COOPERATIVE.** )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16087  
MCL 460.10a(1) by **CONSUMERS ENERGY** )  
**COMPANY.** )  
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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **DTE ELECTRIC COMPANY.** )  
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Case No. U-16088

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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **GREAT LAKES ENERGY** )  
**COOPERATIVE.** )  
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Case No. U-18376

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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **INDIANA MICHIGAN** )  
**POWER COMPANY.** )  
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Case No. U-16090

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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **HOMEWORKS TRI-COUNTY** )  
**ELECTRIC COOPERATIVE.** )  
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Case No. U-18377

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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **MIDWEST ENERGY** )  
**COOPERATIVE.** )  
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Case No. U-18378

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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **NORTHERN STATES** )  
**POWER COMPANY-WISCONSIN.** )  
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Case No. U-16091

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In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **THUMB ELECTRIC** )  
**COOPERATIVE.** )  
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Case No. U-18379

In the matter, on the Commission’s own motion, )  
to establish a docket for the implementation of ) Case No. U-16092  
MCL 460.10a(1) by **UPPER PENINSULA POWER** )  
**COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission’s own motion, )  
to establish a docket for the implementation of ) Case No. U-16093  
MCL 460.10a(1) by **UPPER MICHIGAN ENERGY** )  
**RESOURCES CORPORATION.** )  
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In the matter, on the Commission’s own motion, )  
to establish a docket for the implementation of ) Case No. U-16094  
MCL 460.10a(1) by **WISCONSIN ELECTRIC** )  
**POWER COMPANY.** )  
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At the April 28, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER**

On December 21, 2016, Public Act 341 of 2016 (Act 341), an amendment to Public Act 3 of 1939 and Public Act 286 of 2008, was signed into law. Section 10a(1)(a) of Act 341 provides that the Commission shall issue orders establishing that “Except as otherwise provided in this section, provide that no more than 10% of an electric utility’s average weather adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.”

Specifically, in Section 10a(1)(b)-(k) the Legislature provided that the orders to be issued by the Commission shall do all of the following:

(b) Set forth procedures necessary to allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

(c) Notwithstanding any other provision of this section, provide that, if the commission determines that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from alternative electric suppliers, the commission shall set as a cap on the weather-adjusted retail sales that may take service from an alternative electric supplier, for the current calendar year and 5 subsequent calendar years, the percentage amount of weather-adjusted retail sales for the preceding calendar year rounded up to the nearest whole percentage. If the cap is not adjusted for 6 consecutive calendar years, the cap shall return to 10% in the calendar year following that sixth consecutive calendar year. If a utility that serves less than 200,000 customers in this state has not had any load served by an alternative electric supplier in the preceding 4 years, the commission shall adjust the cap in accordance with this provision for no more than 2 consecutive calendar years.

(d) Notwithstanding any other provision of this section, customers seeking to expand usage at a facility that has been continuously served through an alternative electric supplier since April 1, 2008 shall be permitted to purchase electricity from an alternative electric supplier for both existing and any expanded load at that facility as well as any new facility constructed or acquired after October 6, 2008 that is similar in nature if the customer owns more than 50% of the new facility.

(e) Provide that for an existing facility that is receiving 100% of its electric service from an alternative electric supplier on or after the effective date of the amendatory act that added section 6t, the owner of that facility may purchase electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the servicing electric utility's average weather-adjusted retail sales, for both the existing electric choice load at that facility and any expanded load arising after the effective date of the amendatory act that added section 6t at that facility as well as any new facility that is similar in nature to the existing facility, that is constructed or acquired by the customer on a site contiguous to the existing site or on a site that would be contiguous to an existing site in the

absence of an existing public right-of-way, and the customer owns more than 50% of that facility. This subdivision does not authorize or permit an existing facility being served by an electric utility on standard tariff service on the effective date of the amendatory act that added section 6t to be served by an alternative electric supplier.

(f) Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, may purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales, if that customer is in compliance with the terms of a settlement agreement requiring it to facilitate construction of a new power plant located in the Upper Peninsula of this state. A customer described in this subdivision and the alternative electric supplier that provides electric service to that customer are not subject to the requirements contained in the amendatory act that added section 6t and any administrative regulations adopted under that amendatory act. The commission's orders establishing rates, terms, and conditions of retail access service issued before the effective date of the amendatory act that added section 6t remain in effect with regard to retail open access provided under this subdivision.

(g) Provide that a customer on an enrollment queue waiting to take retail open access service as of December 31, 2015 shall continue on the queue and an electric utility shall add a new customer to the queue if the customer's prospective alternative electric supplier submits an enrollment request to the electric utility. A customer shall be removed from the queue by notifying the electric utility electronically or in writing.

(h) Require each electric utility to file with the commission not later than January 15 of each year a rank-ordered queue of all customers awaiting retail open access service under subdivision (g). The filing must include the estimated amount of electricity used by each customer awaiting retail open access service under subdivision (g). All customer-specific information contained in the filing under this subdivision is exempt from release under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and the commission shall treat that information as confidential information. The commission may release aggregated information as part of its annual report as long as individual customer information or data are not released.

(i) Provide that if the prospective alternative electric supplier of a customer next on the queue awaiting retail open access service is notified after the effective date of the amendatory act that added section 6t that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year are taking service from an alternative electric supplier and that the amount of

electricity needed to serve the customer's electric load is available under the 10% allocation, the customer may take service from an alternative electric supplier. The customer's prospective alternative electric supplier shall notify the electric utility within 5 business days after being notified whether the customer will take service from an alternative electric supplier. If the customer's prospective alternative electric supplier fails to notify the utility within 5 business days or if the customer chooses not to take retail open access service, the customer shall be removed from the queue of those awaiting retail open access service. The customer may subsequently be added to the queue as a new customer under the provisions of subdivision (g). A customer that elects to take service from an alternative electric supplier under this subdivision shall become service-ready under rules established by the commission and the utility's approved retail open access service tariffs.

(j) Provide that the commission shall ensure if a customer is notified that the customer's service from an alternative electric supplier will be terminated or restricted as a result of the alternative electric supplier limiting service in this state, the customer has 60 days to acquire service from a different alternative electric supplier. If the customer is a public entity, the time to acquire services from a different alternative electric supplier shall not be less than 180 days.

(k) Provide that as a condition of licensure, an alternative electric supplier meets all of the requirements of this act.

On March 10, 2017, the Commission issued an order in this docket inviting interested persons to submit comments on the updated procedures, previously adopted by the Commission on September 29, 2009, regarding the allocation of the amount of load to be served by alternative electric suppliers (March 10 order).

On March 24, 2017, Consumers Energy Company (Consumers) filed comments expressing support or non-objection to the updated procedures. However, Consumers requested that the Commission make the following clarifying changes:

1. Amend the definition of a "Group Four Customer" in order to clarify that it is the customer's load, not the alternative electric supplier's (AES) load, which is the focus of the determination of Group Four status:
  - \* **Group Four Customer.** Pursuant to MCL 460.10a(1)(e), a Group Four Customer is a customer who is receiving less than 100% of its electric service from an AES on or after April 20, 2017 through an existing meter.

- A. A Group Four Customer may purchase its remaining load of electricity from an AES pursuant to the guidelines of the Securing an Annual Energy Allotment section of this document. If allotments are awarded for the remaining **amount of the AES customer's electricity** load, **making it receive 100% of its electric load from an AES**, this customer will now become a Group Three Customer.
  - B. **Being Having** a Group Four Customer status does not authorize or permit an existing facility being served on standard tariff service on or as of April 20, 2017 to be served by an AES.
2. In order to fully comply with Act 341, amend subsection 2 of the section titled "Determination of the Cap" of Appendix A:

If the Commission determines, through the utility filing, that less than ten percent (10%) of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from an AES, the Commission shall set as a Cap on the weather-adjusted retail sales that may take service from an AES, for the current calendar year and five (5) subsequent calendar years, the percentage amount of weather-adjusted retail sales taking service from an AES for the preceding calendar year rounded up to the nearest whole percentage. If the Cap is not adjusted for six (6) consecutive calendar years, the Cap shall return to 10% **in the calendar year following that sixth consecutive calendar year**.

Consumers' comments, pp. 5-7.

On April 7, 2017, DTE Electric Company filed reply comments expressing agreement with Consumers' comments. No other comments or reply comments were received.

The Commission finds that Consumers' proposed amendments to the updated procedures attached to the March 10 order are reasonable, and should be adopted.

Additionally, the September 29, 2009 order adopting the initial procedures inadvertently failed to assign docket numbers to the electric distribution cooperatives requiring them to report their "cap information" as outlined in subsection 1 of the section titled "Determination of the Cap" of Appendix A. Pursuant to this section, "Each utility shall calculate the Cap based on the weather-adjusted retail sales of the preceding calendar year through a two step process."

Currently, only one electric distribution cooperative has active retail open access (ROA) participation. However, each electric distribution cooperative has an ROA tariff that allows for

potential ROA participation. The ROA tariff for all electric distribution cooperatives is regulated by the Commission and is subject to the requirements of MCL 460.10a(1). Therefore, the electric distribution cooperatives shall file their preceding calendar year sales, weather-adjusted retail sales for the preceding calendar year, and resulting cap data, as outlined in Appendix A, to their respective dockets assigned by this order.

Finally, out of concern for the correct interpretation and implementation of the final sentence of MCL 460.10a(1)(c), which requires the Commission to reduce the cap for any electric utility serving fewer than 200,000 customers in Michigan if the utility has not had any load served by an alternative electric supplier in the preceding four years, the Commission finds that interested persons shall have an opportunity to submit legal briefs. The specific concern that the Commission is seeking input on pertains to the question of whether the cap should immediately be adjusted for any of the applicable utilities on April 20, 2017, which will then remain in effect at that level for two consecutive years, or whether the Commission should wait to adjust the choice cap based on choice participation during 2017 before implementing any required choice cap reduction during 2018? A person seeking to file an initial brief addressing this issue shall do so on or before May 15, 2017. Reply briefs shall be filed on or before May 26, 2017. All initial and reply briefs are to be electronically filed in Case No. U-15801 by the respective filing deadlines.

THEREFORE, IT IS ORDERED that:

A. The updated procedures, attached to this order as Appendix A and Appendix B, are adopted pursuant to Section 10a(1) of 2016 PA 341 and shall govern all matters regarding allocation of the amount of an electric utility's load to be served by an alternative electric supplier.



B. Interested persons shall have an opportunity to submit legal briefs pertaining to the interpretation and implementation of the final sentence of MCL 460.10a(1)(c), which requires the Commission to reduce the cap for any electric utility serving fewer than 200,000 customers in Michigan if the utility has not had any load served by an alternative electric supplier in the preceding four years. A person seeking to file an initial brief addressing this issue shall do so on or before May 15, 2017. Reply briefs shall be filed on or before May 26, 2017. All initial and reply briefs are to be electronically filed in Case No. U-15801 by the respective filing deadlines.

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, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Commission's Executive Secretary at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungp1@michigan.gov](mailto:pungp1@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of April 28, 2017.

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Kavita Kale, Executive Secretary

## DEFINITIONS

- \* **Annual Energy Allotment (“Allotment” or “Energy Allotment”)** means the level of megawatt-hours (MWh) assigned to a customer based on its actual purchases during the most recent calendar year (January through December).
- \* **Average Weather-Adjusted Retail Sales or Weather-Adjusted Retail Sales** means the level of MWh equal to the preceding calendar year sales of the utility adjusted for weather. The weather adjustment to be applied shall be based on the methodology used in setting rates in the utility’s most recently completed rate case.
- \* **Cap** means the level of MWh equal to ten percent (10%) or less, as determined by the Commission of the weather-adjusted retail sales from the preceding calendar year.
- \* **Customer.** As specified in MCL 460.10a(9)(a), Customer means the building or facilities served through a single existing electric billing meter and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or facilities.
- \* **Choice Participation** means the combined level of MWh equal to the sum of (a) the MWh usage for the previous calendar year of the customers taking service from an alternative electric supplier (AES) and (b) the awarded allotments not yet being served by the AES. The level of Choice Participation shall not be adjusted for weather. The level of Choice Participation shall be updated each time the Cap is updated.
- \* **Enrollment Queue or Queue** means the ranking system established and maintained by each utility when the level of Choice Participation is greater than the Cap or would exceed the Cap if an allotment were awarded. The utility shall maintain and provide to the Commission by January 15 each year enrollment form submission records so that it can accurately identify a customer’s position within the queue. An update of the annual queue data shall be provided to the Commission at any time, upon request.
- \* **Facility or Customer Facility** shall be defined as a building or dwelling served through a single existing electric billing meter at a single site and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or dwelling. This shall be interpreted in the same manner as MCL 460.10a(9)(a), which provides the definition of “Customer.”
- \* **First-Come First-Served Basis** means that enrollment form submissions are attended to by the utility in the order that they were submitted by the AES to the utility, without preference or bias.
- \* **Group One Customer.** In accordance with MCL 460.10a(1)(f), a Group One Customer means any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of Michigan.
  - A. A Group One customer is allowed to increase its usage above the Cap if that customer is in compliance with the terms of a settlement agreement requiring it to

facilitate construction of a new power plant located in the upper peninsula of this state. (See e.g., U-17682, U-18061 and U-18224)

- B. A Group One customer and the alternative electric supplier that provides electric service to this customer are not subject to the requirements contained in MCL 460.6(t) or any administrative regulations adopted in PA 341 of 2016.
- C. The awarded allotments of a Group One Customer shall be included in the calculation of Choice Participation.

\* **Group Two Customer.** In accordance with MCL 460.10a(1)(d), a Group Two Customer shall be identified as a customer who has been continuously taking service through an AES since April 1, 2008.

- A. A Group Two Customer is allowed to increase its usage above the Cap for both existing and any expanded load at that facility.
- B. A Group Two Customer is allowed to increase its usage above the Cap for any new facility constructed or acquired after October 6, 2008 that is similar in nature to the existing facility if more than 50% of the new facility is under common ownership with the existing facility.
- C. A Group Two Customer that discontinues retail access service and returns to standard tariff service will lose its Group Two status.
- D. The awarded allotments of a Group Two Customer shall be included in the calculation of Choice Participation.

\* **Group Three Customer.** As specified in MCL 460.10a(1)(e), a Group Three Customer shall be any customer that is receiving 100% of its electric service from an AES on or after April 20, 2017.

- A. A Group Three Customer may purchase electricity from an AES regardless of whether the sales exceed 10% of the utility's weather-adjusted retail sales, for both the existing choice load at that facility and any expanded load arising after April 20, 2017 at that facility as well as any new facility that is similar in nature to the existing facility that is constructed or acquired by the customer on a site contiguous to the existing site or on a site that would be contiguous to an existing site in the absence of an existing public-right-of-way AND the customer owns more than 50% of that facility.
- B. Being Group Three status does not authorize or permit an existing facility being served on standard tariff service on or as of April 20, 2017 to be served by an AES.
- C. A Group Three Customer that discontinues retail access service and returns to standard tariff service will lose its Group Three status.
- D. The awarded allotments of a Group Three Customer shall be included in the calculation of Choice Participation.

\* **Group Four Customer.** Pursuant to MCL 460.10a(1)(e), a Group Four Customer is a customer who is receiving less than 100% of its electric service from an AES on or after April 20, 2017 through an existing meter.

- A. A Group Four Customer may purchase its remaining load of electricity from an AES pursuant to the guidelines of the Securing an Annual Energy Allotment section of this document. If allotments are awarded for the remaining amount of the customer's electricity load, making it receive 100% of its electric load from an

AES, this customer will now become a Group Three Customer.

- B. Having a Group Four Customer status does not authorize or permit an existing facility being served on standard tariff service on or as of April 20, 2017 to be served by an AES.
- C. The awarded allotments of a Group Four Customer shall be included in the calculation of Choice Participation

- \* **Preceding Calendar Year Sales** means the level of MWh Sold from January through December of the prior year and includes retail open access (ROA) sales. Each utility shall calculate its Preceding Calendar Year Sales using the methodology provided for in the utility's Power Supply Cost Recovery 45-day report.
- \* **Similar in Nature** means having a Standard Industrial Code<sup>1</sup> that resides within the same division structure as an existing facility being served by an alternative electric supplier.

### **IMPLEMENTATION OF SECTION 10a(1) OF PA 341**

1. Determine the level of the Cap by calculating the weather-adjusted retail sales for the preceding calendar year.
  - a. Each utility shall report the level of its preceding calendar year sales, its weather-adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support its calculations. The utility shall file its preceding calendar year sales, its weather-adjusted retail sales for the preceding calendar years and the resulting Cap data and all supporting documentation in the separate docket opened for that purpose.
  - b. Each subsequent calculation of the preceding calendar year sales, the weather-adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support the calculations, shall be provided to the Commission as outlined in the Determination of the Cap section of this document.
2. The utility shall assign energy allotments to its Group One, Two and Three customers. If the Group One, Two and Three allotments exceed the Cap, no additional allotments will be awarded to Group Four customers. All customers, including Group Three and Four customers, shall retain the allotments they had in the prior year. Group One through Three customers may increase their Choice purchases as permitted under MCL 460.10a(1)(d, e & f).
3. The utility shall assign energy allotments to its Group Four customers on a first-come, first-serve basis pursuant to the guidelines of the Securing an Annual Energy Allotment section of this document.
4. Each utility shall establish a fully operational web-based Cap-Tracking System pursuant to the guidelines of the Cap-Tracking System section of this document.

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<sup>1</sup> Standard Industrial Codes (SIC) are published by the Occupational Safety & Health Administration within the US Department of Labor and are located at [http://www.osha.gov/pls/imis/sic\\_manual.html](http://www.osha.gov/pls/imis/sic_manual.html).

### **DETERMINATION OF THE CAP**

1. Each utility shall calculate the Cap based on the weather-adjusted retail sales of the preceding calendar year through a two step process.
  - a. **Step One:** Each utility shall file an initial Cap by January 1<sup>st</sup> of each year. The initial Cap shall be based on 11-months of weather-adjusted retail sales (January through November) and 1-month of estimated weather-adjusted retail sales for December of the same year. The initial Cap shall take effect on the first business day of January each year and is not subject to challenge.
  - b. **Step Two:** Each utility shall file a final Cap by February 1<sup>st</sup> of each year. The final Cap shall be based on the weather-adjusted retail sales from the preceding calendar year. The final Cap shall take effect on the first business day of February each year.
2. If the Commission determines, through the utility filing, that less than ten percent (10%) of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from an AES, the Commission shall set as a Cap on the weather-adjusted retail sales that may take service from an AES, for the current calendar year and five (5) subsequent calendar years, the percentage amount of weather-adjusted retail sales taking service from an AES for the preceding calendar year rounded up to the nearest whole percentage. If the Cap is not adjusted for six (6) consecutive calendar years, the Cap shall return to 10% in the calendar year following that sixth consecutive calendar year.
3. A utility that serves less than 200,000 customers in this state who has not had any load served by an AES in the preceding four (4) years, the Commission shall set as a Cap on the weather-adjusted retail sales that may take service from an AES, for the current calendar year, and no more than two (2) consecutive calendar years, the percentage amount of weather-adjusted sales taking service from an AES for the preceding calendar year rounded up to the nearest whole percentage.
4. Any person wishing to challenge the level of a utility's final Cap shall file a complaint against the utility in a new docket on or before February 15<sup>th</sup> each year.
  - a. If the final Cap is not challenged, the Cap shall remain in effect for the remainder of that calendar year.
  - b. If the final Cap is challenged, the final Cap shall remain in effect until the Commission determines the appropriate Cap.
5. The Cap shall be updated on the utility's Cap-Tracking System on the first business day of January and February each year. The Cap shall also be updated on the first business day following a Cap determination by the Commission.
6. The Cap shall be submitted to the Commission through utility company filings in the separate docket opened for each utility for that purpose on or before January 1<sup>st</sup> and February 1<sup>st</sup> of each year.

### **SECURING AN ANNUAL ENERGY ALLOTMENT**

1. Allotments shall be based on the customer's previous year's 12-month annual usage

(January through December).

- a. If the customer does not have 12-months of annual usage, its annual energy allotment shall be estimated by the utility based on the class and rate using information of similar customer types from the utility's standard tariff service.
2. The utility shall award and allocate allotments on a first-come, first-served basis after the allocation of energy allotments to its Group One, Two and Three customers are complete and there is space available below the Cap.
    - a. The utility shall award and allocate allotments on a first-come first-served basis as measured by the date and time when a complete enrollment form is submitted by the AES to the utility. A complete enrollment form is an enrollment form that meets all utility company validation criteria and does not require resubmission to the utility by the AES.
    - b. An enrollment switch shall be processed without being subject to the annual energy allotment process as a customer may utilize its annual energy allotment with any AES it chooses.
    - c. The utility shall revoke the enrollment form and energy allotment for a customer that fails to become service-ready and begin taking service from an AES within its required time frame, which shall be the latest of:
      - i. Except as provided in section 2(c)(ii) through 2(c)(iv), a customer shall have 90 days from the date of its awarded allotment to become service- ready and must begin taking service on the next billing cycle after becoming service-ready.
      - ii. A customer who requires high voltage protection, substation work or any similar work necessitating more than 90 days to complete shall have 270 days from the date of its awarded allotment to become service-ready and must begin taking service on the next billing cycle after becoming service- ready.
      - iii. If the utility is not service-ready within 60 days, then 30 days after the utility is service-ready.
      - iv. If the AES or its customer has provided the utility with a prospective in- service date, then within 30 days after that prospective date, but not more than one year after the date that the allotment was awarded.
      - v. In the event that an enrollment form and energy allotment is revoked, the utility shall notify the customer and the customer shall no longer be entitled to its approved allotment. The customer must submit a new enrollment form request if it desires to re-secure an energy allotment. The most recent enrollment form date shall be treated as the key measurement date in situations of competing allotment requests.
  3. If an allotment is awarded, the utility shall notify the AES within two business days of the submission of a complete enrollment form.
    - a. An allotment shall be awarded if the entire amount of the expected usage falls below the Cap. Once an annual energy allotment is awarded:
      - i. An AES customer shall not be forced to return to utility service if the level of Choice Participation exceeds the Cap due to the reduction in sales of a utility in a subsequent year. This includes customers already taking service from an AES as well as those customers who have been awarded an annual energy allotment but have not yet began taking service.
      - ii. An AES customer shall not be forced to return to utility service if the level of



Choice Participation exceeds the Cap due to the energy usage of the customer exceeding its annual energy allotment.

- iii. That customer shall not be returned to utility service until that customer elects to discontinue taking service from an AES.
  - iv. A customer's service from an AES that will be terminated or restricted as a result of the AES limiting service in this state, the customer has 60 days to acquire service from a different AES. If the customer is a public entity, the time to acquire services from a different AES shall not be less than 180 days.
- b. An allotment shall be awarded based on a customer's status in the enrollment queue in situations where the level of Choice Participation was above the Cap and subsequently falls below the Cap.
- i. An allotment shall be awarded to the first customer in the enrollment queue if its entire annual energy allotment falls below the Cap.
  - ii. If the annual energy allotment of the first customer in the enrollment queue exceeds the Cap then the utility shall not award additional allotments until such time that the first customer in the queue is provided the opportunity to accept its allotment.
    1. If space below the Cap becomes available, the utility shall notify the AES by telephone or e-mail within two business days. The AES shall then have five business days to notify the utility by telephone or e-mail that the customer desires to accept its allotment. If the customer's AES fails to notify the utility within five business days or if the customer chooses not to take retail open access service, the customer shall be removed from the queue of those awaiting retail open access service. The customer may subsequently be added to the queue as a new customer.
  - iii. The utility shall award allotments from within the enrollment queue until the available energy allotments are exhausted or the queue is empty.
4. If an allotment is not awarded then it shall be deferred, and the utility shall notify the AES of the deferral within two business days of the submission of a complete enrollment form. If the deferral is based on Cap exceedance, the deferral notification shall provide notification of Cap exceedance and provide the AES with the customer's position within the queue in terms of the number of forms and MWh ahead of that customer within the queue.
- a. An allotment shall be deferred if the level of Choice Participation is greater than the Cap or if the annual energy allotment would create a situation where the level of Choice Participation would be greater than the Cap if the allotment were to be awarded.
    - i. A Group One Customer shall be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap in accordance with MCL 460.10a(1)(f).
    - ii. A Group Two Customer may be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap in accordance with MCL 460.10a(1)(d).
    - iii. A Group Three Customer may be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap in accordance with MCL 460.10a(1)(e).
  - b. A deferred enrollment shall be placed into the enrollment queue and shall remain in queue unless withdrawn by the AES or the customer in writing or electronic mail.
    - i. Each utility shall file a rank-ordered queue of all customers awaiting retail open



access service in their Cap data docket by January 15 of each year. The filing must include the estimated amount of electricity used by each customer awaiting retail open access. An update of the annual queue data shall be provide to the Commission at any time, upon request.

- ii. All customer-specific information contained in the filing is exempt from release under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, and the Commission shall treat that individual customer information or data as confidential information.
- c. Provisions, if any, in a utility tariff that impose sanctions on a customer in the event of the customer's (1) premature return to bundled service or (2) failure to take electric service from an AES for the term of the contract shall be unenforceable if the reason for the customer's premature return to bundled service or failure to take electric service from the AES for the term of the contract is the cap limitation on choice sales set forth in MCL 460.10a(1).

### **CAP-TRACKING SYSTEM ("CTS")**

1. The CTS is required for utilities with active or enrolled choice load.
  - a. The CTS shall be web-based and made available at the utility's website.
  - b. The CTS must be available to the public and be free of charge.
2. Each utility shall publish uniform and accurate information concerning energy allotments on its website. At a minimum, the information contained on this website shall include:
  - a. Preceding Calendar Year sales.
  - b. Weather-Adjusted Retail Sales for the Preceding Calendar Year.
  - c. The Cap.
  - d. Current level of Choice Participation expressed in MWh and as a percentage of the weather-adjusted retail sales for the preceding calendar year. Note: the utility shall specify the level of MWh of usage for the previous calendar year of the customers taking service from an AES and the amount of awarded allotments not yet being served by an AES.
  - e. The amount of available energy allotments expressed in MWh and as a percentage of the weather-adjusted retail sales for the preceding calendar year.
  - f. The number of enrollment forms in queue.
  - g. The number of MWh in queue.
  - h. The date of the most recent update to the information contained on the web page.
  - i. A contact name and direct phone number or direct E-mail of a utility representative able to assist with questions about the contents of the website. An individual customer or its AES may contact the utility and receive a report indicating its individual status in the queue for electric choice service. Upon request, a utility shall provide an AES with a list of the AES's customers organized by customer group.
3. The utility shall update the information contained on the website on a weekly basis when the amount of actual energy allotments is less than or equal to six percent (6%) of the weather-adjusted retail sales for the preceding calendar year.
4. The utility shall update the information contained on the website on a daily basis when the

amount of actual energy allotments is greater than six percent (6%) but less than eleven percent (11%) of the weather-adjusted retail sales for the preceding calendar year.

5. The utility shall update the information contained on the website on a monthly basis when the amount of actual energy allotments is greater than or equal to eleven percent (11%) of the weather-adjusted retail sales for the preceding calendar year.
6. The CTS shall be fully operational within 60 days of the issuance of this order.

Appendix to  
45 Day Report  
For Electric Utility with any Choice Volumes  
All Volumes in MWh on a Billed Basis

Category	Month	Year-to-date
Total Sales		
Less: Wholesale Sales		
Retail Sales		
Plus: Retail Choice		
Retail Deliveries		

# P R O O F O F S E R V I C E

STATE OF MICHIGAN )

Case No. U-15801 ET AL.

County of Ingham )

Gloria Pearl Jones being duly sworn, deposes and says that on April 28, 2017 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Gloria Pearl Jones  
Gloria Pearl Jones

Subscribed and sworn to before me  
this 28<sup>th</sup> day of April 2017

Lisa Felice

Lisa Felice  
Notary Public, Eaton County  
My Commission Expires April 15, 2020

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**AES Special Distribution List (04/28/2017) -- Case Number U-15801**

**Company Name:**

**Email Address:**

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Constellation Energy Services, Inc. & Constellation NewEnergy Inc.	<a href="mailto:lael.campbell@constellation.com">lael.campbell@constellation.com</a>
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**ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY,  
ATTORNEY GENERAL, ENERGY MICHIGAN, AND RETAIL ENERGY  
SUPPLY ASSOCIATION**

**SPECIAL DISTRIBUTION ELECTRONIC LIST  
APRIL 28, 2017 COMMISSION MEETING  
CASE NO. U-15801**

<b>CONTACT</b>	<b>EMAIL ADDRESS</b>
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# P R O O F O F S E R V I C E

STATE OF MICHIGAN )

Case No. U-15801 ET AL.  
**COM – GEMOTION**

County of Ingham )

Gloria Pearl Jones being duly sworn, deposes and says that on April 28, 2017 A.D. she electronically notified the attached list of this **Commission Order (Commission’s Own Motion) via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Gloria Pearl Jones  
Gloria Pearl Jones

Subscribed and sworn to before me  
this 28<sup>th</sup> day of April 2017

Lisa Felice

Lisa Felice  
Notary Public, Eaton County  
My Commission Expires April 15, 2020

## GEMOTION DISTTRIBUTION SERVICE LIST UPDATED AS OF: 04-18-2017

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<a href="mailto:bmalaski@cloverland.com">bmalaski@cloverland.com</a>	Cloverland
<a href="mailto:vobmgr@UP.NET">vobmgr@UP.NET</a>	Village of Baraga
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## GEMOTION DISTTRIBUTION SERVICE LIST UPDATED AS OF: 04-18-2017

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