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November 8, 1999

Ms. Dorothy Wideman
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

MICHIGAN PUBLIC SERVICE
COMMISSION

649-

Re: Case No. U-1 1290

Dear Ms. Wideman:

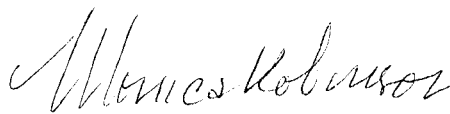
Enclosed for filing in the above captioned matter please find the original and 15 copies of Energy Michigan's Comments on Staff Report on Bid Cycle 1. Also enclosed is the original Proof of Service indicating service on counsel.

Please date stamp one copy of the above entitled document for my records and return it in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}



Eric J. Schneidewind

EJS/mrr

cc: ALJ
parties

NOV 18 1999

STATE OF MICHIGAN
BEFORE THE PUBLIC SERVICE COMMISSION

FILED

In the matter on the Commission's own	)	
motion to consider the restructuring of	)	
electric utility industry	)	Case U- 11290

ENERGY MICHIGAN COMMENTS ON STAFF REPORT ON BID CYCLE 1

I. INTRODUCTION

On October 28, 1999 the Michigan Public Service Commission (Commission) issued an Order allowing interested parties to file comments on a report entitled "Staff Report on Bid Cycle 1" (Staff Report). The Commission stated that it would receive comments and the Staff Report until November 18, 1999 and, after reviewing the comments, might make appropriate changes beginning with the third bid cycle scheduled for January 20, 2000.

These Energy Michigan comments are submitted in response to the request of the Commission.

II. ENERGY MICHIGAN COMMENTS

A. Minimum Bid

Energy Michigan strongly agrees with MPSC Staff that the .5¢/kWh minimum bid requirement proposed by the utilities should continue to be waived.

A review of the statistical data compiled by the Staff reveals that there would not have been enough bids above .5¢/kWh to fill the Consumers Energy allocation of 150 MW in the first bid cycle. The absence of a minimum rate for bids did not prevent participants from averaging .6822

¢/kWh for the Edison program, a bid level which was in excess of the proposed .5¢ minimum. Thus, absence of a minimum bid did not prevent parties from bidding more than .5¢ in the case of Detroit Edison but use of the minimum would have resulted in under subscription for the Consumers program.

If the universe of bidders desiring to participate in open access is limited to the participants in bid cycle 1, it is likely that completion of bid cycles 2-5 will steadily reduce this universe and therefore could steadily reduce the monetary value per kWh of the bids. If this is the case, participation in the Consumers program and the Edison program would be severely curtailed by a minimum bid.

If new factors emerge which make open access more attractive, such as substantially lower purchase power prices, the history of bid cycle 1 in the case of Detroit Edison indicates that potential participants will readily bid more than the .5¢ minimum.

In summary, use of a .5¢ minimum does not discourage higher bids but could limit open access participation in the future. The absence of a .5¢ minimum will not discourage higher bids and allows all open access capacity to be filled at a price that is justified by market conditions.

B. Voluntary Bid Forfeiture Requirements

The Staff Report refers to a potential need to clarify the effective capacity forfeiture policies. It appears that winning bidders who submit multiple bids and voluntarily elect to forfeit capacity must do so by surrendering the lowest bid first and proceeding up to the highest bid last.

Energy Michigan believes that entities submitting multiple winning bids are being told that the lowest bid facilities may not enter service until the highest bid facilities complete all technical and regulatory requirements and enter service. In effect, utility customers are being told by Consumers and Detroit Edison that in the case of multiple bids, the lowest cost bidder may not

receive service until the highest cost bidder is served. This outcome could be disadvantageous to both customer and the utility. Given the potentially large number of program participants it would be wise to “spread out” applications for service to the maximum extent possible. If all winning bidders with multiple bids are prevented from entering service until the highest cost customer is able to be served, applications will be bunched up until the latter part of the 180 day time deadline and then create a traffic jam for approval. Approval of applications to commence service on a first come, first serve basis where the applicant is otherwise eligible, would eliminate the potential traffic jam, commence economic benefits as soon as reasonably possible and increase the predictability of program administration.

Utilities concerns that customers or marketers may try to “game” the system by commencing low cost service and forfeiting higher cost bids can be addressed by monitoring and preventing or sanctioning forfeitures.

The Commission should forcefully remind utilities that approved open access tariffs and implementation programs do not permit utilities to defer commencement of open access service for an otherwise eligible open access customer simply because an affiliated customer has bid more money for participation.

C. Reciprocity

It has become increasingly apparent that Michigan’s reciprocity requirements both limit competition and are difficult to enforce. In the interest of creating the most vigorous competition for available open access capacity - a benefit to both utilities in terms of increased bids for transition charges and customers in terms of increased supply opportunities - all reciprocity requirements should be dropped through the phase-in period of open access capacity. It is quite clear that by January 2002, states such as Illinois and Ohio will have fully implemented complying open access requirements. It would be a triumph of form over substance if power supplies originating from the AEP system in Indiana are prevented from reaching Michigan customers when the same power

originating from an AEP source in Ohio would qualify as of 200 1.

The Commission should drop all reciprocity requirements but, in any event, drop all reciprocity requirements until January 2002.

D. Implementation Costs

The current true-up cases for Consumers Energy (U-1 1955) and Detroit Edison (U-1 1956) contain implementation costs ranging from zero (all implementation costs offset by utility profits) to \$200 million (Consumers Energy proposal). Moreover, some true-up case participants including utilities urge that such costs be spread over all customers while other participants urge that only open access customers pay these costs.

The financial uncertainty produced by this wide range of potential in Case U- 119 15 can be minimized or eliminated if the Commission states that implementation costs will not be collected until 2002 or, in the alternative, that any approved implementation costs will be collected from all customers until a final decision is reached in the true-up cases U-1 1955 and U-1 1956.

E. Franchises

Energy Michigan believes that Commission franchise requirements have become increasingly burdensome. The testimony of Energy Michigan witness Richard Polich in Case U- 119 15 confirms that local government franchise requirements have evolved into revenue enhancement programs rather than an exercise of local government authority designed to prevent obstruction of public thoroughfares or destruction of public property. Energy Michigan recommended that an alternate licensing program be implemented as an alternative to the franchise process which could be exercised if local government demands became unreasonably burdensome. That time may have arrived. If participation in open access phase-in is inadequate or forfeiture rates are unreasonably high, the Commission's franchising requirement is likely to blame. This problem could be partially

corrected by rapid issuance of an order in Case U- 119 15.

III. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE Energy Michigan believes that the somewhat low participation rates in Phase 1 should be a matter of concern for the Commission. Of equal concern should be the potential for forfeiture of capacity due to barriers created by the Commission's reciprocity and franchise requirements. These matters could be corrected, at the very least, during the phase-in period by Commission action on existing dockets (U-1 1915) or waivers of reciprocity rule requirements, etc. Energy Michigan strongly urges these mid-course corrections which are dictated by an analysis of the Staff Report.

WHEREFORE, Energy Michigan requests that the Commission review its comments in this matter and take such action as is deemed appropriate.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
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November 8, 1999

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own)
motion, to consider the restructuring of)
the Case No. U- 11290 electric utility)
industry)
_____)

Case No. U-1 1290, et al

MICHIGAN PUBLIC SERVICE
COMMISSION

PROOF OF SERVICE

NOV 8 1999

STATE OF MICHIGAN)
ss)
COUNTY OF INGHAM)

FILED

Monica Robinson, duly sworn, deposes and says that on this 8th day of November, 1999 she served an original and 15 copies of Energy Michigan's comments on Staff Report on Bid Cycle 1 upon those individuals listed on the attached distribution list.



Monica Robinson, Deponent

Subscribed and sworn to before me
this 8th day of November, 1999.



Rebecca Grenawalt, Notary Public
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My Commission Expires: July 12, 2001

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