

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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ATTORNEY GENERAL

November 18, 1999

Ms. Dorothy Wideman  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48911

Dear Ms. Wideman:

Re: MPSC Case Nos. U-11290, U-11449, U-11451, U-11452, U-11453,  
U-11454, and U-11456

I am enclosing for filing an original and 15 copies of the Attorney General's Comments on Open Access Bidding in Response to October 28, 1999, Scheduling Order. I am also enclosing a proof of service.

Sincerely,

*Donald E. Erickson*

Donald E. Erickson  
Assistant Attorney General

c All Parties  
sld/cases/U-11290 et al.

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter, on the Commission's own motion, to consider the restructuring of the industry | MPSC Case No. U-11290 |
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| In the matter of the application of THE DETROIT EDISON COMPANY for authority to suspend implementation of its power supply cost recovery clause and related relief | MPSC Case No. U-11449 |
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| In the matter of the request of CONSUMERS ENERGY COMPANY for approval of a retail open access tariff | MPSC Case No. U-11451 |
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| In the matter of the request of THE DETROIT EDISON COMPANY for approval of a direct access tariff | MPSC Case No. U-11452 |
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| In the matter of the request of CONSUMERS ENERGY COMPANY for authority to suspend its power supply cost recovery clause | MPSC Case No. U-11453 |
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| In the matter of the application of CONSUMERS ENERGY COMPANY and THE DETROIT EDISON COMPANY for approval of a true-up mechanism in connection with recovery of stranded costs | MPSC Case No. U-11454 |
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| In the matter of the request of CONSUMERS ENERGY COMPANY for approval of a performance-based ratemaking mechanism and changes in standby rates | MPSC Case No. U-11456 |
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**ATTORNEY GENERAL'S COMMENTS ON OPEN ACCESS BIDDING  
IN RESPONSE TO OCTOBER 28, 1999, SCHEDULING ORDER**

On October 20, 1999, the Staff of the Michigan Public Service Commission issued a report on the first bidding cycle for open access service, which was established in the Commission's order dated March 8, 1999, and which became an ingredient of the Commission's August 17, 1999, order. On October 28, 1999, the Commission issued a scheduling order requesting comments on the Staff's report.

The Attorney General and ABATE have appealed the Commission's jurisdiction to issue the August 17, 1999, Opinion and Order. The Attorney General believes she should offer some comments in response to the Staff's report, but in doing so, the Attorney General does not waive her right to pursue her appeal.

First, the MPSC issued a press release concurrently with its Scheduling Order, and this might create some future confusion. The press release seems to say that there will be four bid cycles after the September 20, 1999, cycle. Page 47 of the June 5, 1997, Opinion and Order in U-11290 indicated that there would be five cycles of bidding prior to full open access commencing January 1, 2002, but page 10 of the January 14, 1998, Rehearing on Restructuring reduced the bidding to four cycles, and page 53 of the March 8, 1999, Opinion and Order sets four bidding cycles. The Commission should clarify that its approved phase-in now involves only four cycles and 10% of the capacity, not the five cycles and 12.5% of the capacity identified in the June 5, 1997, Opinion and Order.

Second, the bidding results reported by the Staff indicate that the average bid is well below the transition charges of 1.20¢ / kWh and 1.25¢ / kWh established by the Commission for Consumers Energy and Detroit Edison effective January 1, 2002, this bidding result implies that MPSC-approved open access service will become uneconomical. The Commission should seriously consider this problem in its decision of Case Nos. U-11955 and U-11956. The Staff's bid report could be misread as though it identifies permanent potential savings achievable under open access tariffs even though the Commission's orders currently provide for transition

charges beginning January 1, 2002, which exceed both the bid amounts and the waived minimum bid under which open access service has been initiated.

Third, the Attorney General agrees with the Staff's comment that the voluntary bid forfeiture process needs clarification. As described in the Staff's report, each participant who submits multiple bids will be effectively bidding against itself as well as against competitors. For a simple example, consider the following assumptions. 10 MW of capacity is up for bids, and two participants bid. Participant #1 bids 0.75¢ for 5 MW of capacity, and Participant #2 submits a bid of 0.6¢ for 5 MW of capacity and a bid of 0.5¢ for 5 MW of capacity. In other words, bids totaling 15 MW were submitted for 10 MW of available capacity. As the Attorney General understands the Staff Report, the bidding procedure would mean that Participant #2 outbid its own 0.5¢ bid. If this is what the MPSC intended, this circumstance should be clarified so that participants will know that in submitting multiple bids they may find themselves bidding against themselves. Even if 15 MW of capacity is available, and Participant #2 will not automatically lose one of its bids, then Participant #2 must either delay implementing the lower bid or forfeit the lower bid if the forfeiture procedure is established as the Staff suggests and if the higher bid cannot be implemented within the 180-day period. This was not clear in the prior orders, and it seems to undermine the goal of implementing choice as soon as possible.

Fourth, the Staff's report recommends disqualifying other utilities and their affiliates who fail to meet reciprocity requirements at the time bidding is conducted. The Staff's concept of the sooner the better seems sound, but it could actually lead to more rather than less confusion. The MPSC's reciprocity requirement may be unconstitutional and is on appeal. If the Courts so rule, the Commission and the bidding process may unlawfully disqualify a bidder whose bid would otherwise have been a winning bid. Accepting bids to see which ones would win before imposing reciprocity disqualifications would allow all winning bidders who are not

disqualified to know the risk, if any, that another bidder may be able to upset their bid based upon a disqualification issue. On the other hand, if a bid is not a winner, then reciprocity disqualification becomes a moot issue.

**Relief Requested**

Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to consider the foregoing comments before deciding what if any modifications the Commission may make to the bidding procedures established by the March 8, 1999, Opinion and Order in the captioned cases.

Respectfully submitted,

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November 18, 1999

PROOF OF SERVICE

MPSC Case Nos. **U-11290, U-11449, U-11451, U-11452, U-11453, U-11454 & U-11456**

The undersigned certifies that a copy of the **Attorney General's Comments On Open Access** Bidding in Response to October **28, 1999, Scheduling** Order was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, or by State Interdepartmental mail as indicated, on the 18th day of November, 1999.

  
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