

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,
to consider the restructuring of the electric
utility industry.

Case Nos. U-11290, et al

/

COMMENTS OF THE STAFF OF THE
MICHIGAN PUBLIC SERVICE COMMISSION

Introduction

On October 28, 1999, the Commission issued a Scheduling Order in these cases. Attached to the order was the October 20, 1999 "Staff Report on Bid Cycle One." Among the matters addressed in that Staff Report was the suggestion that the Commission make a clarification with respect to the voluntary bid forfeiture procedure.

In its October 28, 1999 Scheduling Order, the Commission has directed that interested parties file comments on the Staff Report, including any proposed clarifications to the bid forfeiture procedure, by November 18, 1999. In accordance with that directive, the Staff files these comments:

Proposed clarification to bid forfeiture procedure.

In its March 8, 1999 Order in Case No. U-1 1290, et ***al.*** (p.14), the Commission directed "Staff to work with the utilities and other stakeholders to develop a common approach using the 60 day/1 80 day timeline... [and] . . . attempt to reach a consensus on the time at which forfeited capacity would be rolled into the next cycle" (footnotes omitted).

Staff prepared a draft proposal and sent it to interested parties for comments on June 7, 1999. Comments were received from eight parties: ABATE, Consumers Energy, Detroit Edison, Energy Michigan, Federal Trade Commission, Ford Motor Company, Hastings Manufacturing Company, and Shell Western E & P, Inc.

Based on the comments received and the limited experience thus far from the first round of bidding, Staff drafted two different alternatives. They are attached to these comments as Exhibit A and Exhibit B. Both include the same approach to using the 60 day/1 80 day **timeline** and rolling forfeited capacity into subsequent bidding cycles. The only difference between the two alternatives is about how to select the bidders that will be awarded any forfeited capacity: The first alternative, Exhibit A, awards forfeited capacity to the highest losing bidder from the same round of bidding. In the second alternative, Exhibit B, the forfeited capacity would be awarded to the highest losing bidder from the same round of bidding *who is not affiliated with the bidder that has forfeited the capacity*. The two alternatives (Exhibits A and B) are identical, except that the second alternative adds the phrase “*who is not affiliated with the bidder that has forfeited the capacity*” at the end of the first sentence of the second paragraph.

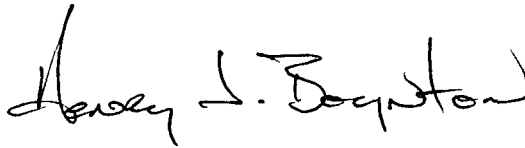
The advantage of the first alternative is its ease of application. However, it would not prevent “gaming” of the bid process by bidders who may find it advantageous to submit multiple bids and then forfeit higher-priced capacity in an effort to create eligibility for a lower priced bid (their own or their affiliate’s). In the first round of bidding, Detroit Edison managed that contingency by stating that any winning bidder who submitted multiple bids and then voluntarily elected to forfeit capacity must forfeit their lowest bid first, and proceed to the highest bid last. The Consumers Energy bid process did not address the issue of forfeiture by bidders who submitted multiple bids.

The advantage of the second alternative is that it will prevent some potential "gaming" of the bid procedure. However, in doing so it creates the need for another set of factual determinations, including but not limited to what constitutes being "affiliated" with the initial winning bidder.

In either case, Staff recommends that the Commission should direct Consumers Energy and Detroit Edison to apply identical forfeiture provisions to their bidding processes

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in black ink, appearing to read "Henry J. Boynton". The signature is fluid and cursive, with the first name "Henry" and last name "Boynton" clearly distinguishable.

Henry J. Boynton (P25242)
'Assistant Attorney General
Public Service Division
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Dated: November 18, 1999
U11290/Comments

Exhibit A: Alternative One

Prior to initiating Retail Open Access Service the successful bidder must be declared a Retailer or designate a Retailer to secure their Power. For the purposes of this section, self-service customers shall be designated as Retailers. Within 60 days from the date the capacity was awarded to a successful bidder, the Retailer must have made application to the appropriate governmental unit(s) for all approvals necessary to participate in Retail Open Access Service. Within 180 days from the date the capacity was awarded to a successful bidder, the participating customers must be enrolled for Retail Open Access Service. For either of these time periods, so long as the Retailer and/or customers are acting in good faith and can demonstrate progress towards obtaining the required approvals, there will be no forfeiture. If the Retailer fails to adhere to either one of these timetables, the Retailer forfeits its capacity award and the bid deposit will be retained by the Independent Bid Administrator and applied toward transition costs.

The forfeited capacity will be awarded to the highest losing bidder from the same round of bidding. If the forfeited capacity was awarded as part of a set-aside for service to a specific class of customers, then it will be awarded to the highest losing bidder for that same class of customers. Once the final bid cycle has been completed, if no bidder to serve customers in the same class accepts the award, then the capacity shall be offered to the highest losing bidder for other customer classes (proceeding in order from residential only, to residential/small commercial, and then to all customer classes). If no qualified bidder from the same round of bidding accepts the capacity award, then it will be offered to the highest losing bidder from the next round of bidding.

Within 10 days, the bidder that is awarded the forfeited capacity shall pay the bid deposit, equal to the amount previously submitted by the initially successful bidder. The bidder or their designated Retailer will be subject to the same requirements for making applications for all necessary approvals within 60 days and enrolling customers for Retail Open Access Service within 180 days from the date the capacity was awarded.

Successful bidders may sell or assign awarded bid capacity to another entity as long as the capacity is assigned within the same bid class. After the final bid period, if all the capacity reserved for residential and small commercial customers has not been filled, it may be tilled by bids for any class of customers. If they do so, they must inform the Independent Bid Administrator, so the sale and the new owner of record can be recorded. In the event of any sale or assignment of capacity rights, the rules for forfeiture apply, with the starting date being the effective date of purchase or assignment. This additional time to make applications and enroll customers may be used only once.

U11290/Comments ExhA

Exhibit B: Alternative Two

Prior to initiating Retail Open Access Service the successful bidder must be declared a Retailer or designate a Retailer to secure their Power, For the purposes of this section, self-service customers shall be designated as Retailers. Within 60 days from the date the capacity was awarded to a successful bidder, the Retailer must have made application to the appropriate governmental unit(s) for all approvals necessary to participate in Retail Open Access Service. Within 180 days from the date the capacity was awarded to a successful bidder, the participating customers must be enrolled for Retail Open Access Service. For either of these time periods, so long as the Retailer and/or customers are acting in good faith and can demonstrate progress towards obtaining the required approvals, there will be no forfeiture. If the Retailer fails to adhere to either one of these timetables, the Retailer forfeits its capacity award and the bid deposit will be retained by the Independent Bid Administrator and applied toward transition costs.

The forfeited capacity will be awarded to the highest losing bidder from the same round of bidding who is not affiliated with the bidder that has forfeited the capacity. If the forfeited capacity was awarded as part of a set-aside for service to a specific class of customers, then it will be awarded to the highest losing bidder for that same class of customers. Once the final bid cycle has been completed, if no bidder to serve customers in the same class accepts the award, then the capacity shall be offered to the highest losing bidder for other customer classes (proceeding in order from residential only, to residential/small commercial, and then to all customer classes). If no qualified bidder from the same round of bidding accepts the capacity award, then it will be offered to the highest losing bidder from the next round of bidding.

Within 10 days, the bidder that is awarded the forfeited capacity shall pay the bid deposit, equal to the amount previously submitted by the initially successful bidder. The bidder or their designated Retailer will be subject to the same requirements for making applications for all necessary approvals within 60 days and enrolling customers for Retail Open Access Service within 180 days from the date the capacity was awarded.

Successful bidders may sell or assign awarded bid capacity to another entity as long as the capacity is assigned within the same bid class. After the final bid period, if all the capacity reserved for residential and small commercial customers has not been filled, it may be filled by bids for any class of customers. If they do so, they must inform the Independent Bid Administrator, so the sale and the new owner of record can be recorded. In the event of any sale or assignment of capacity rights, the rules for forfeiture apply, with the starting date being the effective date of purchase or assignment. This additional time to make applications and enroll customers may be used only once.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,
to consider the restructuring of the electric
utility industry.

Case No. **U-I 1290**

_____/

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.

Case No. **U-I 1449**

_____/

In the matter of the request of
CONSUMERS ENERGY COMPANY for
approval of a retail open access tariff.

Case No. **U-I 1451**

_____/

In the matter of the request of
THE DETROIT EDISON COMPANY for approval
of a direct access tariff.

Case No. U-I 1452

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In the matter of the request of
CONSUMERS ENERGY COMPANY for authority
to suspend its power supply cost recovery clause
and related relief.

Case No. U-I 1453

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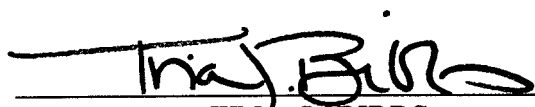
In the matter of the request of
CONSUMERS ENERGY COMPANY and
THE DETROIT EDISON COMPANY for
approval of a true-up mechanism in connection
with the recovery of stranded costs.

Case No. U-11454

PROOF OF SERVICE

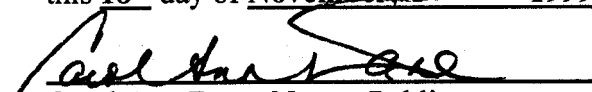
STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

TINA L. BIBBS, being first duly sworn, deposes and says that on **November 18, 1999**, she served a true copy of **COMMENTS OF THE STAFF OF THE MICHIGAN PUBLIC SERVICE COMMISSION** upon the parties on the attached Service List by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid.



TINA L. BIBBS

Subscribed and sworn to before me
this 18th day of November, 1999.



Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 7-23-2000

SERVICE LIST
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