NATIONAL ENERGY MARKETERS ASSOCIATION

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MICHIGAN PUBLIC SERVICE COMMISSION

August 23, 2001

Ms. Dorothy Wideman
Secretary
Michigan Public Service Commission
6545 Mercantile Way, Suite 7
Lansing, MI 48911
Via Express Mail

RE: Case U-12488 - In the matter of the rates, terms and conditions for retail customers of Consumers Energy Company to choose an alternative retail electric supplier

Dear Secretary Wideman:

The National Energy Marketers Association (NEM) hereby files this letter pertaining to the Recommended Decision issued July 31, 2001, in the instant proceeding. Although NEM has not intervened in this matter, NEM respectfully requests that the following comments on Consumers' reciprocity requirements be considered.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing both wholesale and retail marketers of energy and energy-related products, services, information and technologies throughout the United States. NEM's membership includes: small regional marketers, large traditional international wholesale and retail energy suppliers (as well as wind and solar power), billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, information technology providers and suppliers of advanced distributed generation. Membership includes both affiliated and unaffiliated companies.

Affiliated and independent marketers have come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM is committed to working with representatives of state and federal governments, large and small consumer groups and utilities to devise fair and effective ways to implement the competitive restructuring of electricity markets.

NEM contends that the language set forth in Consumers' proposed electric tariff regarding reciprocity is anti-competitive. The proposed tariff provides as follows:

On and after January 1, 2002:

A. No Michigan-based electric utility or its affiliate shall be permitted to utilize the Company's System to make retail sales unless such utility or its affiliate provides comparable Retail Open Access Service to retail customers located within its service territory. A municipal utility or a municipal power agency is required to provide reciprocity to the extent required by Public Act 141 of 2000 and other applicable law.

B. No Retailer that also provides retail distribution services, or that has an affiliate that provides retail distribution services, shall be permitted to utilize the Company's System to make retail sales unless the Retailer or its affiliate provides comparable Retail Open Access Service. If neither the Retailer nor its affiliate provide retail distribution services, but the transaction involves an independent intermediary (such as a Marketer or Broker), or independent Generation Supplier, the reciprocity obligation may be satisfied by the intermediary or Generation Supplier, or the regional transmission/distribution affiliate of either the intermediary or Generation Supplier.

C. "Comparable" Retail Open Access Service is one which (i) provides for Retail Open Access Service in an amount of retail customer load equivalent to that provided by the Company, and (ii) specifies rates, terms and conditions that are equivalent to those offered by the Company, and that have been approved by all applicable regulatory authorities for use in Retail Open Access Service transactions. [1]

In this instance, the requirement of reciprocity is unnecessary and arbitrarily prohibits or limits qualified marketers from participating in Consumers' territory thus limiting customers' choice of suppliers. For instance, if a marketer is an affiliate of a utility in a state that is not open to competition, this reciprocity requirement will prohibit the marketer's participation in Consumers' territory. This would prohibit participation from affiliates located in neighboring states such as Wisconsin and Indiana, as well as Midwest states like Minnesota, Iowa, Missouri, and Kentucky. NEM requests the Commission issue an order requiring Consumers Energy to eliminate the reciprocity language from their tariff.

Generally, unregulated marketers have no influence on whether or to what extent a utility or PUC decides to open a service territory to competition. In many instances, it would be contrary to established codes of conduct for an unregulated marketer to discuss or attempt to influence its regulated affiliate in matters concerning the competitive restructuring of its service territory. Consequently, the modification made to the reciprocity language in Judge Rigas' Proposed Decision[2]

[1] Sheet No. F-3-10, Section F 1.6.

[2] Case U-12488, In the matter of the rates, terms and conditions for retail customers of Consumers Energy Company to choose an alternative retail electric supplier, Proposal for Decision, issued July 31, 2001, at page 7, providing that:

> C. "Comparable" Retail Open Access Service is one which (i) provides for Retail Open Access Service in an amount of retail Customer load **relatively** equivalent to that provided by the Company, **and (ii) specifies rates, terms and conditions** ~~that are equivalent to those offered by the Company, and~~ that have been approved by all applicable regulatory authorities for use in Retail Open Access Service transactions.

that modifies the proposed tariff to require "relatively" equivalent open access will not ameliorate the anti-competitive effects of the requirement.

NEM supports a competitive market that stimulates participation by all qualified marketers. Qualified marketers should have the ability to provide products and services as contracted by customers and consistent with good business practices and consumer protections. NEM is opposed to regulatory barriers, such as the proposed reciprocity restriction for Consumers' service territory in Michigan, which would exclude marketers, who are otherwise qualified, from fully participating in the market.

Other states provide evidence that the concept of reciprocity benefits the incumbent utilities and does not necessarily help to develop a competitive market. Incumbent utilities in other states support reciprocity based on the argument that if marketers affiliated with generating companies in nearby states bring supply into the incumbent's territory and compete against the incumbent's utility generation assets it will cause the utility to incur stranded costs. This argument assumes a surplus of generation exists. The fact that new generation is being built in Michigan would indicate this is not the case. It is clear that bringing additional generation assets into the Michigan market will enhance the development of the wholesale market needed to support retail competition.

By comparison, NEM notes that the approach adopted in Illinois addresses concerns about stranded generation costs without unduly restricting the market.[3] However, in this case, reciprocity will unnecessarily restrict the development of a competitive market in Consumer's service territory. NEM submits that the reciprocity restriction in Consumers' proposed tariff as well as that set forth in the

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[3] The Illinois Public Utilities Act provides that:

> (d) The Commission shall grant the application for a certificate of service authority if it makes the findings set froth in this subsection based on the verified application and such other information as the applicant may submit:
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> (5) That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to **end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered**, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered **that are reasonably comparable to those offered by the electric utility**, and provided further, that the applicant agrees to certifiy annually to the Commission that it is continuing to provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirement of this Section. For purposes of this subparagrpah, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisidiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities; (emphasis added)

Illinois Public Utilities Act, Section 5/16-115 (d)(5).

Proposed Decision are unnecessarily restrictive, anti-competitive and not in Consumers' customers best interest. NEM urges the Michigan Public Service Commission to delete reciprocity language from Consumers' Retail Open Access Service tariff or modify it to mirror the Illinois statute section cited in footnote 3.

Sincerely,

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cc: Active Parties (via email and U.S. mail)
Administrative Law Judge Rigas (via email and U.S. Mail)