STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CLOVERLAND ELECTRIC COOPERATIVE** for approval of its plan to implement 2000 PA 141**.** ____/	Case No. **U-12656**
In the matter of the application of **MIDWEST ENERGY COOPERATIVE** for approval of its plan to implement 2000 PA 141**.** ____/	Case No. **U-12657**
In the matter of the application of **CHERRYLAND ELECTRIC COOPERATIVE** for approval of plans to implement 2000 PA 141**.** ____/	Case No. **U-12658**
In the matter of the application of **GREAT LAKES ENERGY COOPERATIVE** for approval of plans to implement 2000 PA 141**.** ____/	Case No. **U-12659**
In the matter of the application of **PRESQUE ISLE ELECTRIC** **& GAS CO-OP** for approval of plans to implement 2000 PA 141**.** ____/	Case No. **U-12660**
In the matter of the application of **HOMEWORKS TRI-COUNTY ELECTRIC** **COOPERATIVE** for approval of plans to implement 2000 PA 141**.** ____/	Case No. **U-12661**

MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
RESPONSE TO COOPERATIVES' MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

On February 16, 2001, Cloverland Electric Cooperative, Midwest Energy Cooperative, Cherryland Electric Cooperative, Great Lakes Energy Cooperative, Presque Isle Electric & Gas Co-Op and HomeWorks Tri-County Electric Cooperative (Cooperatives) filed a motion for summary disposition and brief in support thereof on the issue of aggregation. In that motion and brief, the Cooperatives attempt to re-phrase the issue addressed in the motion and brief filed by the Michigan Public Service Commission Staff (Staff). Staff's issue, as conveyed to counsel for the Cooperatives prior to the filing of these cross-motions (and to which Staff had not received an objection prior to the filing of these cross-motions) stated:

> whether the Michigan Public Service Commission may, in the context of a PA 141 proceeding, require an electric cooperative to offer a tariff that accommodates the aggregation of loads, meters, and premises which, when combined to a peak load equal to or greater than 1 MW, would permit that customer so aggregated the opportunity, no later than January 1, 2002, to choose an alternative electric supplier.

In an attempt to avoid the relief sought by Staff here, the Cooperatives attempt to re-define the issue here by including matters which are totally irrelevant to the relief sought by Staff. The Cooperatives attempt to define the issue as:

> whether, under §10x(1), the electric cooperatives *must* permit customer aggregation (*i.e.*, the combination of multiple customers' electric loads from multiple sites) so customers can collectively meet the 1 MW load threshold and attain early eligibility for customer choice, *i.e.*, earlier than January 1, 2005.

Staff would submit that the question phrased by the Cooperatives bears no relation to the relief sought by Staff here.

In addition to misstating the issue, the Cooperatives, in their motion and brief, raise issues addressed by Staff below.

I. The Act does not prohibit a non-AES (alternative electric supplier) from being an aggregation agent.

Staff submits that PA 141 does not prohibit any non-AES from being an aggregation agent. First of all, Section 10bb does not provide that only an AES may aggregate loads, nor does it provide that a customer may not aggregate loads. The Cooperatives' argument in this regard is absolutely contradicted by Section 10bb(3), which states:

> As used in this section, **"aggregation" means the combining of electric loads of** multiple retail customers or **a single customer with multiple sites** to facilitate the provision of electric service to such customers [emphasis added].

The Legislature was clear in indicating that a single customer with multiple sites may be aggregated. Contrary to the Cooperatives' interpretation of Section 10bb, the purpose of this section was not to restrict aggregation or limit it only to AESs. Instead, the purpose was in part to make it explicitly clear that certain types of customers shall be allowed to aggregate their own loads. The primary purpose of this section of the Act, as stated in Section 10bb(2), is to insure that no customer will be aggregated without their consent. Section 10bb(2) provides:

> Local units of government, public and private schools, universities, and community colleges may aggregate for the purpose of purchasing electricity for themselves or for customers within their boundaries with the written consent of each customer aggregated. Customers within a local unit of government shall continue to have the right to choose their electricity supplier and are not required to purchase electricity through the aggregator.

Section 10bb was clearly intended to prevent any of the listed types of organizations from being able to aggregate " customers within their boundaries" who are not the customers "themselves", without explicit permission. Thus, Michigan legislated what is, in essence, an "opt in" approach to municipal aggregation, as opposed to an "opt out" approach. With opt out aggregation, an entity of this type might aggregate all customers within its boundaries, and then individual customers would be required to take action to avoid being aggregated. In opt out aggregation, any of the entities listed might aggregate not only all of their own loads (such as all facilities belonging to a municipal government) but also the loads of all other customers within their boundaries (such as all residents of a municipality), and force these other customers to participate, unless they explicitly asked not to be aggregated   Staff has not proposed that the Cooperatives permit aggregation of multiple customers prior to January 1, 2005, and is not asking the Commission to so hold.

In any event, Section 10bb in its definition of "aggregation", permits "the combining of electric loads of…a single customer with multiple sites…." In addition, Section 10bb is explicitly clear that the listed types of customers "may aggregate for the purpose of purchasing electricity for themselves…." This type of aggregation (i.e. of a single customer's loads) is the only type that Staff proposes for consideration at this time.

The Cooperatives assert (Brief, pp. 4-5) that the "sole reference to aggregation" in PA 141 "is in Section 10bb…." However, aggregation is also referenced in PA 141, Section 10(a)(7)(b), which provides:

> "Affiliate wheeling" means a person's use of direct access service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's affiliate at a location, or general **aggregated locations**, within this state… [emphasis added].

Staff is not suggesting that the question presently before the Commission will implicate affiliate wheeling, but simply points out that the Legislature in this section of the Act recognized that a single customer – "a person" – can have multiple, aggregated locations.

Later, in Section 10(g), the Act provides:

> Sec. 10g. As used in sections 10 through 10bb:
>
> (a) "Alternative electric supplier" means a person selling electric generation service to retail customers in this state. …

> (2) A school district aggregating electricity for school properties or an exclusive aggregator for public or private school properties is not an electric utility or a public utility for the purpose of that aggregation.

Again, Staff's purpose in making reference to this section of PA 141 is not to imply that the present case involves only school districts, but rather to contradict two of the Cooperatives' assertions: First, AES is not equated with aggregator, as the Cooperatives imply; and, second, the Legislature contemplated "a school district" being an aggregator of its own "school properties". In fact, Staff submits that Section 10(g)(2) is not intended to restrict aggregation or limit it to schools or school properties, but rather is intended by the Legislature to reflect a recognition that a school district's multiple properties might well reside in multiple municipalities. Therefore, this section provides that a district that aggregates its own facilities, or an independent aggregator working for the district, would not have to obtain a franchise or consent from multiple local units of government in order to participate in retail open access service.

II. A "customer", as defined in MPSC Rules 102 and 411, may be comprised of multiple loads, meters, and premises.

The Cooperatives' Motion (pp. 3-4) and accompanying Brief (p. 6) essentially argue that the singular word "customer" as found in PA 141 Section 10x(1) must "unambiguously" refer not to the plural of the word, nor to the definition found in MPSC Rule 102, but only to something at least as narrow as the Rule 411 definition, of a single load and a single facility. In the Cooperatives' Brief (p. 7) is the additional assertion that in Section 10x(1), "The phrase 'a peak load' refers to a single peak load."

MPSC Rule 102 defines "customer" as "any person, firm, association, or corporation or any agency of the federal, state, county, or municipal government that purchases electric service supplied by a utility." Only for the purpose of Rule 411 is "customer" defined a "the buildings and facilities served rather than the individual, association, partnership, or corporation served."

The Cooperatives' reliance on the singular nature of the term "customer" as used in the Act is misplaced. MCL 8.3b; MSA 2.212(2) provides in part that "Every word importing the singular number only may extend to and embrace the plural number. . . ." For purposes of statutory construction, therefore, the use of the singular "customer" in the Act does not preclude the relief sought here by Staff.

III. The Cooperatives' own rate books provide that an individual customer may have multiple metering points at different premises.

Under "Rate Application" in the Cooperatives' own rate books provides:

> The rates specified in this schedule are predicated upon the delivery of each class of service to a single metering point for the total requirements of each separate premises of the customer, unless otherwise provided for in these rules and regulations. In no case may service be shared with another or transmitted off the premises at which it is delivered. Service at different points and at different premises shall be separately metered and separately billed.[1]

(Representative example included as Attachment A.)

There is no implication here that there can be only a single metering point per customer, nor that a customer cannot obtain service at multiple points on multiple premises. Certainly there is no indication here that each different point or premise constitutes a separate customer. On the contrary, there may be a metering point for "each separate premises of the customer" and "different points" and "different premises" are clearly contemplated.

IV. Rate unbundling is not a prerequisite to retail open access service.

The Cooperatives incorrectly link rate unbundling and aggregated retail open access service, as if the former is a prerequisite for the latter. The Cooperatives posit the incredible

[1] For purposes of its review of the rate applications, Staff has interpreted the term "another" in the second sentence of this provision to refer to "another customer".

notion that unbundled rates must be prepared and approved prior to making aggregation available (Motion, paragraph 4(C), p. 3 and again in Brief, p. 8, paragraph C). The Cooperatives even claim that: “[I]f rates were not unbundled, it would be impossible to allocate the distribution, transmission, and generation charges.” (Brief, p. 8) The Cooperatives’ argument is a red herring. Unbundling is an unrelated issue. Rates for retail open access service can be designed and offered prior to general rate unbundling, as they already have been since 1997 for Consumers Energy and Detroit Edison, and as the Cooperatives have already proposed in their applications in these filings. Staff is not recommending anything different here. Rate unbundling serves an entirely different purpose, which is primarily to provide better information to full-service customers so they will gain understanding of the prices being charged for each component of their electric service within the bundled the rates they are paying. While this helps full-service customers to understand more about the retail open access market and their opportunities in that market, it is entirely unrelated to the question before the Commission in this proceeding.

V. Cooperatives with no customer having a peak load of 1 MW or more will not be required to submit a PA 141 implementation plan filing prematurely.

The Cooperatives argue (Motion, paragraph 4(E), p. 4) that “Aggregation would require all cooperatives, even those without a customer having a peak load of 1 MW or more, to submit a restructuring filing.” Staff does not believe this to be the case and has not suggested this. Staff maintains that the language found in Act 141, Section 10x and the Commission’s subsequent June 19, 2000 Order in Case No. U-12464 is unmistakably clear on this point. The Commission Order states (p. 2),

> Any cooperative that does not have a customer with a peak load of one megawatt or more at this time shall file its plan within 30 days of commencing service to a customer with a peak load of one megawatt or more.

Any Cooperative that does not already have a customer with 1 MW or greater demand can wait until a prospective customer approaches, asking for the 1 MW or greater ROA service. At that time, the Cooperative would make a determination of the eligibility of that customer, employing the same procedures that would be used for any new customer applying to be served under any of the Cooperatives' other existing rates. If the customer were eligible, then the plan would have to be filed within 30 days of commencing service to that customer, as ordered (June 19, 2000 Order in Case No. U-12464, p. 2).

VI. Staff's position with regard to single-customer aggregation presents no risk to Distribution Cooperatives.

Retail Open Access customers of the Distribution Cooperatives will continue to pay distribution rates based on cost of service designed to recover all distribution costs. Therefore, the Distribution Cooperatives should have no opposition to Staff's proposal. Staff's position on these motions is reinforced by examination of Wolverine Power Supply Cooperative and the Commission's prior orders regarding reciprocity in retail electric competition. Wolverine has already formed an unregulated subsidiary company, Wolverine Power Marketing Cooperative, Inc., and obtained a license from the Commission to participate as an AES (see November 20, 2000 Order in Case No. U-12723). Four of the Distribution Cooperatives that are parties to the instant cases are members of Wolverine Power Supply Cooperative: Cherryland Electric, Great Lakes Energy, Presque Isle Electric and Gas, and Homeworks Tri-County Electric Cooperatives. Wolverine Power Marketing Cooperative, Inc. is already preparing to serve open access customers in both the Consumers Energy and Detroit Edison service territories. Therefore, as the Commission has directed in its June 19, 1995 Order in U-10143 & U-10176 (p. 67), the Distribution Cooperatives who are members of Wolverine Power Supply Cooperative must offer reciprocity, which means "retail access to [the Cooperatives' customers] in a manner and on a scale comparable to that provided" by Consumers Energy and Detroit Edison.

The Commission policy on reciprocity is founded in a series of orders, including: the November 14, 1996 and April 10, 1997 Orders in Cases Nos. U-10685 et al.; the June 5, 1997 Order in Case No. U-11290; the October 29, 1997 Order in Cases Nos. U-11451 & U-11452; and the March 8, 1999 Order on Rehearing in Case No. U-11290 et al. In the June 5, 1997 order in U-11290, page 38, the Commission explained:

> The reciprocity issue requires a careful balancing of the interests of the utilities and their customers. Utilities have a reasonable expectation that if they open their existing markets up to competition, they will have corresponding competitive opportunities outside of their existing markets. Conversely, customers have a reasonable expectation that they will have a diverse, vibrant market of potential suppliers.

Throughout these orders on electric utility restructuring, found by the Legislature to be in compliance with 2000 PA 141, in MCL 460.10a(5); MSA 22/13(10a), the Commission held that reciprocity requires comparability and correspondence between the retail open access offerings in the service territories of competing utilities. In the Consumers Energy and Detroit Edison service territories, a significant percent of peak load has been made available to competition, and this will reach 100% by January 1, 2002, and that includes aggregated loads. The types of aggregation presently allowed in the Consumers Energy and Detroit Edison service territories are broader than the single-customer aggregation Staff proposes here. Still, Staff submits that it would be inequitable to permit the four Wolverine Power Supply Cooperative member Distribution Cooperatives to compete in Consumers' and Edison's territories through their AES until January 1, 2005, while at the same time restricting competition in their own service territories to only the few existing customers which have a single peak load at a single location of 1 MW or more.

RELIEF

WHEREFORE, for the foregoing reasons, Staff respectfully requests that the Commission grant Staff's Motion for Summary Disposition, deny the Cooperatives' Motion for Summary Disposition, and enter an order:

1. Requiring the cooperatives to submit to the Commission PA 141 Implementation Plan tariffs that accommodate the aggregation of loads, meters, and premises which, when combined to a peak load equal to or greater than 1MW, would permit a customer so aggregated the opportunity, no later than January 1, 2002, to choose an alternative electric supplier; and,

2. Requiring that the Cooperatives' Electric Member Choice Program tariffs shall apply to either (or both) existing and/or new customers; and,

3. Requiring that Electric Member Choice Program tariffs be available to loads taking service at either primary or secondary voltage.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Michael A

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Dated: March 2, 2001

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ATTACHMENT A

(2) Without Notice - The Cooperative reserves the right to disconnect service without notice for any of the following reasons:

(a) Where hazardous conditions exist in the member-consumer's facilities.

(b) Where the member-consumer's use of service adversely affects the Cooperative's facilities or service to other member-consumers.

(c) For unauthorized reconnection after disconnection with due notice.

(d) For unauthorized use of or tampering with the Cooperative's service or facilities.

(3) Reconnect - After service has been discontinued at the Cooperative's option for any of the above reasons, service will be reconnected only after the member-consumer has taken necessary corrective action and made satisfactory arrangement for payment of all fees and charges, including any applicable reconnect fees and deposits to guarantee payment for service.

2. Rate Application - The rates specified in this schedule are predicated upon the delivery of each class of service to a single metering point for the total requirements of each separate premises of the member-consumer, unless otherwise provided for in these rules and regulations. In no case may service be shared with another or transmitted off the premises at which it is delivered. Service at different points and at different premises shall be separately metered and separately billed.

a. Selection of Rates - In some cases the member-consumer is eligible to take service under any one of two or more rates. Upon request, the Cooperative will advise the member-consumer in the selection of the rate which will give him the lowest cost of service, based on the information provided to the Cooperative, but the responsibility for the selection of the rate lies with the member-consumer.

After the member-consumer has selected the rate under which he elects to take service, the member-consumer will not be permitted to change from that rate to another rate until at least twelve months have elapsed. Neither will the member-consumer be permitted to evade this rule by temporarily terminating service. However, the Cooperative may,

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PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

Linda Andreas, being first duly sworn, deposes and says that on **March 2, 2001,** she served a true copy of the **Michigan Public Service Commission Staff's Response to Cooperatives' Motion for Summary Disposition** upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

Albert Ernst
Christine Mason Soneral
Dykema Gossett PLLC
800 Michigan National Tower
Lansing, MI 48933

Linda Andreas
Linda Andreas

Subscribed and sworn to before me
this 2nd day of March, 2001.

Tina J. Bibbs
Tina L. Bibbs, Notary Public
Ingham County, Michigan
My Commission Expires: 11/13/2003