

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
CLOVERLAND ELECTRIC COOPERATIVE	)	
for approval of its plan to implement	)	Case No. U-12656
2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
MIDWEST ENERGY COOPERATIVE	)	
for approval of its plan to implement	)	Case No. U-12657
2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
CHERRYLAND ELECTRIC COOPERATIVE	)	
for approval of its plan to implement	)	Case No. U-12658
2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
GREAT LAKES ENERGY COOPERATIVE	)	
for approval of its plan to implement	)	Case No. U-12659
2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
PRESQUE ISLE ELECTRIC & GAS CO-OP	)	
for approval of its plan to implement	)	Case No. U-12660
2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
HOMEWORKS TRI-COUNTY ELECTRIC	)	
COOPERATIVE for approval of its plan to	)	
implement 2000 PA 141.	)	Case No. U-12661
_____	)	

RULING ON MOTIONS FOR SUMMARY DISPOSITION

On February 16, 2001, Cloverland Electric Cooperative, Midwest Energy Cooperative, Cherryland Electric Cooperative, Great Lakes Energy Cooperative, Presque Isle Electric and Gas Cooperative, and Homeworks Tri-County Electric Cooperative (collectively "the Cooperatives") filed a Motion for Partial Summary Disposition and Brief in Support of the Motion. Michigan Public Service Commission Staff (Staff) also filed a Motion for Partial Summary Disposition and Supporting Brief on the same day. On March 2, 2001, the Cooperatives and Staff filed replies to each others' motions.

The Cooperatives and Staff seek a summary ruling of the issue presented below.

The issue as stated by the Staff is:

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. Pg 2. Staff's reply brief.

The Cooperatives argue that the Commission has no authority to mandate aggregation for purposes of attaining early eligibility for customer choice. Staff argues that the Commission may require aggregation of loads to attain early eligibility for customer choice.

The issue to be decided involves statutory interpretation of the choice provisions of 2000 PA 141 (Act 141) which became effective on June 5, 2000, generally referred to

as the Customer Choice and Electric Reliability Act. Section 10x(1) of Act 141 states:

The commission shall not require a cooperative electric utility to provide its retail customers the ability to choose an alternative electric supplier before January 1, 2005, nor unbundle its rates as required under section 10b before July 1, 2004. Any retail customer of a cooperative with a peak load of 1 megawatt or greater shall be provided the opportunity to choose an alternative electric supplier no later than January 1, 2002.

Section 10bb of Act 141 refers to aggregation in the following manner:

- (1) Aggregation may be used for the purchasing of electricity and related services from an alternative electric supplier.
- (2) 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.
- (3) 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.

The Cooperatives contend that Section 10x(1) of Act 141 is unambiguous. They argue that Sections 10x(1) and 10bb of Act 141 clearly indicate that the legislature never intended aggregation for retail customers as a means to meet the 1 MW minimum permitting earlier customer choice. The Cooperatives argue that the legislature and the Commission used the singular form of retail customer, and that any intent to use aggregation would have been evidenced by the use of the plural form.

The Cooperatives further rely on language from the Commission which states:

. . . [E]ach investor owned electric utility, other than Consumers Energy Company and the Detroit Edison Company, shall file, no later than October 2, 2000, a restructuring plan in compliance with the act that permits all of its retail customers to choose an alternative electric supplier no later than January 1, 2002. Each filing shall be in a new docket, and will be subject to contested case proceedings. Each cooperative electric utility with any customer having a peak load of one megawatt or more shall do likewise. 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. MPSC Case No. U-12464, dated June 19, 2000.

Staff relies on the same portion of the same Commission order cited by the Cooperatives but reaches a different conclusion. Staff asserts that the above language requires the Cooperatives to file tariffs which accommodate the aggregation of loads, meters and premises to meet the 1 MW minimum. Staff argues that aggregation permits these customers to choose an alternative electric supplier before January 1, 2002, pursuant to Section 10x(1) of Act 141.

Staff explains that aggregation is not inconsistent with Section 10bb of Act 141. Staff asserts that tariffs accommodating aggregation are even contemplated by Section 10bb of Act 141, *supra*. Staff asserts that the use of the singular reference to customer rather than a plural reference to customers does not preclude a determination that the Cooperatives should file tariffs to accommodate aggregation.

Staff cites language from Great Lakes Energy Cooperatives's reply brief in MPSC Case No. U-12316. Staff relies on the recitation to show that even the Cooperatives recognize Act 141 as favoring customer choice.

Finally, Staff's position ignores the realities of today's customer choice environment. The current legislative policy for the electric industry, as evidenced in recently enacted 2000 PA 141, is to accommodate customer choice when possible. The Commission is well aware that 2000 PA 141 is entitled the Customer Choice and Electric Reliability Act. Likewise, the Commission is actively encouraging customer choice in other industries such as the natural gas industry. See Docket No. U-12550 (*re Gas Customer Choice - The Next Step*). Consequently, and contrary to Staff's assertion that customer choice plays *no role*, any interpretation of Rule 411 must actually *favor* customer choice. Staff's Brief, p. 3.

The fundamental and primary rule of statutory construction is to ascertain the legislative intent. *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 598; 608 NW2d 57 (2000). Specific or special language controls general provisions. *Bechtel Power Corp v Department of Treasury, Revenue Div*, 128 MA 324; 340 NW 2d 297 (1983). Where the language of a statute is clear and unambiguous further construction is unnecessary and even prohibited. *In re Approximately Forty Acres in Tallmadge Twp*, 223 Mich App 454; 566 NW2d 652 (1997).

The ALJ finds that the legislature obviously was aware of aggregation and the benefits that aggregation permit through its recitation of aggregation in Section 10bb of Act 141. The legislature specifically provided for aggregation in certain cases, i.e. the purchase from an alternative electric supplier; or local units of government, schools and universities. Act 141 defines 'alternative electric supplier' as "a person selling electric generation service to retail customers in this state. Alternative electric supplier does not include a person who physically delivers electricity directly to retail customers in this state."

Act 141 does not expressly provide for the aggregation of retail customers. Here, the legislature could have provided for aggregation. It did not. In addition, the language in the last sentence describing the retail customer is in the singular.

The ALJ finds that the use of the “retail consumer” in the singular form negates the argument for aggregation. The ALJ finds Section 10x(1) persuasive of the legislative intent to clearly exempt the Cooperatives from offering choice to retail customers until January 1, 2005, except in the case where the Cooperatives have a retail customer with a peak load of 1MW or greater. The last sentence of paragraph 10x(1) must be read in context of the entire paragraph. This provision permitting earlier customer choice for any retail customer with a peak load of 1 MW or greater must be interpreted in context of the whole.

The issue presented here is whether, in the context of Act 141, the Commission may require the Cooperatives to permit the type of aggregation proposed by Staff. It is true there is no language in Act 141 which prohibits the Commission from requiring the Cooperatives to aggregate. However, the ALJ finds such interpretation contrary to the clear, specific and unambiguous language of Section 10x(1) of Act 141. The ALJ rejects Staff’s argument that aggregation is not inconsistent with Section 10bb of Act 141 for the reason that aggregation would be inconsistent with Section 10x(1).

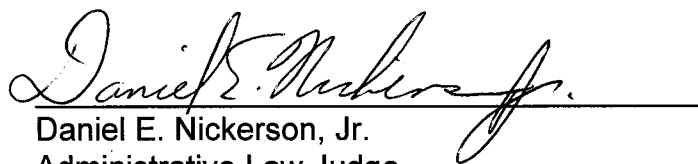
Under statutory construction, the general language gives way to the more specific language, *Bechtel Power Corp*, supra. While the general intent of Act 141 is to provide customer choice the more specific statutory provision that deals with the Cooperatives is

found at Section 10x(1) of Act 141. Here, the legislature in no uncertain terms excludes the Cooperatives from compliance until January 1, 2005, except where there is a retail customer with a peak load of 1 MW or greater. The ALJ finds any device or arrangement to require sooner compliance circumvents the exclusion, and unless it is statutorily mandated, is contrary to the specific language of Section 10x(1) of Act 141.

The ALJ further finds that the legislature clearly tied the unbundling of rates with the ability to offer choice in the case of the Cooperatives. Section 10x(1) provides that the rates are required to be unbundled by July 1, 2004. This statutorily mandated unbundling is chronologically tied to the offering of choice by January 1, 2005. It is perfectly logical and consistent that the unbundled rates, which permit the offering of choice, precede the date of the offer of choice.

Therefore, the ALJ finds that summary disposition on this issue should be granted to the Cooperatives and denies Staff's request for summary disposition.

MICHIGAN PUBLIC SERVICE COMMISSION


Daniel E. Nickerson, Jr.
Administrative Law Judge

April 20, 2001
Lansing, Michigan
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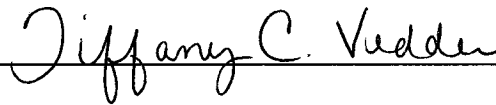
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PROOF OF SERVICE

Tiffany C. Vedder deposes and says that on the April 20, 2001, she served a copy of the attached Ruling on Motions for Summary Disposition, upon those persons shown on Attachment A, by enclosing same in a sealed envelope addressed as indicated above and delivering the envelope to the Commission's mail courier for (1) postage prepayment and deposit with the United States Postal Service, or (2) delivery through interdepartmental mail (I.D.M.).



Subscribed to before me this 20th
day of April, A.D. 2001.



Notary Public, Eaton County Acting in
Ingham County, Michigan

My Commission expires 2-14-2004.

ATTACHMENT A

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