STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Indiana Michigan Power Company, d/b/a American Electric Power, for certain approvals in connection with 2000 PA 141 Section 10v.	)))))	Case No. U-12780
In the matter of the application of International Transmission Company, Consumers Energy Company and Great Lakes Energy Cooperative.	))))	Case No. U-12781

INITIAL BRIEF OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill P.L.C., in accordance with the briefing schedule before the Michigan Public Service Commission ("Commission"), files this Initial Brief.

I

INTRODUCTION

Given AEP's stipulation made on the record that it accepts the Joint Report (Exhibit A-5), it appears that there is in fact a joint plan which can be implemented by the utilities to increase the commercial availability of what is now referred to as firm "available transfer capability" ("ATC"). It is also clear that AEP has begun accepting reservations for new firm transactions some of which are in to Michigan and some of which are in to Illinois which are contingent upon AEP receiving alternative rate relief from Federal Energy Regulatory Commission ("FERC"). It is also clear that all rate proposals in this case should be deferred to a future proceeding because it is currently impossible to tell whether the utilities will collect some or all of their investment in the projects identified in the Joint Report through FERC approved transmission rates. On the other hand, the Commission, if it approves the Joint Report, should expressly hold that the assets identified in the Joint Report are approved as regulatory assets for the purposes of Section 10v of 2000 PA 141 ("Act 141") subject to a later determination that the expenditures were reasonable and prudent.

The Alliance RTO is scheduled to begin operation later this year and is still in the process of determining what rates will be in place for transmission related services in 2002. There should be some experience with the number and direction of various transmission transactions which would make 2003 the year in which to entertain requests by the utilities to receive cost recovery pursuant to the provisions of Section 10v. ABATE recommends that the Commission direct the utilities to make such a filing on or before June 1, 2003.

II

ARGUMENT

A. The Joint Report Should Be Approved with the Requirement That the Utilities File a Notification with the Commission When the Facilities Identified in the Report Begin Commercial Operation.

Certain utilities filed a Joint Report which was part of Exhibit A-5. As noted in the Exhibits to the Joint Report, many of the projects are in progress and have yet to be completed including the installation of a second transformer at the Dumont substation. Consequently, it is totally inappropriate to make a determination that the projects identified in the Joint Report qualify for full cost recovery at this time. Instead, the Commission should designate the identified projects as regulatory assets eligible before cost recovery under Section 10v of Act 141. Consideration of rate recovery should only be undertaken when the projects are built and put in service and after it is demonstrated that the projects collectively will have increased the import capability into Michigan by 2000 MW on a commercially firm basis. 3 TR 92-93.

These proceedings are governed by Section 10v(3) of Act 141. This Section provides:

> "The commission may order modifications to the joint plan to make it consistent with this act. If the electric utilities are unable to agree upon a joint plan to meet the requirements of this act, the commission shall conduct a hearing to establish a joint plan. The commission shall authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet the requirements of this Section that are not recovered through FERC transmission rates."

Nothing in this Section requires the Commission to approve at this time cost recovery for certain assets that have not been built or acquired. On the other hand, the Commission should signal its willingness to consider, at a future date, cost recovery related to these assets once all the facts are known through a specific finding that the utilities are authorized to treat the equipment identified in the Joint Report as regulatory assets for ratemaking purposes. Exhibit A-5 clearly shows that a number of the investments needed to increase ATC by 2000 MW are still in the construction phase or, as with the second transformer at the Dumont substation, work is not even started. Three things remain unknown at this point: actual construction costs, how much of the cost will be recovered in FERC transmission rates and whether the plan will really increase firm ATC by 2000 MW. Until the Commission makes factual findings with respect to these issues, it is certainly premature to approve cost recovery.

Exhibit A-5 clearly shows the status of the individual projects and also provides estimates of their respective cost. Moreover, some of the final costs may not be known until the end of this year or the middle of 2002. Historically, this Commission has only approved rate recovery of known utility investment cost and it should continue to do so under Act 141.

It is also impossible to tell how much of the investment the utilities are going to recover through FERC approved transmission rates. For example, AEP will be seeking FERC approval of an alternative rate proposal. AEP witness Bethel explained:

> "Because we have limited the request to what is our current firm rate of $1,420 per megawatt per month, what we would be requesting is that that rate continue to the full duration of the request regardless of the institution of a different pricing mechanism when the Alliance RTO takes over providing service for AEP." 3 TR 243.

The unknown nature of the how much of the investment will be recovered in FERC transmission rates is highlighted by the following questions and answers.

> "Q. You said before that there's no guarantees FERC will grant your request for this rate treatment. There are in fact other ways that you can seek this rate treatment from FERC, such as a rate case?
>
> A. You mean to roll it into investment?
>
> Q. Yes.
>
> A. Well, the Alliance RTO plan is to file rates this year based on last year's costs. And this would be a plan project. It wouldn't be in service. You would have to convince the FERC that this was the thing to do.
>
> The Alliance plan then calls for rates established in that case to be the rates that are used until at least the end of December of 2004. So rolling those in could be problematic before 2005.

> Q. But Alliance rates, since you mentioned them, are in fact subject to change for AEP between now and when they go into effect?
>
> A. Well, we could make a filing, as we did." 3 TR 247-248.

Exhibit A-15 contains transmission capacity reservations into MECS and elsewhere. All of these reservations are dependent upon their being a second transformer installed at the Dumont substation. A simple review of the various entries in the Exhibit indicates that the four confirmed transactions into MECS (Exhibit A-15, pp. 11-33) have scheduled start up dates of June 1, 2002. Consequently, there will not be any transactions until the middle of next year to determine how much of the investment AEP will recover. Consequently, cost recovery is a subject that must be taken up at a later date.

Given the uncertainty surrounding the investment, the amount of cost recovery through FERC transmission rates, etc., ABATE proposes that the Commission establish a date by which the utilities should file applications for cost recovery under Section 10v of Act 141. Such filing can be made by June 1, 2003 in order to allow the Commission to consider cost recovery after the freeze is partially lifted in 2004.

B. The Uniform Surcharge Proposed by Consumers, If Adopted, Would Violate Act 141.

Consumers proposed a levelized surcharge of 0.074¢ per kWh applicable to all retail customers to recover the cost of its transmission plan investment. Even if it could be determined that the investment being made by Consumers is reasonable and prudent, the rate design of the charge to recover the cost from customers is inappropriate. According to Mr. Dauphinais: "[t]he uniform charge to all rate classes as stated on a cents per kWh basis should not be utilized for recovery of these costs." Mr. Dauphinais then went on to explain why the uniform surcharge was inappropriate:

> "First, the uniform charge is not consistent with Public Act 141. Public Act 141 states the following regarding that issue:
>
> > 'The commission shall allocate approved securitization, transmission, stranded and other related charges and credits in a manner that does not result in reallocation among cost responsibility among different customer classes.' (Sec. 10d.(5)).
>
> A uniform surcharge will reallocate cost responsibility among different customer classes.
>
> Second, a uniform surcharge does not reflect cost causation. The use of a uniform surcharge results in certain customers or rate classes being charged for costs that are incurred to provide service to other classes.
>
> Third, the Commission does not authorize the use of a uniform charge on an equal cents per kWh basis for all classes to recover these types of costs currently from retail ratepayers. The costs are currently recovered from customers recognizing cost causation. Demand, energy and customer allocation factors are used to develop rate class cost of service. It is the cost of service that forms the basis for creating the rates that recover these types of costs from customers. The use of a uniform charge ignores this fundamental ratemaking principle." 3 TR 90-91.

Mr. Dauphinais then pointed out that this Commission has historically used the 75% / 25% allocation methodology to develop rates for the recovery of investment in bulk transmission. He concluded by noting that the use of the uniform surcharge will only worsen the skewing problem recognized by Consumers in Case No. U-12639. 3 TR 92.

In summary, ABATE's position is that cost recovery should be deferred to a later date but to the extent that the Commission considers it in this proceeding, the Commission should not approve a uniform cents per kWh surcharge as proposed by Consumers.

C. The Commission Should Adopt a Mechanism That Would Give Michigan the First Right of Refusal for New Transmission Capacity.

Under the current system, utilities allocate transmission capacity on a first come first serve basis after it has been posted to each utility's OASIS site. Exhibit A-15 shows that a second transformer at the Dumont substation would not only allow increased flows into Michigan but also increased flows to Commonwealth Edison. In addition, there is a bias in favor of using the Dumont substation to make more sales into Commonwealth Edison because a transaction going into Michigan has two and a half times more impact on the transformer rating than a transaction going to Commonwealth. 3 TR 227. In order to more fairly allocate the capacity and hopefully avoid the opportunity for one market participant to obtain the entire available transmission capacity expansion, Mr. Dauphinais offered two suggestions.

First, he recommended a simultaneous posting by year of the increases in the transmission capacity available on each transmission path into the lower peninsula:

> "As a minimum, the Commission should require that exactly 20 days after the issuance of an order in this proceeding, the applicants prominently post on their respective OASIS (or website) the anticipated available transmission capability that will become available to the market on each of the transmission paths into the Lower Peninsula of Michigan due to the implementation of the expansion plan. To the extent the plan is implemented over a number of years, the applicants should post the amount of expanded available transmission capability that will become available during each year of the implementation. I would also recommend that the Commission require the posting to occur at a specific time of day to avoid giving more sophisticated parties an undue advantage over less sophisticated

> parties. This simultaneous posting of information will ensure that all market participants have access to this information at the same time consistent with the principles of FERC Order No. 889." 3 TR 94-95.

Second, he recommended that the Commission require the applicants to create an "open season" plan. This could be in the form of an auction or allowing for a flexible window for the receipt of transmission service requests. Under either approach, there probably would have to be an amendment to each utility's OATT. 3 TR 95.

ABATE believes that it was the intent of the legislature to actually make the increase in transmission capacity, that Michigan customers may have to pay for, available to marketers and others that are interested in moving power into the state. An "open season" approach, if adopted by the Commission, would achieve this result. The Commission has the authority to order modifications to the plan pursuant to Section 10v(3) of Act 141 and it should utilize that authority to require the utilities to create an open season plan.

II

RELIEF

WHEREFORE, ABATE requests the Commission to enter an order which classifies the assets identified in the Joint Report as regulatory assets, defers consideration of cost recovery, establishes an “open season” for the allocation of capacity, requires the utilities to simultaneously file transmission upgrade information following the final order in this case and grant such other relief as is just and reasonable.

Respectfully submitted,

CLARK HILL P.L.C.

By: ______________________

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<u>PROOF OF SERVICE</u>

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Lisa Ann Teets, being first duly sworn, deposes and says that she filed electronically a copy of the Initial Brief of the Association of Businesses Advocating Tariff Equity in the above dockets on the persons identified on the attached service list by depositing the same on June 29, 2001, in the United States mail in the City of Birmingham, Michigan with first-class postage thereon fully paid.

Lisa Ann Teets

Lisa Ann Teets

Mary A. German

Notary Public, Macomb County, Michigan
My Commission Expires October 21, 2005

SERVICE LIST

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