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June 29, 2001

Via Hand Delivery
and Electronic Case Filing

Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Re: 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.
In the matter of the Application of International Transmission Company, Consumers Energy Company, and Great Lakes Energy Cooperative.
Case Nos. U-12780/U-12781

Dear Ms. Wideman:

Enclosed for filing regarding the above-captioned matter please find the original and four copies of the ***Brief of PG&E National Energy Group***. Also enclosed is the original ***Proof of Service.***

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

John M. Dempsey

JMD/mds
Enclosure
cc: Parties of Record

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

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

Mindy D. Smith, being first duly sworn, deposes and says she is employed as a secretary at Dickinson Wright PLLC, that she caused a copy of the ***Brief of PG&E National Energy Group***, to be served via e-mail and by placing same in envelopes addressed to said counsel on the attached list at their respective addresses, with proper first-class postage affixed thereto, and by causing the same to be deposited in a mail receptacle maintained by the United States Government in Lansing, Michigan on the 29th day of June, 2001.

Mindy D. Smith

Mindy D. Smith

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 29th day of June, 2001.

Nicole A. Thom

Nicole A. Thom, Notary Public
Ingham County, Michigan
My Commission Expires: 06/10/01

SERVICE LIST
CASE NO. U-12780; U-12781

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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
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BRIEF OF PG&E NATIONAL ENERGY GROUP

PG&E National Energy Group (PG&E NEG), by its counsel, respectfully submits its initial brief in these consolidated cases pursuant to the schedule set at hearing.[1]

This case involves application of a single statutory provision of the new Customer Choice and Electricity Reliability Act. Under section 10v of the Act, the Legislature endeavored to ameliorate a long-standing problem in the Michigan electricity supply marketplace. Transmission capacity constraints exist that can serve to defeat the statutory purposes of the act to "ensure that all retail customers in this state of electric power have a choice of electric suppliers", "allow and encourage the . . . [C]ommission to foster competition in this state in the provision of electric supply", and "encourage the development and construction of merchant plants which will diversify the ownership of electric generation in this state". Section 10(2)(a)-(c). This case, then, is all about ensuring choice, fostering competition, and diversifying generation supply through expanding transmission.

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[1] Because it is anticipated that the Commission will read the record, the schedule does not provide for the issuance of a proposal for decision or exceptions. (Tr 249-250)

Section 10v specifically provides:

> (1) Electric utilities serving more than 100,000 retail customers in this state shall file, by January 1, 2001, a joint plan with the commission detailing measures to permanently expand, within 2 years of the effective date of this section, the available transmission capability by at least 2,000 megawatts over the available transmission capability in place as of January 1, 2000.
>
> (2) The joint plan shall detail all actions including additional facilities required, the proposed schedule for accomplishing the actions, the cost of the actions, and the proposed ratemaking treatment for the costs. The joint plan shall also identify all actions and facilities that are required of other transmission owners, including out-of-state entities, to accommodate the actions described in the joint plan.
>
> (3) 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.
>
> (4) If an electric utility or an affiliate that is the owner of the transmission assets is denied cost recovery of the reasonable and prudent costs expended to implement the joint plan, then the electric utility or affiliate shall have no further obligation to implement the joint plan. If an electric utility or its affiliate is subsequently granted cost recovery, then the obligation to implement the original joint plan is required. If cost recovery of the reasonable and prudent costs of implementing the joint plan is denied, an electric utility or its affiliate shall develop a new joint plan as provided under this section.

Pursuant to this provision, a joint filing was initially made in Case No. U-12781 by all but one utility covered by section 10v. In Case No. U-12780, AEP made a separate filing. The difference between the two cases boiled down to one project: expansion of AEP's Dumont facility through construction of a second transformer. The joint plan filed in Case No. U-12781 covered a number of projects designed to meet the statutory requirement to expand the available transmission capability by at least 2,000 megawatts over the available transmission capability in place as of January 1, 2000, including Dumont. AEP's filing did not dissent from the joint plan except for the Dumont project.

Because the utilities covered by section 10v had not all filed a joint plan, the Commission set the two filings for hearing pursuant to subsection (3). The failure of the utilities to reach a consensus and make a completely joint filing conferred jurisdiction upon the Commission to implement the section.

The status of the case at the commencement of the evidentiary hearing on June 6, 2001, therefore, consisted of a set of projects pursuant to a joint plan developed under the aegis of section 10v, all but one of which were in progress and on schedule to meet the statutory deadline of June 2002. The singular exception was, of course, Dumont. As the evidentiary hearing began, however, AEP took the rather unusual step of repudiating its own filing in Case No. U-12780. Its counsel made a statement as follows:

> ". . . AEP will not contest in this proceeding the testimonies of [the others parties] to the extent that they urge that the second Dumont transformer should be included in the joint plan approved by the Commission.
>
> AEP will at this time unilaterally stipulate to the joint report filed by the other utilities. And thus, we will not offer into the record in this proceeding either the plan filed by AEP or the testimony of [AEP's witness] in support of that plan." (Tr 39)

In short, AEP stipulated that the Dumont project should be constructed and must go forward. And, presumably, AEP is proceeding with the deployment of the Dumont project in order to meet the deadline in the statute, which is but a year away.

PG&E NEG does not believe there remains any issue to be addressed by the Commission other than to approve the joint plan filed in Case No. U-12781. AEP was the only party to contest the joint plan, but it has now stipulated to its approval. There can be no doubt that the projects specified in the joint plan are necessary to meet the 2000 MW additions required by section 10v. There is no evidence of record to the contrary. AEP has effectively admitted that the Dumont project is necessary for section 10v to be fulfilled. Therefore, the Commission should act to approve the joint plan filed in Case No. U-12781.

It may be anticipated that AEP, based on its statement at the evidentiary hearing, will argue that a second issue needs to be addressed at this juncture, that of cost recovery. In essence, AEP's position appears to be that the final order in this case should approve, in advance, cost recovery of the Dumont project, and that such recovery either ought to come from all Michigan electricity users or from all customers of utilities other than AEP. This latter argument, it seems, comes from the use of the term "benefitting customers" in subsection (3). AEP's position, which will be seen in its fullness for the first time on brief, would appear to be that the Commission should pre-approve cost recovery from certain Michigan retail end users at the time it approves the joint plan.

Of course, this is not what the statute requires at this point. Both subsections (3) and (4) specify recovery of reasonable and prudent costs. Furthermore, subsection (3) specifies that cost recovery becomes an issue only if there is no recovery through FERC rates. Moreover, there can be no increase in certain rates due to the freeze enacted in section 10d. All of these factors must be evaluated when they present themselves, which is clearly not at this point.

Therefore, it would be premature for the Commission to pre-approve cost recovery. At most, the Commission might authorize deferred cost accounting, so that total costs for the projects can be recorded on the utilities' books for the purpose of adjudicating cost recovery when it becomes germane. At this time, and at this stage of the record, there is nothing to be gained by anticipating what might happen at FERC, what unreasonable and imprudent expenses might be incurred, and what other actions might occur that would affect the issue.

For the foregoing reasons, PG&E NEG respectfully requests that the Commission enter an order consistent with the positions advocated herein.

Respectfully submitted,

By: ______________________

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Dated: June 29, 2001

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