

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for certain relief in connection with the )  
sale of transmission facilities. )  
\_\_\_\_\_ )

Case No. U-12726

At the December 4, 2000 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

On November 22, 2000, Consumers Energy Company (Consumers) filed an application asking  
for certain approvals related to the proposed transfer of its transmission facilities to an affiliate,  
Michigan Electric Transmission Company (Michigan Transco), and subsequent sale to an  
independent third-party purchaser. Consumers requested:

1. Approval of specific accounting journal entries relating to accounts 101 (Electric Plant in Service), 102 (Electric Plant Purchased or Sold), 107 (Construction Work in Progress), 108 (Accumulated Provision for Depreciation of Electric Plant), 121 (Investment in Transmission Tower Steel), 123 (Investment in Michigan Transco Subsidiary), 154 (Materials and Supplies), and 186 (RTO Organization and Development Costs);
2. A Commission determination that, if Consumers completes the sale in the manner described in its application, it will have fully complied with the provisions of Section 10w of Public Act 141 of 2000 (Act 141), MCL 460.10w, MSA 22.13(10w);

3. A Commission determination that, if Consumers completes the sale in the manner described in its application and enforces the contractual obligation that the purchaser assume Consumers' obligations under Section 10v of Act 141, MCL 460.10v; MSA 22.13(10v), it will have fully complied with the provision of that section;
4. A Commission determination that distribution performance standards will measure performance of the distribution system rather than the transmission system; and
5. A Commission determination regarding the ratemaking treatment of any net proceeds received as a result of the sale.

Consumers currently has pending before the Federal Energy Regulatory Commission (FERC), in Docket No. ER01-4, an application to transfer ownership of its transmission facilities and associated contracts to Michigan Transco. In addition, Consumers indicates that it and The Detroit Edison Company will file a joint application with the FERC to remove certain transmission facilities from the Ludington Pumped Storage project so that those facilities can be transferred to Michigan Transco. Finally, Consumers has pending before the Securities & Exchange Commission a request for approval of its ownership of Michigan Transco. Consumers states that it anticipates receiving approvals of these requests by the end of 2000.

If these approvals are received, Consumers proposes to enter into negotiations to sell 100% of the stock in Michigan Transco to an independent third party, subject to certain conditions.

First, the purchaser must agree to enter into a transmission service agreement with Consumers and must agree to cap transmission rates through December 31, 2005 at the rates for transmission and ancillary services set forth in tariffs that were in effect and being billed on September 1, 2000. In addition to transmission rates paid by Consumers, this cap will apply to rates paid by new and existing retail open access customers and wholesale requirements customers serving retail load in Michigan.

Second, the purchaser must agree to join a FERC-approved Regional Transmission Organization or its equivalent by December 15, 2001.

Third, the purchaser must agree to assume Consumers' obligations under Section 10v of Act 141.<sup>1</sup> Consumers indicates that it will require a contractual commitment that the purchaser will complete all of the actions that are required by the joint plan.

Consumers indicates that it will not be selling existing transmission rights-of-way, pole attachment rights, and the right to the use of the transmission lines for power line communications. However, it will enter into a ground lease or easement agreement to allow the purchaser to use the rights-of-way for the construction, enlargement, or relocation of transmission facilities, although Consumers will retain the use of the rights-of-way for the installation or expansion of electric distribution facilities.

Finally, 50% of the net premium above net book value at the time of sale<sup>2</sup> would be allocated to shareholders and the remaining 50% would be used to reduce implementation or stranded costs that would otherwise be paid by customers.

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<sup>1</sup>This section requires the filing of a joint plan, by electric utilities serving more than 100,000 customers in Michigan, to permanently expand available transmission capability by 2,000 megawatts. The Commission may order modifications to the joint plan or may establish a joint plan if the utilities are unable to agree on one.

<sup>2</sup>Since Consumers will not be selling the rights-of-way, subsequent fees to allow the purchaser to use the rights-of-way for the construction, enlargement, or relocation of transmission facilities will be included in calculating the 50% share.

## Discussion

One significant issue in the public policy debate over the restructuring of the electric industry involved the control by electric utilities of the transmission system and the potential negative impacts that control could have on competition. Act 141 resolves this issue as follows:

Each investor-owned electric utility in this state shall, at the utility's option, either join a FERC approved multistate regional transmission system organization or other FERC approved multistate independent transmission organization or divest its interest in its transmission facilities to an independent transmission operator.

Section 10w of 2000 PA 141, MCL 460.10w; MSA 22.13(10w).

The statute requires an electric utility either to join a FERC approved regional transmission organization or to divest itself of its transmission assets. Consumers proposes to do both. Its application sets forth a process by which the company intends to sell its transmission assets to an independent third-party purchaser. As a condition of the sale, the purchaser must agree to join a FERC-approved Regional Transmission Organization or its equivalent by December 15, 2001. Thus, Consumers' proposal is fully consistent with the statute.

In addition, Consumers' proposal contains rate protections that might not otherwise be available to retail open access customers. Act 141 provides for certain rate cuts followed by a three-year rate freeze. After the expiration of the rate freeze, rates will remain capped for a period that may last up to 10 years. Although Act 141 provides substantial protections from rate increases for customers, these protections do not extend to rates subject to FERC jurisdiction. Recently, in a case involving the divestiture of transmission assets, FERC conditionally approved a request to increase rates by up to 48% for some retail open access customers.<sup>3</sup> Consumers proposes that the purchaser would be required to agree contractually to a cap, through December 31, 2005, on trans-

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<sup>3</sup>Order issued September 28, 2000, in Docket No. ER00-3295-000.

mission and ancillary service rates for customers, including new and existing retail open access customers, at tariff rates in effect and being billed on September 1, 2000. This is a substantial rate protection that might otherwise not be available to Michigan customers. In addition, capping transmission rates for retail open access customers will foster the development of a more competitive electric generation market in Michigan.

As previously discussed, Consumers requests five determinations from the Commission. The first involves approval of specific accounting journal entries. The second and third involve the use of contractual arrangements to assure compliance with sections of Act 141. The fourth is a clarification that distribution standards will only measure the performance of the distribution system. Finally, Consumers proposes that any net proceeds be split 50/50 between the company and its customers.

After reviewing all aspects of Consumers' proposal, the Commission finds that the company's requests should be granted. The proposed accounting entries conform to the Uniform System of Accounts. Consumers proposes to contractually obligate the purchaser to assume the utility's obligations under Sections 10v and 10w of Act 141, which will transfer those obligations to the purchaser if Consumers enforces the contract. The clarification regarding distribution standards is reasonable. Finally, the proposed 50/50 sharing of net proceeds is reasonable in light of the significant benefits to customers contained in the proposal. Under other circumstances, the Commission may find that a different distribution is appropriate. However, in this case, Consumers proposes a divestiture approach that complies with the Act 141 and further provides a cap on transmission rates through 2005 -- a cap that might otherwise not be available to customers. Accordingly, the Commission concludes that the proposed sharing is reasonable in this case.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. The accounting journal entries proposed by Consumers should be approved.

c. If Consumers completes the sale of its transmission system in the manner described in its application, it will have fully complied with the provisions of Section 10w of 2000 PA 141.

d. If Consumers completes the sale of its transmission system in the manner described in its application and enforces the contractual obligation that the purchaser assume Consumers' obligations under Section 10v of 2000 PA 141, it will have fully complied with the provisions of Section 10v of 2000 PA 141.

e. Distribution system performance standards should be designed to measure performance of the distribution system rather than the transmission system.

f. Consumers' proposed ratemaking treatment of any net premium as a result of the sale of its transmission facilities in the manner proposed herein is reasonable and should be adopted.

THEREFORE, IT IS ORDERED that the proposal by Consumers Energy Company regarding the sale of its transmission assets is adopted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

( S E A L )

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner

By its action of December 4, 2000.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated December 4, 2000 adopting the proposal by Consumers Energy Company regarding the sale of its transmission assets, as set forth in the order.”