

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the joint request of)	
THE DETROIT EDISON COMPANY, INDIANA)	
MICHIGAN POWER COMPANY, THE)	
MICHIGAN ELECTRIC AND GAS ASSOCIATION)	
and CONSUMERS ENERGY COMPANY to)	
initiate an investigation of the licensing rules and)	Case No. U-16020
regulations needed to address the effect of the)	
participation of Michigan retail customers, including)	
those associated with aggregators of retail customers,)	
in a regional transmission organization wholesale)	
market.)	
_____)	

At the December 2, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On September 29, 2009, the Commission issued an order in this proceeding initiating an investigation at the request of The Detroit Edison Company (Detroit Edison), Indiana Michigan Power Company (I&M), the Michigan Electric and Gas Association (MEGA), and Consumers Energy Company (Consumers). The investigation concerns the appropriate regulatory response by this Commission to the direct participation of Michigan retail customers in regional transmission organization (RTO) wholesale markets. The Commission solicited comments from “interested

persons” on the relief requested by the utilities and temporarily restricted participation of Michigan retail customers in any RTO wholesale markets during the pendency of this proceeding.

In response to its request, the Commission received comments from Non-Linear, the Commission Staff (Staff), the Association of Businesses Advocating Tariff Equity (ABATE), UP Power Marketing, LLC (UP Power), Michigan Industrial Ratepayers,¹ Consumers, Detroit Edison, Energy Michigan, and EnerNoc, Inc. Replies to comments were due December 4, 2009, and were timely filed by ABATE, Detroit Edison, the Staff, Energy Michigan, Michigan Industrial Ratepayers and EnerNOC.

Petitions for Intervention

On October 29, 2009, EnerNOC, Inc. filed a petition to intervene, and a petition for rehearing and clarification pursuant to 1999 AC, R 460.17403 (Rule 403). Accompanying the petition for rehearing was a motion for admission *pro hac vice*, requesting permission for EnerNOC’s out-of-state attorney to appear and to participate as its counsel in this proceeding. On November 12, 2009, the Commission issued an order granting the motion for admission *pro hac vice*.

On November 19, 2009, I&M and the Staff filed responses to the petitions for intervention and rehearing. On January 25, 2010, the Commission entered an order denying intervention but clarifying its September 29, 2009 order in this matter to indicate that all curtailment service provider contracts with retail customers existing on September 29, 2009 remain in effect during the pendency of the Commission’s investigation in this matter. In its reasoning for denial of intervention, the Commission emphasized that this matter was not a contested case and that EnerNOC had already filed comments and reply comments as an interested party.

¹Michigan Industrial Ratepayers consists of Hemlock Semiconductor Corporation, Tilden Mining Company, LLC, and Empire Iron Mining Partnership.

On December 4, 2009, Energy Michigan filed a petition to intervene along with comments to the Commission's original request. Although the Commission did not address Energy Michigan's petition for intervention in its January 25, 2010 order, the Commission finds that the petition should be denied. This proceeding is not a contested case and Energy Michigan was provided the same opportunity to comment and reply.

FERC Order 719 and 719-A

On October 17, 2008, the Federal Energy Regulatory Commission (FERC) issued its final order on reforms to improve the operation of wholesale power markets.² Generally, and in relation to this proceeding, the FERC's order requires independent system operators (ISOs) and RTOs to amend their market rules to permit aggregators of retail customers (ARCs) to bid demand response resources from retail customers directly into the RTO organized structured wholesale energy and ancillary services markets unless the relevant electric retail regulatory authority enacts laws or regulations that prevent retail customers from participating.

In Order No. 719-A, the FERC modified its rule to prohibit market operators from accepting bids that include aggregated demand response provided by customers of small utilities that distributed up to 4 million megawatt-hours (MWh) during the previous year, unless a small utility's retail regulator authorizes such aggregation. RTOs and ISOs may continue to accept bids from companies that aggregate demand response provided by customers of larger utilities, unless the relevant retail regulator prohibits those customers from participating in wholesale markets.

²Final Rule, Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC ¶ 61,071 (2008) (Order 719) and Order on Rehearing, 128 FERC ¶ 61,059 (2009) (Order 719-A).

Positions of the Parties

The Commission does not believe it necessary to address many of the technical issues presented by the parties at this time. The Commission does, however, find it necessary to address the issues regarding the Commission's jurisdiction and the scope of the current proceeding.

1. The Commission's Jurisdiction and Authority

In their comments, ABATE, Energy Michigan and Michigan Industrial Ratepayers argue that the Commission lacks jurisdiction to prohibit participation of retail customers in organized wholesale power markets. However, the authority to restrict participation of end-use customers in wholesale markets was provided via FERC Order 719, which "requires an RTO or ISO to accept bids for ancillary services from demand response resources, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate." FERC Order 719 P 53.

FERC Order 719-A provides further authority to restrict participation and reads in pertinent part:

Therefore, we direct RTOs and ISOs to amend their market rules as necessary to accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, and (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, where the relevant electric retail regulatory authority permits such customer's demand response to be bid into organized markets by an ARC. RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of (1) customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an ARC, or (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the relevant electric retail authority permits such customers' demand response to be bid into organized markets by an ARC.

FERC Order 719-A, P 60.

Thus, in its order, the FERC recognized the states' authority to determine participation of retail customers either directly or indirectly through ARCs, in organized wholesale power markets.

2. The Commission's Clarification of the Scope of the Proceeding

The Staff recommends that the Commission issue an interim order providing administrative guidance relevant to the balance of this investigation, by affirmatively ruling that demand response of Michigan's retail customers, or ARCs on behalf of retail customers, should only be allowed to be offered into wholesale power markets, subject to clearly defined policies that protect nonparticipating customers from economic harm and resolve outstanding technical issues.

Additionally, the Staff argues that the Commission's interim order should reaffirm the prohibition of retail customers' participation in organized wholesale power markets pending a Commission determination that the appropriate policies are in place. In addition, the Staff states that the Commission's interim order should clarify the scope of this proceeding as being restricted to an investigation to address the effect of of Michigan retail customers that offer demand response resources into organized wholesale power markets, rather than a broader investigation of the effects of retail participation in other services bid in wholesale power markets. Finally, the Staff argues that the Commission should require utility-specific tariff filings enabling retail customers to offer demand response resources into wholesale power markets, as more fully described below.

The Staff also recommends that the Commission commence a rulemaking proceeding to develop formal rules and licensing requirements for ARCs pursuant to the Commission's jurisdiction under the Customer Choice and Electricity Reliability Act, 2000 PA 141; MCL 460.10 *et seq.*

The Commission finds the positions of the Staff compelling. FERC Order 719 requires revised tariffs by RTOs and ISOs to facilitate the integration of demand response resources into

organized wholesale power markets. The Commission does not envision broadening the scope of this investigation to include other non-demand response issues pertaining to the retail participation in wholesale electric markets. Accordingly, the Commission finds that the scope of the proceeding shall be limited to an investigation of effects related to the offering of demand response resources by retail customers or ARCs on behalf of retail customers in wholesale power markets only. The Commission further finds that a contested case proceeding for each individual utility affected by FERC Orders 719 and 719-A should be opened in corresponding dockets to address the particular effects that the participation of retail demand response will have on that individual utility.

Several rate and reliability issues may arise when ARCs participate in electric wholesale power markets using retail load that is served by utilities under the Commission's jurisdiction. The Commission encourages utilities to develop proposals, with accompanying tariff sheets, that allow ARCs to participate in a manner where the participating load is not inadvertently counted by both the utility and the ARC. The proposal should also ensure that the rate paid is fair to participants as well as non-participants, while recognizing the utilities' responsibility to manage all load during emergencies, including that served by the ARCs. The filing should include testimony addressing topics such as advanced notification of load interruption by retail customers or ARCs on behalf of retail customers, whether there is a need for fees for metering or related services for measurement and verification, and other issues related to the proper administration of the program.

The Commission finds, however, that proceedings should not be filed until the FERC issues its orders in Dockets RM07-19, ER09-1049 regarding the integration of ARCs in the Midwest Independent Transmission System Operator, Inc. (MISO) market, and Docket ER09-701 regarding the same in the PJM Interconnection, LLC (PJM) market.

Additionally, the Commission finds it premature to commence a rulemaking proceeding for licensing ARCs at this time. The Commission finds that within 30 days after the FERC issues its order responding to the MISO rulemaking and PJM Order 719 filings referenced above, the Staff should convene a meeting with Michigan electric utilities with distribution exceeding 4 million MWh in the previous fiscal year to discuss issues relative to conforming to the final FERC order.

Although a separate docket for each utility shall be opened, the proposed tariffs for each docket shall be substantially similar with the effects on each utility addressed uniformly.

After meeting with the Staff, the identified Michigan electric utilities shall, within 120 days of the issuance of the FERC orders responding to the MISO and PJM Order 719 filings referenced above, file separate contested case proceedings limited in scope to the effects of participation of Michigan retail customers on that utility in wholesale power markets.

THEREFORE, IT IS ORDERED that:

A. With respect to demand response resources, Michigan retail customers, or aggregators of retail customers on behalf of retail customers, shall not participate in any regional transmission organization wholesale power market until further order of the Commission.

B. Within 30 days of the issuance of the final Federal Energy Regulatory Commission orders in RM07-19, Docket ER09-1049 in Midwest Independent Transmission System Operator, Inc., and ER09-701 in the PJM Interconnection, LLC market, the Commission Staff shall convene a meeting with Michigan electric utilities with distribution exceeding 4 million megawatt-hours in the previous fiscal year to discuss issues relative to conforming to the final orders.

C. Within 120 days of the issuance of the final Federal Energy Regulatory Commission order in RM07-19, ER09-1049 in the Midwest Independent Transmission System Operator, Inc. market, and ER09-701 the PJM Interconnection, LLC market, each Michigan electric utility with

distribution exceeding 4 million megawatt-hours in a fiscal year shall file a separate contested case proceeding limited in scope to the effects of participation of Michigan retail customers on that utility in wholesale power markets.

D. Within each contested case proceeding, the affected utility shall file proposed tariffs allowing the retail customers to participate in wholesale power demand response of markets along with an application for the approval of the respective retail tariff.

E. Energy Michigan's December 4, 2009 petition to intervene is denied as moot.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of December 2, 2010.

Mary Jo Kunkle, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-16020

County of Ingham)

Mignon Middlebrook being duly sworn, deposes and says that on December 2, 2010 A.D.
she served a copy of the attached Commission orders by first class mail, postage prepaid,
or by inter-departmental mail, to the persons as shown on the attached service list.

Mignon Middlebrook

Subscribed and sworn to before me
This 2nd day of December 2010

Sharron A. Allen
Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

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