S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to implement the customer information and environmental notice requirements of 2000 PA 141.	))))	Case No. U-12487

At the December 20, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER ADOPTING STANDARDS REGARDING THE DISCLOSURE OF CUSTOMER INFORMATION AND ENVIRONMENTAL CHARACTERISTICS OF ELECTRICITY PRODUCTS

In an order issued on June 5, 2001 in Case No. U-12487 (the June 5 order), the Commission proposed minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric services to the general public, as required by Section 10r(1) of Public Act 141 of 2000 (Act 141). The same order also proposed a standardized format by which electric suppliers must disclose information about the environmental characteristics of their electricity products, as required by Section 10r(3) of Act 141. In so doing, the Commission invited interested parties to comment on these proposals.

Comments were received from the Commission Staff (Staff), The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), the Michigan Electric and Gas

Association (MEGA), Energy Michigan, the Association of Businesses Advocating Tariff Equity (ABATE), the Michigan Electric Cooperative Association (MECA), State Representative Chris Kolb, the National Energy Marketers Association (NEMA), the Michigan Environmental Council (MEC), and the Michigan United Conservation Clubs (MUCC). Reply comments were received from Consumers, Energy Michigan, and MEGA.

I.

MINIMUM DISCLOSURE STANDARDS

Section 10r(1) provides:

> (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The standards shall be developed to do all of the following:
>
> (a) Not be unduly burdensome.
>
> (b) Not unnecessarily delay or inhibit the initiation and development of competition for electric generation service in any market.
>
> (c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different classes of customers, whenever such different requirements are appropriate to carry out the purposes of this section.

MCL 460.10r(1).

The comments filed by ABATE, NEMA, the Staff, MECA, Detroit Edison, Consumers, MEGA, and Energy Michigan discuss issues related to implementation of Section 10r(1). The Commission will consider the issues raised by these comments in the order in which the proposed standards appear in Exhibit A of the June 5 order.

General Provisions - Section 1

This provision states that these standards do not relieve "a supplier of retail electric services" from complying with all applicable federal, state, and local laws and actions of administrative agencies. MECA and Consumers contend that the standards should be clarified because there is substantial confusion due to the apparent interchangeable use throughout the standards of the words "utilities," "alternative electric suppliers" (AESs), and "suppliers."

The Commission has responded to MECA's and Consumers' concerns by reviewing each use of these terms and by making revisions when necessary to clarify the intent of the Commission. The Commission also revised the glossary to recognize a distinction between an "AES" and a "supplier" because of confusion associated with having both terms share the same definition.

General Provisions - Section 2a

Energy Michigan contends that this provision, which requires suppliers to provide information in an understandable format that enables customers to compare prices, services, and terms and conditions of service on a uniform basis, should be interpreted to require utilities to separately print generation and distribution charges on their bills. According to Energy Michigan, if AESs are required to provide such information, the same requirement should apply to utilities.

The Commission finds that Energy Michigan's position is not well taken. This provision applies to the publication of all forms of information regarding prices, services, and terms and conditions of service, not just billing information. Additionally, as discussed in dealing with the comments regarding the ensuing provision, the Commission finds that the degree to which a utility is required to unbundle its rates and charges on its bills should be resolved in accordance with the requirements of Section 10b(2) of Act 141, not in this proceeding.

General Provisions - Section 2b

This provision states that suppliers shall comply with all unbundling requirements adopted by the Commission.

Detroit Edison argues that confusion associated with unbundling may outweigh any of the purported benefits. Indeed, Detroit Edison is concerned that some customers may prefer to purchase bundled services and that Detroit Edison could find itself at a competitive disadvantage if the unbundling requirements are not equally applicable to all suppliers. Further, in Detroit Edison's view, obligating all suppliers to comply with the unbundling requirements could be overly prescriptive in terms of how service offerings will be marketed.

Consumers argues that all unbundling issues should be addressed in Cases Nos. U-12966 and U-12970, which are the unbundling cases for Detroit Edison and Consumers, respectively.

The Commission finds that Detroit Edison's concerns are not only premature, but also unfounded. The Commission finds that issues related to the unbundling of a utility's rates should be addressed in the context of proceedings initiated pursuant to Section 10b(2) of Act 141. Moreover, although the Commission views unbundling as essential to the transition to a competitive market, the obligation to unbundle services to accommodate the entrance of new providers does not necessarily mean that any supplier will be precluded from offering customized bundles of services designed to meet the needs of the consuming public.

General Provisions - Section 2c

MECA contends that this provision, which requires a supplier to delineate the services and conditions of service of both the delivery utility and the generation provider, should be rewritten or clarified. According to MECA, a supplier should only be responsible for informing the public of the price of the supplier's services, not the services of other companies. MECA would prefer if

AESs were required to inform the public that "pricing is for generation services only and does not include pricing, terms, or conditions of delivery." Page 1 of attachment to MECA's July 13, 2001 comments. Furthermore, MECA maintains that customers should be informed that information regarding the terms and conditions of distribution service are available from the local distribution company. Finally, MECA questions how much disclosure an AES should be required to make in a competitive market. In this regard, MECA suggests that it might be reasonable for the Commission to require an AES to publish pricing information if the AES conducts mass advertising or targets customers having a load of less than 20 kilowatts (kW).

MEGA contends that the utility responsible for providing distribution services has no basis for disclosing information about the products and services available from an AES. Accordingly, MEGA suggests that a distribution utility's obligation to disclose information should be limited to the distribution utility's products and services.

The Commission finds that MECA's and MEGA's recommendations should be adopted. As revised, this provision obligates a supplier to delineate only the services and conditions of service that it provides. However, in response to an inquiry, an AES must inform a customer that information about distribution services may be obtained from the customer's local distribution company.

General Provisions - Section 2d

This provision requires suppliers to outline prices for all service components in all advertisements, marketing materials, customer contracts, and bills.

In addition to repeating its comments regarding the prior section, MECA states that the likelihood that an AES and a distribution utility will have multiple relationships renders it impractical to require the disclosure of all service components in published materials. MECA

contends that, at most, each participant should be required to outline prices, terms, and conditions of service for those services it is offering. MECA adds that customers should also be informed of the components not being offered and that they should be directed to a source for that information.

Detroit Edison contends that this provision is unclear and overly broad. According to Detroit Edison, only advertisements intended to provide specific, detailed information related to the purchase of electricity should be required to contain pricing information. Branding activities designed to raise the public's general awareness of the supplier's products and services should not be subject to the price disclosure requirement. Detroit Edison also states that many types of advertising media, such as billboards or brief broadcast spots, are not well suited to the presentation of pricing information. Therefore, Detroit Edison contends that the inclusion of pricing information should not be mandated for all forms of marketing activities.

Consumers maintains that this provision needs to be rewritten to clarify that its pertains only to circumstances specifically related to the sale of electricity.

ABATE argues that this provision is unrealistic and burdensome. According to ABATE, this provision should not apply to industrial and large commercial customers because AESs interested in serving such customers typically do not know the price that can be offered to a customer until after researching the prospective customer's load characteristics and acquiring a source of power to meet those specific requirements. For that reason, ABATE suggests that a more appropriate standard would make inclusion of accurate pricing information optional, which ABATE insists would reflect the reality that prices are subject to negotiation and cannot be finalized until the AES has fully analyzed the customer's load characteristics. ABATE also suggests that application of a price disclosure requirement to the residential market would be burdensome and may cause some suppliers to avoid Michigan.

MEGA also believes that this provision should be revised to avoid requiring a distribution utility to communicate information about the products and services available from an AES. Further, MEGA states that brand awareness advertising should be permitted without pricing or other specific service information.

Energy Michigan states that it would be nearly impossible to comply with this provision. According to Energy Michigan, each AES advertisement would have to contain hundreds of pricing variations. Energy Michigan suggests that a better approach would be to relieve suppliers of the duty to publish prices in all advertisements, but to mandate that whenever pricing information is provided, the supplier must set forth such information in a clear and understandable manner.

The Commission finds that this provision should be revised. The Commission is now persuaded that suppliers should not be required to state a fixed price for their services in advertisements and marketing materials and that the appropriate focus should be on the disclosure of general pricing policies upon request by a prospective customer and on the provision of complete and accurate pricing information at the time of execution of an original contract and upon renewal of an existing contract and in all billings.

General Provisions - Section 2e

Detroit Edison also believes that the prominent display of a supplier's name, address, telephone number, internet address, and website on all marketing materials, contracts, and customer bills is not practical. Detroit Edison suggests that the standard be modified to require that sufficient supplier information be made available so that a reasonable person would have an opportunity to understand how to contact the supplier. According to Detroit Edison, a supplier's name plus one other source of identification, such as an address, telephone number, or website address, would be sufficient.

MEGA requests that multi-state utilities be exempt from the requirement to place their address on their advertisements. MEGA contends that the address requirement would interfere with the ability to mass produce information to be used in national promotions. According to MEGA, address information is of limited value because most customers use toll-free numbers or internet addresses to contact the supplier.

The Commission is persuaded that this provision should be revised to provide that a supplier shall display its name and any other contact information deemed appropriate by the supplier on its marketing materials. The requirements for contracts and customer bills will be addressed in those sections.

General Provisions - Section 2f

Several comments express doubt over the application of this provision, which requires a provider mistakenly contacted by a customer to refer the customer to the correct provider.

Detroit Edison suggests that it is unrealistic to expect one supplier to know the name and address of another supplier providing service to a customer.

MEGA states that this provision should be clarified to limit its application to the company receiving the call and to situations where the call recipient has the necessary information.

Energy Michigan insists that an AES may not have any idea of the identity of the customer's supplier. Accordingly, Energy Michigan suggests that the provision be revised to allow the AES to direct the customer to contact the Commission's toll-free number.

The Commission finds that this provision should be revised to require the supplier to refer the customer to the correct contact if the identity of the correct contact is known to the supplier.

General Provisions - Section 3

Energy Michigan recommends that certain of the provisions contained in this section, which prohibits a variety of actions on the part of suppliers, should be moved to the marketing and advertising section.

The Commission finds no compelling reason for adopting Energy Michigan's recommendation.

General Provisions - Section 3a

MEGA contends that this provision, which prohibits suppliers from engaging in many forms of unfair, misleading, deceptive, or unconscionable acts, practices, or omissions, is too broad and does little to inform a supplier of what might constitute a violation. MEGA also believes that this provision duplicates the provisions of the Michigan Consumer Protection Act, MCL 444.901 et seq. According to MEGA, this provision should be revised to merely prohibit suppliers from violating existing laws and regulations that might be applicable to electric service commercial transactions.

The Commission finds that MEGA's comments should not be adopted. The Commission has an obligation pursuant to Section 10r(1) of Act 141 to ensure that all persons selling electric service in this state provide adequate, accurate, and understandable information to the public. As the Commission has been specifically charged with the duty to regulate the form and the content of all such disclosures, explanations, and sales information, the Commission is not persuaded that it should effectively relinquish its jurisdiction to prevent unfair, misleading, deceptive, or unconscionable acts, practices, or omissions through adoption of a provision that indicates that the Commission intends to rely on existing consumer protection measures. With regard to MEGA's contention that the provision is defective because it does not provide an adequate explanation of the actions

that will be considered to be unfair, misleading, deceptive, or unconscionable, the Commission finds that there is sufficient case law regarding the meaning of these terms in the context of consumer protection issues to adequately apprise suppliers of the limits placed on the content of information to be disseminated to the public.

General Provisions - Section 3b

Consumers believes that this provision, which prohibits a supplier from suggesting to a customer that the customer is obligated to switch to a new supplier, should be modified to allow such information to be disseminated in the event that the customer's existing supplier defaults or otherwise disenrolls the customer.

MEGA maintains that the word "suggest" should be replaced by the word "communicate."

The Commission finds that Consumers' suggestion should not be adopted. The Commission presumes that the disenrollment of a customer or an unanticipated default by a supplier will cause the customer to seek another supplier. Therefore, dissemination of the information suggested by Consumers will not be necessary. However, the Commission agrees with MEGA that the word "suggest" should be replaced by the word "communicate."

Marketing and Advertising - Section 1b

This section indicates that suppliers should use terms as defined in the glossary that appears on the Commission's website at http://cis.state.mi.us/mpsc/electric/restruct/glossary.htm .

Energy Michigan opposes compulsory use of the glossary. According to Energy Michigan, unless updated frequently, the glossary will likely hinder the evolution of marketing and advertis-

ing activities. Further, Energy Michigan believes that the required use of the glossary will cause additional work for the Commission and AESs.[1]

MECA, Detroit Edison, Consumers, and MEGA support use of the glossary in varying degrees. Some comments propose specific changes. Others simply urge the need to maintain a consistent nomenclature and definition set to minimize confusion. Still other comments maintain that strict adherence to the definitions in the glossary should be optional to avoid forcing suppliers to hastily redraft existing advertisements and tariff provisions by January 1, 2002.

In response to the comments, some of the definitions that appear in the glossary have been revised. Further, the Commission has added language to the glossary indicating that the glossary is intended as a general informational guide and that the definitions in the glossary do not supersede or modify definitions used in statutes, administrative rules, Commission orders, tariffs, or contracts.

Marketing and Advertising - Section 1c

Consumers and MEGA state that this provision, which requires electric utilities, AESs, and other persons selling, advertising, or marketing electric power to retail customers to provide customers with educational materials required pursuant to Section 10r(2) of Act 141 "whenever practicable," is confusing. They maintain that the Commission's orders regarding Section 10r(2) should determine the requirements for the customer education program.

The Commission finds that the clarification suggested by Consumers and MEGA should be adopted.

[1]Energy Michigan raises the same arguments with regard to Section 1b of the Additional Minimum Standards section.

Marketing and Advertising - Section 1d

MECA objects to this provision, which requires an AES to provide detailed distribution rate information to the public. According to MECA, confusion is possible if distribution rate information provided by an AES is incorrect. MECA is concerned that the error may be attributed to the local distribution company rather than the AES. According to MECA, to ensure accuracy regarding distribution costs, AESs should disclose information regarding generation services and should be required to notify the customer that information about the rate for distribution service is available from the distribution utility. Finally, in the event that the Commission determines that an AES should provide information regarding the rates for distribution service, MECA maintains that such disclosure information should include a disclaimer stating that the rate for distribution service is provided for informational purposes only and may not represent the actual charge assessed by the local distribution utility.

In addition to proposing several minor revisions, Consumers maintains that the emphasis of this provision should be switched from rates to prices.

MEGA argues that this provision is flawed because it would apply not only to AESs, but also to utilities providing full requirements service at regulated rates. According to MEGA, it is not practical to require utilities to incorporate rate information into all forms of advertising. MEGA believes that this requirement should be applicable only when the purpose of the advertisement is to disclose pricing information for specific services. Additionally, MEGA asserts that the disclosure of items 1d(i)-(iv) may be unnecessary because they are covered by the order in Case No. U-12970.

Energy Michigan contends that the inclusion of generation pricing information should not be mandatory for marketing and advertising materials. Energy Michigan also asserts that AESs

should be free to express their prices in terms of a percentage discount off the rate available from the customer's utility or some other similar mechanism. In any event, Energy Michigan seeks relief from the obligation to disclose a price based on a specific rate per kilowatt-hour (kWh) or kW. Finally, Energy Michigan contends that it would be practically impossible to comply with the requirement of including complete information concerning all of the applicable distribution charges.

The Commission finds that this provision should be revised to relieve suppliers of the obligation to include pricing information in all advertising and marketing materials. However, if a supplier chooses to include pricing information or a description of its pricing mechanism in an advertisement or a marketing brochure, then the supplier shall accurately portray the information in a manner that fully informs a prospective customer of the cost of the supplier's products and services. Because distribution rate information will not be required, MECA's objection is rendered moot.

Marketing and Advertising - Section 1e

Energy Michigan asserts that this provision, which requires suppliers to inform customers of the availability of additional written information from the supplier, should be revised to allow a supplier to simply inform a customer about how to obtain such information. Specifically, Energy Michigan envisions the possibility that the supplier could post information on its website and merely direct inquisitive customers to that location.

Detroit Edison maintains that this provision should more clearly describe the type of information that must be disclosed.

The Commission finds that this provision should not be revised. It is the Commission's conclusion that fully informed customers are necessary to a competitive marketplace. Therefore,

although a supplier may suggest the option of visiting the supplier's website to obtain additional information, if a customer requests additional information be provided in writing, the Commission concludes that the supplier should be required to respond to such a request.

Marketing and Advertising - Section 1f

Consumers suggests that this provision, which obligates all suppliers to authenticate claims in writing on demand, should be rewritten to clarify that its pertains only to circumstances specifically related to the sale of electricity.

MEGA contends that obligating suppliers to authenticate their claims in writing is unreasonable. MEGA maintains that existing laws adequately protect the public from deceptive and misleading advertising and that the public has enough savvy to recognize puffery in advertising claims.

The Commission finds that this provision should be revised to adopt the clarification recommended by Consumers. However, the Commission is persuaded that it is reasonable to require suppliers to authenticate their claims in writing if requested to do so.

Marketing and Advertising - Section 1g

Consumers insists that this provision, which concerns disclosure of a supplier's autonomy from the customer's current supplier, should be rewritten to also prohibit AESs from implying any affiliation with the customer's current generation supplier.

Energy Michigan argues that AESs should not be required to make affirmative statements disavowing any relationship to the customer's existing supplier. Rather, Energy Michigan contends that a simple prohibition against making any false representations is sufficient.

The Commission finds that the identification of a relationship or the lack of a relationship between a soliciting supplier and the customer's current supplier is an important consideration that should be disclosed affirmatively. However, the Commission agrees that some minor changes should be made to this provision to ensure that customers will always be fully informed of the identity of a supplier.

Marketing and Advertising - Section 1h

MEGA and Energy Michigan contend that this provision, which requires all providers to provide all information required to be disclosed under Section 10r(1) to the Commission's Executive Secretary in an electronic digital format, is too far reaching. According to them, suppliers should not be required to submit every piece of information used in marketing and advertising to the Staff. At most, they believe that the provision should be revised to provide that any marketing or advertising information that is required to be disclosed by another provision should be provided in electronic format.

Energy Michigan also urges the Commission to allow the submission of information in other formats than PDF.

The Commission never intended to require suppliers to submit copies of all of their advertisements and marketing materials to its Executive Secretary. The Commission finds that moving this provision to another section will clarify that it was not intended to apply to marketing and advertising information. Therefore, the Commission finds that this provision should be rewritten and relocated in the General Provisions section as Section 2g.

Disclosures - Section 1

MECA, MEGA, and Consumers maintain that this section, which concerns the disclosure of information to customers, should be revised to clarify that it applies only to AESs unless otherwise stated.

The Commission finds that this recommendation is appropriate.

Disclosures - Section 1f

Consumers suggests that this provision, which requires the disclosure of demand charges, be revised to provide that demand charges be expressed in dollars per kW.

The Commission agrees.

Disclosure - Section 1m

Energy Michigan contends that this provision, which allows a customer 10 days to rescind a contract, should be deleted. According to Energy Michigan, price volatility makes it impossible for a supplier to hold an offer open for 10 days. Energy Michigan insists that an AES should not be required to finalize its offer unless the customer is also required to finalize its acceptance of that offer. At most, Energy Michigan maintains that a three-day rescission period should apply to residential customers only.

MECA maintains that a customer's right to rescind a contract with an AES should be controlled by the terms of the agreement between the AES and customer. Moreover, MECA questions whether it is practical to allow a customer to rescind a contract without charge or penalty after the AES has made arrangements to serve the customer.

The Commission finds that the rescission period should be as specified in the approved retail open access tariff.

Disclosure - Section 1q

NEMA objects to requiring marketers to indicate in their disclosure statements that a customer may continue to receive generation services from a public utility in lieu of switching to another supplier. According to NEMA, this information is wholly unnecessary and, at best, should be disseminated to customers in a customer education campaign.

Energy Michigan opposes requiring an AES to affirmatively state that the customer is not obligated to take service from the AES.

The Commission finds that the prohibition contained in Section 3b of the General Provisions section and the revisions made to Section 1g of the Marketing and Advertising section of these standards provide adequate protection against the abuses that this provision was intended to curb. Therefore, the Commission finds that this provision should be deleted, which necessitates the renumbering of Section 1r as Section 1q.

Disclosure - Sections 2 and 3

ABATE contends that Section 2, which requires the filing of informational tariffs by AESs, should be deleted because the administrative burden of filing tariffs for every separate power supply arrangement would be onerous. ABATE stresses that AESs have no inventory and simply cannot disclose a price before finalizing a deal due to the risks and costs that they would have to incur to do so. Further, according to ABATE, the responsibility of adhering to this provision constitutes a significant entry barrier for AESs. ABATE suggests that the Commission should focus on assuring that customers have sufficient information at the time that they sign contracts to allow them to analyze whether they are going to save money and receive other valuable services from the AESs.

MEGA points out that this provision does not establish any frequency for the filing of informational tariffs by AESs. MEGA suggests that such tariffs should be filed annually and updated whenever the AES amends its terms of service.

Energy Michigan insists that this provision is impossible to comply with because there is no way to standardize or report such terms in a tariff format. Further, Energy Michigan states that the list of items that must be disclosed by this provision will be included in the final contract between the customer and the AES. Therefore, requiring the preparation of a separate document would be redundant.

The Commission finds that these provisions should be deleted because the Commission is now persuaded that requiring all AESs to file such informational tariffs would be unduly burdensome.

Disclosure - Sections 4 and 5 (now renumbered as Section 2)

Consumers argues that these provisions, which concern notice provisions for the termination of service to customers, should be revised to apply only to AESs and to require 9 months' notice (rather than 45 days) of the non-renewal of the contract. Moreover, Consumers asserts that a short notice period complicates planning by utilities for the return of customers to sales service.

MEGA contends that these provisions should be consistent in requiring an AES to inform customers of advance notice requirements for return to utility service in all situations.

Energy Michigan insists that the 45-day notice requirement in Section 4 for nonrenewal of a contract should be the subject of negotiations between the customer and the AES. If subject to regulation, Energy Michigan contends that the notification period should not exceed 30 days.

Energy Michigan states that the 45-day contract termination notice requirement in Section 5 should be deleted. According to Energy Michigan, electric utilities are not subject to similar notice requirements for their industrial or commercial customers. Because customers have legal recourse

to challenge improper terminations of service, Energy Michigan maintains that, with the exception of terminations of customers subject to the winter protection plan, the right of an AES to terminate a customer should be left to the negotiation process.

The Staff maintains that customers are very concerned about the timing associated with their ability to return to service provided by traditionally regulated utilities. Accordingly, the Staff suggests that this matter should be considered in the context of the cases devoted to the development of restructiring tariffs for regulated utilities.[2]

The Commission finds that these provisions should be revised and combined into Section 2, which provides that if an AES does not intend to renew a contract or intends to invoke a termination provision in a contract, the AES must provide the customer with notice of the nonrenewal or termination of the contract at least 15 days before commencement of the notification period required by the retail open access tariff approved by the Commission.

Customer Bills - Section 1

Detroit Edison, Consumers, and MEGA state that because the content of bills rendered by electric utilities is already regulated by tariffs and the Consumer Standards and Billing Practices for Electric and Gas Residential Service, R 460.2101 et seq., (the billing rules), this section, which pertains to the content of customer bills, should be amended to apply only to AESs.

---

[2]These issues have been and are being addressed in Cases Nos. U-12488 (Consumers), U-12489 (Detroit Edison), U-12649 (Wisconsin Electric Power Company and Edison Sault Electric Company), U-12650 (Wisconsin Public Service Corporation and Upper Peninsula Power Company), U-12651 (Northern States Power Company-Wisconsin), U-12652 (Indiana Michigan Power Company), U-12655 (Alpena Power Company), U-12656 (Cloverland Electric Cooperative), U-12657 (Midwest Electric Cooperative), U-12658 (Cherryland Electric Cooperative), U-12659 (Great Lakes Energy Cooperative), U-12660 (Presque Isle Electric and Gas Coop), and U-12661 (Homeworks Tri-County Electric Cooperative).

MECA maintains that utilities and rural electric cooperatives are guaranteed by Sections 10q(4) and 10q(5) of Act 141, respectively, MCL 460.10q(4) and MCL 460.10q(5), to have the right to bill their customers for the services that they provide. MECA believes that this section of the disclosure standards is unclear with regard to the responsibilities of the respective billing entities. MECA would prefer the Commission to clarify that AESs may only bill for generation services, while utilities and rural electric cooperatives providing distribution services to an AES's customers will be solely responsible for billing for distribution services.

Energy Michigan maintains that it would be unfair to exempt utilities from the requirements of this section.

The Commission has revised this section to clarify that its application is limited to AESs because utilities are already subject to regulations governing the content of their bills.

Customer Bills - Section 1f

Energy Michigan contends that this provision, which requires a statement of the unit cost of energy on a customer's bill, should be revised. According to Energy Michigan, the Commission should allow an AES to express the costs of energy and demand as a percentage discount from a utility standard tariff or other pricing mechanism because the exact calculation of the cost may be difficult or impossible if the customer does not have appropriate metering.

The Commission is not persuaded that AESs should be exempt from informing their customers of the unit cost of energy and demand per kWh and kW, respectively, on customer billings.

Customer Bills - Sections 1h and 1i

These provisions require customer bills to display both the toll-free telephone number of the AES and the toll-free telephone number of the local distribution company.

Energy Michigan argues that AESs should not be required to use toll-free numbers.

MEGA contends that distribution utilities and AESs should only be required to have the telephone number of the other entity on their bills if the customer receives service from an AES that does not separately bill for its services.

MECA suggests that this provision be revised by adding language indicating that the toll-free number of the local distribution company must be provided only if it is different from the toll-free number of the generation supplier.

The Commission finds that these provisions should be revised to provide that the use of toll-free numbers is not required.

Customer Bills - Section 1j

MECA suggests that this provision, which concerns notice of the Commission's regulation of rates, be revised by inserting the words "if any" so as to clarify that none of the rates on the bill may be regulated by the Commission.

MEGA contends that this provision will be necessary only where the distribution utility provides billing services for the AES.

The Commission finds that this provision should be deleted.

Customer Bills - Sections 1k and 1l

MEGA maintains that Sections 1k and 1l, which require the inclusion of information about the filing of complaints, should be omitted because they could require a utility to engage in costly revisions of its billing statements. MEGA states that the Commission's toll-free number and its website address are readily available and should appear on CHOICE educational materials. MEGA

also maintains that emergency contact information already appears on utility billing statements without the excess verbiage contained in Section 1l.

Energy Michigan also contends that Sections 1k and 1l could lead to confusion and lengthy bills. According to Energy Michigan, a utility may not use its toll-free number for service calls. Further, Energy Michigan states that because AESs frequently provide service pursuant to aggregated contracts, there could be more than one utility serving the aggregated accounts of a large user. Therefore, Energy Michigan argues that the presence of more than one telephone number for information might be confusing and costly.

The Commission finds that these provisions should be deleted.

Additional Minimum Standards

Consumers believes that this section needs to be rewritten to provide that it applies only to the sale of unregulated generation services to retail customers by AESs.

MEGA agrees that this section should only apply to the retail access program.

Energy Michigan asks that this section be clarified as not applying to the aggregation of the small loads of a single customer that exceed 20 kW.

The Commission finds that all of these suggestions should be incorporated into the proposed standards.

Additional Minimum Standards - Section 1a

Energy Michigan contends that this provision, which requires prices to be expressed on a kW or kWh basis, should be amended to allow suppliers the option of using some other pricing mechanism such as a discount percentage. According to Energy Michigan, a supplier should only be required to display prices in an understandable format.

The Commission finds that this provision should be revised to permit a supplier to include additional methodologies to express prices, if desired. However, the Commission continues to believe that every statement of prices to residential and small commercial customers should include the expression of prices on a kW or kWh basis.

Additional Minimum Standards - Sections 1c and 1d

Detroit Edison argues that compliance with these provisions, which concern the use of a "fact sheet" or "label," is problematic because the disclosure of the total cost of power at various usage levels may involve a variety of different rate offerings. Citing time-of-day offerings, seasonal rate offerings, connected-watt offerings, and tiered rate structures, Detroit Edison maintains that the required information cannot be displayed in any meaningful way for customers.

MEGA states that the "fact sheet" or "label" mentioned in this provision should be provided only by AESs. According to MEGA, the provision of either full requirements service or distribution-only service should not be subject to these disclosure provisions.

Energy Michigan maintains that the "fact sheet" should contain only one usage level illustration for residential customers (750 kWh) and not more than two usage level illustrations for small commercial customers. In addition, Energy Michigan believes that AESs should be allowed to display a percentage discount rather than a specific price.

The Commission finds that these provisions should be revised to reflect their applicability to AESs and to reduce the number of illustrative examples that must be provided.

Additional Minimum Standards - Section 1e

Consumers contends that this provision, which requires the inclusion of up-to-date data on marketing materials and disclosure statements sent to residential and small commercial customers, should be revised to assure that it applies only to AESs.

Energy Michigan urges the Commission to delete this provision because it is not practical to require AESs to incorporate the environmental disclosures required by Section 10r(3) of Act 141 into all marketing materials available to residential and small commercial customers.

The Commission finds that this provision should be revised to eliminate the requirement to include the environmental disclosures required by Section 10r(3) of Act 141 in all of a supplier's marketing materials available to residential and small commercial customers and to clarify that this section applies only to AESs.

Additional Minimum Standards - Section 1f

Energy Michigan states that this provision, which requires a supplier to provide residential customers with a separate disclosure form setting forth winter shutoff protection information, should be revised. According to Energy Michigan, AESs should be allowed to incorporate such information into their customer contracts.

R 460.2134(1)(b) of the billing rules requires utilities to annually inform each residential customer of the winter protection program. Accordingly, the Commission is persuaded that AESs should be required to provide similar notices to their residential customers.

Additional Minimum Standards - Section 1g(i)

Detroit Edison and Consumers maintain that this provision should not apply to electric utilities subject to the Commission's jurisdiction because, at the current time, such utilities provide their power subject to regulated rates.

The Commission agrees.

Records and Retention

Detroit Edison states that this section, which requires a supplier to establish and maintain records and data sufficient to verify its compliance with these minimum standards, is not clear and should better explain what "a record required to be retained by these standards" entails.

Consumers contends that regulated electric utilities should be exempt from this section because they are already subject to such requirements.

The Commission finds that this provision should be revised to clarify that it applies only to AESs.

Uniform Billing Provisions

NEMA is concerned that requiring marketers to comply with uniform disclosure requirements will limit their ability to offer innovative products, services, information, and technologies in the marketplace. In this regard, NEMA urges the Commission to consider adoption of the billing and payment processing portion of certain uniform business practices for retail energy marketers available at www.ubpnet.org .

Consumers states that NEMA's proposal is beyond the scope of this proceeding. Further, Consumers insists that uniform business practices designed to fit the needs of retail energy

marketers from many states would be of uncertain worth in Michigan due to the variety of approaches to restructuring that are being attempted across the nation.

The Commission finds that NEMA's proposal should not be adopted because it was not designed to meet the specific needs and concerns of Michigan customers and businesses.

Areas of Service

The Staff suggests that the Commission should consider requiring suppliers to affirmatively state the areas of the state that they intend to serve. The Staff's justification for this requirement is that it would facilitate the targeting of customer education messages under the CHOICE Advisory Council's education program to those areas of the state where new suppliers are actively seeking customers.

The Commission finds that the Staff's suggestion is appropriate and should be adopted. To implement the Staff's suggestion, the Commission has adopted a new provision as Section 1h in the Marketing and Advertising section of the standards that requires all AESs to inform the Commission's Executive Secretary of the cities, villages, and townships where they intend to provide service to the general public. If an AES intends to serve the entire service territory of an electric utility, it is sufficent for the notice to state that fact. Further, if an AES changes its service territory, it shall inform the Commission's Executive Sectretary of the change in a timely manner. Finally, the Commission directs the Staff to devise a method of disseminating this information to the public through the Commission's website.

Plain English

MECA supports the requirement to use plain English in all communications with residential and small commercial customers. However, MECA insists that the Commission should not endeavor to review the content of any supplier's communications prior to publication.

The Commission finds that MECA's concern is unwarranted. The Commission does not intend to engage in the prior review of any communication to determine whether it complies with the requirement to use plain English.

II.

ENVIRONMENTAL NOTICE REQUIREMENTS

Sections 10r(3) and 10r(4) of Act 141 provide:

> (3) The commission shall require that, starting January 1, 2002, all electric suppliers disclose in standardized, uniform format on the customer's bill with a bill insert, on customer contracts, or, for cooperatives, periodicals issued by an association of rural electric cooperatives, information about the environmental characteristics of electricity products purchased by the customer, including all of the following:
>
> (a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. For the purposes of this subdivision, "biomass" means dedicated crops grown for energy production and organic waste.
>
> (b) The average emissions, in pounds per megawatt hour, [of] sulfur dioxide, carbon dioxide, and oxides of nitrogen. An emissions default, determined by the commission, may be used if the regional average fuel mix is being disclosed.
>
> (c) The average of the high-level nuclear waste generated in pounds per megawatt hour.
>
> (d) The regional average fuel mix and emissions profile as referenced in subsection (3)(a), (b), and (c).

(4) The information required by subsection (3) shall be provided no more than twice annually, and be based on a rolling annual average. Emissions factors will be based on annual publicly available data by generation source.

MCL 460.10r(3) and 460.10r(4).

Comments on the environmental notice requirements were received from State Representative Chris Kolb, the MEC, the MUCC, the Staff, MEGA, Consumers, MECA, and Energy Michigan Because these comments cover a wide variety of issues, the Commission will address them on a topic-by-topic basis.

Range of Data

Representative Kolb suggests that the range of data from which the fuel source and emissions disclosures will be prepared should be lengthened from 12 months to 2 to 3 years. According to Representative Kolb, the disclosure of additional data may benefit consumers by better manifesting a company's progress at reducing emissions levels or increasing reliance on renewables.

MEGA expresses support for use of the12-month approach, but offers a suggestion that might respond to Representative Kolb's concern. According to MEGA, by posting a series of annual data on its website, the Commission could effectively create the type of comparison desired by Representative Kolb.

MEGA and Consumers also believe it would make sense to propose specific periods for the use of data in the fuel mix and environmental disclosures prepared by suppliers and in the regional average fuel mix prepared by the Staff. According to them, this could be accomplished consistent with the requirement to use recently available data. For example, they state that the January 2002 disclosure could be based on data from July 1, 2000 to June 30, 2001.

The Commission finds that this recommendation should not be adopted. The Commission's requirement to use the most recent 12 months of data to produce average values for the fuel source and emissions disclosures is simpler and provides better approximations of the current situation. Moreover, the Commission anticipates that the retention of historical data regarding fuel mix and environmental disclosures on its website will produce the type of comparison supported by Representative Kolb.

Frequency of Environmental Notifications

The Legislature provided in Section 10r(4) that the environmental notifications "shall be provided no more than twice annually." In its June 5, 2001 order, the Commission expressed an opinion that such notifications should be provided by investor-owned utilities and AESs to their customers in the form of bill announcements or bill inserts twice a year. The Commission also found that the rural electric cooperatives, which are not obligated to provide a copy of the required disclosures through billing announcements or with customer contracts, should publish their fuel mix and emissions information in their periodicals twice a year.

In its comments, the Staff urges the Commission to revisit its determination on this issue. According to the Staff, while biannual reporting of fuel mix information is possible because fuel mix data is available on a monthly basis, it is hardly worth the effort to do so because customers are not likely to see significant changes over a six month period in the source of energy used to generate a supplier's electricity. On the other hand, the Staff states that the Energy Information Administration (EIA), which is the source of information about emissions, publishes only annual emissions data. For this reason, the Staff believes that customers will not be adversely affected if suppliers provide fuel mix and emissions data only once a year. Consumers, Energy Michigan, and

MEGA agree with the Staff on this issue. However, as a compromise solution, MEGA suggests that the Commission could provide for the annual preparation and the biannual distribution of such information.

The MEC and the MUCC support the biannual preparation and disclosure of fuel source and emissions data.

The Commission remains convinced that all suppliers should be required to compile and provide environmental notifications twice a year.

Common Data Sources

MEGA and Consumers support use of common data sources in developing the fuel-type percentages and the emissions data. According to them, the sources listed in the following table would be reasonable for consideration. However, MEGA cautions that results prepared for disclosure should reflect net megawatt-hours (MWh) because that is the standard reflected in the information sources listed in the table.

Data Item	Information Source
Generation Breakdown	FERC Form 1, EIA 906, EIA 767
Emissions-Large Units (above 25 MW)	Acid Rain Part 75 Emission Data
Small Generating Units (less than or equal to 25 MW)	EIA 767, State Emission Inventories, Stack Test Data, EPA AP-42 Emission Factors
Small Renewables (below 1 MW)	Manufacturers' Data, Stack Test Data, EPA Emission Factors

The Commission finds that these recommendation are reasonable and should be adopted.

Margin of Error

In the June 5 order, the Commission rejected a proposal by Exelon Energy and Unicom Energy, Inc., (collectively, Exelon) to permit disclosures for fuel sources and emissions to fall within a "margin of error." Consumers now urges the Commission to recognize that any calculation is only accurate within the accuracies of the measurement systems.

In rejecting Exelon's proposal, the Commission did not mean to imply that suppliers must attain a degree of precision in their calculations that cannot be attained.

High-Level Nuclear Waste

MEGA and Consumers propose an additional clarification to the term "amount of fresh fuel inserted into the reactor" as used in the June 5 order. They state that suppliers generally understand that term to be limited to the mass of uranium in the fuel assemblies and that the total weight of the assembly should not be used.

The Commission finds that this clarification should be adopted. In so doing, the Commission recognizes that the methodology used by the Staff for the regional calculation uses fuel removed from the reactor, not fresh fuel inserted into the reactor. However, the Commission is informed that because the weight of fuel inserted into a reactor is essentially the same as the weight of the discharged fuel, the difference between the methodologies is not significant.

Use of Regional Averages

Energy Michigan requests that the Commission confirm that suppliers that acquire their energy sources through spot market purchases may use the Staff's prepared regional average value in their disclosure statements.

In the June 5 order, the Commission determined that a supplier may resort to reporting the regional average fuel mix determined by the Staff "only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned." June 5, 2001 order, p. 31. The Commission also recognized that the emissions default may be used only "if the regional average fuel mix is being disclosed." June 5, 2001 order, p. 31. The June 5 order indicated that Section 10r(3)(a) obligates suppliers to attempt to discern the fuel mix and emissions of all power delivered to their customers. The Commission recognized that increases in market fluidity will complicate the ability to report the fuel mix and emissions data of purchased power. However, the Commission found that Section 10r(3)(a) requires that suppliers must undertake this endeavor to the extent that it is possible to do so.

Revision of Disclaimers

The June 5 order provides that in the event that a supplier acquires some or all of its total power requirements through wholesale purchases and after a good faith effort cannot discern the actual fuel mix of some or all the power so purchased, the supplier must factor into the calculation of its fuel mix the regional average fuel mix as calculated by the Staff for that portion of its power requirements purchased from another source for which the actual fuel mix could not be discerned. Further, the order indicated that immediately below the fuel mix disclosure table the supplier shall prominently display a disclaimer printed in bold type that informs its customers that its fuel mix data includes regional average fuel mix data from Michigan, Illinois, Indiana, Ohio, and Wisconsin as a proxy for some or all of the supplier's actual fuel.

In its comments, the Staff maintains that the Commission's proposed disclaimers are unnecessarily verbose and should be shortened. The Staff proposes that suppliers should be

permitted to use the phrases "unknown purchased resources" or "unknown resources purchased from other companies" as acceptable substitute disclaimers. The Staff also suggests that it would be appropriate for suppliers to use a footnote to inform customers that it would be reasonable to assume that the regional average fuel mix reflects the composition of power of unknown purchased resources.

The Commission finds that these recommendation are reasonable and should be adopted.

Definition of the Region

In several places in Section 10r(3), the Legislature referred to a "regional average fuel mix" without specifying the geographic territory that should be included in the region. In the June 5 order, the Commission found that data from the states of Michigan, Illinois, Indiana, Ohio, and Wisconsin should be used to develop the default regional average fuel mixes.

Representative Kolb suggests that inclusion of data from Illinois, Indiana, and Ohio will not be helpful to customers. He states that, because Michigan customers get most of their electricity from Michigan and Wisconsin, data from other states would seem to be irrelevant.

The MEC and the MUCC agree with Representative Kolb's position. In addition, they maintain that U.S. Department of Energy information from 1998 verifies that the fuel mixes from Indiana and Illinois do not resemble Michigan's or Wisconsin's fuel mixes.

MEGA states that although it continues to support use of data from the five-state region, it does not oppose adoption of the alternative suggested by Representative Kolb, the MEC, and the MUCC.

The Commission remains convinced that data from the states of Michigan, Illinois, Indiana, Ohio, and Wisconsin should be used to develop the default regional average fuel mixes because the

environmental characteristics of electricity consumed in this state are similar to the environmental characteristics of the electricity produced in this five-state region. Moreover, in light of the Commission's active involvement in creating a seamless wholesale market throughout the Midwest, the five state region is becoming increasingly relevant to the fuel mix data for Michigan.

Reporting of Regional Data

In the June 5 order, the Commission provided that the Staff should calculate the regional average fuel mix required by Section 10r(3) and provide that information to all suppliers at least 30 days prior to the time that the suppliers must distribute their disclosure information to the public.

Consumers and MEGA contend that the Commission should require the Staff to provide such information 60 days prior to the time that the suppliers must distribute their disclosure statements to the public.

The Commission finds that these recommendation are reasonable and should be adopted. Accordingly, in the future, the Staff shall provide the required information by November 1 of each year.[3]

Emissions Trading Information

Representative Kolb states that the Commission should require suppliers to disclose information regarding any emissions trading engaged in by them to meet their reported emissions levels.

MEGA responds that such information is readily available from other sources and is beyond the scope of this proceeding.

[3] The Staff posted the regional data for 2002 on the Commission's website on December 5, 2001.

The Commission is persuaded that adoption of this suggestion is not necessary because the data selected by the Commission for use in the preparation of emissions disclosures does not involve emissions trading. Rather, it reflects actual levels of emissions, in pounds per MWh, of sulfur dioxide (SO_2), carbon dioxide (CO_2), and oxides of nitrogen (NO_X).

Generation Information Certificates

Energy Michigan contends that the Commission should consider allowing suppliers to use generation information certificates (GICs) as verification for product claims and disclosure. Energy Michigan explains that GICs, which are created by an accounting system that recognizes the environmental attributes of electric power separately from the energy commodity, offer tremendous flexibility in supporting public policy initiatives as well as facilitating the development of emerging green markets. According to Energy Michigan, suppliers should be allowed to trade in GICs in a secondary market for the purpose of acquiring a basis for their representations regarding the environmental characteristics of the power they sell to their customers.

The Commission finds that Energy Michigan's recommendation should not be adopted at this time. However, the Staff is directed to further investigate the feasibility of incorporating GICs in the renewable energy program being finalized by the Commission pursuant to Section 10r(6) of Act 141.

Exclusion of Insignificant Fuel Sources

MEGA requests that suppliers be permitted to disregard reporting the actual amount of any fuel source that falls below 0.5% of its supply mix. According to MEGA, because such tiny amounts are not significant, they should be excluded from the table and merely be disclosed only through use of a footnote. Likewise, MEGA states that if all forms of renewable resources,

standing alone, fall below the 0.5% threshold, they should be aggregated into a single "renewables" category, with the actual fuel types disclosed through use of a footnote.

The Commission finds that the reporting threshhold should be set at 0.1%. Supply mix amounts below that reporting threshhold need not be reported. Further, the Commission does not agree with MEGA's recommendation to aggregate all forms of renewable resources into a single category.

Use of Recent Data

In the June 5 order, the Commission found that the required disclosures should be based on the most recent data available, which was a position proffered by the MUCC. The MEC and the MUCC continue to support the use of the most recent data available for the preparation of the required disclosures. Moreover, they maintain that the data should not be more than three months old at the time of its disclosure to the public.

While remaining committed to the use of the most recent data available, the Commission recognizes that requiring that such data be no more than three months old at the time of its disclosure is simply not reasonable because there are significant lags in the compilation of some of the data over which the Commission and the suppliers have no control.

Opportunity for Additional Comments

In the June 5 order, the Commission stated that, as long as a supplier adheres to the standardized, uniform format approved by the Commission and does not intentionally mislead or disseminate inaccurate information to customers, the supplier may add additional information of its own choosing.

The MEC and the MUCC contend that, in order to ensure that any such information disseminated by a supplier is not misleading or inaccurate, all information should be submitted for public review and comment at least 30 days prior to publication.

MEGA objects to the proposal for a formal review of a supplier's additional comments. MEGA insists that such a review would infringe on the property and free speech rights of public utilities. According to MEGA, the Commission's complaint process provides an adequate means for addressing claims of false or misleading statements on a utility's bills or bill inserts.

The Commission finds that the MEC's and the MUCC's suggestion should be rejected. The Commission's June 5 order was based on well established legal principles. A public utility owns the extra space on its bills and in its billing envelopes[4] and has a First Amendment right to use such space to communicate its opinion to its customers.[5] It is equally well established that any prior restraint on the exercise of the First Amendment right to the freedom of expression is not likely to withstand challenge in the courts.[6]

Side-by-side Comparisons

Representative Kolb maintains that customers would be better served if the required fuel source and emissions disclosures include not only information regarding the behavior of their current provider, but also the fuel source and emissions disclosures from all major electric

---

[4]Pacific Gas & Electric Company v Public Utilities Commission of California, 475 US 1; 106 S Ct 903; 89 L Ed 2d 1 (1986).

[5]Consolidated Edison Company of New York v Public Service Commission of New York, 447 US 530; 100 S Ct 2326; 65 L Ed 2d 319 (1980), and Central Hudson Gas & Electric Corporation v Public Service Commission of New York, 447 US 557; 100 S Ct 2343; 65 L Ed 2d 341 (1980).

[6]New York Times v United States, 403 US 713; 91 S Ct 2140; 29 L Ed 2d 822 (1971), and Organization for a Better Austin v Keefe, 402 US 415; 91 S Ct 1575; 29 L Ed 2d 1 (1971).

suppliers in a side-by-side comparison format. According to Representative Kolb, because many customers are not aware of the identities of alternative suppliers in their area, it cannot be assumed that they will be able to garner such information on their own.

The Commission finds that Representative Kolb's proposal for the preparation of a side-by-side comparison of fuel sources and emissions levels is not required by Section 10r(3). In any event, the type of comparison supported by Representative Kolb will likely be available to the public through the Commission's website.

Additional Disclosures

Representative Kolb also proposes the inclusion of certain additional disclosures including data on water consumption, mercury emissions, and particulate matter emissions.

MEGA opposes these suggestions because they are not addressed in Section 10r(3).

The Commission agrees with MEGA on this issue. The Legislature did not require the disclosure of such information, and the Commission cannot rewrite the law.

Disclosure on Bills and the Internet

Representative Kolb contends that information contained in the fuel source and emissions disclosures should be provided to customers only by printing such information directly on the customers' energy bills. According to Representative Kolb, because customers are deluged with mass mailings and inserts, the use of such devices may cause the information to be overlooked or recycled. Further, Representative Kolb states that until every household in Michigan has a computer, internet disclosure alone is not an acceptable method of reaching the general public.

The MEC and the MUCC echo the position on the reliance on the internet as the sole system for distributing information required to be disclosed pursuant to Section 10r(3).

MEGA responds that Representative Kolb's suggestion ignores the practical problems presented by requiring suppliers to cram a great deal of extra information into a very limited space. MEGA insists that the Legislature recognized these problems because it authorized alternative methodologies for disclosure of such information to the public.

The Commission finds that Representative Kolb's suggestion regarding the printing of information on bills should be rejected because it is not consistent with Section 10r(3), which clearly permits most suppliers to use bill inserts or to print the disclosure information directly on customers' bills. Further, the Legislature specifically provided that rural electric cooperatives may publish disclosure information in their periodicals.

Inclusion of Dedicated Resources

Representative Kolb, the MEC, and the MUCC state that suppliers should not be able to include any dedicated generating capacity in their total fuel source or emissions figures. According to them, such dedicated capacity is not part of a supplier's energy base because it constitutes a special service for those customers who are willing to pay extra for it. In addition, the MEC and the MUCC contend that all suppliers making specific product claims should be required to report those claims to the Commission annually.

In its June 5, 2001 order, the Commission stated:

> Section 10r(3)(a) obligates each electric supplier to disclose information about the environmental characteristics of electricity products "purchased by the customer." In light of the overall focus of Section 10r(3), the Commission finds that a supplier's obligation to disclose information should be consistent with its declarations. In other words, if a supplier does not purport to sell power from a specific source to a specific customer, then the supplier should be obligated to disclose only its average environmental characteristics. However, if a supplier leads a specific customer to believe that the power purchased by the customer has distinctive characteristics due to use of a specific fuel or due to specific emissions characteristics, then the

> supplier must report the environmental characteristics of its products in a manner so as to avoid misleading or fraudulent representations. Specifically, such a supplier's calculations of the average environmental characteristics of power sold without regard to specific environmental claims must be net of any power marketed as a dedicated environmentally-friendly source.

June 5, 2001 order, Case No. U-12487, pp. 29-30.

The Commission remains committed to that position.

Regional Fuel Mix Disclaimer

The MEC and the MUCC contend that a supplier's reliance on the regional average fuel mix should be highlighted by placement of the disclaimer recommended by the Commission immediately following the printed fuel mix values.

The Commission finds that this recommendation is reasonable and should be followed, if feasible. However, if a supplier discovers that it cannot place the disclaimer immediately underneath the printed fuel mix values or that to do so would involve a costly revision to its billing system, then the supplier may request a waiver of this requirement.

Format - Tables or Pie Charts

The MEC and the MUCC urge the Commission to adopt the approach followed in Illinois, which requires quarterly tabular and pie chart reporting of fuel mix data.

MEGA states that it does not oppose use of pie charts in addition to tables and suggests that the Commission should adopt a standardized format for their use.

The Staff recommends that the Commission should direct suppliers to disclose fuel mix data by use of both tables and pie charts. According to the Staff, providing the data in both formats will make it easier for customers to understand the information.

The Commission finds that the simultaneous use of tables and pie charts is reasonable and should be adopted.

Internet Template

In the June 5 order, the Commission directed the Staff to comment on Energy Michigan's proposal regarding the creation of a standardized template that would permit suppliers to provide fuel mix and environmental disclosures on the internet. In its comments, the Staff states that such a template could be developed, but it recommends that the Commission be careful not to limit suppliers to a standardized approach. According to the Staff, suppliers should have some discretion to customize the information that they wish to communicate to their customers. As an example, the Staff urges consideration of the disclosure format presented as Appendix E to its August 22, 2000 comments.

Energy Michigan supports the Staff's position on the development of an internet-based template for the disclosure of fuel source and emissions data, but opposes any effort to incorporate pricing information, which it maintains is too volatile and customer-specific to be posted as a fixed rate.

The Commission finds that the Staff should create a template to be deployed on the Commission's website for use by suppliers. The Commission also finds that use of all or any portion of the template by suppliers should be voluntary, which allows suppliers the flexibility to provide the required fuel mix and environmental disclosures in any manner that suits their strategies. However, suppliers should keep in mind that Section 10r(5) of Act 141 explicitly requires them to supply all of the information required to be disclosed pursuant to Section 10r(1) to the Commission for inclusion on the Commission's website. The suppliers are encouraged to establish links between their websites and the Commission's website.

Green Power True-up Procedures

Energy Michigan recommends that the Commission recognize that there may be a mismatch between a supplier's environmental claims regarding the power it sells and the actual environmental characteristics of power delivered to the customer. According to Energy Michigan, such mismatches usually occur due to the difference between scheduled deliveries and the customer's actual consumption pattern. Therefore, Energy Michigan states that the Commission should allow for a two-month true-up period during which green power (or other such power attributes) can be purchased by the supplier to make up for differences between a supplier's environmental claims and its actual deliveries. Energy Michigan represents that Texas, California, and Maine currently allow for such true-up efforts.

The Commission finds that Energy Michigan's proposal for the use of a true-up mechanism should not be adopted at this time because its operation was not adequately explained.

Identifiable Wholesaler

MECA states that its member-cooperatives buy all, or substantially all, of their power requirements on the wholesale market, either through long-term contracts or on the spot market. For this reason, MECA suggests that the Commission clarify that, if a supplier purchases all, or substantially all, of its requirements from one source, then the supplier may use the fuel mix and emissions data as reported by that source, assuming that such specific data is available from the source of the power.

The Commission finds that MECA's request is consistent with both the June 5 order and Section 10r(3) of Act 141, and should be adopted.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The Commission's proposed standards for the disclosure of information by electric service providers to their customers, as amended by this order, should be adopted.

c. The Commission's proposed standards for the public disclosure of information by electric service providers regarding the fuel mix and environmental characteristics of their electricity products, as amended by this order, should be adopted.

THEREFORE, IT IS ORDERED that:

A. The Commission's standards for the disclosure of information by electric service providers to their customers, attached to this order as Exhibit A, are adopted.

B. Electric service providers shall comply with the standards for the public disclosure of information regarding the fuel mix and environmental characteristics of their electricity products established by the Commission's orders in this proceeding. An illustrative form for the public disclosure of the fuel mix and environmental characteristics of a supplier's electricity products is attached to this order as Exhibit B.

C. The standards approved by this order shall take effect January 1, 2002.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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.

MICHIGAN PUBLIC SERVICE COMMISSION

_____
Chairman

_____
Commissioner

_____
Commissioner

By its action of December 20, 2001.

_____
Its Executive Secretary

In the matter, on the Commission's own motion, to implement the customer information and environmental notice requirements of 2000 PA 141.	))))	Case No. U-12487

Suggested Minute:

> "Adopt and issue order dated December 20, 2001 approving standards for the disclosure of certain information by suppliers of retail electric service to their customers and further approving standards by which electric service suppliers must inform their customers about the environmental characteristics of their electricity products, as set forth in the order."