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

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter, on the Commission's own motion, regarding administration and operation of the Low-Income and Energy Efficiency Fund. | ) ) ) ) | Case No. U-13129 |

At the January 13, 2009 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

**AMENDATORY ORDER**

On November 20, 2001, the Commission issued an order (November 20 order) pursuant to former Section 10d(6) of the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141); MCL 460.10 *et seq*., which required that a portion of the cost savings from the issuance of securitization bonds be used as a source of funding for the Low-Income and Energy Efficiency Fund (LIEEF). The November 20 order established the procedural framework that the Commission has used to establish and administer the LIEEF. Appended to that order as Attachment A were the procedures that have been followed in considering specific grant proposals.

As originally designed by the November 20 order, the Commission's focus for the LIEEF was to issue grants to organizations for the provision of energy assistance to low-income customers, conservation and energy efficiency measures targeted toward reducing the energy usage and bills of low-income customers, and the development of energy efficiency programs that benefit all customer classes. The original source of the monies for these grants was the excess securitization savings from the Commission's orders in Case Nos. U-12478 and U-12505.

However, in both the interim and final orders in Case No. U-13808, the Commission recognized that for the LIEFF program to continue, the costs of the program must be incorporated into The Detroit Edison Company's cost of service. The Commission noted that, "[t]he concept of a LIEEF was approved by the Legislature and has been in place and fully operational for several years. For those reasons, it can hardly be contended that the LIEEF issue conflicts with existing policy or is controversial." February 20, 2004 order in Case No. U-13808, p. 44. The Court of Appeals upheld the Commission's decision to continue funding LIEFF in base rates in *Attorney General v Public Service Comm*, 276 Mich App 216, 229-230; 740 NW2d 685 (2007).

In Case No. U-14547, the Commission expanded funding for LIEEF to include funding from the large natural gas utilities. This decision was likewise affirmed by the Court of Appeals in *In re Consumers Energy Co*, 279 Mich App 180; 756 NW2d 253 (2008). In *Consumers Energy*, the Court held that, "the PSC's interpretation of its clear and unmistakable authority to administer the LIEEF, as encompassing the power to secure funding, was a reasonable interpretation of the administrative power conferred on it by the Legislature and is consistent with its ratemaking authority pursuant to MCL 460.6." *Id.* at 190-191. The Court further noted that the Legislature has indicated its intent for the continuation of the LIEEF through the provision of ongoing appropriations[.] . . . Thus, the absence of specific statutory language regarding the authority to secure funds for the LIEEF through operation and maintenance expenses does not serve to preclude the PSC from funding the LIEEF by these means."

Although in the recent amendments to Act 141 by 2008 PA 286, the language referencing the establishment and funding of the LIEEF was eliminated, the Legislature has clearly expressed its intent for the Commission to continue the LIEEF activities as shown by the $80,000,000 of LIEEF funding for the fiscal year ending September 30, 2009 contained in Section 114 of 2008 PA 251.

The Commission is now persuaded that the focus of LIEEF should be expanded to permit the direct funding of services that are aimed at both the original focus of the fund and the additional activities associated with a more recent legislative initiative.  On October 6, 2008, Governor Jennifer M. Granholm signed into law the “Clean, Renewable, and Efficient Energy Act,” 2008 PA 295 (Act 295), MCL 460.1001 *et seq*.  Among other things, Act 295 amended the Customer Choice and Electricity Reliability Act to require all providers of electric service in this state to establish renewable energy programs.  All providers must file a plan within 90 days (120 days for self-regulated rural electric cooperatives and municipally-owned electric utilities) after the Commission issues the temporary order.  Act 295 also requires the filing with the Commission of energy optimization plans by each electric provider (other than AESs) and all rate-regulated natural gas distribution utilities.  The overall goal of each energy optimization plan is to reduce the future costs of provider service to customers by delaying “the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction.” Sec 71(2).  The Commission is also obligated by MCL 460.10p(9)-(10) to review its existing rules and amend them, if necessary, to implement performance standards for generation and distribution facilities.

With the passage of Act 295, the Commission is faced with a new regulatory paradigm.  Given the enhanced state interest in renewable energy and energy optimization, and in light of the compressed schedule for implementing Act 295, the Commission finds that it needs additional flexibility in using some of the Fund for purposes beyond those originally identified in Act 141.

Toward that end, the Commission amends Attachment A to the November 20 order to allow for up to 10% of the monies in the Fund to be used directly for funding contractual services that are related to low-income assistance, energy efficiency, energy technology, and the objectives of Act 295, including renewable energy, energy optimization, and distributed generation projects. The use of LIEEF monies for these purposes will enable the Commission to move more rapidly in areas such as funding the development of a strategic plan to promote energy efficiency and renewable-based distributed generation technologies so as to achieve the purposes of Act 295. Although expanding the potential uses of LIEEF monies, the Commission remains committed to ensuring that all uses of LIEEF monies, whether to fund grant projects or to pay for contractual services, will continue to produce benefits for ratepayers.

In taking the administrative steps necessary to implement the Fund, the Commission will rely on established procedures used by the Department of Management and Budget and the Department of Energy, Labor & Economic Growth for awarding contractual services, making disbursements, and managing the performance of contractual services on an ongoing basis.

THEREFORE, IT IS ORDERED that:

A. The procedures set forth in Attachment A of the Commission's November 20, 2001 order in this docket are amended and shall serve as the framework for implementing and administering the Low-Income and Energy Efficiency Fund.

B. Up to 10% of the monies in the Low-Income and Energy Efficiency Fund may be used directly for funding contractual services that are related to low-income assistance, energy efficiency, energy technology, and the objectives of 2008 PA 295, including renewable energy, energy optimization, and distributed generation projects.

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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Steven A. Transeth, Commissioner

By its action of January 13, 2009.

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Mary Jo Kunkle, Executive Secretary

ATTACHMENT A

I. Grant Procedures.

A. Written grant proposals are required. Written proposals are public documents and shall be made available to the public in compliance with the Freedom of Information Act, MCL 15.231 et seq.

B. Grantees are required to submit a written final report and written progress reports to the Commission as required in the request for proposals as a condition of the grant.

C. Grantees are required to maintain records of expenditures and to submit financial reports to the Commission as required in the request for proposals as a condition of the grant.

D. All grantees are subject to audit by the Commission Staff or other auditor designated by the Commission.

E. Grantees who receive $100,000 or more in any 12-month period will be required to submit an audited financial report for the period.

II. Allocation of Disbursements from the Fund for Grants.

A. Disbursements will be allocated for: (1) energy assistance for low-income customers, (2) conservation and energy efficiency measures targeted toward reducing the usage and bills of low-income customers, and (3) the development of energy efficiency programs that benefit all customer classes. Proposals serving each purpose will normally be funded each year, but the proportion allocated to each may vary from year to year.

B. Total disbursements for the promotion of energy efficiency should benefit all customer classes, but no single grant must necessarily be applicable to all classes.

C. Both single-year and multiple-year proposals may be funded.

D. The Commission will issue a final decision on the proposals to be funded and the amount of funding for each.

E. The amount of funds allocated to any purpose should take into account the pre-existing sources of funding for that purpose.

F. The Commission should consider the benefits received relative to the cost of the proposal.

G. For energy efficiency proposals to improve the customers' utilization of energy, the Commission should consider the following:

1. The net present value of the benefits expected to be received by customers relative to the cost of the proposal.

2. The mix of energy efficiency proposals previously approved by the Commission regarding both types of measures and classes of customers.

3. The anticipated benefits of the proposal on the development of a sustainable market for energy efficiency measures.

III. Disbursements from the Fund for the Funding of Contractual Services.

A. Disbursements for the funding of contractual services shall be limited to no more than 10% of the amount appropriated by the Legislature to the fund.

B. Disbursements shall be administered in accordance with established procedures used by the Department of Management and Budget and the Department of Energy, Labor & Economic Growth for awarding contracts for services, making disbursements, and managing the contracts for services on an ongoing basis.

C. Disbursements shall be used for funding contractual services that are related to low-income assistance, energy efficiency, energy technology, and the objectives of Act 295, including renewable energy, energy optimization, and distributed generation projects. Disbursements for the promotion of these purposes should benefit all customer classes, but no single contract must necessarily be applicable to all classes.

D. Both single-year and multiple-year proposals may be funded.

E. The Commission will issue an order approving the funding of all proposals to be funded and the amount of funding for each proposal.

F. The amount of funds allocated to any purpose should take into account the pre-existing sources of funding for that purpose.

G. The Commission should consider the benefits received relative to the cost of the proposal as required by law.