

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**GREAT LAKES ENERGY COOPERATIVE** )  
for a certificate of public convenience and necessity ) Case No. U-11814  
relative to Orangeville Township. )  
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In the matter of the application of )  
**GREAT LAKES ENERGY COOPERATIVE** )  
for a certificate of public convenience and necessity ) Case No. U-11819  
relative to Irving Township. )  
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At the June 10, 1999 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

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

**OPINION AND ORDER**

On October 9, 1998, Great Lakes Energy Cooperative (Great Lakes) filed two applications pursuant to 1929 PA 69, MCL 460.501 et seq.; MSA 22.141 et seq., (Act 69) seeking certificates of public convenience and necessity for its proposed central tank residential propane gas operations in Orangeville and Irving Townships of Barry County.

On November 18, 1998, a prehearing conference was held before Administrative Law Judge James N. Rigas (ALJ). At that time, the ALJ granted the motion to consolidate the two cases. Additionally, the ALJ granted the petition to intervene by Consumers Energy Company (Consum-

ers), which opposed the application. The Commission Staff (Staff) participated in support of Great Lakes' request. An evidentiary hearing was held on February 25, 1999. The record consists of 87 pages of testimony and five exhibits that were admitted.

Following the submission of briefs and reply briefs, the ALJ issued his Proposal for Decision (PFD) on April 19, 1999, in which he concluded that the requirements of Act 69 had been satisfied and recommended that the Commission grant the requested certificates.

On May 3, 1999, Consumers filed exceptions to the PFD. On May 13, 1999, Great Lakes and the Staff filed replies to those exceptions.

### Legal Framework

Act 69 prohibits a public utility from constructing or operating any public utility plant or system, or rendering service for the purpose of transacting or carrying on a local business, in any municipality in this state where any other utility or agency is then engaged in such local business and rendering the same sort of service without first obtaining a certificate of public convenience and necessity from the Commission. MCL 460.502; MSA 22.142. Section 5 of Act 69 requires that, before granting a certificate of public convenience and necessity, the Commission must consider four factors: (1) the service being rendered by the utility currently serving the territory; (2) the investment in that utility; (3) the benefit, if any, to the public in the matter of rates; and (4) other equitable matters.<sup>1</sup> See, MCL 460.505; MSA 22.145.

The purpose of the Act 69 certification requirement is to enable the Commission to prevent needless multiplication of companies serving the same territory, avoid wasteful duplication of capital

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<sup>1</sup>No issue is raised on exception concerning the first two factors. Therefore, the Commission concludes that they do not weigh against granting the requested certificates.

facilities, keep necessary utility investment at the lowest level consonant with satisfactory service, and exclude competition where the general public convenience and necessity requires. Huron Portland Cement Co v PSC, 351 Mich 255, 267; 88 NW2d 492 (1958), Panhandle Eastern Pipe Line Co v PSC, 328 Mich 650, 664; 44 NW2d 324 (1950).

### Factual Background

Great Lakes is a nonprofit utility company that is primarily engaged in the sale and distribution of electric energy. The company has decided to engage in the business of propane gas sales and distribution, the goal of which, Great Lakes states, is to bring gas service to previously unserved areas. The present applications concern Great Lakes' proposed propane gas service in new subdivisions located in Irving and Orangeville Townships, Barry County. The company has obtained the necessary franchises from those townships.

Great Lakes states that Consumers currently has a very limited presence in the affected townships, and few customers have the option of being served by natural gas. It goes on to state that its proposed rates offer customers substantial savings over currently available alternatives.

Great Lakes proposes to construct 18,000 to 30,000 gallon propane gas storage tanks to which it will attach distribution facilities. Those distribution facilities are to include 2-inch plastic mains and plastic lateral service lines of various sizes that will connect to individual residences. Great Lakes represents that its installations will comply with the Michigan Gas Safety Code and the National Fire Protection Association standards and that they will be inspected by the Michigan Department of Environmental Quality, as required by law.

Great Lakes proposes to enter into a 25-year contract with the developer of each subdivision that would bind prospective landowners within the subdivision. During the contract period,

landowners must purchase all of their gas requirements from Great Lakes, although they are not required to purchase any gas. Great Lakes states that if natural gas becomes available and the subdivision is converted from propane to natural gas, Great Lakes would own the facilities that are in place and would offer “the same open access to residents as Michigan Consolidated Gas Company and Consumers currently offer to customers in their pilot program.” 2 Tr. 22. When it begins distributing natural gas, Great Lakes states, it will submit to full Commission regulation of its natural gas rates and facilities.

### Exceptions

Consumers raises two exceptions to the PFD. First, it argues that the price of propane delivered to customers bound by a 25-year contract will not be regulated and may become unreasonably high. Second, Consumers argues that Great Lakes’ offers to install the storage tanks and piping without cost to the developer may be used to induce the developer to also take electric service from Great Lakes.

#### 1. Price

Consumers argues that if the Commission grants the requested certificates, Great Lakes intends to bind customers for 25 years to buy all gas requirements from Great Lakes, even if everyone in the subdivision voted to procure propane from a different supplier. Yet, despite the virtual monopoly position this creates for Great Lakes, Consumers complains, the price for propane is not regulated by the Commission. Rather, Consumers argues, “Great Lakes will merely dispense a copy of its rates to the Commission [and to the residents] for the next heating season.” Consumers’ exceptions, p. 3. Consumers points out that Great Lakes does not claim that it will offer the lowest price for propane in the area. It argues that Great Lakes’ ability to impose an arbitrarily high price on

propane for these customers is contrary to the public interest. According to Consumers, reliance upon a developer's concern for the public interest to protect residents would be a mistake. In Consumers' view, the developers would likely be swayed by the free installation of the main tanks and distribution lines, despite any misgivings about future rates.

Great Lakes argues that the evidence produced at the hearing adequately addresses Consumers' concerns over arbitrary pricing. It states that it has worked with the Staff in creating a method to determine the price for propane, and proposes to provide notice to customers at the beginning of the heating season of the price cap for that year.

At the hearing, Great Lakes submitted its Propane Pricing Summary, which reflects pricing policies for two groups of customers, those served with individual tanks (noncaptive) and those served with the central tank and underground distribution system (captive). The summary states that, for noncaptive customers, Great Lakes will set a cap price for propane for the year, with the actual price being generally below the cap. The summary describes the company's loyal customer discount for noncaptive residents, which grants a 5% discount to those customers that maintain service on a paid up basis for one year. For customers using the underground distribution system off the central tanks, there is no loyal customer discount. However, the pricing summary states that Great Lakes will charge these customers 5% below the rate that it charges customers in the first group without the loyal customer discount. Thus, the pricing for captive customers will always be the same as for noncaptive customers that receive the loyal customer discount.

The Staff argues that, although it might be ideal for the residents to have a free choice of propane suppliers during the 25-year contract period, Great Lakes will have made an initial investment, for which it is reasonable to require some assurance of a continued revenue stream. The

Staff further points out that customers may opt to use a different energy source, such as electricity or oil, and purchase no gas from Great Lakes if they so desire.

In the context of certifying that the public convenience and necessity will be served, the Commission finds that Great Lakes' proposal for pricing its propane over the life of the 25-year contracts is not disqualifying. The Commission is persuaded, based on Great Lakes' commitment to price propane for these customers at the same rate as the discounted rate for noncaptive customers, that the competitive market will adequately control the rates that captive customers will pay. Currently, the Commission notes, targeted customers should benefit by lower rates because propane is less expensive than their available alternatives. Moreover, should Great Lakes propose unreasonable prices for propane in the future, the Commission is not without authority to provide a remedy.<sup>2</sup>

## 2. Unlawful tying

Consumers argues that Great Lakes markets free propane tank systems and underground distribution systems to developers without the traditional customer attachment program (CAP) contained in the tariffs of regulated natural gas utilities. Those tariffs, argues Consumers, take into account all of the revenues expected to be generated and calculate all of the expenses involved in providing the gas main extension in order to determine a customer contribution or surcharge, which is fair to the public and prevents subsidies from the utility's captive customers. On the other hand, Consumers charges, Great Lakes "has justified giving away free propane tanks and free underground distribution systems without [a] cost/revenue comparison since it already gives free tanks to individual customers to entice them to take propane service." Consumers' exceptions, p. 5.

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<sup>2</sup>See, for example, the Commission's October 19, 1970 order in Case No. U-3776.

Consumers argues that the ALJ should have included a mechanism for any competing utility that is adversely affected by improper marketing tactics to complain to the Commission.

Great Lakes responds that it has an extension program for its proposed gas distribution facilities, the terms for which are included in Exhibit A-5. Additionally, Great Lakes states that it has repeatedly maintained that cross-subsidy between its electric and gas operations will not occur.

The Staff asserts that language prohibiting tying has never been included in Act 69 certificates, including those issued to Consumers. The Staff argues that there is no greater danger of cross-subsidy here than in other Act 69 proceedings and no reason to single Great Lakes out for the language suggested by Consumers.

The Commission concurs with Great Lakes and the Staff that limiting language need not be included in the certificate of public convenience and necessity to preclude Great Lakes from tying electric service to the proposed propane service. To the extent that such conduct violates MCL 460.557(4); MSA 22.157(4) or any other statute, there are procedures for an injured utility to bring a complaint before the Commission.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1929 PA 69, as amended, MCL 460.501 et seq.; MSA 22.141 et seq.; 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. The certificates of public convenience and necessity requested by Great Lakes should be granted.

THEREFORE, IT IS ORDERED that Great Lakes Energy Cooperative is granted certificates of public convenience and necessity to provide propane gas service in Orangeville Township and in Irving Township, Barry County, provided: (1) Construction and maintenance of the system complies with the Michigan Gas Safety Code and applicable Commission rules, and no newly constructed lines cross another utility's gas mains or service lines or parallel another utility's mains or service lines within a street or right of way; (2) Any extension of service must be consistent with the utility's then existing customer attachment program or main extension policy; (3) Prior to constructing any extension of a main within a township section occupied by another utility, Great Lakes Energy Cooperative must give 30 days' written notice to the Commission's Competitive Services Section, identifying the location of the proposed extension and a copy of the customer attachment program worksheet, if applicable, for the extension; and (4) Great Lakes Energy Cooperative may not construct facilities to serve an existing customer of another gas utility.

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



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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of June 10, 1999.

/s/ Dorothy Wideman  
Its Executive Secretary

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Case No. U-11819

Suggested Minute:

“Adopt and issue order dated June 10, 1999 granting Great Lakes Energy Cooperative certificates of public convenience and necessity for propane gas operations in Orangeville and Irving Townships, Barry County, as set forth in the order.”