

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
to implement the provisions of Section 10a(1) of ) Case No. U-15801  
2008 PA 286. )  
\_\_\_\_\_ )

In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16086  
MCL 460.10a(1) by **ALPENA POWER COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16087  
MCL 460.10a(1) by **CONSUMERS ENERGY** )  
**COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16088  
MCL 460.10a(1) by **THE DETROIT EDISON** )  
**COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16089  
MCL 460.10a(1) by **EDISON SAULT ELECTRIC** )  
**COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16090  
MCL 460.10a(1) by **INDIANA MICHIGAN POWER** )  
**COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission's own motion, )  
to establish a docket for the implementation of ) Case No. U-16091  
MCL 460.10a(1) by **NORTHERN STATES POWER** )  
**COMPANY-WISCONSIN.** )  
\_\_\_\_\_ )

In the matter, on the Commission’s own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **UPPER PENINSULA POWER** ) Case No. U-16092  
**COMPANY.** )  
\_\_\_\_\_ )

In the matter, on the Commission’s own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **WISCONSIN PUBLIC SERVICE** ) Case No. U-16093  
**CORPORATION.** )  
\_\_\_\_\_ )

In the matter, on the Commission’s own motion, )  
to establish a docket for the implementation of )  
MCL 460.10a(1) by **WISCONSIN ELECTRIC** ) Case No. U-16094  
**POWER COMPANY.** )  
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At the September 29, 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

**ORDER ESTABLISHING PROCEDURES FOR IMPLEMENTATION OF  
MCL 460. 10a(1)(b)-(d) AND OPENING DOCKETS FOR INDIVIDUAL ELECTRIC UTILITIES**

On October 6, 2008, Governor Jennifer M. Granholm signed into law 2008 PA 286 (Act 286),  
an amendment to Public Act 3 of 1939. Section 10a(1)(a) of Act 286 provides that the  
Commission shall issue orders establishing that “no more than 10% of an electric utility’s average  
weather adjusted retail sales for the preceding calendar year may take service from an alternative  
electric supplier at any time.”

Specifically, in Section 10a(1)(b)-(d) the Legislature provided that the orders to be issued by  
the Commission shall:

(b) Set forth procedures necessary to administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis, and shall provide, among other things, that existing customers who are taking electric service from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an alternative electric supplier will be given next priority, with the remaining available load, if any, allocated on a first-come first-served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy allotments for the utility's distribution service territory is greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the date of allocation. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

(c) Notwithstanding any other provision of this section, customers seeking to expand usage at a facility that has been continuously served through an alternative electric supplier since April 1, 2008 shall be permitted to purchase electricity from an alternative electric supplier for both the existing and any expanded load at that facility as well as any new facility constructed or acquired after the effective date of the amendatory act that added this subdivision that is similar in nature if the customer owns more than 50% of the new facility.

(d) Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, shall be permitted to purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales.

On October 21, 2008, the Commission issued an order in this docket inviting interested persons to submit comments on the procedures to be adopted by the Commission regarding the allocation of the amount of load to be served by alternative electric suppliers. Consumers Energy Company (Consumers), the Michigan Electric Cooperative Association, The Detroit Edison Company (Detroit Edison), Energy Michigan, Constellation NewEnergy, Inc. (CNE), and Integrys

Energy Services submitted comments. The Commission Staff (Staff) reviewed the comments and developed proposed procedures regarding implementation of MCL 460.10a(1)(b)-(d).

On August 25, 2009, the Commission issued an order in Case No. U-15801 scheduling a collaborative discussion on the proposed procedures for 1:00 p.m. on Tuesday, September 1, 2009 at the Commission's Lansing offices, 6545 Mercantile Way, Lansing, Michigan. Interested persons were invited to attend. In addition, any interested person was invited to submit written or electronic comments regarding the proposed procedures by Thursday, September 10, 2009.

On September 3, 2009, the Staff filed an exhibit detailing all of the modifications that resulted from the September 1 collaborative. In so doing, the Staff reported:

As a result of the collaborative discussion held at the MPSC on Tuesday, September 1, 2009, Staff proposes certain modifications to Attachment A of the August 25, 2009 Order in Case No. U-15801. The Staff modifications are represented in the attached document. Among other things, the Staff modifications include the elimination of the reference to the MPSC Form P-521 contained within the definition of Preceding Calendar Year Sales. The attached document does not include a replacement reference at this time. Staff intends to insert a reference to the 45-day report filed by each utility, but requires more time to review the mechanics of this modification.

On September 10, 2009, Energy Michigan, CNE, and Consumers submitted comments on the collaborative's amended procedures.

### Discussion

At the outset, the Commission would like to thank the Staff and the other participants in the collaborative for their contributions to the development of the procedures approved today. These procedures, which are attached to this order as Appendix A, define how the Commission will administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers under Section 10a(1)(a)-(d) of Act 286.

The previous opportunities for comment, combined with the efforts of the collaborative participants, were responsible for most of the content of these procedures. The Commission now turns to the remaining loose ends that have been raised by the Staff's September 1, 2009 comments, and the September 10, 2009 filings by Energy Michigan, CNE, and Consumers.

## 1. The Staff

In response to the Staff's September 1 comments, the Commission has rewritten the defined term "Preceding Calendar Year Sales" to reference the use of a utility's 45-day power supply cost recovery (PSCR) report as follows:

**Preceding Calendar Year Sales** means the level of MWh Sold from January through December of the prior year and includes retail open access (ROA) sales. Each utility shall calculate its Preceding Calendar Year Sales using the methodology provided for in the utility's Power Supply Cost Recovery 45-day report.

Further, the Commission has determined that it should impose the following requirement on all electric utilities with choice sales:

Any electric utility with choice sales during a month shall file the form attached to this order as part of its Power Supply Cost Recovery 45-day report. In addition, the most recent form shall be posted in an easily accessible location on the utility's website.

## 2. Consumers

Consumers submitted five suggestions regarding the draft procedures reported by the collaborative:

a. According to Consumers, the Commission should define "Preceding Calendar Year Sales" as requiring the use of the same methodology and source data as that used in the preparation of the MPSC Form P-521. Consumers states that it examined the 45-day PSCR report and does not believe that the 45-day report contains the correct data for determining the "Preceding Calendar

Year Sales.” According to Consumers, the problems identified by the collaborative participants with use of MPSC Form P-521 data were related solely to the timing of submission of such data to the Commission. Because the collaborative participants did not object to the substance of the MPSC Form P-521 data, Consumers suggests that the Commission adopt the following as the second sentence of the definition of “Preceding Calendar Year Sales:” “Each Utility shall calculate its Preceding Calendar Year Sales using the same methodology and source data as that used in the preparation of MPSC Form P-521.”

The Commission finds that its response to the Staff’s September 1 filing appropriately addresses Consumers’ concerns and that further revision of the definition of “Preceding Calendar Year Sales” is not needed.

b. Consumers maintains that the Commission should either clarify the distinction between “expanded” and “increased” usage, or delete proposed Group Four. According to Consumers, as drafted, Group Four customers appear to be Group Three customers that “seek to expand usage” as opposed to actually increasing usage as a Group Three customer. Consumers argues that the draft proposal does not appear to give any lower priority to Group Four customers than it does to Group Three customers. Consumers suggests that the Commission clarify the distinction and its effect on Group Four’s priority status in relation to Group Three. Absent such clarification, Consumers argues Group Four should be stricken.

The Commission does not agree that the definition of Group Four should be stricken. There is a distinction between Group Three and Group Four customers. Group Three customers have “existing load and subsequent increased load through meters served continuously by an AES since October 6, 2008.” Group Four customers are “seeking to expand usage at a facility served through an AES where expand means to connect new load through an existing meter.” After expanding, a

Group Four customer becomes a Group Three customer for the purposes of the next round of allotments. While, the Commission readily concedes that confusion is possible regarding the distinction between Groups Three and Four, there does not appear to be any better way to explain the distinction. Accordingly, the Commission urges utilities and other interested parties to contact the Staff in the event that they have any uncertainty regarding the appropriate classification of a customer.

c. Next, Consumers contends that the Commission should be more specific about when and how customers are allocated their allotment for the upcoming year. Consumers states that the proposed procedures do not specify the method or the timing for the calculation of the customer allotment for the upcoming year. Consumers argues that the Commission should align these procedures with the proposed procedures for overall cap calculation by adding a new step under the proposed “Securing An Annual Energy Allocation” section to provide that “[p]rior to February 1 of each annual allocation period, Group Three, Four and Five customers shall be informed of their allocation status for that annual allocation period.”

The Commission finds that the suggestion made by Consumers should not be adopted. The suggestion falsely assumes that all allotments will come along at the beginning of the year, which surely will not take place.

d. Consumers also believes that the proposed implementation schedule should be clarified and modified. The clarification sought by Consumers concerns elimination of any uncertainty over the order described in the Staff’s proposal that “[e]ach utility shall report the level of its preceding calendar year sales, its weather adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support its calculations, within 5 business days of the issuance of this order.” Consumers would like the Commission to

clarify that the Staff was referring to the order to be issued in Case No. U-15801 that adopts the procedures required by Section 10a(1)(b)-(d) of Act 286. In addition, Consumers requests that the Commission modify this recommendation by allowing utilities 60 days from the date of the issuance of the order to make this filing. According to Consumers, without knowing what the Commission will require in the final procedures, doing the required calculations in five days will be problematic.

The Commission finds that this suggestion should be rejected. It can hardly be claimed by Consumers that it is a surprise that the utility will need to calculate the level of its preceding calendar year sales, its weather adjusted retail sales for the preceding calendar year and the resulting cap. There is no reason for the calculation of these items and the assembly of supporting documentation to take 60 days. The Commission finds that five days is an appropriate amount of time for the utility to produce this information.

e. Finally, Consumers suggests that the Commission should change the Staff's proposed one day notification for annual energy allotment to two days.

This change was discussed at the collaborative and has already been incorporated.

### 3. Energy Michigan and CNE

Energy Michigan offers the following three suggestions, which CNE endorses:

a. According to Energy Michigan, the definition of "Allotment" or "Energy Allotment" should refer to the level of megawatt hours assigned to a customer based on actual customer purchases not "sales" or should refer to the "utility sales to the customer" not the "customer sales."

The Commission finds that this suggestion is reasonable and should be adopted.

b. Next, Energy Michigan asserts that customers should be informed of their individual status in the groupings. Energy Michigan states that this concern was addressed by an agreement at the



collaborative, but has not been included in the Staff's September 3 filing. According to Energy Michigan, it was agreed at the collaborative that individual customers could contact the utility and receive a report indicating their individual status in the queue for Electric Choice service. Energy Michigan suggests that language reflecting this agreement be added to the Section entitled "Cap-Tracking System."

The Commission agrees and adds the following language to the procedures: "An individual customer or its AES may contact the utility and receive a report indicating its individual status in the queue for electric choice service."

c. Finally, Energy Michigan maintains that the language in the Section titled "Cap-Tracking System," Sections 3-5 on page 7, may cause confusion because the various percent triggers for frequency of reporting refer to "available energy allotments" instead of "actual energy allotments". As worded, the sections could be read to say that the frequency of reporting would increase as the amount of unassigned or available Choice capacity increases, obviously the exact opposite of the intent of the Commission and the parties to the collaborative. This confusion could be eliminated if the phrase, "available energy allotments" is changed to "actual energy allotments".

The Commission finds that this suggestion is reasonable and should be adopted.

#### 4. CNE

CNE makes the following additional suggestions:

a. According to CNE, AESs should be provided with a list of which Customer Grouping (1-5) each of their customers falls within. CNE contends that such information should be provided within 30 days of entry of a final order.

The Commission finds that the AESs' concerns may be addressed by adding the following sentence to "Cap-Tracking System" Section 2i: "Upon request, a utility shall provide an AES with a list of the AES's customers organized by customer group by October 15, 2009."

b. CNE recommends that the Commission modify Section 3(b)(ii)(1) of "Securing an Annual Energy Allotment" so that the form of notification to the AES (telephonic, e-mail, or other) is specified to ensure that the customer does not miss this very small window of opportunity.

The Commission agrees and adds "by telephone or e-mail" to Section 3(b)(ii)(1) of "Securing an Annual Energy Allotment".

c. CNE also maintains that the Commission should direct Consumers and Detroit Edison to modify any existing forms of customer notifications regarding choice sales so that the forms are consistent with the clarification made during the collaborative that replaced the word "returned" with the words "forced to return" in Section 3(a)(i) and (ii) of "Securing an Annual Energy Allotment". CNE claims that there is a great deal of customer confusion due to the manner in which Consumers addressed this issue in the form letters that are being sent to customers that select competitive retail electric service.

The Commission finds that CNE's suggestion goes beyond the scope of this proceeding, which was to adopt procedures for all electric utilities regarding the administration and allocation of the amount of load that will be allowed to be served by AESs. Should CNE have a grievance regarding the forms or letter issued by an individual utility, such may be brought to the attention of the Commission via a complaint against that specific utility. However, it should be noted that the Commission has an expectation that all utility or AES communications should accurately reflect the new procedures adopted today.

d. Finally, citing concerns over the manner in which Consumers handled the “flow of information” relevant to “managing customer expectations and minimizing potential risks that are imposed upon AESs” as the market was approaching the 10% cap, CNE states that it is concerned about how Detroit Edison intends to handle this issue over the course of the next few months. According to CNE, the Commission should direct Detroit Edison to manually process those functions, beginning immediately; failing to do so may result in the market closing before implementation of those automated processes are completed.

The Commission finds that CNE’s concern should be addressed. The procedures adopted today provide for the timely development of a cap tracking system by each utility that has enrolled choice load. Accordingly, Detroit Edison’s cap tracking system “shall be fully operational within 60 days of the issuance of this order.” Should choice load dramatically increase prior to that time period, the Commission expects Detroit Edison to take appropriate steps to ensure that choice requests are handled appropriately and without disruption.

THEREFORE, IT IS ORDERED that:

A. The procedures attached to this order as Attachment A are adopted by the Commission pursuant to Section 10a(1) of 2008 PA 286 and shall govern all matters regarding allocation of the amount of an electric utility’s load to be served by an alternative electric supplier.

B. Any electric utility with choice sales during a month shall file the form attached to this order as part of its power supply cost recovery 45-day report. In addition, the most recent form shall be posted in an easily accessible location on the utility’s website.

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

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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 September 29, 2009.

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Mary Jo Kunkle, Executive Secretary

**DEFINITIONS**

- \* **Annual Energy Allotment (“Allotment” or “Energy Allotment”)** means the level of megawatt-hours (MWh) assigned to a customer based on its actual purchases during the most recent calendar year (January through December).
- \* **Average Weather-Adjusted Retail Sales or Weather-Adjusted Retail Sales** means the level of MWh equal to the preceding calendar year sales of the utility adjusted for weather. The weather adjustment to be applied shall be based on the methodology used in setting rates in the utility’s most recently completed rate case.
- \* **Cap** means the level of MWh equal to ten percent (10%) of the weather-adjusted retail sales from the preceding calendar year.
- \* **Customer.** As specified in MCL 460.10a(17)(a), Customer means the building or facilities served through a single existing electric billing meter and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or facilities.
- \* **Choice Participation** means the combined level of MWh equal to the sum of (a) the MWh usage for the previous calendar year of the customers taking service from an alternative electric supplier (AES) and (b) the awarded allotments not yet being served by the AES. The level of Choice Participation shall not be adjusted for weather. The level of Choice Participation shall be updated each time the Cap is updated.
- \* **Enrollment Queue or Queue** means the ranking system established and maintained by each utility when the level of Choice Participation is greater than the Cap or would exceed the Cap if an allotment were awarded. The utility shall maintain enrollment form submission records so that it can accurately identify a customer’s position within the queue.
- \* **Facility or Customer Facility** shall be defined as a building or dwelling served through a single existing electric billing meter at a single site and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or dwelling. This shall be interpreted in the same manner as MCL 460.10a(17)(a), which provides the definition of “Customer.”
- \* **First-Come First-Served Basis** means that enrollment form submissions are attended to by the utility in the order that they were submitted by the AES to the utility, without preference or bias.

- \* **Group One Customer.** In accordance with MCL 460.10a(1)(d), a Group One Customer means any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of Michigan.
  - A. A Group One customer is allowed to increase its usage above the Cap.
  - B. The awarded allotments of a Group One Customer shall be included in the calculation of Choice Participation.
  
- \* **Group Two Customer.** In accordance with MCL 460.10a(1)(c), a Group Two Customer shall be identified as a customer who has been continuously taking service through an AES since April 1, 2008.
  - A. A Group Two Customer is allowed to increase its usage above the Cap for both existing and any expanded load at that facility.
  - B. A Group Two Customer is allowed to increase its usage above the Cap for any new facility constructed or acquired after October 6, 2008 that is similar in nature to the existing facility if the more than 50% of the new facility is under common ownership with the existing facility.
  - C. A Group Two Customer that discontinues retail access service and returns to standard tariff service will lose its Group Two status.
  - D. The awarded allotments of a Group Two Customer shall be included in the calculation of Choice Participation.
  
- \* **Group Three Customer.** As specified in MCL 460.10a(1)(b), a Group Three Customer shall be any customer who has been continuously taking service through an AES since October 6, 2008 but began taking such service after April 1, 2008.
  - A. Group Three Customer status is limited to existing load and subsequent increased load through meters served continuously by an AES since October 6, 2008. Expanded load at such a facility shall be classified as having Group Four Customer status.
  - B. A Group Three Customer that discontinues retail access service and returns to standard tariff service will lose its Group Three status.
  - C. The awarded allotments of a Group Three Customer shall be included in the calculation of Choice Participation.
  
- \* **Group Four Customer.** Pursuant to MCL 460.10a(1)(b), a Group Four Customer is a customer seeking to expand usage at a facility served through an AES where expand means to connect new load through an existing meter.
  - A. The awarded allotments of a Group Four Customer shall be included in the calculation of Choice Participation.
  
- \* **Group Five Customer.** Pursuant to MCL 460.10a(1)(b), a Group Five Customer shall be any customer who enrolled or began taking retail open access service after October 6, 2008 and who is not classified as a Group One, Two, Three or Four Customer.

A. The awarded allotments of a Group Five Customer shall be included in the calculation of Choice Participation.

- \* **Preceding Calendar Year Sales** means the level of MWh Sold from January through December of the prior year and includes retail open access (ROA) sales. Each utility shall calculate its Preceding Calendar Year Sales using the methodology provided for in the utility's Power Supply Cost Recovery 45-day report.
- \* **Similar in Nature** means having a Standard Industrial Code<sup>1</sup> that resides within the same division structure as an existing facility being served by an alternative electric supplier.

### **IMPLEMENTATION OF SECTION 10a(1) OF PA 286**

1. Determine the level of the Cap by calculating the weather-adjusted retail sales for the preceding calendar year.
  - a. Each utility shall report the level of its preceding calendar year sales, its weather-adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support its calculations, within 5 days of the issuance of this order. The utility shall file its preceding calendar year sales, its weather-adjusted retail sales for the preceding calendar years and the resulting Cap data and all supporting documentation in the separate docket opened for that purpose.
  - b. Each subsequent calculation of the preceding calendar year sales, the weather-adjusted retail sales for the preceding calendar year and the resulting Cap, along with all supporting documentation necessary to support the calculations, shall be provided to the Commission as outlined in the Determination of the Cap section of this document.
2. The utility shall assign energy allotments to its Group One and Group Two customers. If the Group One and Two allotments exceed the Cap, no additional allotments will be awarded to Group Three, Four and Five customers. All customers, including Group Three, Four, and Five customers, shall retain the allotments they had in the prior year and may increase their Choice purchases as permitted under MCL 460.10a(1)(b).
3. The utility shall assign energy allotments to its Group Three customers. If the Group Three allotments exceed the Cap, no additional allotments will be awarded to Group Four and Five customers.

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<sup>1</sup> Standard Industrial Codes (SIC) are published by the Occupational Safety & Health Administration within the US Department of Labor and are located at [http://www.osha.gov/pls/imis/sic\\_manual.html](http://www.osha.gov/pls/imis/sic_manual.html) .

4. The utility shall assign energy allotments to its Group Four customers. If the Group Four allotments exceed the Cap, no additional allotments will be awarded to Group Five Customers.
5. The utility shall assign energy allotments to its Group Five customers on a first-come, first-serve basis pursuant to the guidelines of the Securing an Annual Energy Allotment section of this document.
6. Each utility shall establish a fully operational web-based Cap-Tracking System pursuant to the guidelines of the Cap-Tracking System section of this document.

#### **DETERMINATION OF THE CAP**

1. Each utility shall calculate the Cap based on the weather-adjusted retail sales of the preceding calendar year through a two step process.
  - a. Step One: Each utility shall file an initial Cap by January 1<sup>st</sup> of each year. The initial Cap shall be based on 11-months of weather-adjusted retail sales (January through November) and 1-month of estimated weather-adjusted retail sales for December of the same year. The initial Cap shall take effect on the first business day of January each year and is not subject to challenge.
  - b. Step Two: Each utility shall file a final Cap by February 1<sup>st</sup> of each year. The final Cap shall be based on the weather-adjusted retail sales from the preceding calendar year. The final Cap shall take effect on the first business day of February each year.
2. Any person wishing to challenge the level of a utility's final Cap shall file a complaint against the utility in a new docket on or before February 15<sup>th</sup> each year.
  - a. If the final Cap is not challenged, Commission action is not required and the Cap shall remain in effect for the remainder of that calendar year.
  - b. If the final Cap is challenged, the final Cap shall remain in effect until the Commission determines the appropriate Cap.
3. The Cap shall be updated on the utility's Cap-Tracking System on the first business day of January and February each year. The Cap shall also be updated on the first business day following a Cap determination by the Commission.
4. The Cap shall be submitted to the Commission through utility company filings in the separate docket opened for each utility for that purpose on or before January 1<sup>st</sup> and February 1<sup>st</sup> of each year.

#### **SECURING AN ANNUAL ENERGY ALLOTMENT**

1. Allotments shall be based on the customer's previous year's 12-month annual usage (January through December).



- a. If the customer does not have 12-months of annual usage, its annual energy allotment shall be estimated by the utility based on the class and rate using information of similar customer types from the utility's standard tariff service.
2. The utility shall award and allocate allotments on a first-come, first-served basis after the allocation of energy allotments to its Group One, Two, Three and Four customers are complete and there is space available below the Cap.
  - a. The utility shall award and allocate allotments on a first-come first-served basis as measured by the date and time when a complete enrollment form is submitted by the AES to the utility. A complete enrollment form is an enrollment form that meets all utility company validation criteria and does not require resubmission to the utility by the AES.
  - b. An enrollment switch shall be processed without being subject to the annual energy allotment process as a customer may utilize its annual energy allotment with any AES it chooses.
  - c. The utility shall revoke the enrollment form and energy allotment for a customer that fails to become service-ready and begin taking service from an AES within its required time frame, which shall be the latest of:
    - i. Except as provided in section 2(c)(ii) through 2(c)(iv), a customer shall have 90 days from the date of its awarded allotment to become service-ready and must begin taking service on the next billing cycle after becoming service-ready.
    - ii. A customer who requires high voltage protection, substation work or any similar work necessitating more than 90 days to complete shall have 270 days from the date of its awarded allotment to become service-ready and must begin taking service on the next billing cycle after becoming service-ready.
    - iii. If the utility is not service-ready within 60 days, then 30 days after the utility is service-ready.
    - iv. If the AES or its customer has provided the utility with a prospective in-service date, then within 30 days after that prospective date, but not more than one year after the date that the allotment was awarded.
    - v. In the event that an enrollment form and energy allotment is revoked, the customer shall no longer be entitled to its approved allotment. The customer must submit a new enrollment form request if it desires to re-secure an energy allotment. The most recent enrollment form date shall be treated as the key measurement date in situations of competing allotment requests.
3. If an allotment is awarded, the utility shall notify the AES within two business days of the submission of a complete enrollment form.
  - a. An allotment shall be awarded if the entire amount of the expected usage falls below the Cap. Once an annual energy allotment is awarded:
    - i. An AES customer shall not be forced to return to utility service if the level of Choice Participation exceeds the Cap due to the reduction in sales of a utility in a subsequent year. This includes customers already taking

- service from an AES as well as those customers who have been awarded an annual energy allotment but have not yet began taking service.
- ii. An AES customer shall not be forced to return to utility service if the level of Choice Participation exceeds the Cap due to the energy usage of the customer exceeding its annual energy allotment.
  - iii. That customer shall not be returned to utility service until that customer elects to discontinue taking service from an AES.
- b. An allotment shall be awarded based on a customer's status in the enrollment queue in situations where the level of Choice Participation was above the Cap and subsequently falls below the Cap.
- i. An allotment shall be awarded to the first customer in the enrollment queue if its entire annual energy allotment falls below the Cap.
  - ii. If the annual energy allotment of the first customer in the enrollment queue exceeds the Cap then the utility shall not award additional allotments until such time that the first customer in the queue is provided the opportunity to accept its allotment.
    1. If space below the Cap becomes available, the utility shall notify the AES by telephone or e-mail within two business days. The AES shall then have two business days to notify the utility by telephone or e-mail that the customer desires to accept its allotment.
  - iii. The utility shall award allotments from within the enrollment queue until the available energy allotments are exhausted or the queue is empty.
4. If an allotment is not awarded then it shall be deferred, and the utility shall notify the AES of the deferral within two business days of the submission of a complete enrollment form. If the deferral is based on Cap exceedance, the deferral notification shall provide notification of Cap exceedance and provide the AES with the customer's position within the queue in terms of the number of forms and MWh ahead of that customer within the queue.
- a. An allotment shall be deferred if the level of Choice Participation is greater than the Cap or if the annual energy allotment would create a situation where the level of Choice Participation would be greater than the Cap if the allotment were to be awarded.
    - i. A Group One Customer shall be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap.
    - ii. A Group Two Customer may be awarded additional energy allotments even if the level of Choice Participation exceeds the Cap.
  - b. A deferred enrollment shall be placed into the enrollment queue and shall remain in queue unless withdrawn by the AES or the customer in writing or electronic mail.
  - c. Provisions, if any, in a utility tariff that impose sanctions on a customer in the event of the customer's (1) premature return to bundled service or (2) failure to take electric service from an AES for the term of the contract shall be unenforceable if the reason for the customer's premature return to bundled service

or failure to take electric service from the AES for the term of the contract is the 10% limitation on choice sales set forth in MCL 460.10a(1).

### **CAP-TRACKING SYSTEM (“CTS”)**

1. The CTS is required for utilities with active or enrolled choice load.
  - a. The CTS shall be web-based and made available at the utility’s website.
  - b. The CTS must be available to the public and be free of charge.
2. Each utility shall publish uniform and accurate information concerning energy allotments on its website. At a minimum, the information contained on this website shall include:
  - a. Preceding Calendar Year sales.
  - b. Weather-Adjusted Retail Sales for the Preceding Calendar Year.
  - c. The Cap.
  - d. Current level of Choice Participation expressed in MWh and as a percentage of the weather-adjusted retail sales for the preceding calendar year. Note: the utility shall specify the level of MWh of usage for the previous calendar year of the customers taking service from an AES and the amount of awarded allotments not yet being served by an AES.
  - e. The amount of available energy allotments expressed in MWh and as a percentage of the weather-adjusted retail sales for the preceding calendar year.
  - f. The number of enrollment forms in queue.
  - g. The number of MWh in queue.
  - h. The date of the most recent update to the information contained on the web page.
  - i. A contact name and direct phone number or direct E-mail of a utility representative able to assist with questions about the contents of the website. An individual customer or its AES may contact the utility and receive a report indicating its individual status in the queue for electric choice service. Upon request, a utility shall provide an AES with a list of the AES’s customers organized by customer group by October 15, 2009.
3. The utility shall update the information contained on the website on a weekly basis when the amount of actual energy allotments is less than or equal to six percent (6%) of the weather-adjusted retail sales for the preceding calendar year.
4. The utility shall update the information contained on the website on a daily basis when the amount of actual energy allotments is greater than six percent (6%) but less than eleven percent (11%) of the weather-adjusted retail sales for the preceding calendar year.
5. The utility shall update the information contained on the website on a monthly basis when the amount of actual energy allotments is greater than or equal to eleven percent (11%) of the weather-adjusted retail sales for the preceding calendar year.
6. The CTS shall be fully operational within 60 days of the issuance of this order.

Appendix to  
45 Day Report

For Electric Utility with any Choice Volumes

All Volumes in MWh on a Billed Basis

Category	Month	Year-to-date
Total Sales		
Less: Wholesale Sales		
Retail Sales		
Plus: Retail Choice		
Retail Deliveries		