

STATE OF MICHIGAN
IN THE SUPREME COURT

CITY OF HOLLAND,

Plaintiff-Appellee,

v

CONSUMERS ENERGY COMPANY,

Defendant-Appellant.

Supreme Court No. 151053

Court of Appeals No. 315541

Ottawa County Circuit Court
Case No. 12-002758-CZ

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**SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLEE
CITY OF HOLLAND**

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I. INTRODUCTION

This Brief is filed pursuant to this Court's September 30, 2015 Order permitting the parties to file supplemental briefs within 42 days of the date of that order. Plaintiff-Appellee City of Holland ("Holland") relies on the arguments set forth in its Response to Defendant-Appellant Consumers Energy Company's ("Consumers") Application for Leave to Appeal and the limited additional arguments and citations set forth below. In addition, Holland may request leave of this Court to respond to any supplemental brief filed by Consumers.

II. ARGUMENT

A. Consumers' Argument That "Facilities" Means "Land" Is Not Supported By Relevant Authority

MCL 124.3(2) prohibits a municipal utility from extending service to a customer outside its corporate limits who is already receiving service from another utility. A companion provision, MCL 460.10y(2) imposes the same prohibition in reverse on MPSC-regulated utilities with respect to customers of municipal utilities. Coldwater and Consumers agree that the term "customer" in these statutes means the buildings and facilities receiving electric service. But Consumers then goes on to argue that to differentiate the word "facilities" from the word "buildings," "facilities" must be construed to mean the entire 40-acre parcel of land now owned by Benjamin's Hope.¹ Consumers' Application, pp 14-15. This "facilities means land" argument was considered and flatly rejected by the Supreme Court of North Carolina in *State of North Carolina ex rel Utilities Comm'n v Lumbee River Electric Membership Corp*, 275 NC

¹ In essence Consumers is asking the Court to import the "premises rule" (otherwise known as the "rule of first entitlement") from MPSC Rule 411 into MCL 124.3(2). But the premises rule is a creature solely of subsection 11 of Rule 411. There is no counterpart in MCL 124.3(2) which is the controlling provision here. As noted in Coldwater's Response to Consumers' Application for leave (pp 24-25), the term "facilities" does not encompass natural things such as land, but, rather it refers to things that are built or created by people.

250; 166 SW2d 663 (1969).² There, an electric cooperative argued that another utility was prohibited from providing electric service to a new plant located on land formerly occupied by a house and a sign, both of which had been served by the cooperative. The North Carolina Supreme Court held that:

Subsection (a)(1) of this statute defines ‘premises’ to mean ‘the building, structure, or facility to which electricity is being or is to be furnished,’ subject to a proviso not presently material. Consequently, it is the plant of Acme, and not the tract upon which it is located, which constitutes the ‘premises’ here involved, as that term is used in subsection (b). Thus, paragraph (1) of subsection (b), above quoted, does not confer upon Lumbee [the electric cooperative] the right to serve the Acme plant by reason of Lumbee’s former service to the residence and the electric signs previously located on this tract. [*Id.*, 275 NC at 259].

As to Consumers’ argument that Holland’s interpretation effectively assigns the same meaning to the term “facilities” as it does to the term “buildings,” Consumers’ Reply Br, p 8, one need look no further than the facts in this case and in the *Coldwater* case (Sup Ct No. 15051) to see the fallacy in this assertion. In this case, as the circuit court found, the construction trailer formerly served by Consumers was not a “building” but it clearly was a “facility” and it was not the same structure as the residential buildings now being served by Holland. (See T Ct Op, p 8 (attached as Ex 2 to Holland’s Response to Consumers’ Application for Leave to Appeal).) In the *Coldwater* case, none of the facilities that the City of Coldwater intends to serve – a water tower, a wastewater pumping station, and an electric substation – are buildings, and they are clearly not the pole barn that was formerly served by Consumers. (See *Coldwater* T Ct Op, p 2 (attached as Exhibit 2 to the City of Coldwater’s Response to Consumers’ Application for Leave to Appeal, Docket No. 151051).)

² For the convenience of the Court, this case is attached as Exhibit A to this Brief.

B. Where More Than One Electric Utility Is Franchised In The Same Area, Some Duplication Of Service Is Inevitable

A principal justification offered by Consumers for applying MPSC Rule 411 to municipal utilities such as Holland is that, according to Consumers, Rule 411's purpose is "to avoid unnecessary and costly duplication of facilities and to provide objective standards for extension of electric service." Consumers' Reply Brief, p 3 (quoting *Great Wolf Lodge of Traverse City, LLC v Pub Serv Comm'n*, 489 Mich 27, 38; 799 NW2d 155 (2011)).³ The simple answer is that this assertion is irrelevant here because, on its face, Rule 411 does not apply to a municipal utility and this case is, thus, governed not by Rule 411 but by MCL 124.3(2).

Beyond this, Rule 411 itself recognizes that where there are two or more MPSC-regulated utilities franchised to operate in the same area, some duplication is inevitable and expressly permitted by Rule 411. For example, if no MPSC-regulated utility has 3-phase electric service within 2,640 feet of the prospective customer, any regulated utility in the area may provide service. See Rule 411(8); Mich Adm Code, R 460.3411(8). Similarly, any MPSC-regulated

³ On page 13 of its Application for Leave to Appeal, Consumers asserts that its ratepayers "have already paid in building the infrastructure so Consumers Energy could serve this parcel in the first place." This assertion is patently false. The Consumers infrastructure utilized for temporary service to the construction trailer was for single-phase service. For its new buildings, Benjamin's Hope requires 3-phase service which is delivered at twice the voltage and requires higher capacity facilities. Holland's 3-phase facilities were approximately 1000 feet from the site at the time Benjamin's Hope requested service. There is no evidence in the record as to precisely how close or how far Consumers' 3-phase facilities are from the site. However, the record is clear that Consumers 3-phase lines were not so close to the site so as to avoid extraordinary construction charges that would have exceeded \$35,000. (See Affidavit of Krista A. Mason, attached as Exhibit 4 to Holland's Response to Consumer's Application for Leave to Appeal.) Under Consumers' MPSC-approved tariffs, such "extraordinary" charges for an overhead extension of 3-phase facilities may be levied only if the cost of the extension exceeds by three times the anticipated annual revenue from the service. Relevant sections of Consumers' tariffs are attached here as Exhibit B and are available at www.dleg.state.mi.us/mpsc/electric/ratebooks/consumers13curcandd/pdf.

utility in the area may provide 3-phase service to a prospective industrial customer with a connected load of more than 500 kilowatts. See Rule 411(9); Mich Adm Code, R 460.3411(9).

The Legislature has also recognized that duplication will occur when an MPSC-regulated utility is operating in the same general area as a municipal utility and has provided a procedure for utilities to *voluntarily* enter into territorial service agreements upon proper approval. See MCL 460.10y(4). These examples illustrate that the right of an electric utility to extend service is not dependent solely on the avoidance of duplication.

III. CONCLUSION

In its September 30, 2015 Order authorizing supplemental briefing in this case, the Court instructed the parties “not [to] submit mere restatements of their application papers,” and in this Supplemental Brief, Holland has not done so. However, for the benefit of the Court, Holland believes it would be useful to reiterate the positions it has taken in this case. In brief summary, it is Holland’s position that:

1. This case is governed by MCL 124.3(2) not by MPSC Rule 411(11).
 - a. MPSC Rule 411(11) applies where both competing utilities are regulated by the MPSC.
 - b. MCL 124.3(2) (and its companion MCL 460.10y(2)) applies where one of the competing utilities is a municipal utility.
2. MPSC Rule 411(11) does not apply to municipal utilities or their prospective customers, or landowners.
 - a. On its face, Rule 411 applies *only* to *utilities* under the jurisdiction of the MPSC. Mich Adm Code, R 460.3101(1).
 - b. Municipal utilities are not regulated by the MPSC. MCL 460.6(1); MCL 460.10y(11); MCL 460.54.
 - c. No constitutional provision or statute authorizes the MPSC to regulate the behavior of customers, prospective customers, or landowners.

- d. The only time Rule 411 applies to a municipal utility is when the municipal utility unilaterally elects to be governed by Rule 411. MCL 460.10y(3). Holland has not so elected.
3. The so-called right of first entitlement bestowed on MPSC-regulated utilities by Rule 411 cannot be used to displace service by a municipal utility because the MPSC has no authority to authorize a regulated utility to interfere with a customer's right to receive service from a municipal utility.
4. The implication in *Great Wolf Lodge v MPSC* that Rule 411(11) applies – directly or indirectly – to municipal utilities is erroneous and should be clarified by the Court.
5. Holland has a franchise to serve in Park Township and the only restriction on its provision of service is MCL 124.3(2).
 - a. MCL 124.3(2) prohibits a municipal utility from extending service to a customer already receiving service from another utility without the other utility's permission.
 - b. Under MCL 124.3(2), "customer" means the buildings and facilities, not the person receiving the electricity.
 - c. The "customers" here are the newly constructed residential buildings now being served by Holland, not the structures formerly served by Consumers which were demolished in 2008 or the construction trailer to which Consumers supplied electric power for several months in 2011-12. Consumers never provided service to the buildings now being served by Holland. Accordingly, Holland did not extend service to a customer already receiving service from Consumers in violation of MCL 124.3(2).

IV. RELIEF REQUESTED

For the foregoing reasons, Plaintiff-Appellee City of Holland respectfully requests that this Court issue an order summarily affirming the Court of Appeal's decision in this case and clarifying that Rule 411 does not apply directly or indirectly to municipal utilities and granting it further relief to which it is entitled. In the alternative, the Court should grant leave to appeal to further consider the important issues in this case.

Respectfully submitted,

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EXHIBIT A

275 N.C. 250

Supreme Court of North Carolina.

STATE of North Carolina ex rel. UTILITIES
COMMISSION, and Carolina Power
& Light Company and Acme Electric
Corporation and Acme Electric Corporation
of Lumberton, North Carolina, Appellees,

v.

LUMBEE RIVER ELECTRIC
MEMBERSHIP CORPORATION, Appellant.

No. 17. | April 9, 1969.

Nonprofit electric membership corporation filed complaint against public utility corporation. The Utilities Commission dismissed complaint, and plaintiff appealed. The Court of Appeals, 3 N.C.App. 318, 164 S.E.2d 895, affirmed and plaintiff appealed. The Supreme Court, Lake, J., held that where location of customer's premises was not wholly within 300 feet of any line of any electric supplier and was not partially within 300 feet of lines of two or more electric suppliers, customer had right to choose public utility corporation as its supplier rather than nonprofit electric membership corporation which had previously had a single-phase power line within 300 feet of a portion of the premises that required three-phase line though membership corporation could reach plant by extension of lines substantially shorter than could public utility.

Affirmed.

252** *665** Lumbee River Electric Membership Corporation, hereinafter called Lumbee, instituted this proceeding in the North Carolina Utilities Commission by filing in a single document a complaint against Carolina Power & Light Company, hereinafter called CP&L, and an application for an assignment to Lumbee of a described area in Robeson County as its electric service area. The Utilities Commission entered its order separating the two into independent proceedings and setting the complaint against CP&L for hearing. Lumbee did not except to that order, and all subsequent proceedings, including the present appeal, have been and are upon the theory that nothing but the complaint against CP&L is involved. CP&L filed its answer thereto. Acme Electric Company, hereinafter called Acme,

was permitted by the Utilities Commission to intervene and filed its answer in support of the position taken by CP&L.

The Utilities Commission heard no evidence, but, upon facts ***253** stipulated by the parties and admissions in the pleadings, dismissed the complaint, Commissioners Eller and McDevitt dissenting. Lumbee appealed to the Court of Appeals which affirmed the order of the commission, its opinion being reported in 3 N.C.App. 318, 164 S.E.2d 895, Brock, J., dissenting.

The material facts, summarized, are these:

Lumbee, a non-profit electric membership corporation, organized pursuant to Ch. 117 of the General Statutes, supplies electric power to its members in Robeson County and nearby areas. CP&L, a public utility corporation, carries on for profit in Robeson County, and elsewhere in North Carolina, the business of supplying electric power to the public. Lumbee purchases substantially all of its power at wholesale rates from CP&L and so is a CP&L rate payer. Acme is a manufacturer of electrical equipment. The Utilities Commission has not made any assignment of territories in Robeson County to CP&L or to Lumbee or to other suppliers as service areas pursuant to G.S. s 62-110.2(c).

Acme, after negotiations with CP&L, acquired a tract of 36 acres in Robeson County on the east side of Highway I-95 and the north side of U.S. Highway 74. At the time of Acme's acquisition of this site, Lumbee owned and operated a three-phase power line running along U.S. Highway 74 and thence along and near to the west boundary of Highway I-95, across from the site so acquired by Acme, and also a single-phase line running therefrom, across the highway right-of-way into and upon the western portion of the land so ****666** acquired by Acme. The purpose and use of the single-phase line was to supply electric power to a tenant house and two signs all then located upon the site but subsequently removed in the construction of Acme's plant. The single-phase line was then removed by Lumbee at Acme's request, without prejudice to any right of Lumbee to supply electricity to the plant.

Acme conveyed a portion of the tract to its wholly owned subsidiary. The subsidiary built thereon a large building, which it then leased to Acme for the operation therein by Acme of its manufacturing business. The larger part of this building lies within 300 feet of the former location of Lumbee's single-phase line, but a portion of it is more than 300 feet from the former location of that line and all of it is more than 300 feet from Lumbee's three-phase line west

of Highway I—95, that along U.S. Highway 74 being more distant.

Acme contracted with CP&L to take all of its electric power at this plant from CP&L. Acme requires three-phase electric service. *254 To serve Acme it was necessary for CP&L to construct 3.63 miles of new three-phase line and to convert 0.6 miles of single-phase line to three-phase line. Substantially all of this CP&L line runs along U.S. Highway 74, just across the highway from Lumbee's three-phase line. For Lumbee to serve the Acme plant would require a relatively short extension of its existing three-phase line across Highway I—95. The point of connection of the CP&L line, so extended, with the Acme plant is more than 300 feet from the former location of Lumbee's single-phase line.

In its letter to Lumbee requesting the removal of the single-phase line and advising Lumbee of Acme's contract with CP&L, Acme stated that its reasons for desiring service by CP&L were that it desired to be served by a regulated public utility and that CP&L had been of assistance to Acme in locating and selecting this site for its plant. In its answer Acme alleged CP&L was better qualified by experience and facilities to supply an industrial plant such as Acme's than was Lumbee.

The complaint alleged, in substance, such of the above facts as had occurred at the time it was filed. It also alleged Lumbee was ready, able and willing to supply adequately all the needs of the Acme plant for electric service, that CP&L had begun the construction of its above mentioned line and that it would be an unnecessary and economically wasteful and unsightly construction. Lumbee prayed the Utilities Commission to restrain CP&L from further construction of such facilities and from rendering service to the Acme plant and to require CP&L to remove the facilities which had then been constructed for that purpose.

Lumbee moved for a temporary restraining order, which was denied by the commission. The construction of the line was completed by CP&L and it supplied electric service over these facilities to the contractor constructing the Acme plant. CP&L and Acme then moved to dismiss the complaint as a matter of law upon the stipulated facts and the pleadings. The commission first denied this motion and then, upon reconsideration, allowed it.

The commission found as a fact: 'Lumbee does not allege, and counsel for Lumbee conceded that it does not propose to show, that CP&L will not make a profit or earn a return on the facilities constructed by it to furnish electric service to

the Acme premises.' While this is not a fact stipulated, it is true that the complaint does not contain any allegation with reference to this matter.

The commission concluded: 'There is no question but that, under G.S. s 62—110.2(b)(5), CP&L has the right to provide electric service to the Acme plant or 'premises' in this case. * * * (W)hether *255 or not there may be duplication, is not an issue in this proceeding, * * * (E)ven if duplication should exist it would not deprive the consumer of its statutory right to choose **667 its electric supplier or deprive CP&L of its statutory right to serve.'

Attorneys and Law Firms

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Edward B. Hipp, Commission Atty., and Larry G. Ford, Associate Commission Atty., Raleigh, for North Carolina Utilities Commission, appellee.

Sherwood H. Smith, Jr., Charles F. Rouse and W. Reid Thompson, Raleigh, for Carolina Power & Light Co., appellee.

McLean & Stacy, Lumberton, for intervenor appellee.

Opinion

LAKE, Justice.

Acme desires to purchase from CP&L the electric power it requires for the operation of its manufacturing plant. CP&L desires to sell that power to Acme. They have entered into a contract for such purchase and sale. We are not required to determine whether Acme could compel an unwilling CP&L to serve it.

Lumbee is a customer of CP&L. We are not, however, presently required to determine whether, as such customer, it may bring a proceeding before the Utilities Commission to prevent CP&L from constructing an extension of CP&L's facilities on the theory that such extension will be unprofitable and, therefore, may, at some future date, make it necessary for CP&L to charge Lumbee rates higher than CP&L would otherwise need in order to earn a fair return on the fair value of CP&L's total plant. Lumbee does not proceed here upon that theory. While it does not stipulate that CP&L will derive from its service to Acme a fair return upon that portion of its total rate base attributable to such service, Lumbee does not allege the contrary. It proceeds here upon the theory that it, as

a supplier of electric power, has the exclusive right to serve Acme though Acme prefers another supplier.

Again, we do not presently have before us the question of Lumbee's right to have the Utilities Commission assign to Lumbee, as its exclusive service area, any territory pursuant to G.S. s 62--110.2(c). That statute confers upon the commission the authority, and imposes upon it the duty, to make such assignments to electric membership corporations, such as Lumbee, and to electric utility companies, such as CP&L, of all territory outside the corporate limits of municipalities and more than 300 feet from the lines of any such supplier. It provides that 'in order to avoid unnecessary duplication *256 of electric facilities,' the commission shall, 'as soon as practicable after January 1, 1966,' so assign all such territory 'in accordance with public convenience and necessity.' The record before us shows that, despite the passage of three years, there has been no such division of such territory in Robeson County, either by agreement of the suppliers or by order of the commission. Originally, in this proceeding Lumbee combined its prayer for a restraining order against CP&L with its application for an order so assigning to Lumbee the territory which includes the Acme plant. However, Lumbee did not except to the order of the commission which separated its application for such assignment of territory from its complaint against CP&L. Only the latter was heard by the commission and it alone is now before us.

Thus, the question before us is whether Lumbee, as a competitor of CP&L, has a right, in the absence of such assignment of territory by the commission and in the absence of any contract between Lumbee and CP&L or between Lumbee and Acme, to an order by the Utilities Commission forbidding CP&L to serve Acme in accordance with Acme's request. Lumbee asserts that it is entitled to the entry of such order solely because, at the time Acme's initial need for service arose, Lumbee had in operation a single-phase power line within 300 feet of a portion of Acme's plant, and a three-phase line a short distance further therefrom, whereas CP&L had to build approximately four miles of line, substantially paralleling and duplicating Lumbee's line, in order to reach the Acme plant.

****668 [1] [2]** In the absence of a valid grant of such right by statute, or by an administrative order issued pursuant to statutory authority, and in the absence of a valid contract with its competitor or with the person to be served, a supplier of electric power, or other public utility service, has no territorial monopoly, or other right to prevent its competitor from serving anyone who desires the competitor

to do so. In *Blue Ridge Electric Membership Corp. v. Duke Power Co.*, 258 N.C. 278, 128 S.E.2d 405, this Court said, 'Unless compelled by some cogent reason, one seeking electric service should not be denied the right to choose between vendors.' In *Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co.*, 255 N.C. 258, 120 S.E.2d 749, and in *Carolina Power and Light Co. v. Johnston County Electric Membership Corp.*, 211 N.C. 717, 192 S.E. 105, this Court recognized that, except as restricted by contract, electric membership corporations and public utility companies supplying electricity are free to compete in the rural areas of this State, notwithstanding the fact that such competition may result in substantial duplication of electric power lines and other facilities.

***257 [3] [4]** It is well settled, that the police power of the State is broad enough to include a statute providing that a public utility company, desiring to serve a new area, must obtain from the Utilities Commission a certificate that public convenience and necessity requires the proposed extension of its distribution facilities. It is, however, equally well settled that the Utilities Commission is a creature of the Legislature and has no authority to restrict competition between suppliers of electricity, except insofar as that authority has been conferred upon it by statute. *State of North Carolina ex rel. Utilities Comm. v. Thurston Motor Lines*, 240 N.C. 166, 81 S.E.2d 404; *North Carolina Utilities Comm. v. Atlantic Greyhound Corp.*, 224 N.C. 293, 29 S.E.2d 909.

[5] [6] [7] [8] Obviously, the commission may not, by its rule or order, forbid the exercise of a right expressly conferred by statute. See *North Carolina Utilities Comm. v. Atlantic Coast Line R.R. Co.*, 224 N.C. 283, 29 S.E.2d 912. The legislative body is under no compulsion to exercise the police power of the State to its fullest extent, or to exercise it in a manner which the courts, or an administrative agency, may deem wise or best suited to the public welfare. *Zopfi v. City of Wilmington*, 273 N.C. 430, 160 S.E.2d 325; *In re Markham*, 259 N.C. 566, 131 S.E.2d 329. It is for the Legislature, not for this Court or the Utilities Commission, to determine whether the policy of free competition between suppliers of electric power or the policy of territorial monopoly or an intermediate policy is in the public interest. If the Legislature has enacted a statute declaring the right of a supplier of electricity to serve, notwithstanding the availability of the service of another supplier closer to the customer, neither this Court nor the Utilities Commission may forbid service by such supplier merely because it will necessitate an uneconomic or unsightly duplication

of transmission or distribution lines. In such event, it is immaterial whether the Legislature has imposed upon such supplier a correlative duty to serve.

In the light of these principles, we turn, to G.S. s 62—110.2, enacted in 1965, prior to which time there was no restraint upon competition in rural areas between electric membership corporations and public utility suppliers of electric power except as established by contract. *Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co.*, supra.

The former absence of statutory provisions restricting competition between electric membership corporations and public utility suppliers of electric power gave rise to many contracts between these two types of suppliers designed to fix their respective territorial rights, which contracts, in turn, gave rise to much litigation. ****669** See *Blue Ridge Electric Membership Corp. v. Duke Power Co.*, supra. In the hope of putting an ***258** end to or reducing this turmoil, the 1965 Legislature enacted G.S. s 62—110.2, the language of which was the result of collaboration and agreement between the two types of suppliers.

Subsequent (c) of this statute provides for the assignment of territory by the commission above mentioned. Subsection (b) of this statute sets forth in ten numbered paragraphs specific rules governing the right of suppliers to serve in situations there described. Provisions pertinent to this appeal are as follows:

'(b) In areas outside of municipalities, electric suppliers shall have rights and be subject to restrictions as follows:

'(1) Every electric supplier shall have the right to serve all premises being served by it, or to which any of its facilities for service are attached, on April 20, 1965.

'(2) Every electric supplier shall have the right, subject to subdivision (4) of this subsection, to serve all premises initially requiring electric service after April 20, 1965 which are locate wholly within 300 feet of such electric supplier's lines as such lines exist on April 20, 1965, except premises which, on said date, are being served by another electric supplier or to which any of another electric supplier's facilities for service are attached.

'(3) Every electric supplier shall have the right, subject to subdivision (4) of this subsection, to serve all premises initially requiring electric service after April 20, 1965 which are located wholly within 300 feet of lines that such electric

supplier constructs after April 20, 1965 to serve consumers that it has the right to serve, except premises located wholly within a service area assigned to another electric supplier pursuant to subsection (c) hereof.

'(4) Any premises initially requiring electric service after April 20, 1965, which are located wholly or partially within 300 feet of the lines of one electric supplier and also wholly or partially within 300 feet of the lines of another electric supplier, as each of such supplier's lines exist on April 20, 1965, or as extended to serve consumers that the supplier has the right to serve, may be served by such one of said electric suppliers which the consumer chooses, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises.

'(5) Any premises initially requiring electric service after April 20, 1965 which are not located wholly within 300 ***259** feet of the lines of any electric supplier and are not located partially within 300 feet of the lines of two or more electric suppliers may be served by any electric supplier which the consumer chooses, unless such premises are located wholly or partially within an area assigned to an electric supplier pursuant to subsection (c) hereof, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises.

'(10) No electric supplier shall furnish electric service to any premises in this State outside the limits of any incorporated city or town except as permitted by this section * * *.'

[9] Subsection (a)(1) of this statute defines 'premises' to mean 'the building, structure, or facility to which electricity is being or is to be furnished,' subject to a proviso not presently material. Consequently, it is the plant of Acme, and not the tract upon which it is located, which constitutes the 'premises' here involved, as that term is used in subsection (b). Thus, paragraph (1) of subsection (b), ****670** above quoted, does not confer upon Lumbee the right to serve the Acme plant by reason of Lumbee's former service to the residence and the electric signs previously located on this tract. For the same reason, the 'premises' here involved are located partially but not wholly within 300 feet of where Lumbee's single-phase line was when Acme's initial need for electric service arose. Consequently, the right of CP&L to construct its line here in question and to serve the Acme plant is governed by paragraphs (3), (4) and (5), above quoted.

EXHIBIT B

(Continued From Sheet No. C-2.00)

C1. CHARACTERISTICS OF SERVICE (Contd)

C1.3 Use of Service (Contd)

- M. For failure of the Non-Residential customer to pay any delinquent Non-Residential account incurred by the customer under a different account name, by the customer's predecessor in interest or by any other entity, provided that the customer is legally obligated to assume and pay such debt.
- N. For failure of the customer to comply with the terms and conditions of a settlement agreement, interim determination or complaint determination between the customer and the Company.
- O. For violation of, or noncompliance with, the Company's Electric Rate Book.

C1.4 Extraordinary Facility Requirements and Charges

The Company reserves the right to charge a monthly extraordinary facilities charge or to make special contractual arrangements when, in the opinion of the Company, extraordinary facilities are required by the customer. Extraordinary facilities include, but are not limited to, the following:

- A. Facilities required to accommodate a customer whose capacity requirements exceed 1,000 kW.
- B. Facilities required to accommodate a customer whose establishment is remote from the Company's existing suitable facilities.
- C. Facilities required to accommodate a customer's service requirements necessitating unusual investment by the Company and/or not normally provided by the Company.
- D. Facilities required to accommodate a customer's service requirements which may be of a short-term, temporary or transient nature.
- E. Facilities required to avoid *interrupting or impacting* the service to *other customers*.

The Company shall build, own and maintain all such facilities, to and including any substation required at the customer's premises. The customer will have the following options:

- A. Pay a monthly extraordinary facilities charge equal to one and one-half percent (1-1/2%) of the Company's total investment in such facilities, or
- B. *Pay the balance of the Company's investment in the facilities needed to serve the customer after applying the Contribution in Aid of Construction Allowance ("Allowance"). The Allowance will be based on the projected annual incremental load, as determined by the Company, times the dollar per kWh or kW based on the customer's rate schedule and contract duration as shown in the Contribution In Aid of Construction Allowance Schedule. The customer shall be required to make payment prior to construction as specified in a written facility agreement for the difference between the Allowance and the total estimated cost of construction. The customer may be subject to a minimum monthly charge based on the customer's estimated load, contract duration, and the amount of Company investment, which shall be specified in a written facility agreement.*

(Continued on Sheet No. C-3.10)

Issued November 13, 2012 by
J. G. Russell,
President and Chief Executive Officer,
Jackson, Michigan



Effective for service rendered on
and after November 1, 2012

Issued under authority of the
Michigan Public Service Commission
dated October 31, 2012
in Case No. U-17147

(Continued From Sheet No. C-32.20)

C6. DISTRIBUTION SYSTEMS, LINE EXTENSIONS AND SERVICE CONNECTIONS (Contd)

C6.1 Overhead Extension Policy (Contd)

A. Residential Customers (contd)

The Company shall make a one-time refund, five years from the completion date of the extension or upon completion of the customer's construction, whichever the customer chooses, of \$500 for each additional residential customer and/or the first year's estimated revenue for each additional General Service customer who connects directly to the line for which a deposit was required. Refund allowances shall first be credited against the 25% reduction before a refund is made to the customer based on the customer's cash deposit. Directly connected customers are those who do not require the construction of more than 300 feet of Primary and/or Secondary distribution line. Refunds shall not include any amount of contribution in aid of construction for underground service made under the provisions of Rule C 6.2, Underground Policy.

B. General Service Customers

The Company shall construct single-phase and three-phase distribution line extensions, at its own cost when the cost of such extension does not exceed three times the estimated annual revenue from the customer(s) to be immediately served.

Extensions in excess of the above free allowance shall require a deposit from the customer, in an amount equal to the estimated construction costs in excess of the free allowance.

(1) Original Customers

At the end of the first complete 12-month period beginning the month following the date the line extension is completed, the Company shall refund to the depositor three times the amount that actual revenue exceeds the original revenue estimate. If the actual revenue exceeds the estimated revenue, the actual revenue then becomes the base upon which future refund calculations are to be made during the remainder of the five-year refund period.

(2) Additional Connected Customers

The Company shall refund \$500 for each residential customer and/or the first year's estimated revenue for each General Service customer who connects directly to the line for which a deposit was required. Directly connected customers are those who do not require the construction of more than 300 feet of Primary and/or Secondary distribution line. Refunds shall not be made until the original customer(s) or equivalent is actually connected to the extension. Refunds shall not include any amount of contribution in aid of construction for underground service made under the provisions of Rule C6.2, Underground Policy.

C. General

- (1) Refundable deposits made with the Company under this rule shall be subject to refund without interest, for a five-year period which begins the month after the line extension is completed. The Company shall have no further obligation to refund any remaining portion of line extension deposits.
- (2) Each extension shall be a separate, distinct unit and any further extension therefrom shall have no effect upon the agreements under which existing extensions were constructed.
- (3) Refunds cannot exceed the refundable portion of the deposit.
- (4) Estimated construction costs shall exclude services and meters.
- (5) The applicant shall furnish, without cost to the Company, all necessary rights-of-way and tree trimming permits, in a form satisfactory to the Company. If the applicant is unable to secure rights-of-way and permits, in a form satisfactory to the Company, the Company shall extend its distribution system along an alternate route selected by the Company, and shall require the applicant to pay all additional costs incurred.

(Continued on Sheet No. C-34.00)

Issued July 19, 2013 by
J. G. Russell,
President and Chief Operating Officer,
Jackson, Michigan



Effective for service rendered on
and after June 29, 2013

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