



April 28, 2016

Chairman Nofs, Vice Chairman Proos and members of the committee. Thank you for allowing me to speak today. My name is Teresa Ringenbach and I am presenting today on behalf of Direct Energy.

Direct Energy is a residential and commercial provider of electricity, natural gas and home services products. We serve over 5 million customers across North America. Our parent company Centrica is a Global 500 business with over 27.9 million customer accounts worldwide. In Michigan, our business focus is retail electricity service, natural gas service and home services through our HVAC and electrician franchisees. Ultimately Direct Energy would prefer a fully open Michigan electric market like we see in other states.

I am testifying today out of concern SB 437 (S-2) will have a devastating impact on the 700 businesses and schools we serve electricity across Michigan. Direct Energy is concerned that the legislation as written will result in a loss of customer choice for the 10% of load receiving competitive electric service.

The legislation as written contains provisions which will strangle customer choice in three ways. These include:

1. Timing of compliance
2. Openings for market manipulation without choice customer protections
3. Lack of process for load switching

Individually and together these three failures will result in loss of choice for existing customers.

The first item to impact electric choice is the timing for compliance with the legislation.

As written the legislation would require an AES to file their demonstration for the 2017/2018 and 2018/2019 planning years in November 2016. MISO determines the requirements for the next planning year based on data received at different times. MISO receives the first set of data in November. This is the first part of the calculation to create the local clearing requirement or LCR. The next piece of data arrives in December this is the specific customer demand used to determine any supplier's capacity needs. Then in January MISO sets the planning reserve margin requirements with a final forecast in March. As written an AES, utility or co-op will all be required to demonstrate capacity for a planning year requirement that MISO has not yet set. If passed now for November 2016 compliance, the legislation is unclear what data the MPSC is to use to set our pro-rata portion. The assumption is that the MPSC would use the 2015 data to set the 2017/2018 planning year and therefore would now create a two to three year gap for the 2017/2018 and



2018/2019 planning years. In other words we will be planning based on customer peak demand from last year for customers we may not even serve a year from now. However, given the legislation is not clear what data would be used for our compliance filing in November 2016 there is room for manipulation of the process. If this legislation passes in June and goes into effect suppliers will be scrambling to set up contracts. Contract negotiations take time, MISO's own power purchase agreement review requirements take 60 days and that is outside of a supplier and generator negotiating period. Timing alone could create non-compliance and loss of license. There needs to be a one year delay to set up calculations and processes with the MPSC and to allow suppliers time to plan and contract. The legislation must be clarified that if passed this session the demonstration requirement would not apply until the 2018/2019 planning year. In addition, the timing for data and demonstration should be shifted to match the MISO timeframes to ensure the most recent customer demand data is being used to avoid a two year gap.

To ensure the 10% on choice are not adversely affected the enactment date needs to be further in future to allow for the orderly transition from the current MISO rules to those contained in this legislation.

The second impact to choice is market manipulation.

The legislation as proposed narrows the number of generators eligible to enter into bi-lateral agreements. The requirement to purchase from resources present in the local resource zone reduces the number of generators with capacity eligible to serve the zone. Today we could also use what is called a Tier 1 resource. Tier 1 is a resource that is directly adjacent to the zone but not located within it. Generators who are within the zone will now have full market control for whom and how much they contract. There is nothing in the legislation that can force a generator to contract with Michigan customers first. In fact, as stated earlier if a generator does not contract the only requirement is that the excess capacity must go into the MISO auction – an option no longer available for purchase for Michigan customers. Direct Energy is concerned there could be price gouging or withholding of capacity designed to manipulate the market. The legislation does include a process to complain that such actions are occurring but that process has no resolution or relief for the customer or AES. As written the protections appear to instead simply place extra requirements on an AES or customer with no solution. For non-regulated generators an AES or customer must first go to the MPSC and prove there is evidence. Then after spending time and money to prove there is evidence of capacity manipulation the solution is for the MPSC to take this to the Attorney General where some unknown next step may or may not occur. If that next step is the Attorney General filing a case then that is another process that could take years to resolve. In the meantime, the customer will either be forced to pay the higher prices or lose their AES due to lack of capacity.



On the regulated side the process is worse. The legislation as written offers zero relief to the customer or AES. In fact, should the AES or customer prove a regulated entity has manipulated the capacity system the only solution for the MPSC is that they “may” withhold cost recovery. Direct Energy respects the concept of a stick to encourage compliance however as written there is no relief for a customer or AES who has been subjected to this manipulation. In fact, the solutions or “sticks” as written ensure a customer will either overpay or lose their AES due to lack of capacity. There needs to be a form of relief for the customer to ensure the 10% choice option remains legitimate and not inadvertently killed.

Finally, this lack of customer relief also opens the door for customer manipulation of the queue. A customer could contract with AES to withhold capacity creating a shortage for other customers on choice. Capacity cannot be withheld from the MISO auction if it is excess but because the timing for compliance under this legislation doesn’t match up to MISO an AES would only need to withhold to get through the November demonstration process and ensure other AES lose their license or have reduced load. As AES lose their license or are forced to return customers due to a capacity shortage the next customer in line has an opportunity to go on choice.

If the MPSC is to be tasked with ensuring AES and utilities have enough required capacity the MPSC should also have the flexibility to allow for use of the MISO auction or other capacity purchase options when a complaint of withholding or price gouging is brought. If AES and customers have other relief it would mitigate the incentive to withhold or price gouge to kill or manipulate the market.

This brings us to the third item – a lack of process for retail load switching.

The legislation as written requires an AES to procure capacity for customers it serves nearly a full 1-2 years prior to the actual delivery year. I have attached timelines of the current and proposed process so I will not go into that here. The nature of competition is that customers have the ability to procure pricing from the AES they choose. MISO has retail load switching policies which ensure capacity obligations move with customers as they switch suppliers. As written an AES who loses a customer would be forced to carry too much capacity and one who gains a customer could be short capacity. This is possible because the requirement to demonstrate happens annually based on a prior year peak demand served. In other words, an AES who loses a customer would be forced to over carry capacity for nearly 3 years while the AES gaining a customer could under carry for two years in essence a loophole. Direct Energy would like to see language which requires the MPSC to recognize the MISO retail load switching policies. A supplier would have the ability to demonstrate based on changes in customers a lower or higher capacity procurement to avoid losing their license. This would allow for suppliers to sell capacity to each other, capacity to not be unreasonably withheld from the market for purposes of licensing and continue to provide customers with options for their supply. In addition, the requirement that a customer who leaves



the utility retain and pay for the capacity the utility held for them should also be clarified that the capacity is the customer's. The customer paid for it therefore it should carry to their supplier and count toward that supplier's pro-rata requirement. Without that clarification those customers will pay for double capacity – that which they have with the utility and the supplier amount to meet the pro-rata requirement.

The legislation as written contains several openings that will strangle electric choice until there are few to no real options left. Attached to my testimony are timelines showing how resource requirements and capacity calculations occur today and under the legislation. For the reasons discussed above this legislation will inadvertently kill choice, I urge this committee to vote no on SB 437 (S-2) as it is written today.

Thank you for your time on this important matter.

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Current MISO Timeline for Planning

Year 2017/2018

(June 1, 2017 – May 31, 2018)

Nov. 2016

- Utility sends demand/energy information to MISO
- This is the data from 2015

Dec 2016

- AES receive customer PLC (capacity requirement) from utility

Mid January 2017

- AES confirms the PLC information in the MISO computer system

Early March 2017

- MISO finalizes forecast, determines PRMR and LCR and other auction parameters
- FRAP are due to MISO

Late March 2017

- MISO holds auction for June 2017 – May 2018 planning year
- Excludes FRAP includes all excess capacity

Potential MPSC Compliance Timeline for Planning Year 2017/2018 (June 1, 2017 – May 31, 2018)

July 2016	<ul style="list-style-type: none">•MPSC determines pro-rata share•Unclear what data will be used given the MISO data wont be finalized until March 2017	Nov 1, 2016	<ul style="list-style-type: none">•AES demonstrate capacity•MISO receives first demand/energy data for the planning year.	Dec 2016	<ul style="list-style-type: none">•AES receive PLC from utility•PLC is the demand that determines the capacity needs of our customers	Jan 1, 2017	<ul style="list-style-type: none">•AES send PLC to MISO	Early March 2017	<ul style="list-style-type: none">•MISO finalizes forecast•AES must submit their FRAP to MISO	Late March 2017	<ul style="list-style-type: none">•MISO holds auction for June 2017 – May 2018 planning year•Excludes FRAP includes all excess capacity
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Under legislation compliance is filed 4 months prior to the actual capacity requirement for the upcoming planning year being known.

