

IMPORTANT UPDATE REGARDING THE ELECTRIC CHOICE PROGRAM

August 8, 2019

As Yogi Berra so eloquently once said: **“It ain’t over till it’s over”** and this statement couldn’t be more accurate as it pertains to the Electric Choice program.

As you may recall, in the closing hours of the 2016 legislative session a package of energy related bills was ultimately agreed upon and Public Act 341 became law. Thanks to the tireless effort of many interested parties, including MISEC, we were successful in removing a very controversial section of the proposed legislation. This section would have required Alternate Energy Suppliers (AES), like those that serve MISEC’s Electric Choice customers, to purchase a portion of their electric needs from in-state generators (like DTE & Consumers, the very people that want to eliminate Electric Choice). This requirement was known as a “Local Clearing Requirement” or LCR.

However, despite our efforts, the Michigan Public Service Commission (MPSC), in implementing the new requirements of PA341, determined that in fact the law did require AES’s purchase a portion of their requirements from in-state generators and ordered the AES’s to meet this requirement beginning in 2022.

Disagreeing with the MPSC’s decision, the very same parties that negotiated the original law filed a lawsuit at the Michigan Court of Appeals (COA) claiming that the MPSC was basically rewriting the law. The Court of Appeals unanimously, and correctly, agreed with us and ruled that the imposition of a supplier-specific local clearing requirement is unnecessary, and that the imposition of an LCR for AES’s favors in-state generation suppliers to the detriment of AES’s, and will ultimately end Electric Choice in Michigan.

Needless to say, this was a very big victory for the Electric Choice customers, but unfortunately the MPSC and both utilities (Consumers Energy and DTE) have appealed the COA’s decision to the Michigan Supreme Court.

Prior to hearing arguments on the case, the Supreme Court has invited interested parties to file Amicus Briefs so the Court has a full picture of the issues and arguments that are before them. An Amicus Brief is a filing by someone who is not a direct party to a case but could assist a court by offering information, expertise, or insight, that has a bearing on the issues in the case.

Due to the importance and impact of the Court’s LCR ruling on our members, MISEC has retained Counsel and is preparing to file an Amicus Brief that will outline our position and understanding of the law as it pertains to the LCR and will also inform the Court of how important participation in the Electric Choice program is for schools.

We anticipate that this brief will be filed within the next week or so and we will keep you informed as this case moves through the process. If you would like a copy of our filing or have any additional questions, please feel free to contact us at 888-345-0440 or drop us an email at Jeffrey.clark@se.com.