

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>THE DETROIT EDISON COMPANY</b> for	)	
authority to amend its rate schedules	)	Case No. U-10102
governing the supply of electric energy	)	
and to amend other miscellaneous rates.	)	
_____	)	

At the August 5, 1998 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. John C. Shea, Commissioner  
Hon. David A. Svanda, Commissioner

**ORDER ON REMAND**

On January 21, 1994, the Commission issued an order in The Detroit Edison Company's (Detroit Edison) above-captioned rate case that, among other things, approved a demand-side management (DSM) program for 1994 through 1996. The order authorized Detroit Edison to collect from its customers, and spend on its base DSM program, \$7.6 million during 1994, \$14.9 million during 1995, and \$19 million during 1996. These figures represented an increase of 17%, 67%, and 57%, respectively, from the utility's proposed spending levels for 1994, 1995, and 1996, for a total increase of \$14 million over the amount requested by Detroit Edison. The order further approved recovering these DSM costs by applying a uniform surcharge to all customer

classes, rather than surcharging only those customers involved in the program as proposed by Detroit Edison.

In that order, the Commission rejected Detroit Edison's plan to recover a shareholder incentive equal to 20% of the savings realized by the program and instead established a sliding scale of penalties and rewards. In conjunction with that penalty/reward mechanism, the order adopted capacity and energy savings targets that were higher than those proposed by the utility. The Commission went on to revise a "lost revenue" provision that Detroit Edison proposed by precluding recovery of "lost revenues" in any year when the utility's sales exceeded projections used in the ratemaking process or when the utility earned more than its authorized rate of return. The order also established a plan for (1) reconciling each year's DSM revenues and expenses, (2) projecting DSM costs for each year through at least 1998, (3) calculating the reward to be collected or penalty to be paid, and (4) computing the surcharge to be applied during the upcoming year. Finally, the order indicated that cogeneration and dispersed generation do not constitute DSM measures and should not be treated as part of Detroit Edison's DSM program.

In its June 16, 1994 order addressing petitions for rehearing, the Commission clarified certain DSM issues, but otherwise rejected proposals to modify the DSM program. Thereafter, Detroit Edison and others filed claims of appeal with the Michigan Court of Appeals (the Court).

On February 7, 1997, the Court issued an order upholding the Commission's authorization of rates needed to recover the cost of the DSM program. In so doing, the Court rejected claims by several appellants that MCL 460.6c; MSA 22.13(6c) somehow restricts the Commission's authority to approve such rates for any customers other than residential ratepayers. However, the Court went on to find that the Commission impermissibly infringed on Detroit Edison's managerial prerogatives by increasing the size of the proposed DSM program, eliminating certain aspects of

the program proposed by the utility, and raising the capacity and energy savings targets. Detroit Edison Co. v Public Service Comm'n, 221 Mich App 370; 562 NW2d 224 (1997). The Court therefore ordered the case remanded for further consideration, to the extent that the Commission deems it necessary, of the Commission's decision regarding the DSM program.<sup>1</sup> Id., at 11. Although the Commission sought leave to appeal, its application was denied by the Michigan Supreme Court on July 13, 1998.

The Commission notes that most, and possibly all, of the issues mentioned in the Court's remand order have been rendered moot by Commission orders issued subsequent to June 16, 1994. The July 31, 1995 order in Case No. U-10671-R suspended the incentive system established for Detroit Edison in Case No. U-10102. Moreover, the Commission's September 12, 1996 order in Case No. U-10932 authorized the utility to implement a DSM surcharge of zero for 1996, and further advised Detroit Edison that it did not need to file DSM plan cases for 1997 and 1998. Additionally, the December 20, 1996 order in Cases Nos. U-10671-R and U-10867 approved a settlement that, despite requiring Detroit Edison to submit certain information to the Commission Staff concerning any net over- or underrecovery from its 1994, 1995, and 1996 DSM plan years, resolved a number of the remaining DSM-related issues.

The Commission concludes that all parties to Case No. U-10102 or to any of Detroit Edison's subsequent DSM plan and reconciliation cases should be given 60 days to assess the effect of the

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<sup>1</sup>The Court went on to note that although the Commission erred in the manner in which it approved Detroit Edison's DSM program, there would be no need to refund to the utility's customers the funds paid through rates or surcharges to support the DSM program from 1994 through 1996. According to the Court, to the extent customers were charged for the DSM program, the charges represent rates based on expenses that the Commission found to be just and reasonable.

Court's February 7, 1997 decision and to submit filings regarding what, if any, additional steps should be taken to provide for a final resolution of this case.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand  
Chairman

( S E A L )

/s/ John C. Shea  
Commissioner

/s/ David A. Svanda  
Commissioner

By its action of August 5, 1998.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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By its action of August 5, 1998.

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Case No. U-10102

Suggested Minute:

“Adopt and issue order dated August 5, 1998 providing the parties to Case No. U-10102 or to any of The Detroit Edison Company’s 1994, 1995, or 1996 demand-side management plan or reconciliation cases with 60 days to submit filings regarding what, if any, additional steps should be taken by the Commission in response to the remand order from the Court of Appeals, as set forth in the order.”