

Robert W. Kehres S T A T E O F M I C H I G A N
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

At the October 26, 1998 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

ORDER CLOSING DOCKET

On January 21, 1994, the Commission issued an order in The Detroit Edison Company's (Detroit Edison) rate case (Case No. U-10102) 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. 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 and 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.

In its June 16, 1994 order addressing petitions for rehearing in Case No. U-10102, 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 of the Commission's decisions regarding the DSM

program, but only to the extent that the Commission deemed it necessary.¹ *Id.*, at 390. Although the Commission sought leave to appeal, its application was denied by the Michigan Supreme Court on July 13, 1998.

On August 5, 1998, the Commission issued an order in this case noting that most, and possibly all, of the issues mentioned in the Court's remand order were rendered moot by Commission orders issued subsequent to June 16, 1994. For example, 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 therefore concluded that all parties to Case No. U-10102 or to any of Detroit Edison's subsequent DSM plan and reconciliation cases should be given an opportunity to "assess the effect of the 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." August 5, 1998 order in Case No. U-10102, pp. 4-5. On October 2 and 5, 1998, respectively, Detroit Edison and Attorney General Frank J. Kelley (Attorney General) filed statements asserting that prior Commission

¹The 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.

orders (like those issued in Cases Nos. U-10671-R, U-10867, and U-10932) rendered moot the Court's February 7, 1997 remand order. No other parties filed statements.

The Commission agrees with Detroit Edison and the Attorney General that, in light of prior orders suspending the utility's DSM program and reconciling the program's revenues and expenses, no additional steps are needed to comply with the Court's remand order. It therefore concludes that the docket should be closed in this case.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. No further proceedings are necessary in this case.
- c. The docket in Case No. U-10102 should be closed.

THEREFORE, IT IS ORDERED that the docket in Case No. U-10102 is closed.

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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

By its action of October 26, 1998.

/s/ Dorothy Wideman

Its Executive Secretary

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Case No. U-10102

Suggested Minute:

“Adopt and issue order dated October 26, 1998 finding that no further proceedings are necessary in this case and that the docket should be closed, as set forth in the order.”