

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
for a determination of which facilities of)	
THE DETROIT EDISON COMPANY should be)	Case No. U-11337
classified as transmission facilities for purposes)	
of Order No. 888 issued by the Federal Energy)	
Regulatory Commission.)	
_____)	

At the January 14, 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

OPINION AND ORDER

On March 10, 1997, the Commission issued an order commencing a contested case to address a proposal submitted by The Detroit Edison Company (Detroit Edison) to provide a federal/state jurisdictional delineation between the company's transmission and local distribution facilities, pursuant to the criteria set forth by the Federal Energy Regulatory Commission (FERC) in its Order No. 888.¹

¹Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed Reg 21,540; FERC Stats & Regs, Regulations Preambles Jan 1991 to June 1996 ¶ 31,036 (1996). Thereafter, the FERC issued Order No. 888-A, which addressed requests for rehearing of Order No. 888 and reaffirmed the FERC's findings regarding the jurisdictional delineation between transmission and local distribution facilities. 62 Fed Reg 12,274; III FERC Stats and Regs ¶ 31,048, at pp. 30,181-82, 30,335-46 (1997).

At a prehearing conference on March 31, 1997, Administrative Law Judge Robert E. Hollenshead (ALJ) granted leave to intervene to the Association of Businesses Advocating Tariff Equity (ABATE), Attorney General Frank J. Kelley (Attorney General), Competitive Utility Tariffs, Inc., the City of Detroit and its Public Lighting Department (Detroit), DowElanco, Edison Sault Electric Company, Energy Michigan, the Michigan Electric Cooperative Association, Northern States Power Company - Wisconsin, Wisconsin Public Service Corporation (WPS Corp), and Wolverine Power Supply Cooperative, Inc. The Commission Staff (Staff) also participated.

The ALJ conducted evidentiary hearings on May 28 and 29, 1997. Detroit Edison, Detroit, WPS Corp, the Attorney General, and the Staff filed briefs, and, except for Detroit, the same parties filed reply briefs. On August 26, 1997, the ALJ issued a Proposal for Decision (PFD). On September 9, 1997, Detroit Edison, ABATE, and the Staff filed exceptions. On September 16, 1997, WPS Corp and the Attorney General filed replies to exceptions.

As explained by Detroit Edison witness Lawrence B. Andres, Detroit Edison's proposal defines the transmission system as the lines and related equipment and facilities that the company operates as an integrated network system to make interconnections with nearby transmission systems and to transmit bulk power from the interconnections and its power plants to major load centers for further distribution. The proposal classifies facilities as transmission if they operate at or above 120 kilovolts (kV) (including 345 and 230 kV), except for radial lines and related facilities serving end-use customers. According to Detroit Edison, there are approximately 50 radial 120 kV lines running to end-use customers.² Tr. 55-56

²The Staff additionally identified one 230 kV radial line serving an end-use customer. Tr. 168, 171.

Detroit Edison's proposal further defines the distribution system as the facilities used to transfer power from the transmission system to retail customers (as well as a limited number of wholesale and resale customers). It classifies distribution facilities to include the 120 kV radial lines to end-use customers as well as facilities operating at lower voltages (41.6, 24, 13.2, and 4.8 kV and secondary voltages). Tr. 55-56.

Staff witness Stephen M. Paytash and Attorney General witness Richard A. Rosen evaluated Detroit Edison's proposal and substantially agreed with the company's recommendations regarding the reclassification of transmission facilities as distribution. All three witnesses applied the FERC's technical test using seven indicators of local distribution.³

Dr. Rosen testified that he interpreted Detroit Edison's proposal to assign a transmission classification to those substations located above the 120 kV radial lines running to end-users. He further classified the substations at voltages higher than 120 kV as transmission facilities and the substations used as interfaces between 120 kV and either 41.6 kV or 24 kV as distribution facilities. Tr. 232, 243-245. Dr. Rosen proposed that all retail meters be classified as distribution facilities. Tr. 253. Detroit Edison concurred in Dr. Rosen's clarifications regarding substations and retail meters. Detroit Edison's brief at 40-41.

The ALJ recommended that Detroit Edison's proposal for distinguishing transmission and distribution facilities should be adopted. PFD at 14. No exceptions were filed to this recommendation, which the Commission adopts.

One disputed issue concerns how to classify step-up transformers, lines, and other facilities used to connect generating plants to Detroit Edison's transmission system. Detroit Edison and the

³Order No. 888, supra at pp. 31,771, 31,783-84.

Staff advocated that those facilities be reclassified as generation plant. The Attorney General and WPS Corp supported retaining their current classification as transmission plant. The ALJ recommended that the facilities not be reclassified in this case. He said that the proper classification was beyond the scope of this case, that FERC Order No. 888 does not prescribe criteria for distinguishing generation and transmission facilities, that the record in this case is devoid of criteria for making this type of classification, and that attempting to classify those assets could raise valuation issues that need not be addressed at this time. PFD at 15-16.

In its exceptions, the Staff refers to the order commencing this case, in which the Commission stated that the hearing “will provide an opportunity for interested parties to develop fully the evidence and arguments that bear on the proper division of facilities between transmission and local distribution using the seven criteria set out in Order No. 888 and any other factors the parties believe are appropriate.” March 10, 1997 order at 2 (emphasis added in the Staff’s exceptions). The Staff says that Consumers Energy Company (Consumers) raised a similar issue in Case No. U-10283, which is a parallel case relating to Consumers’ transmission system. The Staff observes that the Commission addressed this issue in the context of the retail wheeling experiment cases, finding that the capacity reservation charges should be calculated by excluding the cost of the main unit transformers from the transmission system. June 19, 1995 order in Cases Nos. U-10143 and U-10176, at 19.

The Staff states that the function of the generation/transmission connecting facilities is to step up the electricity produced by a generator to a voltage that is suitable for the transmission system. The Staff argues that if a generator is eliminated, the step-up transformer and other connecting facilities would not have a functional value for transmission purposes.

The Staff says that any accounting or ratemaking ramifications of reclassifying the facilities can be dealt with in future proceedings. The Staff adds that a delay in resolving this issue serves no useful purpose.

Detroit Edison also argues that the proposed generation/transmission reclassification should be adopted. Detroit Edison explains that the current classification has its historical roots in an era when utility systems were not interconnected, all customers were retail sales customers, and step-up transformation improved the efficiency of transmission. Detroit Edison says that the FERC staff has taken the view that the facilities should be reclassified as production-related to accommodate current realities and prevent distortions in the generation market. However, Detroit Edison acknowledges, the FERC itself has yet to adopt this position. Detroit Edison concludes that, to be consistent with FERC proceedings on open access, the Commission should either reclassify the generation/transmission connecting facilities or defer a ruling until the FERC reaches a decision in the utility's pending open access transmission tariff proceeding.

ABATE argues that the generation/transmission reclassification is necessary to develop proper rates for unbundled services. ABATE also emphasizes the importance of consistency between FERC and state proceedings.

The Attorney General argues that the ALJ's recommendation not to reclassify the generation/transmission connecting facilities is appropriate. The Attorney General says that the FERC's seven indicators test for distribution facilities is facially inapplicable to this issue. The Attorney General says that, unlike the Commission's ruling in Cases Nos. U-10143 and U-10176, the current case does not relate to an experimental program. According to the Attorney General, the contention that the facilities would serve no purpose but for the generator is meaningless, and the converse would also be true if the transmission system were eliminated instead. The Attorney

General contends that the functional value of the connecting facilities is to facilitate the transmission of the power. He also argues that the FERC's current policy supports the current classification and that any different FERC ruling in the future would not preempt this Commission.

WPS Corp says that the ALJ was correct in defining the scope of this proceeding to exclude issues relating to the classification of the generation/transmission connecting facilities.

The Commission is persuaded by the arguments of Detroit Edison, ABATE, and the Staff that the step-up transformers and other facilities connecting generating units to the utility's transmission grid should be classified as generation-related. As argued by the Staff, those facilities provide access to the transmission and distribution systems for the energy produced by the generation units and their design is integrated with the generation units. As such, the Commission agrees with the Staff that the use of those facilities is closely aligned with the generation function. Moreover, this finding is consistent with the Commission's determination in Cases Nos. U-10143 and U-10176, supra, that the costs of main unit transformers should be excluded from the transmission function for purposes of calculating the capacity reservation charges in a retail wheeling experiment.

The ALJ agreed with the Attorney General's suggestion that additional hearings should be conducted to address what depreciation reserves should be transferred from transmission accounts to distribution accounts to record the reclassification of assets on Detroit Edison's books. PFD at 16-17.

Detroit Edison excepts, arguing that the reclassification of assets will not alter current accounting practices and does not require regulatory oversight. Detroit Edison says that the proper classification of depreciation reserves can be addressed if and when the company seeks a change in its jurisdictional rates.

In reply, the Attorney General argues that additional hearings should be conducted to determine the accounting consequences of reclassifying 47.6% of Detroit Edison's transmission plant, which has a total original cost of almost \$1.2 billion and depreciation reserves of more than \$0.5 billion. The Attorney General says that current accounting practices do not provide enough information to predict how the asset reclassification will affect the depreciation reserves.

The Commission need not address that issue in this order. The effect of the reclassification upon depreciation reserves will be subject to review in appropriate future accounting or ratemaking proceedings.

The ALJ also adopted the Attorney General's recommendation to reopen this case if Detroit Edison decides to join with other regional utilities in forming a Midwest independent system operator (ISO) to coordinate transmission functions. The ALJ reasoned that inconsistencies among the criteria of the participating utilities for classifying transmission and distribution plant could distort the prospective ISO's transmission rates and require retail ratepayers of some utilities to subsidize other utilities. PFD at 17.

Detroit Edison excepts, arguing that there is too little information available to predict if or when an ISO might be formed or how it would affect ratepayers. Detroit Edison contends that this case should be concluded with finality and should not make contingent provisions that create uncertainty.

The Attorney General responds that the formation of an ISO, which is now under discussion, and the use of postage stamp transmission rates⁴ by the ISO could result in Detroit Edison ratepayers subsidizing other utilities.

The Commission will not, in this order, make a provision to address a potential future ISO. As Detroit Edison argues, whether or when an ISO will be formed cannot be foreseen with much certainty at this time. If an ISO proposal is presented to the Commission, it will then be in a position to undertake proceedings to make the determinations required by the proposal.

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 AACS, R 460.17101 et seq.

b. Detroit Edison's classification proposal should be adopted.

THEREFORE, IT IS ORDERED that the proposal submitted by The Detroit Edison Company for classifying certain facilities is adopted.

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

⁴By a postage stamp rate, the Attorney General presumably means a single rate that would cover the use of any part of several utilities' transmission systems operating under the joint control of the ISO.

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/ John C. Shea
Commissioner, dissenting in a separate opinion.

/s/ David A. Svanda
Commissioner

By its action of January 14, 1998.

/s/ Dorothy Wideman
Its Executive Secretary

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Case No. U-11337

Suggested Minute:

“Adopt and issue order dated January 14, 1998 adopting the proposal of The Detroit Edison Company to determine appropriate classifications for certain electrical facilities, as set forth in the order.”

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DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on January 14, 1998 concerning order issued on same date.)

Because the accompanying order purports to exercise authority which I believe has not been granted to the Commission, I am not able to join the majority. As repeatedly noted in my dissenting opinions, the power of this Commission is limited to the authority expressly granted by the Michigan Legislature. See, Union Carbide Corporation v Public Service Commission, 431 Mich 135; 428 NW2d 322 (1988); In re Telecommunications Tariffs, 210 Mich App 533; 534 NW2d 194 (1995). The statutory authority at issue in this proceeding is the Transmission of Electricity Act, MCL 460.551 et seq.; MSA 22.151 (the "Act"). Section 1 of the Act provides in part:

Sec. 1. When electricity is generated or developed . . . within one county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of the same . . . and the rules and

conditions of service under which said electricity shall be transmitted and distributed shall be subject to regulation as in this act provided.

MCL 460.551; MSA 22.151.

The regulation contemplated by the above-referenced section is set forth in Section 2:

Sec. 2. The . . . commission . . . shall have control and supervision of the business of transmitting and supplying electricity as mentioned in the first section of this act.

MCL 460.552; MSA 22.152.

The terms “transmitting and supplying electricity” cannot be interpreted to mean that the Commission’s regulation of electricity may only be limited to an aggregated or bundled sale of electricity. To the contrary, this statutory language clearly authorizes the Commission to regulate all transactions involving electricity which begin and end in the state of Michigan. The regulatory jurisdiction of the Commission does not depend on the size of the wires through which electricity flows nor the pathway such wires may take, whether radial, parallel or otherwise. There is no differentiation in the Act among facilities which carry electricity at 120 kV, 41.6 kV or 24 kV, or any other voltage. There is no distinction among assets which are commonly called generation, assets which are commonly called transmission, and assets which are commonly called distribution.

The accompanying order states that the classification of the transmission assets of Michigan’s electric utilities is being done pursuant to Federal Energy Regulatory Commission (FERC) Order No. 888 and 888-A. See, Order at 1, n 1. But resort to federal law does not help the majority. Principles of federalism prevent the United States government from compelling the administrative agencies of the states to act or not to act. See, e.g. New York v United States, 505 US 144; 112 S Ct 2408; 120 L Ed 2d 120 (1992); Printz v United States, _____US_____;117 S Ct 2365; 138 L Ed 2d 914 (1997). Thus, the only way that federal law could apply here is if federal law preempts

the Act. If, indeed, the Act has been preempted by the FERC Order No. 888, then any proceeding by this Commission pursuant to the Act would be rendered a nullity.

It is true that in 1934 the United States Congress committed to the regulatory jurisdiction of the FERC certain wholesale transactions regardless of whether they may or may not occur wholly within a state. Thus, FERC does have appropriate regulatory authority to regulate certain transactions which occur within the state of Michigan. However, the jurisdictional questions have not been sufficiently clarified in this proceeding (or any other) for this Commission to voluntarily divest itself of authority which the Michigan Legislature has committed to this Commission.

For the foregoing reasons, I believe that the accompanying order is not consistent with the statutory mandate found in the Act and thus I respectfully dissent.

MICHIGAN PUBLIC SERVICE COMMISSION

John C. Shea, Commissioner