

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**THE DETROIT EDISON COMPANY** for )  
accounting authority related to the ) Case No. U-11726  
accelerated amortization of the Fermi 2 )  
nuclear plant. )  
\_\_\_\_\_ )

At the September 28, 1998 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

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

**ORDER**

On September 2, 1998, Attorney General Frank J. Kelley, the Association of Businesses Advocating Tariff Equity, and Energy Michigan filed an application for leave to appeal the August 21, 1998 ruling of Administrative Law Judge Robert E. Hollenshead (ALJ) that established a protective order for certain documents that The Detroit Edison Company (Detroit Edison) was required to provide during discovery. The appellants argue that the ALJ improperly granted a protective order in that (1) Detroit Edison failed to make a timely motion for such an order, (2) Detroit Edison failed to provide specific explanations of why each type of information is confidential and why disclosure would work a clearly defined and serious injury, (3) the information has a significant bearing on whether the Fermi 2 assets and regulatory assets are impaired by the

electric restructuring orders, and (4) Detroit Edison failed to demonstrate that its confidentiality interests outweigh the interests of the public in full disclosure in this case. They request that the Commission permit full disclosure of the information provided pursuant to the protective order.

On September 16, 1998, Detroit Edison filed a response.

As Detroit Edison acknowledges, there have been requests under the Freedom of Information Act, MCL 15.231 et seq.; MSA 4.1801(1) et seq., for a study that it provided under the protective order related to the market value of the Fermi 2 plant. The Commission gave notice to Detroit Edison of the requests, and the company chose not to object to the release or to seek a court order preventing the Commission's compliance. Paragraph 3.(b)(3) of the protective order states that it does not apply to any materials that become "public knowledge other than through disclosure in violation of this Protective Order." In addition, a significant portion of the rebuttal testimony that Detroit Edison filed addresses the Fermi 2 market value study.

In light of these factors, the Commission concludes that it should defer ruling on the application for leave to appeal and remand the issues related to the protective order for further consideration and action by the ALJ.

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 AACRS, R 460.17101 et seq.

b. It should remand the issues related to the protective order for further consideration and action by the ALJ.

THEREFORE, IT IS ORDERED that the issues related to the protective order are remanded to the Administrative Law Judge for further consideration and action.

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/ David A. Svanda  
Commissioner

By its action of September 28, 1998.

/s/ Dorothy Wideman  
Its Executive Secretary

b. It should remand the issues related to the protective order for further consideration and action by the ALJ.

THEREFORE, IT IS ORDERED that the issues related to the protective order are remanded to the Administrative Law Judge for further consideration and action.

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-11726

Suggested Minute:

“Adopt and issue order dated September 28, 1998 remanding the issues related to the protective order to the Administrative Law Judge for further consideration and action, as set forth in the order.”