

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 governing	)	Case No. U-8789
the supply of electric energy and to amend	)	
other miscellaneous rates.	)	
_____	)	

At the March 8, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

**REHEARING ORDER**

On December 27, 1988, the Commission issued an order in this proceeding approving a settlement agreement entered into by the parties. Subsequently, it became apparent that a dispute had arisen among the parties with respect to Paragraph I-E of the settlement, which relates to the phase-in revenues for The Detroit Edison Company's (Detroit Edison) Fermi 2 Nuclear Generating Plant (Fermi 2) under Statement of Financial Accounting Standards 92. Briefs and reply briefs regarding the dispute were filed by Detroit Edison, the Association of Businesses Advocating Tariff Equity (ABATE), the Attorney General, Energy Michigan, and the Commission Staff (Staff), all of whom were parties to the settlement.

On December 28, 1998, the Commission issued an order (December 28 order) finding: (1) that the settlement agreement provides for reductions in Detroit Edison's Fermi 2 cost of service in 1998

and 1999, but does not specify a mechanism for implementing those reductions; and (2) that the Commission should adopt reasonable mechanisms to assure that the Fermi 2 cost of service reductions are implemented consistent with the intent of the settlement agreement. The Commission also directed that briefs be filed by January 15, 1999 regarding the issues of whether the Commission's orders in other proceedings have fully accounted for the reductions in the Fermi 2 cost of service and, if not, what additional actions should be taken, as well as what actions are needed to revert to non-phase-in ratemaking in 2000.

On January 15, 1999, briefs on these matters were filed by Detroit Edison, the Attorney General, ABATE, and Energy Michigan. On January 21, 1999, a reply brief was filed by ABATE. On January 26, 1999, ABATE filed supplemental and amended comments.

On January 27, 1999, the Attorney General filed a petition for rehearing. On February 27, 1999, Detroit Edison filed a response.

#### Petition for Rehearing

The Attorney General requests that the Commission grant rehearing regarding the finding that the settlement agreement provides for reductions in Detroit Edison's cost of service but does not provide a mechanism for implementing those reductions. According to the Attorney General, Paragraph I-E of the settlement agreement uses the operative term "revenue changes" but does not use the terms "cost of service" or "revenue requirement." According to the Attorney General, the term "revenue changes" can only be interpreted to mean "rate changes" and the Commission should have ordered a rate reduction of \$170 million.

In reply, Detroit Edison contends that the Attorney General simply rehashes the same arguments previously presented to the Commission. According to Detroit Edison, the Attorney

General's arguments are based upon the inaccurate premise that revenue changes recorded for accounting purposes are the same as rate changes implemented. Detroit Edison notes that none of the "revenue changes" listed in Paragraph I-E for 1990 through 1994 resulted in corresponding rate changes. According to Detroit Edison, "[i]f none of the revenue changes recorded for 1990 through 1994 resulted in rate changes implemented, it is ridiculous to argue that somehow a new and different meaning must be given to the values listed for 1998 and 1999." Detroit Edison's response, p. 3.

The Attorney General's arguments do not justify rehearing in this proceeding. The Attorney General is correct that Paragraph I-E uses the term "revenue changes" that are to be recorded for accounting purposes, but that use of the terminology does not in any way suggest that the Commission's decision was in error. The Commission's use of the terms "cost of service" and "revenue requirement" in the December 28 order was intended to reflect the meaning attached to Paragraph I-E by the parties to the settlement, as was evidenced by references in the briefs and reply briefs filed the Attorney General, ABATE, Detroit Edison, Energy Michigan, and the Staff.<sup>1</sup> The Attorney General had previously indicated that the "revenue changes" represented changes in "revenue requirements" (e.g., Attorney General's reply brief, p. 8), and no justification has been given for the attempt to now somehow draw minute distinctions between these terms that all of the parties, including the Attorney General, had previously used synonymously. The terms of the settlement must be understood as the parties intended, not based upon later attempts at redefinition.

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<sup>1</sup>The Commission notes that the Attorney General is in error in claiming that Paragraph I-E does not refer to "cost of service." It does, as the quotation from the settlement included in the Attorney General's petition demonstrates.

The Attorney General also attempts to argue that the negative “revenue changes” included in the settlement for 1998 and 1999 can only be interpreted as corresponding to rate reductions for those years. However, as the December 28 order indicates, the settlement lists “revenue changes” to be recorded for the years 1988 through 1999. The “revenue changes” were positive prior to 1995, but none of the parties to settlement (or anyone else) has ever contended that these positive “revenue changes” should be interpreted as rate increases. In fact, none were.<sup>2</sup> The Attorney General offers no possible reason why a different meaning should be given to the term “revenue changes” in 1998 and 1999 from that used by all parties in prior years. Accordingly, the Attorney General’s petition for rehearing must be rejected.

#### Rate Reductions and Non-Phase-In Ratemaking

The December 28 order requests briefs regarding the issues of whether the Commission’s orders have fully accounted for the reductions in the Fermi 2 cost of service and what actions are needed to revert to non-phase-in ratemaking.

With regard to the Fermi 2 cost of service, the arguments of the parties are directed at the appropriate level of rate reduction in Case No. U-11726. These arguments are being addressed in an order issued in that proceeding today.

The settlement states that in the year 2000 the following should occur: “Revert to non-phase-in ratemaking.” December 27, 1988 order, Attachment, p. 6. The Attorney General indicates that no specific action would be required for the year 2000, but that the Commission should order a rate case because the test year in Detroit Edison’s last rate case was 1994. Detroit Edison indicates that

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<sup>2</sup>For example, as the December 28 order indicates, the settlement agreement records a revenue increase in 1994, but rates were actually reduced by approximately \$78 million that year.

the phase-in of Fermi 2 has been completed and no further actions are required at this time.

ABATE indicates that the settlement agreement was negotiated in an era of constant rate cases and it requests that the Commission order Detroit Edison to file a rate case no later than March 30, 1999, using the year 2000 as a test year. Energy Michigan argues that Detroit Edison's rates must be recalculated by removing the effects of the Fermi 2 phase-in program on or before the year 2000 and that it is long past time for Detroit Edison to file a rate case.

The briefs in this proceeding have not convinced the Commission that any action is necessary in order to carry out the settlement provision. Energy Michigan claims that the phrase "revert to non-phase-in ratemaking" means that rates must be recalculated to remove certain effects of the phase-in, but fails to provide any explanation of what those effects might be. ABATE and the Attorney General indicate that they would prefer that a rate case be conducted, but appear to concede that no action is necessary to revert to non-phase-in ratemaking.

The Commission is not inclined to begin a proceeding to implement a provision in the settlement when it is unclear what, if anything, is required to be implemented and the parties have been unable to articulate anything specific that is required. Accordingly, the Commission finds that no further action should be taken at this time. If any party believes that some specific action is required to revert to non-phase-in ratemaking in the year 2000, it should file an appropriate motion with the Commission, including full documentation of what is needed to revert to non-phase-in ratemaking.

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. The petition for rehearing filed by the Attorney General should be denied.
- c. No further action is required at this time to implement the settlement agreement.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by the Attorney General is denied.

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 March 8, 1999.

/s/ Dorothy Wideman

Its Executive Secretary

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. The petition for rehearing filed by the Attorney General should be denied.
- c. No further action is required at this time to implement the settlement agreement.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by the Attorney General is denied.

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

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Case No. U-8789

Suggested Minute:

“Adopt and issue order dated March 8, 1999 denying the petition for rehearing filed by the Attorney General, as set forth in the order.”