

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
THE DETROIT EDISON COMPANY for a)	Case No. U-12478
financing order.)	
_____)	

At the October 24, 2000 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

ORDER DENYING SUMMARY DISPOSITION

On July 5, 2000, The Detroit Edison Company (Detroit Edison) filed an application for a financing order authorizing the issuance of securitization bonds and related matters pursuant to Section 10i of 2000 PA 142 (Act 142), MCL 460.10i; MSA 22.13(10i). On September 20, 2000, the Michigan Chamber of Commerce (Chamber) filed a motion for summary disposition and a motion for immediate consideration. On October 4, 2000, Detroit Edison filed a response.

The basis for the Chamber’s motion for summary disposition is its claim that Detroit Edison did not present any evidence regarding generation assets having a market value in excess of net book value. The Chamber claims that the benefit of Detroit Edison’s above-market assets must be netted against its stranded costs in order for the application to comply with the requirements of 2000 PA 141 (Act 141) and Act 142, which together comprise the Customer Choice and Electricity

Reliability Act, MCL 460.10 et seq.; MSA 22.13(10) et seq. The Chamber argues that dismissal without prejudice is appropriate because the defect in Detroit Edison's case cannot be corrected within the 90-day timeframe for issuing a decision. MCL 460.10i(6); MSA 22.13(10i)(6). The Chamber says that Detroit Edison should be encouraged to file a new application that complies with the netting provisions as soon as possible.

The Chamber argues that netting is an integral part of the treatment of stranded costs in Acts 141 and 142. In this regard, it notes that Section 10a, which provides for the recovery and true-up of stranded costs, makes seven references to "net" stranded costs or the "netting" of stranded costs. It argues that the Commission must interpret the term net stranded costs in Act 141 in pari materia with references to "qualified costs" in Act 142. It further argues that Act 141 amended the title to 1939 PA 3, MCL 460.1 et seq.; MSA 22.13(1) et seq., (which encompasses both Acts 141 and 142) "to allow for the securitization of stranded costs." Thus, the Chamber contends that securitization requires a determination of net stranded costs.

The Chamber argues that the true-up mechanism in Section 10a(9) operates on the assumption that the qualified costs approved in the financing order provide an initial estimate of net stranded costs. It says that approving a securitization charge that is well in excess of subsequent determinations of net stranded costs could create a discrepancy in the timing of the recovery of those costs and could inhibit competition.

Detroit Edison argues that none of the statutory provisions addressing securitization in Act 142 requires netting or makes reference to net stranded costs. It further claims that Section 10a does not mandate netting (although it refers to it), even in the context of a true-up case. Detroit Edison argues that netting would not be a good idea, given that it retains its obligation to provide generation as part of its bundled service obligations to those native load customers that will not

choose open access. It says that this obligation will likely be met by the fossil fuel plants that the Chamber views as a source of stranded benefits to be netted against stranded costs. Thus, Detroit Edison says, it will not realize any financial benefit from the (relatively) high market value of those assets as long as they are dedicated to the requirements of its native load. Detroit Edison maintains that issues related to netting should be addressed in true-up proceedings.

As the Chamber notes, Section 10a makes several references to net stranded costs and, in providing for true-up proceedings, requires the Commission to “consider the reasonableness and appropriateness of various methods to determine net stranded costs.” MCL 460.10a(10); MSA 22.13(10a)(10). However, the Legislature did not use the same terminology in the securitization context (primarily Act 142). The Commission is not willing to assume that the wording differences are inconsequential or that the Legislature intended to use different terminology to convey an identical meaning. Given the marked differences in the terminology used for the true-up and securitization proceedings, it would not be appropriate to infer that netting terminology must necessarily apply to securitization proceedings.

In another order issued today in Case No. U-12505, a securitization proceeding conducted on an application by Consumers Energy Company (Consumers), the Commission upheld a ruling striking testimony related to netting and rejected the arguments by the Association of Businesses Advocating Tariff Equity (ABATE) in support of that testimony:

None of the stricken testimony concerns matters to be addressed pursuant to Act 142 Moreover, the issue that the stricken testimony does address, namely Consumers’ net stranded cost recovery, lies exclusively within the realm of proceedings to be conducted under Sections 10a(1), 10a(9), and 10a(10) of Act 141. Thus, ABATE’s claims concerning net stranded costs . . . should be addressed in one of those proceedings,¹⁷ rather than in this Act 142 case.

¹⁷In the course of its argument, ABATE asserted that “should the Commission determine not to examine net stranded costs (and stranded benefits) here, it must take action to assure that they are examined promptly.” ABATE’s initial brief, p. 15. This has been accomplished by the issuance of today’s order in Case No. U-12639 initiating a contested case proceeding, pursuant to Section 10a(10) of Act 141, to establish procedures for determining net stranded costs.

Order at 51. The Commission’s ruling in Case No. U-12505 is dispositive of the Chamber’s motion for summary disposition.¹ As indicated, the proceeding initiated today in Case No. U-12639 is the appropriate forum for the Chamber to present its positions concerning netting.

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. The motion for summary disposition should be denied.

THEREFORE, IT IS ORDERED that the motion for summary disposition is denied.

¹ The Commission finds it curious that the Chamber did not request summary disposition in Consumers’ securitization case, given that both the Detroit Edison and Consumers applications failed to address the netting of generation assets.

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

/s/ Robert B. Nelson
Commissioner

By its action of October 24, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

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By its action of October 24, 2000.

Its Executive Secretary

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_____)

Case No. U-12478

Suggested Minute:

“Adopt and issue order dated October 24, 2000 denying a motion by the Michigan Chamber of Commerce for summary disposition of an application filed by The Detroit Edison Company relating to securitization, as set forth in the order.”