

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
THE DETROIT EDISON COMPANY for)
authority to implement a power supply cost)
recovery plan in its rate schedules for 2000)
metered jurisdictional sales of electricity.)
_____)

Case No. U-12121

At the October 29, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER DENYING REHEARING

On June 19, 2000, the Commission issued an order dismissing an application filed by The Detroit Edison Company (Detroit Edison) to implement a power supply cost recovery (PSCR) plan in 2000 pursuant to Public Act 304 of 1982, as amended, MCL 460.6j et seq. (Act 304). The basis for dismissal was that Section 10d(1) of Public Act 141 of 2000 (Act 141), MCL 460.10d(1), foreclosed implementation of a PSCR plan.

On July 19, 2000, the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM) filed a petition for rehearing. On August 9, 2000, Detroit Edison filed an answer. On August 16, 2000, MEC/PIRGIM filed a motion to strike portions of Detroit Edison's answer, together with a reply brief to Detroit Edison's arguments. On August 23,

2000, Detroit Edison filed a response to the motion. Most of MEC/PIRGIM's reply brief provides further rebuttal argument. To the extent that it seeks to strike portions of Detroit Edison's answer filed on August 9, 2000, it is denied. To the extent that it is another attempt to argue its position, it has been disregarded as not permitted by the Commission's rules and procedures.

In their petition for rehearing, MEC/PIRGIM contend that an underlying basis of the Commission's decision to dismiss the PSCR application was the erroneous assumption that Act 141 had the effect of repealing inconsistent provisions in Act 304. MEC/PIRGIM argue that repeals by implication are disfavored as a matter of statutory construction, that there is no significant point of inconsistency between Acts 141 and 304, and that nothing in Act 141 directs the Commission to dismiss pending cases. They say that Detroit Edison's PSCR plan should be adjudicated in order to review the reasonableness of the company's procurement of fuel and power supplies, even if it is not necessary to adjust the PSCR factor. They contend that any excess earnings attributable, for example, to declining coal costs could be used as credits or offsets in determining net stranded costs. They argue that the Commission should also decide issues they raised relating to the Nuclear Waste Fund and energy efficiency, which do not require rate adjustments. They alternatively construe Act 141 as capping, but not freezing, rates, so that it does not preclude a reduction. As another alternative, MEC/PIRGIM suggest that Acts 141 and 304 be harmonized by applying the rate provisions of Section 10d(1) only to base rates, and not the PSCR factor. They note that Act 141 reaffirmed the validity of Act 304 by retaining, with minor changes, the Utility Consumer Participation Board as a vehicle for funding intervenors' participation in the PSCR process. See MCL 460.61.

MEC/PIRGIM also argue that, in summarily dismissing a contested case proceeding without prior notice or an opportunity for a complete hearing, the Commission violated their procedural rights.

In reply, Detroit Edison says that Section 10d(1) clearly reduces and freezes rates, including the PSCR factor, that it forecloses rate proceedings that would be inconsistent with the Legislature's rate determination, and that the case is moot in light of the change in the law. Detroit Edison notes that the courts have upheld the Commission's authority to suspend PSCR clauses ex parte. Detroit Edison says that MEC/PIRGIM's efforts to litigate stranded cost setoffs, energy efficiency issues, and the Nuclear Waste Fund are an improper attempt to expand the scope of the proceedings beyond the PSCR factor. It says that Act 141 clearly provides the appropriate procedures for dealing with stranded costs.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACRS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission rejects MEC/PIRGIM's argument that the Commission adopted an improper interpretation of Act 141 as the basis for dismissing a PSCR plan case. To quote from the statute, Section 10d(1) reduces residential rates by 5% "from the rates that were authorized or in effect on May 1, 2000" and freezes those rates as well as non-residential rates "authorized or in effect as of May 1, 2000." It further provides that, except for certain reductions related to securitization, the

frozen rates shall “remain in effect until December 31, 2003.” It mandates this rate treatment “[n]otwithstanding any other provision of law or commission order.” Thereafter, rates will be subject to change as set forth in Section 10d and other provisions of Act 141. As the Commission stated in the June 19, 2000 order dismissing this case:

With [the 5% reduction to residential rates], all of the retail rates now in effect may not be changed until at least December 31, 2003 except to reflect the effects of securitization. The implementation of a PSCR plan for Detroit Edison, which is designed to adjust rates for changes in the costs of fuel and purchased power, is inconsistent with subsection 10d(1). Therefore, Detroit Edison’s application must be dismissed.

Order at 2. The Commission reaffirms its reading of the statute. It is neither reasonable nor necessary to interpret Section 10d(1) as imposing a rate cap or as applying only to non-PSCR rates.

The Commission finds no merit in the contention that MEC/PIRGIM have a procedural right to have Detroit Edison’s application adjudicated to finality, notwithstanding Act 141. In effect, Act 141 rendered the case moot. Further proceedings would not serve a valid purpose. The Commission sees no merit in the view that the case should be continued to address the non-rate energy efficiency and Nuclear Waste Fund issues raised by MEC/PIRGIM. Those issues can be more appropriately addressed in other proceedings. In particular, MEC/PIRGIM’s concerns may be addressed in Case No. U-13129, in which the Commission will determine how to implement the provisions of Section 10d(6) relating to low-income and energy efficiency funding.

Finally, the Commission rejects MEC/PIRGIM’s efforts to use this case as a forum for litigating stranded cost setoff issues, which have little, if any, relationship to a PSCR plan case. Stranded cost issues should be addressed in appropriate proceedings, for example Case No. U-12639.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. MEC/PIRGIM's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing 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.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ Laura Chappelle
Chairman

By its action of October 29, 2001.

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ Robert B. Nelson
Commissioner

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b. MEC/PIRGIM's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing is denied.

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Suggested Minute:

“Adopt and issue order dated October 29, 2001 denying a petition for rehearing of the dismissal of an application by The Detroit Edison Company to implement a power supply cost recovery plan in 2000, as set forth in the order.”