

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
THE DETROIT EDISON COMPANY to)	Case No. U-12966
unbundle its retail electric rates.)	
_____)	

At the December 20, 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 DISMISSING APPLICATION AND
REQUIRING THE FILING OF A NEW APPLICATION**

On June 5, 2000, Public Act 141 (Act 141) became effective. Section 10b(2) of Act 141, MCL 460.10b(2), requires electric utilities to file an application no later than one year from its effective date to unbundle existing commercial and industrial electric rate schedules to separately identify and charge for discrete services.

On June 4, 2001, The Detroit Edison Company (Detroit Edison) filed an application in response to Section 10b(2). However, in so doing, Detroit Edison did not propose to unbundle its rates. Rather, Detroit Edison stated that any unbundling of its rates beyond the unbundling accomplished by the retail access service tariff (RAST) approved by the Commission's October 29, 1997 order in Case No. U-11452 would violate the rate freeze provision in Section 10d of Act 141. So, in lieu of unbundling its rates, Detroit Edison proposed to provide customers

with appropriate pricing signals through use of a message printed on customers' bills that informs the customers of the charges for the company's distribution services.

On August 23, 2001, Administrative Law Judge Barbara A. Stump (ALJ) conducted a prehearing conference, and granted petitions to intervene filed by Energy Michigan, Exelon Energy, Inc. (Exelon), the National Energy Marketers Association (NEMA), the Association of Businesses Advocating Tariff Equity (ABATE), and Attorney General Jennifer M. Granholm (Attorney General). The Commission Staff (Staff) also participated. The ALJ also considered arguments by the parties regarding a joint motion to reject the application and to require its refiling that had been filed by Energy Michigan, Exelon, and ABATE on June 29, 2001.

On August 31, 2001, the ALJ issued a Proposal for Decision (PFD) granting the joint motion. In so doing, she recommended that the application be rejected and that Detroit Edison be ordered to file a new application that complies with the requirements of Section 10b(2).

On September 13, 2001, Detroit Edison filed exceptions to the PFD. In its exceptions, Detroit Edison maintains that the 5% rate reductions and the rate freezes and rate caps that are in place pursuant to Section 10d of Act 141 preclude it from unbundling its rates beyond the unbundling already contemplated through implementation of its RAST. According to Detroit Edison, it is constrained from incorporating RAST charges directly in its full service bundled tariffs because, in doing so, individual customers may see an increase or decrease in their bills from bills based on existing bundled tariffs. As an example, Detroit Edison states that incorporation of RAST secondary voltage pricing, which includes a service charge and an energy-based charge, into existing tariffs, which may not have a service charge or which may have a service charge at a different level than the RAST, would result in individual customers receiving a price increase or decrease from existing bundled tariffs.

Citing case law dealing with rules for construing statutes to determine legislative intent, Detroit Edison argues that the purpose of Section 10b(2) is to give customers a clear indication of the charges that they will continue to pay for regulated delivery service under the retail access program. Detroit Edison contends that its proposal harmonizes Section 10d, which requires a rate reduction and freeze, with Section 10b(2), which requires the unbundling of its rates. Detroit Edison reasons that its proposed informative bill messages will allow customers to determine their respective retail access “shopping credits,” will not be confusing, and will cause less manipulation of the existing billing system.

Detroit Edison also insists that its proposal promotes continuity between the various requirements of Act 141, whereas unbundling in the manner contemplated by the ALJ would result in individual customers or sub-classes of customers receiving a price increase or decrease because it would be difficult to incorporate RAST charges within existing bundled tariffs while maintaining customer revenue neutrality. Therefore, Detroit Edison contends that the ALJ’s approach would violate the price freeze and 5% rate reduction mandated by Section 10d and would result in customers receiving improper pricing signals for electric delivery service.

Detroit Edison also maintains that the ALJ erred in determining that its proposal does not identify and charge for discrete services. According to Detroit Edison, its existing retail access program provides only two truly discrete services: delivery service and bulk electric energy service. Full service bundled customers of Detroit Edison receive these services on a regulated basis and its retail access customers receive delivery service on a regulated basis and bulk electric energy service on an unregulated basis. Because Detroit Edison’s proposal for commercial and industrial customers is to present the charges for regulated service and to quantify those charges on the customer’s monthly bill, Detroit Edison insists that its proposal represents an unbundling and,

contrary to the ALJ's conclusion, quantifies the monthly cost of distribution service for larger customers.

Replies to exceptions filed by Energy Michigan, ABATE, Exelon, NEMA, and the Attorney General insist that Detroit Edison's application is flawed and that it should be rejected. These parties contend that Detroit Edison's proposal to continue to display the cost of bundled services together with a billing message as a substitute for the complete unbundling that is required by Section 10b(2) is unreasonable. According to them, Detroit Edison's refusal to unbundle its services thwarts the development of a competitive market by depriving customers of essential information. They also contend that Detroit Edison's proposal is flawed because the distribution rate to be stated in the company's billing information would differ from the distribution component embodied in the amount due from a customer for fully bundled services.

Energy Michigan, ABATE, Exelon, NEMA, and the Attorney General also contend that Detroit Edison's insistence that it can only unbundle rates by incorporating the RAST rates into its bundled tariff is misleading. According to them, Section 10b(2) does not direct that RAST rates be used to accomplish unbundling. Rather, it simply directs Detroit Edison to unbundle existing rate schedules. Further, they insist that the effect of unbundled rates on rate freezes, rate caps, and the 5% rate reduction is unknown because Detroit Edison failed to comply with Section 10b(2). In any event, these parties maintain the Section 10d freezes and caps rates, not customer bills.

The Commission finds that Detroit Edison's exceptions to the PFD lack merit. Section 10b(2) requires Detroit Edison to file an application no later than June 5, 2001 to unbundle existing commercial and industrial electric rate schedules to separately identify and charge for discrete services. The application filed by Detroit Edison on June 4, 2001 did not propose to unbundle its

rates. Rather, it proposed the continued use of bundled rates accompanied by additional bill language purporting to permit customers to determine their generation costs.

The Commission agrees with the ALJ that the proposal embodied in Detroit Edison's June 4, 2001 application fails to conform with either the letter or the spirit of Section 10b(2), which clearly requires Detroit Edison and all other electric utilities in this state to unbundle their "existing commercial and industrial electric rate schedules and separately identify and charge for their discrete services." MCL 460.10b(2). The Commission finds that the language of Section 10b(2) is clear and unambiguous. Therefore, there is no reason to resort to rules of statutory construction to discern its meaning because it is well established that "if the wording of a statute is unambiguous, there is no room for courts to attempt to 'construe' it." Michigan Harness Horsemen's Ass'n v Racing Comm'r, 123 Mich App 388; 333 NW2d 292 (1983).

Further, the Commission does not agree that Sections 10b(2) and 10d are in conflict to the point that the clear and unambiguous language of Section 10b(2) should be effectively deleted from Act 141, which would result if Detroit Edison's proposal were afforded any credibility. It is the Commission's duty to harmonize sections of a statute in order to give meaning to all of its provisions. Ram Broadcasting of Michigan, Inc. v Michigan Public Service Comm, 113 Mich App 79; 317 NW2d 295 (1982); Great Lakes Sales, Inc. v State Tax Comm, 1194 Mich App 271; 486 NW2d 367 (1992). The Commission is persuaded that the Legislature never envisioned that an electric utility could avoid complying with the clear and unambiguous unbundling requirement set forth in Section 10b(2) due to the possibility that some of Detroit Edison's unbundled rates may not match all aspects of its RAST rates. The Commission is also persuaded that Detroit Edison's existing commercial and industrial electric rate schedules can be unbundled to separately identify and charge for discrete services. Indeed, counsel for Detroit Edison conceded, "it can be

done.” Tr. 20. In any event, the Commission agrees that it is impossible to predetermine whether application of Section 10b(2) will conflict with the purpose of Section 10d until Detroit Edison files an application that fully complies with Section 10b(2). Therefore, the Commission concludes that Detroit Edison’s June 4, 2001 application should be rejected and the company should be ordered to file within 45 days a new application that complies with Section 10b(2).

Act 141 was enacted to, among other things, ensure that affected customers “have a choice of electric suppliers.” Section 10(2)(a). Meaningful choice will be thwarted if the provisions of Act 141, specifically Section 10b, are ignored. Therefore, the Commission finds that Detroit Edison should be notified that the failure to file a new application that complies with Section 10b(2) within 45 days will subject the company to the remedies and penalties specified in Section 10c(1) of Act 141.

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. Detroit Edison’s June 4, 2001 application should be rejected.

c. Detroit Edison should be ordered to file a new application that complies with Section 10b(2) of Act 141 within 45 days of the issuance of this order.

d. Detroit Edison should be notified that the failure to file a new application that complies with Section 10b(2) of Act 141 within 45 days of the issuance of this order shall subject the company to the remedies and penalties specified in Section 10c(1) of Act 141.

THEREFORE, IT IS ORDERED that:

A. The application filed by The Detroit Edison Company on June 4, 2001 is rejected.

B. The Detroit Edison Company shall file a new application that complies with Section 10b(2) of 2000 PA 141 within 45 days.

C. The failure of The Detroit Edison Company to file a new application that complies with Section 10b(2) of 2000 PA 141 within 45 days of the issuance of this order shall subject the company to the remedies and penalties specified in Section 10c(1) of Act 141.

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/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

THEREFORE, IT IS ORDERED that:

A. The application filed by The Detroit Edison Company on June 4, 2001 is rejected.

B. The Detroit Edison Company shall file a new application that complies with Section 10b(2) of 2000 PA 141 within 45 days.

C. The failure of The Detroit Edison Company to file a new application that complies with Section 10b(2) of 2000 PA 141 within 45 days of the issuance of this order shall subject the company to the remedies and penalties specified in Section 10c(1) of Act 141.

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

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Suggested Minute:

“Adopt and issue order dated December 20, 2001 rejecting The Detroit Edison Company’s application to unbundle its retail electric rates and requiring the filing of a new application, as set forth in the order.”