

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
THE DETROIT EDISON COMPANY to recover)	
implementation costs for the 12-month period)	Case No. U-13341
ended December 31, 2001.)	
_____)	

At the March 12, 2003 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

OPINION AND ORDER

History of Proceedings

On March 27, 2002, The Detroit Edison Company (Detroit Edison) filed an application seeking deferred recovery of \$27,445,392 for expenditures to implement a retail open access program made during the 12-month period ended December 31, 2001.

The Association of Businesses Advocating Tariff Equity (ABATE) and Attorney General Jennifer M. Granholm¹ (Attorney General) filed petitions to intervene on April 1 and May 1, 2002, respectively. The Commission Staff (Staff) also participated in the proceedings.

Pursuant to due notice, a prehearing conference was conducted on May 15, 2002 by Administrative Law Judge James N. Rigas (ALJ). The prehearing conference was attended by

¹On January 1, 2003, Michael A. Cox was sworn in to replace Ms. Granholm as Attorney General.

Detroit Edison, the Attorney General, and the Staff. The Attorney General's intervention request was granted, but ABATE's intervention was deferred. Thereafter, the parties agreed to a schedule for conducting the evidentiary hearing. On September 12, 2002, ABATE's petition to intervene was granted after the parties filed a stipulation to that effect.

On September 21, 2002, the ALJ presided over the evidentiary hearing. Two witnesses testified and three exhibits were received into evidence. The transcript consists of 43 pages. Subsequently, Detroit Edison, ABATE, and the Staff filed briefs, and Detroit Edison, ABATE, and the Attorney General filed reply briefs.

On November 25, 2002, the ALJ issued his Proposal for Decision (PFD). Exceptions to the PFD were filed by Detroit Edison. Replies to exceptions were filed by the Staff and the Attorney General.

Discussion

At the evidentiary hearing, the witnesses for Detroit Edison and the Staff concurred that Detroit Edison spent \$22,149,527 during 2001 to implement its retail open access program. However, they disagreed regarding the amount of carrying charges that should be added to that amount. Joseph A. McCormick, Manager of the Budget and Management Information Group of Detroit Edison's Electric Choice Implementation Team, supported the addition of \$3,977,873 in carrying charges. Nancy G. Katsarelas, an auditor in the Commission's Electric Division, testified that the carrying charges amounted to \$875,330.

Two differences in the approaches taken by Mr. McCormick and Ms. Katsarelas account for the \$3,102,543 variance in their positions. One difference involves the appropriate rate of interest to use in calculating carrying charges for the 2001 implementation costs and the other involves

whether additional carrying charges attributable to Detroit Edison's 2000 implementation costs are recoverable in this proceeding.

Referencing the December 20, 2001 order in Case No. U-12639 and the July 23, 2002 order in Case No. U-12892, wherein the Commission reaffirmed that Detroit Edison's recovery of its implementation costs should be delayed until the end of the rate freeze required by Section 10d(1) of 2000 PA 141 (Act 141), MCL 460.10d(1), Mr. McCormick maintained that the Commission should use long-term interest rates to determine the appropriate amount of carrying costs. More specifically, Mr. McCormick supported use of 10.01% rate of interest, which he stated was the pretax cost of capital approved in Detroit Edison's most recent rate case, Case No. U-10102. Mr. McCormick also argued that carrying charges must be included for the company's 2000 implementation costs, which were determined by the Commission's July 23, 2002 order in Case No. U-12892, as well as its 2001 implementation costs.

On the other hand, Ms. Katsarelas contended that the Commission should continue to use the 7% interest rate that was previously used to determine Detroit Edison's 1999 implementation cost carrying charges in the March 29, 2001 order in Case No. U-12359. Further, claiming that it would be more appropriate for the Commission to postpone determination of the amount of carrying charges attributable to Detroit Edison's 2000 implementation costs until the time is ripe for Detroit Edison to recover such costs, Ms. Katsarelas stated that the carrying costs calculated in this case should be limited to the company's 2001 implementation costs.

The ALJ accepted Ms. Katsarelas's position on both issues. Accordingly, his recommendation was that the Commission should allow Detroit Edison to recover a total of \$23,024,857 on a deferred basis and subject to further consideration by the Commission.

In its exceptions, Detroit Edison argues that many of the ALJ's recommendations are flawed. To begin with, Detroit Edison contends that its witness provided a detailed explanation regarding the appropriateness of using a long-term interest rate to calculate the carrying charges. Because the statutory rate freeze extends through December 31, 2003, Detroit Edison insists that recovery of the implementation costs could be delayed for three to four years. Citing Mr. McCormick's testimony that short-term interest rates ordinarily apply to periods of 12 months or less, Detroit Edison maintains that the Commission should reject continued use of short-term rates and adopt the 10.01% rate from Case No. U-10102 to calculate carrying charges.

As an alternative, Detroit Edison suggests that use of the 7% short-term rate supported by the Staff would be appropriate if the Commission were to permit Detroit Edison to immediately recover the 2001 implementation costs and 2000 and 2001 carrying charges through the residual savings associated with issuance of Detroit Edison's securitization bonds. According to Detroit Edison, by using this mechanism the Commission would be providing Detroit Edison with full and immediate recovery of its implementation costs without violating the rate freeze.

In any event, Detroit Edison argues that there is no justification for the ALJ's determination that its 2001 implementation costs should be subject to further review or otherwise remain contingent until reconsidered in light of the effectiveness of its direct access program. Detroit Edison maintains that it is error to subject recovery of its implementation costs to some undefined, backward-looking evaluation of the effectiveness of its direct access program. Detroit Edison also insists that it would be inequitable to deny recovery of its 2001 implementation expenses, which it made in good faith and subject to the Commission's oversight. Further, citing Association of Businesses Advocating Tariff Equity v Public Service Comm, 208 Mich App 248; 527 NW2d 533 (1994), Detroit Edison maintains that the prudence of decisions and expenditures should be

evaluated based on its knowledge at the time the decision was made. Indeed, Detroit Edison insists that Section 10a(1) of Act 141, MCL 460.10a(1), mandates full recovery of its implementation costs. Further, citing myriad case decisions, Detroit Edison argues that both the United States and the Michigan Constitutions provide it with substantive and procedural due process safeguards and protect it from “takings” and confiscatory rates.

Finally, Detroit Edison argues that inclusion of the carrying charges associated with its 2000 implementation costs is appropriate because the delay in the recovery of these costs caused Detroit Edison to incur such charges in the first place. According to Detroit Edison, the Commission must provide for the continuing recovery of the cost of deploying that capital until it is ultimately recovered. Indeed, Detroit Edison insists that any failure to provide for the full and timely recovery of such costs also constitutes an unconstitutional taking of its property.

The Staff responds that Detroit Edison is confusing its right to full recovery of its implementation costs pursuant to Section 10a(1) of Act 141 with the right to immediate recovery of such funds, which is a matter left to the Commission’s discretion. According to the Staff, the Commission’s determination to defer recovery of implementation costs at this time and to establish a methodology to recover the costs at a later date is not tantamount to a denial of recovery.

With regard to the interest rate issue, the Staff argues that its use of a 7% interest rate was authorized by the Commission in its March 29, 2001 order in Case No. U-12359. Moreover, the Staff insists that 7% remains reasonable in today’s economy.

Finally, the Staff states that Detroit Edison’s position that this proceeding must resolve the carrying charges associated with its 2000 implementation charges should be rejected. According to the Staff, this issue should be considered at the time that the Commission conducts a proceeding to effectuate the actual recovery of Detroit Edison’s implementation costs.

In her reply to exceptions, the Attorney General argues that the issue of the recoverability of Detroit Edison's implementation costs involves more than whether the funds were spent. Rather, the Attorney General insists that to be recoverable, implementation costs must be prudently incurred, necessary to facilitate the transition to competitive markets, and would not have been incurred absent restructuring. Moreover, the Attorney General contends that Detroit Edison has the burden of proof on these issues.

The Attorney General next contends that Detroit Edison failed to demonstrate that an interest rate higher than the 7% rate that has been consistently used in implementation cost proceedings is justified by current economic conditions. According to the Attorney General, interest rates have declined and inflation is not a concern. Therefore, the Attorney General insists that the Commission should reject Detroit Edison's request for an increase in the interest rate to 10.01%.

The Attorney General also states that the ALJ correctly rejected Detroit Edison's request to include interest on its 2000 implementation costs in this proceeding. Assuming that Mr. McCormick correctly determined the amount of Detroit Edison's carrying charges associated with its 2000 implementation costs, the Attorney General nevertheless insists that the absence of an award of such costs to Detroit Edison in Case No. U-12892 does not convert those carrying charges into 2001 implementation costs.

Finally, the Attorney General argues that conditional approval of Detroit Edison's 2001 implementation costs is appropriate. According to the Attorney General, the ALJ correctly determined that the Commission's existing policy of making recovery of Detroit Edison's implementation costs conditional and subject to further review should be adhered to in this proceeding. Moreover, the Attorney General contends that conditional review gives Detroit Edison an additional chance

to demonstrate that its implementation costs satisfy the Commission's prior definitions of such costs.

The Commission finds that Detroit Edison's exceptions are not well taken. With regard to the interest rate used to determine carrying charges, the Commission has previously rejected Detroit Edison's position. See, the October 24, 2000 order in Cases Nos. U-11955 and U-11956. Moreover, the Commission notes that Case No. U-10102 cited by Detroit Edison was decided January 21, 1994. The Commission is not persuaded that a nine-year-old interest rate sheds much light regarding the current economic climate. Certainly, Detroit Edison's evidentiary presentation offers little support for such a conclusion.

Further, the Commission also has previously rejected Detroit Edison's request for the immediate recovery of its implementation costs through the residual savings associated with issuance of its securitization bonds. See, the December 20, 2001 order in Case No. U-12639. Nothing in the record of this proceeding supports a change in that policy.

The Commission also rejects Detroit Edison's contention that the carrying charges associated with its 2000 implementation costs must be considered in this proceeding. The Staff's position that such costs may be determined and provided for at a later date is reasonable and does not deny or impair any of Detroit Edison's rights under Section 10a(1) of Act 141.

Finally, the Commission finds that Detroit Edison's arguments regarding the Commission's conditional approval of the recovery of its implementation costs are not well taken. The Commission has repeatedly determined that implementation expenditures should be approved conditionally. See, the December 20, 2001 order in Case No. U-12639 and the July 23, 2002 order in Case No. U-12892. In so doing, the Commission has reaffirmed that it will permit Detroit Edison

to recover prudently incurred implementation costs as provided for in the Commission's prior orders at the conclusion of the rate freeze.

Accordingly, the Commission finds that Detroit Edison's exceptions to the PFD should be rejected. However, nothing in this order should be viewed as foreclosing Detroit Edison from seeking a determination from the Commission at an appropriate time in the future that assures recovery of all or a portion of its implementation costs at the conclusion of the rate freeze. To seek such a determination, Detroit Edison should file an application and supporting documentation that provides the Commission with a factual basis for reviewing the success of Detroit Edison's implementation efforts. Specifically, the Commission is looking for evidence that any component, system, or procedure that is necessary for a retail access program to fully function is in place, completely operational, and capable of seamlessly performing its role in conjunction with the other necessary components, systems, and procedures. Simply spending funds on a new component, system, or procedure is not sufficient to demonstrate that the expenditure furthered the utility's ability to conduct a retail access program in a manner that promotes customer choice and fair competition among suppliers. Notice of the application should be provided in accordance with the directions of the Commission's Executive Secretary. Any interested party may request a hearing as provided in the notice.

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 AACR, R 460.17101 et seq.

b. Implementation costs of \$23,024,857 incurred by Detroit Edison during 2001 should be approved for deferred recovery, subject to the conditions stated in this order.

THEREFORE, IT IS ORDERED that implementation costs of \$23,024,857 incurred by The Detroit Edison Company during 2001 are approved for deferred recovery, subject to the conditions stated in this order.

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 March 12, 2003.

/s/ Dorothy Wideman
Its Executive Secretary

b. Implementation costs of \$23,024,857 incurred by Detroit Edison during 2001 should be approved for deferred recovery, subject to the conditions stated in this order.

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of March 12, 2003.

Its Executive Secretary

In the matter of the application of)
THE DETROIT EDISON COMPANY to recover)
implementation costs for the 12-month period)
ended December 31, 2001.)
_____)

Case No. U-13341

Suggested Minute:

“Adopt and issue order dated March 12, 2003 approving The Detroit Edison Company’s application for authority to recover its 2001 retail access program implementation costs subject to certain modifications and conditions, as set forth in the order.”