

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
THE DETROIT EDISON COMPANY for)	
accounting approval for the transfer of certain)	Case No. U-13646
assets and for certain other findings.)	
_____)	

At the February 5, 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

On December 3, 2002, The Detroit Edison Company (Detroit Edison) filed an application asking for certain approvals related to the transfer of its transmission facilities to an affiliate, the International Transmission Company (ITC), and the proposed sale of ITC and its transmission facilities to an independent third-party purchaser, Kohlberg Kravis Roberts & Co. and Trimaran Capital Partners LLC. Specifically, the application sought:

1. Approval of specific accounting journal entries relating to accounts 101 (Electric Plant in Service), 102 (Electric Plant Purchased or Sold), 105 (Electric Plant Held for Future Use), 106 (Completed Construction Not Classified – Electric), 107 (Construction Work in Progress – Electric), 108 (Accumulated Provision for Depreciation of Electric Plant), 111 (Accumulated Provision for Amortization of Electric Plant), and 216 (Equity Distribution).
2. A Commission determination that, if the sale of ITC is completed in the manner described in the application, Detroit Edison will have fully complied with the provisions of Section 10w of Public Act 141 of 2000 (Act 141), MCL 460.10w.

3. A Commission determination that, if the sale is completed in the manner described in the application and if it enforces the contractual obligation of the purchaser to complete the transmission upgrade projects identified in the Joint Transmission Plan approved in Case No. U-12781, Detroit Edison will have fully complied with the provisions of Section 10v of Act 141, MCL 460.10v.
4. A Commission determination that, if the sale is completed in the manner described in the application, Detroit Edison will be exempt from operating reliability and performance standards relating to transmission facilities no longer owned by Detroit Edison or its parent, DTE Energy.
5. A Commission determination regarding the ratemaking treatment of any net proceeds received as a result of the sale.

On December 6, 2002, the Commission issued an order (December 6 order) granting the request. In so doing, the Commission noted that the five approvals sought by Detroit Edison were virtually identical to those previously sought by Consumers Energy Company (Consumers) and approved in Case No. U-12726. The Commission indicated that ex parte approval was appropriate because the approvals would not increase the cost of service to any customer. In addition, the Commission found that Detroit Edison should file final journal entries upon completion of the transaction.

On January 6, 2003, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition to intervene and for rehearing. Also on January 6, 2003, Attorney General Mike Cox (Attorney General) filed a petition for rehearing that is substantially identical to that filed by ABATE. On January 22, 2003, Detroit Edison filed an answer to the petitions to intervene. Finally, on January 24, 2003, Francisco Torre, Sr., filed a petition to intervene on his own behalf and on behalf of other Detroit Edison retirees.

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 rehearing.

As noted earlier, the December 6 order was issued on an ex parte basis. This was due to the fact that the relief requested by the utility will not increase the cost of service to its customers. In accordance with the provisions of MCL 460.6a(1), it was therefore appropriate for the Commission to review, and ultimately grant, the determinations sought in that application without providing notice or an opportunity for hearing.

Because the application was handled on an ex parte basis, neither ABATE nor the Attorney General nor Mr. Torre were made parties to the proceedings. They therefore lack standing to request a rehearing of this case pursuant to Rule 403 and their petitions must be denied—a decision consistent with that previously reached in Case No. U-12726. Moreover, even if ABATE or the Attorney General had standing, their petitions do not meet the standard of Rule 403.

MCL 460.6a(1) provides in relevant part: “An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing.” In its application, Detroit Edison did not request an alteration or amendment in rates or rate schedules. Rather, it proposed that the net proceeds of the sale would be shared 50/50 between the utility and its customers, and that the customers' 50% share would be used to reduce deferred implementation costs that would be billed to customers after the end of the rate freeze provided for pursuant to the provisions of MCL 460.10d(1) and (2). As Detroit Edison points out, the Michigan Court of Appeals has repeatedly held that MCL 460.6a(1) does not require a hearing in such cases

involving refunds or reductions in costs. Attorney General v Public Service Commission, 206 Mich App 290; 520 NW2d 636 (1994); Attorney General v Public Service Commission, 220 Mich App 561; 560 NW 2d 348 (1996); Attorney General v Public Service Commission, 227 Mich App 148; 575 NW2d 302 (1997); and Attorney General v Public Service Commission, unpublished opinion per curiam of the Court of Appeals, decided January 20, 1998, (Docket Nos. 191946, 192000 and 192001). Moreover, the 50/50 sharing of net proceeds from the sale of transmission assets had previously been approved for Consumers in Case No. U-12726.

In addition to arguments regarding MCL 460.6a(1), ABATE and the Attorney General contend that a hearing should be held because MCL 460.10v requires the Commission to approve transmission expansion plans and because MCL 460.10w requires divestiture of transmission facilities or participation in a Federal Energy Regulatory Commission (FERC) approved regional transmission system. Although MCL 460.10v requires the Commission to conduct a hearing if Detroit Edison and certain other electric utilities are unable to agree on a transmission expansion plan, the Commission has already done so in Cases Nos. U-12780 and U-12781, and has issued a final order on November 20, 2001 and a rehearing order on July 28, 2002. With regard to MCL 460.10w, Detroit Edison proposes to divest its transmission facilities and the purchaser has agreed to participate in a FERC-approved regional transmission system. ABATE and the Attorney General have not demonstrated any reason to conduct a hearing on Detroit Edison's proposal, which complies with the statute.

Finally, ABATE and the Attorney General question the accuracy of certain numbers included in Attachment 2 to Detroit Edison's application. However, Attachment 2, by its own terms, is simply an example calculation and does not purport to use actual data, which will not be known until after the transaction is complete. The Commission did not approve the numbers used in the

example, because they were merely illustrative. Indeed, the Commission's December 6 order explicitly found that "Detroit Edison should file final journal entries upon completion of the transaction." December 6, 2002 order, Case No. U-13646, p. 5. Should they choose to do so, ABATE and the Attorney General will have an opportunity to contest the accuracy of the accounting entries if and when Detroit Edison seeks to bill deferred implementation costs to customers after the conclusion of the rate freeze.

Because the Commission has concluded that the petitions for rehearing do not meet the standard of Rule 403, the petitions for intervention are moot.

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 AACCS, R 460.17101 et seq.
- b. ABATE's petition for rehearing should be denied.
- c. The Attorney General's petition for rehearing should be denied.
- d. Mr. Torre's petition to intervene should be denied.

THEREFORE, IT IS ORDERED that:

- A. The petitions for rehearing filed on January 6, 2003 by the Association of Businesses Advocating Tariff Equity and Attorney General Mike Cox are denied.
- B. The petition for leave to intervene filed by Francisco Torre, Sr., 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/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of February 5, 2003.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-13646

Suggested Minute:

“Adopt and issue order dated February 5, 2003 denying the petitions for rehearing filed by the Association of Businesses Advocating Tariff Equity and the Attorney General related to certain approvals granted in connection with the transfer and sale of The Detroit Edison Company’s transmission facilities, as set forth in the order.”