

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 increase)
rates, amend its rate schedules governing the)
distribution and supply of electric energy, implement)
power supply cost recovery plans, factors, and)
reconciliations in its rate schedules for jurisdictional)
sales of electricity, and for miscellaneous accounting)
authority and regulatory asset recovery.)
_____)

Case No. U-13808

At the April 28, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER DENYING MOTION

On November 23, 2004, the Commission issued the final order in this rate case proceeding. Among other things, the November 23 order revised the return to service requirements for the electric choice program. On December 14, 2004, Constellation NewEnergy, Inc. (NewEnergy), filed a document entitled "Emergency Motion," in which NewEnergy asserts that The Detroit Edison Company (Detroit Edison) sent improper communications to customers regarding the return to service provisions of the November 23 order.

In its motion, NewEnergy explains that the Commission Staff (Staff) worked with Detroit Edison to craft a neutral informative notification letter to inform customers of the changes to the return to service provisions adopted in the November 23 order. However, NewEnergy charges,

Detroit Edison sent a document that inserted additional information about usage and rates in these customer notifications in order to induce those customers to return to bundled service.

NewEnergy argues that Detroit Edison's modifications to the notification letter markets Detroit Edison's bundled service, and, in some instances, does so in a misleading manner.

NewEnergy requests the Commission to issue an order directing Detroit Edison to halt the issuance of communications other than the letter that the Staff assisted in drafting, attached to the motion as Exhibit A. It further requests that the Commission direct Detroit Edison to show cause why it should not be found in violation of 2000 PA 141, MCL 460.10 *et seq.* (Act 141).

On December 20, 2004, Detroit Edison filed a response in which it argued that all of its communications with its customers regarding the return to service changes have been appropriate. It asserted that the communications were not misleading or intended to pressure customers to return to bundled service. It insisted that nothing in those communications were in violation of Act 141. Moreover, Detroit Edison argued, any confusion on the part of customers was likely caused by NewEnergy's letter to them, which inaccurately portrayed Detroit Edison as attempting to pressure customers into taking bundled service.

Detroit Edison further argued that NewEnergy's motion was filed in this docket in error and should be rejected by the Commission. Detroit Edison points out that the Commission issued its final order on November 23. There is a time period provided for appeal and petitions for rehearing in the rules of practice and procedure. However, Detroit Edison argues, NewEnergy's motion does not seek rehearing for the grounds provided in Rule 403 of the Commission's Rules of Practice and Procedure, R 460.17403. Rather, it is more in the nature of a complaint, which is not appropriately brought within the rate case docket. Detroit Edison argues that the motion is

frivolous and otherwise unwarranted. For these reasons, it argues, the Commission must deny the motion in this docket.

The Commission is persuaded that NewEnergy's motion should be rejected. NewEnergy stated that it brought this motion pursuant to Rule 335, which governs motion practice.

Rule 335(1) provides in pertinent part: "In a pending proceeding, a request to the commission or presiding officer for a ruling or order, other than a final order, shall be by motion."

R 460.17335(1). What NewEnergy ignores in filing its motion is that a final order has been issued, and the case is, therefore, no longer pending. Moreover, the Commission agrees with Detroit Edison that NewEnergy's concerns are not properly characterized as a request for rehearing or clarification of the order. Rather, the allegations are more in the nature of a complaint, which should be brought in a separate docket.

Moreover, the Commission is aware that NewEnergy, Detroit Edison, and the Staff have worked to resolve the issues raised in the motion. It appears that any problem concerning the communications that were sent to customers has now been remedied. If that surmise is not correct, NewEnergy may bring any claims of violations of Act 141 or the Commission's November 23 order to the Commission by filing a complaint in a new docket.

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, 1999 AC, R 460.17101 *et seq.*

b. The motion filed by NewEnergy should be denied.

THEREFORE, IT IS ORDERED that the motion filed by Constellation NewEnergy, Inc., on December 14, 2004 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/ J. Peter Lark
Chairman

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of April 28, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

THEREFORE, IT IS ORDERED that the motion filed by Constellation NewEnergy, Inc., on December 14, 2004 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

Chairman

Commissioner

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By its action of April 28, 2005.

Its Executive Secretary