

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. )  
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Case No. U-13808

At the June 30, 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 REHEARING**

On November 23, 2004, the Commission issued the final order in this rate proceeding. On  
December 27, 2004, the Association of Businesses Advocating Tariff Equity (ABATE) filed a  
petition for rehearing. On January 18, 2005, The Detroit Edison Company (Detroit Edison),  
Attorney General Michael A. Cox (Attorney General), and the Commission Staff (Staff) filed  
responses to ABATE's petition for rehearing.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, 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.

### Transmission Costs

ABATE argues that the Commission erred by including transmission costs in the power supply cost recovery (PSCR) calculations. ABATE takes the position that it is unlawful and illogical to include these costs in PSCR proceedings. It argues that two categories of transmission costs that the Commission included in the PSCR portion of the proceeding are costs that have never before been considered for PSCR treatment: (1) fees for transmission within the utility's service territory of power obtained by the utility from third parties, and (2) transmission of power within Detroit Edison's service territory, including transmission of power that is generated at Detroit Edison's plants.

The first category of transmission costs, ABATE argues, did not historically generate a fee because it reflected transmission over Detroit Edison's facilities. Rather, ABATE argues, the revenue requirement for these costs was a part of Detroit Edison's return on investment.

The second category of transmission costs, ABATE argues, are not a part of any transaction in which power is bought, or necessary to permit the utility to take possession of power that it has purchased. ABATE asserts that by the time these costs are incurred, the power has already made it to Detroit Edison's service territory. Thus, ABATE argues, these costs do not fit within the statute's definition of what may be included in a PSCR case. ABATE argues that the Legislature intended to severely limit the availability of adjustment clauses when it created the PSCR proceedings.

ABATE further argues that Detroit Edison recovers transmission costs through its base rates, and in some instances, its industrial rates include explicit transmission demand charges in the maximum demand charge category specified in the rates. ABATE argues that, in addition to permitting double recovery, including transmission costs in PSCR cases would create a significant cost shift from low load factor customers to high load factor customers. Moreover, it argues, collecting transmission expense on an energy basis in the PSCR factor provides inaccurate price signals to customers. In ABATE's view, transmission costs are no different than other operation and maintenance expenses, and should not be included under a separate cost recovery mechanism, but remain an appropriate base rate item.

ABATE further complains that the Commission did not adequately set out its legal reasoning for its decision. ABATE argues that this failure violates MCL 24.285, which requires the Commission to support its conclusions of law with authority or reasoned opinion in order to facilitate judicial review.

The Attorney General agrees with ABATE and supports its position that it is neither lawful nor just and reasonable to include transmission costs in the PSCR pursuant to MCL 460.6j. The Attorney General argues that the transmission costs are neither purchased nor net interchanged power costs, which are recoverable along with fuel costs to produce power. He argues that because these costs are booked in Account 547 or Account 555, they do not qualify for recovery under MCL 460.6j(1)(a). Moreover, the Attorney General argues, PSCR costs are recovered via energy charges, and transmission costs are related to peak demand. Therefore, the Attorney General argues, it is not just and reasonable to charge transmission expenses to customers through the PSCR.

Detroit Edison responds that the Commission appropriately determined that transmission costs should be included in the PSCR process and that incremental changes from the base rate amount should be recovered as PSCR costs. Detroit Edison explains that in response to MCL 460.10w and Federal Energy Regulatory Commission (FERC) policy, DTE divested its transmission system by selling its affiliate, the International Transmission Company (ITC), to an independent third party. Detroit Edison no longer owns the transmission system in its service territory and now purchases transmission service for its customers pursuant to FERC rates. Detroit Edison explains that ITC is a member of the Midwest Independent Transmission System Operator (MISO) and has transferred the responsibility for most of the operations of the transmission system to MISO. Thus, Detroit Edison states, when it obtains needed transmission services throughout its service territory, Detroit Edison does and will pay for transmission and associated services based on the FERC approved rates for ITC and MISO transmission services.

Detroit Edison further explains that all MISO charges in the utility's presentation in this case are developed from the bundled customers' requirements and do not include transmission expense for choice customers or wholesale sales for resale. Detroit Edison points out that the Staff agreed that network transmission expenses should be included as PSCR costs, in accordance with prior decisions.

Moreover, Detroit Edison argues, the Michigan Court of Appeals (Court of Appeals) has previously upheld the inclusion of transmission costs in PSCR proceedings. Detroit Edison chastises ABATE for its complaint regarding the Commission's succinct discussion of this issue in the November 23 order. Detroit Edison states that ABATE's charges are particularly inappropriate when the Commission has at least twice rejected ABATE's argument with regard to this issue. *See*, the September 16, 2002 order in Case No. U-12725 and the December 20, 2002 order in Case

No. U-13497. The first of the cited orders was affirmed by the Court of Appeals in *Michigan Environmental Council v Michigan Public Service Comm*, unpublished opinion *per curiam*, decided May 11, 2004 (Docket Nos. 244354 and 246744).

Further, Detroit Edison argues that transmission costs are purchased and net interchange power costs, and, therefore, are properly included in the PSCR. It argues that external third party transmission expenses have been included in the PSCR because they are necessary to bring the power to Detroit Edison's system. With the divestiture of Detroit Edison's transmission system to ITC, Detroit Edison asserts, billings for these services are also properly includable in the PSCR as expenses necessary to bring power to the distribution system.

Detroit Edison emphatically argues that there is no double recovery of transmission costs. It argues that transmission costs are now in the PSCR base, which does not appear as a separate factor for recovery. This does not create a double recovery. Detroit Edison points out that there is still \$126.9 million in base rates, which applies to all customers even those not subject to the PSCR factor. It argues that only the variations in transmission costs from the \$126.9 million included in base rates will be recovered or refunded through the PSCR factor. Detroit Edison states that there is no change to the total revenues collected from the industrial customer class.

After reviewing the arguments of the parties, the Commission is not persuaded that it reached an incorrect conclusion with regard to transmission costs. Detroit Edison no longer owns or controls its former transmission facilities. It therefore must pay for the use of those facilities, which are operated by a separate entity. The transmission costs are costs to deliver power to Detroit Edison's distribution system, and are costs for purchased and net interchange power not already included in base rates may be properly included in the PSCR pursuant to MCL 460.6j.

### Transitional Primary Supply Rate (TPSR)

ABATE argues that the Commission erred when it concluded that availability of the TPSR should be limited to those customers currently served under special manufacturing contracts (SMCs). ABATE states that its own proposal would have resulted in a slightly higher price, but would be available to all customers having loads of 5 Megawatts (MW) or above.

ABATE argues that there is a difference between special contracts, which may be tailored to the individual circumstances, and a tariff, which must meet the nondiscrimination standards of MCL 460.557(4). It argues that the Commission must reject the Staff's proposal to establish a new tariff applicable only to SMC customers.

ABATE further argues that the Commission's reasoning concerning discrimination is flawed. It argues that the attributes of electrical service include demand, the number of kilowatt-hours (kWh) used, and the time of day that electricity is consumed. ABATE complains that the Commission did not address these attributes. It opines that the Commission provided no reasoned decision supporting its position that the new tariff is not discriminatory. ABATE argues that the Commission should reverse its determinations in the November 23 order and adopt ABATE's proposed tariff.

Detroit Edison responds that the Commission properly decided this issue. It quotes the Commission's related determinations from the November 23 order, and argues that ABATE merely reasserts its position that the proposed TPSR was based on costs to serve all customers having loads of at least 5 MW. Detroit Edison states that ABATE's contention is not accurate. It states that the cost data related only to serving special contracts customers, not all customers with 5 MW loads or above.

The Staff also supports the determinations made in the Commission's November 23 order on this issue. The Staff argues that the Commission made a specific, reasoned finding on this issue and that ABATE merely disagrees with that decision. The Staff states that the Commission approved the special contracts and, therefore, is familiar with the special circumstances that were considered when the contracts were approved. In the Staff's view, the Commission properly exercised its discretion and determined that the special contracts should not be continued, but that SMC customers should be returned to cost of service rates gradually through the transitional tariff. The Staff states that the TPSR is a solution that provides a gradual transition from SMCs to full rates for customers in unique circumstances, while balancing the economic interests of both the participating and non-participating customers. In the Staff's view, if the Commission abandons the TPSR, it should require all SMC customers to return to full service rates.

The Attorney General adds that the Commission's approval of the TPSR shifted part of the difference between SMC rates and the cost to serve SMC customers onto other customer classes. However, the Attorney General argues, adopting ABATE's proposal to open the tariff to all large customers would shift even more costs to those customer classes. Thus, he argues, ABATE's arguments more logically demonstrate why there should be no transitional tariff and cost shift at all. He argues that the actual costs of serving large customers are fully captured in Detroit Edison's other applicable tariffs, and neither the utility nor ABATE have demonstrated why those tariffs should not be applied to SMC customers as their special contract terms expire.

The Commission is not persuaded that it should alter its original determinations on this issue. In the Commission's view, ABATE has merely reiterated its arguments presented before the November 23 order, and rejected in that order. Rehearing is not opportunity to merely express disagreement with the Commission's order, raising the same arguments previously rejected.

ABATE's arguments on this issue do not meet the standards for granting rehearing. Moreover, the Commission finds that its November 23 order includes an explanation of the Commission's conclusions on this issue that adequately sets forth the Commission's reasoning for purposes of compliance with the Michigan Administrative Procedures Act, MCL 24.201 *et seq.*

### TPSR Rate Design

ABATE argues that the Commission's rate design for the TPSR is not supported by the competent, material, and substantial evidence on the whole record. It states that the rate approved by the November 23 order increased the rate in excess of the result that would occur if the calculations follow the Staff's methodology. It argues that the Commission should change the revenue application for the new rate class to be consistent with the Staff's methodology in order to avoid unintended consequences.

Detroit Edison responds that the Commission's determination with regard to the TPSR tariff is supported on the record in this proceeding. Detroit Edison states that the order established an average rate for the TPSR of 4.75¢ per kWh, which is slightly less than the rate advocated by ABATE as a cost-based rate. The utility argues that the Commission should not adopt ABATE's position which would retreat even further from a cost-based rate, and would require an increase in rates for all other classes in order to maintain the revenue increase authorized by the November 23 order.

The Attorney General argues that it would be more reasonable for the Commission to allocate the full cost of service to TPSR customers rather than creating a discount. However, in the Attorney General's view, whatever lower amount is allocated to those customers is not unjust or unreasonable to them.

The Staff responds to ABATE that the Commission did not err in the design of the TPSR because it adopted the Staff's proposal with a reasonable modification that is within the Commission's ratemaking discretion. It states that the Commission's order expressly indicates that the Commission intended to create the TPSR, and then apply the equal percentage increase, which modified the recommendation of the proposal for decision (PFD). The Staff states that the 10.25% increase applied to the TPSR is based on figures available on Exhibit S-128, and is thus based on competent and material evidence in the record. The Staff states that the Commission elected to require that non-SMC customers absorb only 50% of the original discounts. The Staff further comments that it is not unusual for the Commission to modify a party's position before adopting it. The Staff points out that the Commission is not restricted to accepting or rejecting any party's recommendation without modification in a rate case proceeding. The Staff states that the advantage to the TPSR conclusions in the November 23 order is that it affords the same increase to all customers if the comparison is based on the new TPSR revenue.

The Commission is not persuaded by ABATE's arguments that the November 23 order was in error concerning the TPSR. As noted by the Staff, there is no requirement that the Commission limit itself to choosing one of the positions presented on the record without modification. The Commission reaffirms its reasoning and conclusions expressed in the November 23 order with respect to the TPSR tariff. The Commission finds ABATE's argument that the determinations were not based on the competent, material, and substantial evidence to be without merit. The Commission reasonably fashioned a rate for those customers with expiring special contracts, by balancing the interests of ratepayers and the utility.

### Allocation of Costs to R10 Tariff

ABATE argues that the rate increase for R10 customers in the November 23 order assumes a fuel cost greater than the fuel cost assumed for all other rate classes. ABATE argues that this assumption allocates more of the rate increase to R10 customers and disturbs the rate relationship between customer classes. It argues that using the same fuel cost factor for all rate classes would reduce the R10 allocation of the rate increase from \$5.06 million to \$3.83 million. ABATE argues that the Commission should adopt this change because fuel is not a part of the increase ordered by the Commission. It argues that the November 23 order results in a base rate increase, thus, all customers should be treated in a similar fashion and have the same fuel cost for allocation purposes. It argues that the R10 class already provides a rate of return above the system average. It insists that the Commission's treatment of R10 costs moves rates further from cost of service.

Detroit Edison responds that even though ABATE recognizes that the R10 tariff operates differently than any other, it contends that the fuel factor used should be the same as those rate classes subject to the PSCR. Once the Commission adopted the methodology of an equal percentage rate increase for all customer classes, Detroit Edison argues, it would make no sense to adjust the base revenues upon which the increase is to be allocated for a fuel cost that is not applicable to the rate, as ABATE contends. Detroit Edison points out that if the Commission should adopt ABATE's adjustment, rates for all other classes must be increased to maintain the overall revenue increase authorized by the November 23 order.

The Attorney General argues that the R10 tariff is an optional discounted tariff, designed for customers to pay discounted base rates in exchange for paying PSCR charges on an incremental cost basis described in the tariff. He argues that ABATE's proposal would effectively redefine the

incremental cost provisions in the R10 tariff. He states that R10 customers may switch back to the standard tariff and pay PSCR costs instead of paying incremental energy charges.

The Staff asserts that the Commission did not err in its allocation of costs to the R10 tariff. The Commission adopted the equal percentage allocation methodology recommended by the Staff and adopted in the PFD. That method was based on the present revenue calculation provided in Exhibit A-13, Schedule E6, p. 34. The Staff states that ABATE does not point out where it challenged Detroit Edison's use of different power supply costs for R10 customers. The Staff argues that ABATE's rehearing request on this issue should be rejected as an attempt to raise an argument that could have been raised and addressed after the Staff's case filing.

The Commission rejects ABATE's argument on this issue. The R10 tariff contemplates a different power supply cost than those tariffs subject to PSCR charges. Thus, the November 23 order appropriately adopted a result based on a different fuel cost for R10 customers. Moreover, the Commission notes that ABATE could have challenged this assumption in a more timely manner. Waiting to raise an argument until filing a petition for rehearing is not appropriate, and will likely be unavailing to the party choosing that path.

#### Return to Service Requirements

ABATE argues that the Commission should clarify the return to service requirements found in the November 23 order. It raises three issues, for which it states the answers are important for customers seeking to assess the risks of participating in open access: (1) return to service requirements when a supplier defaults, (2) market price of power calculation for returning customers that do not provide sufficient notice, and (3) the length of time that a customer, which has been on open access for the required two years, but does not give timely notice for a return during the following summer, must pay the applicable power price. It argues that unless the

Commission clarifies these issues, the November 23 order will have an unintended consequence of creating more risk, rather than greater certainty, in connection with Detroit Edison's open access program.

Detroit Edison contends that both the market price calculation and the supplier default conditions contained in the Commission's RAST as approved December 20, 2001 and subsequently on rehearing in the Commission's April 26, 2002 order in Case No. U-12489, remain unchanged by the Commission's November 23 order in this case. Thus, it argues, no clarification is necessary. Concerning the third issue, Detroit Edison maintains that the Commission has discretion regarding the deadlines imposed in the order, so long as any extension of the notice deadline does not violate the principle of providing the utility with sufficient notice to effectively plan for and acquire power supply for such customer's return during the forthcoming summer. Detroit Edison argues that the November 23 order provides that the applicable power price shall be applied during the entire summer period where notice is delinquent.

The Attorney General notes the requests for clarification. However, because ABATE has not stated answers that it believes the Commission should provide or why, the Attorney General states that he has no basis upon which to support or oppose ABATE's positions.

The Staff states that it has no objection to the Commission granting ABATE's requests for clarification.

The Commission finds that no clarification is needed with respect to the first two return to service issues for which ABATE seeks clarification. The tariff remains as approved by the Commission's December 20, 2001 order in Case No. U-12489. As to the third issue, the Commission finds that a customer failing to provide timely notice of return to service during the

summer months, but which has been on open access for the required minimum time, must pay the appropriate higher energy rate through the summer months for which timely notice was not given.

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. ABATE's petition for rehearing and clarification should be denied, except as provided in this order.

THEREFORE, IT IS ORDERED that the request for rehearing and clarification filed by the Association of Businesses Advocating Tariff Equity should be denied, except as provided 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/ J. Peter Lark  
Chairman

( S E A L )

/s/ Robert B. Nelson  
Commissioner

/s/ Laura Chappelle  
Commissioner

By its action of June 30, 2005.

/s/ Mary Jo Kunkle  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of June 30, 2005.

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Its Executive Secretary