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 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

On November 23, 2004, the Commission issued the final order in this rate proceeding. On December 22, 2004, The Detroit Edison Company (Detroit Edison) filed a petition for rehearing. On January 18, 2005, Attorney General Michael A. Cox (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM), Constellation NewEnergy, Inc., and the Commission Staff (Staff) filed responses to Detroit Edison's petition.

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.

Capital Structure

Detroit Edison argues that the Commission should have adopted a capital structure reflecting 50% equity and 50% debt, rather than the 46% equity and 54% debt adopted in the November 23 order. Detroit Edison states that the Commission reached this result based on its belief that a credit downgrade would not occur, or that the order would not be the cause of any downgrade. Detroit Edison asserts that new evidence demonstrates the unintended consequences of the Commission's decision. It asserts that one week after the November 23 order, a Standard & Poor's Corporation (S&P) press release cited the regulatory situation in Michigan as a basis for downgrading Detroit Edison's credit rating.

Detroit Edison further argues that the record supports its proposed capital structure. It argues that the Commission's finding that the Staff's proposed capital structure is an improvement over the last approved equity ratio of 40% and is consistent with the company's present needs is simply wrong. First, Detroit Edison states, its equity ratio was not 40% ten years ago, and it has not been at that level after that time. Rather, Detroit Edison states, its capital structure included 55.01% debt, 4.99% preferred stock, and 40% common equity. Detroit Edison argues that its equity ratio from 1994 was 47.05% equity (42.22% common equity and 4.84% preferred stock), or 1% greater than the Commission allowed in the November 23 order.

Moreover, Detroit Edison argues, what might have been acceptable ten years ago is not acceptable today, because credit rating agencies have toughened their standards and are more

likely to downgrade companies. It points to the observation in the Proposal for Decision (PFD) that Detroit Edison had been rated with negative outlook by Moody's Investors Services, Inc., (Moody's) and S&P. The week after the Commission accepted the Staff's position, Detroit Edison argues, the predicted downgrade occurred. Thus, Detroit Edison argues, the Commission should rehear this issue and decide that the minimum equity ratio necessary for Detroit Edison is 50% as supported by the company's witnesses Khouri, Morin, and Gorman.

The Staff responds that the Commission correctly adopted the 46% equity and 54% debt permanent capital structure for Detroit Edison, as recommended by the Staff and adopted in the PFD. The Staff argues that Detroit Edison has neither challenged nor rebutted the figures used in the Staff's reply to exceptions, in which the Staff states, it presented a clear picture of Detroit Edison's forecasted common equity and long-term debt profile, taking into account debt and equity recommendations from the Staff and Detroit Edison. The Staff states that it presented an appropriate common equity profile based on a 13-month common equity average, adjusted by equity modifications based on testimony provided by Detroit Edison's treasurer. The Staff argues that the bases for its recommendation are solid, reasonable, and not controversial. Thus, the Staff argues Detroit Edison's petition for rehearing appears to be based solely on the S&P downgrade to its rating and the implication that the approved capital structure played a role in that downgrade. The Staff argues that the capital structure approved by the Commission had no bearing on the rating downgrade.

The Staff goes on to argue that Detroit Edison lifts out of context the statement made in the S&P press release, and ignores indications in that writing that things will likely improve for Detroit Edison beginning in 2006. The Staff notes that nowhere in the credit report does S&P reference the Commission's decision to grant Detroit Edison a 54% debt, 46% equity capital

structure as a factor in its decision to downgrade the company's rating. However, the report notes that:

> Going forward, Standard and Poor's expects the company's consolidated financial profile to garner credit protection measures appropriate for the rating over a sustained period. Specifically, adjusted FFO interest coverage is expected to be above 4x, adjusted FFO to total debt to be about 25% and adjusted debt leverage to be migrating to 55% or below.

Staff's response, pp. 3-4. The Staff argues that the rationale quoted above suggests that if the Commission had approved a 50% equity capital structure, the downgrade would most likely have still occurred. In the Staff's view, it is the timing of Detroit Edison's financial recovery that spurred the ratings action downgrade, not the approved capital structure.

Further, the Staff notes, Detroit Edison failed to take into account the reactions of the other major rating agencies, such as Moody's and Fitch Inc. The Staff states that Moody's has not formally announced any credit rating action based upon the November 23 order and had placed the negative outlook on Detroit Edison prior to November 23, 2004. Moreover, the Staff states, Fitch maintained Detroit Edison's rating at BBB+ with stable outlook after the issuance of the order. The Staff argues that Detroit Edison's petition for rehearing depends on one rating agency's position, despite supportive ratings from Fitch and the neutral position taken by Moody's. Moreover, the rating downgrade was related to the timeframe in which Detroit Edison could expect to reap the benefits of the rate order, rather than the capital structure.

The Staff further argues that viewing preferred stock as equivalent to equity included in Detroit Edison's 1994 capital structure is not correct. The Staff states that preferred stock does not have the same type of discretionary dividends as common stock for a public utility. Therefore, the Staff states, the common equity ratio approved by the Commission in the present case is not less than the total common equity approved in 1994.

The Attorney General responds that Detroit Edison's arguments do not fit within the scope of Rule 403. Rather, the Attorney General argues, Detroit Edison merely reargues issues raised prior to the Commission's order. He argues that Detroit Edison repeats arguments that were previously presented by its witnesses and were rejected in the PFD and the November 23 order.

Moreover, the Attorney General states, Detroit Edison requests rehearing on this issue based on a press release by S&P, which has not been subject to discovery, cross examination, or refutation, and is outside of the record evidence in this case. The Attorney General argues that this is not the type of information upon which reasonable people would solely rely for understanding the reasons behind the announced action.

The Commission is not persuaded that Detroit Edison has met the requirements for rehearing. The thrust of its argument is that a downgrade in rating from S&P requires that the Commission reconsider the approved capital structure. The Commission disagrees. The news release does not support Detroit Edison's claim that the approved capital structure caused the downgrade, or that fixing the capital structure more to Detroit Edison's liking would improve the utility's rating. Rather, the Commission finds it likely that the downgrade would have happened, regardless of the capital structure approved in the November 23 order, based on S&P's view that there is significant delay in Detroit Edison's ability to entirely recognize the benefits created by the order. The Commission finds that its discussion within the November 23 order on this issue sufficiently sets out the Commission's consideration of the evidence presented and the arguments of the parties. Therefore, the Commission concludes, no alteration to the order need be made on this issue.

Rate Base and Capitalization

Detroit Edison argues that in order for its rate base to match its total capitalization, the Commission must increase working capital by $125 million, or short-term debt must be reduced

by that amount. According to Detroit Edison, the change is necessary because the Staff's total capitalization exceeds its 2004 uses of capital. However, Detroit Edison states, the Commission failed to address this issue when it adopted the Staff's $279 million of short-term debt.

Detroit Edison repeats its argument from its exceptions that the Commission should correct this mathematical error so that the results conform with the Commission's requirements adopted in the June 11, 1985 order in Case No. U-7350 to use a balance sheet method for determining working capital.

The Attorney General responds that the Staff's replies to exceptions at pages 6-9 respond to the same argument in Detroit Edison's request for rehearing, and aptly explain why there is no error.

The Commission finds that Detroit Edison's arguments on this issue fail to meet the standard for granting rehearing. Those arguments repeat nearly verbatim the arguments addressed in the November 23 order. The Commission is not persuaded that it erred in adopting the Staff's recommendation. Moreover, the Commission finds that its discussion of this issue in the November 23 order adequately addresses Detroit Edison's arguments.

Control Premium

Detroit Edison takes issue with the Commission's determination that the utility's regulated rates should not reflect the cost of Detroit Edison's allocated share of the control premium paid by Detroit Edison's parent company, DTE Energy Company (DTE), to acquire MCN Energy Group, Inc., (MCN). Although Detroit Edison acknowledges that the Commission summarized the positions of the parties, the utility argues that the discussion and conclusions are not supported by the parties or their positions in this proceeding. Detroit Edison argues that the Commission relied upon facts not in evidence and on speculation with respect to matters not relevant to the legal

standard used to assess recovery of these costs. In Detroit Edison's view, if the Commission applies the proper legal standard to the record evidence, it could only conclude that Detroit Edison should recover 100% of the control premium allocated to the utility.

Detroit Edison argues that although the Commission had no regulatory oversight of the merger, it had opportunities to express its displeasure with the pending arrangement, but did not do so. Detroit Edison points to the February 14, 2001 order in Case No. U-12825, approving a special contract, without which, Detroit Edison asserts, the merger would not be approved by the Federal Trade Commission. It further points to a letter from the Commission to the Securities and Exchange Commission in which the Commission stated that the merger would not adversely affect the Commission's ability to fulfill its regulatory responsibilities. These actions, Detroit Edison asserts, demonstrate the Commission's approval and agreement with the reasonableness of the merger.

Moreover, Detroit Edison argues, the Commission's reference to the $893 million premium in relation to the value of MCN, which was financially distressed, fails to recognize the reduction in market value immediately prior to the October 4, 1999 merger agreement. According to Detroit Edison, the financial distress had already been recognized as the market value dropped and, along with it, the purchase price. Thus, Detroit Edison posits, the Commission's determination that the premium was enormous is without evidentiary basis, is speculative, and irrelevant without articulated criteria for assessing the reasonableness of the premium.

Detroit Edison insists that it demonstrated on the record the reasonableness of the premium paid. Specifically, it argues, the reasonableness of the purchase price was supported by reference to analyses performed by Merrill Lynch & Co. for DTE's Board of Directors.

Further, Detroit Edison argues, the Commission failed to articulate the relevance of the reasonableness of the price paid for the merger to determining whether there is a net benefit to ratepayers from the change in ownership.

Additionally, Detroit Edison complains that the Commission engaged in compound speculation when it projected what might happen should MCN be sold for a profit. Such speculation, Detroit Edison argues, has no basis in the record and seems to contradict other elements of the Commission's reasons for excluding the control premium cost. In fact, Detroit Edison argues, the Commission's discussion accepts the fact that meaningful synergies are being realized, are inuring to the customers' benefit, and will likely continue into the future.

Detroit Edison argues that the Commission's skepticism regarding the sustainability of the merger synergies fails to address the issue of the net benefit to ratepayers as a result of the merger. Those synergies, Detroit Edison argues, were reflected in the Staff's proposed operation and maintenance (O&M) expense adopted by the Commission. Moreover, it argues, there is no need to demonstrate a permanent net benefit in this proceeding to support recovery of the control premium. Detroit Edison argues that the permanence of the savings is supported by the record. It argues that although 375 employees were replaced, 811 former employees have not been replaced after the reductions following the merger. Detroit Edison argues that its proposed synergy savings are based on net savings, recognizing the need to backfill for the larger-than-expected number of employees that left after the merger.

Detroit Edison further argues that the Commission makes an irrelevant observation that certain aspects of the merger produced confusion and customer consternation relative to the billing problems experienced when the two companies merged their billing systems. Detroit Edison acknowledges that "transitional issues occurred" with the combining of the two billing systems.

However, it suggests that the Commission is without authority to impose a penalty for those problems in this case. Further, it argues the statement that an investigation continues concerning those problems is contradicted by the December 18, 2003 order closing Case No. U-13287.

Further, Detroit Edison argues, the Commission's observation that costs associated with the billing system problems were not included in the calculation of the merger synergies is also irrelevant to the determination at hand. The utility argues that the $6.3 million of 2002 costs pertain to one-time costs incurred to address the transitional issues with the combined billing systems.

As to the Commission observation that contract termination costs were excluded when the cost savings were calculated, Detroit Edison argues the Commission made an irrelevant finding. The utility argues that the 2002 contract termination cost was not incurred by Detroit Edison, and was thus not included in the historical or projected test periods used in this case. It states that both Detroit Edison and Michigan Consolidated Gas Company (Mich Con) incurred substantial merger-related costs arising from the early retirement and voluntary resignation programs. Because those costs were incurred prior to the historical test year, they are also not reflected in the derivation of current and projected synergy analyses. Detroit Edison states that because it has not sought to include these costs in rates, they are not proper components of the determination of net customer benefit in the evaluation of the inclusion of the control premium costs.

Further, Detroit Edison argues, the Commission erroneously concludes that because Detroit Edison's post-merger O&M costs are higher than its pre-merger O&M costs, and the order provides an opportunity for full recovery of all actual O&M expenses, no recovery of the control premium is warranted. First, Detroit Edison states, the projected O&M synergies for 2004 applicable to the electric utility were $112.6 million, not the $84 million cited in the order.

Second, Detroit Edison states, because the 2002 O&M expense levels included $80 million net synergies, the comparison is not useful. Both 2002 historical and 2004 projected O&M expense levels included synergies. Thus, the change in O&M expense levels from 2002 to 2004 reflects changes other than those related to synergies created by the merger. The net effect, Detroit Edison argues, is to deny the company the cost of obtaining the synergies, while including the reductions in costs caused by the merger.

Detroit Edison states that the Commission should encourage the merger of Michigan companies to build a stronger intrastate energy infrastructure. It argues that the Commission's response in this rate case will have a chilling effect on such mergers in the future, thereby depriving state citizens of the benefits associated with mergers.

Therefore, Detroit Edison concludes, the Commission erred as a matter of fact and law in determining to exclude the control premium. It argues that the Commission never addressed whether the synergies currently being realized by Detroit Edison were greater than the cost of the control premium. Correcting this error on rehearing would increase the company's revenue deficiency by $46.5 million.

The Attorney General argues that Detroit Edison fails to meet the standard for granting rehearing on this issue, because it merely reasserts those arguments addressed and rejected by the Commission in the November 23 order. Moreover, the Attorney General argues, Detroit Edison's arguments should be rejected on the basis that MCL 460.557 limits the lawful elements of rates to costs incurred by the utility to provide service. The Attorney General argues that there is no statutory support for including in rates costs incurred by a separate, albeit related business. Rather, he argues, costs recovered must be incurred by the utility itself. Additionally, the Attorney General argues, ratepayers cannot be charged for alleged savings, as to do so would impose a

charge for costs not incurred. Thus, he argues, the control premium is not a recoverable cost of service incurred by the utility.

The Attorney General further argues that inclusion of the merger control premium in rates would not be reasonable, because it would permit double recovery. He argues that Detroit Edison's ratepayers are effectively already paying for the control premium through the securitization surcharge.

MEC/PIRGIM support the Commission's determination to exclude the control premium that Detroit Edison's parent paid over book value to acquire MCN. In their view, any cost synergies obtained relative to the combination of Detroit Edison and Mich Con would have been realized without payment of the control premium. Similarly, MEC/PIRGIM argue, those synergies are realized if DTE assumes all responsibility for the control premium.

MEC/PIRGIM argue that there is no basis to assume that the amount of the control premium is reasonable or rational. Moreover, they assert, it would be unreasonable to include in forward looking rates, any amounts exceeding actual expenses or reasonable projections of expenses. In MEC/PIRGIM's view, the benefit obtained by the merger inured to stockholders, not ratepayers.

Further, MEC/PIRGIM argue, recognition of a control premium would create unwanted precedent and constitute reckless regulation. They argue that substantial premium payments made by an unregulated parent company to acquire other companies should not be encouraged or rewarded. Therefore, they argue, the Commission should reject Detroit Edison's petition for rehearing on this issue.

The Commission is not persuaded that Detroit Edison has met the requirements for granting rehearing on this issue. Its petition reiterates arguments it made in its exceptions, which the Commission rejected in the November 23 order. The Commission is not persuaded that the

benefits for ratepayers justify including any portion of the control premium paid by DTE to acquire MCN for the reasons expressed in the November 23 order, at pages 52-54.

Inflation Increase

Detroit Edison argues that the Commission should add at least $24.6 million to the revenue deficiency to reflect an additional year of inflation due to the delays in processing the case, and the consequent delay in implementing the rate increase. Moreover, Detroit Edison argues, the statutory rate caps will delay increases for small commercial and industrial customers until January 1, 2006. The utility argues that although the Commission recognized Detroit Edison's exceptions on this issue, it did not address them.

The Staff responds that the Commission should reject this request because it would be contrary to public policy to adjust rates for only one factor, inflation. Rather, the Staff argues, numerous factors are involved in setting rates. Although changes in one factor may suggest the need for an increase, other changes might suggest a need for a decrease. Moreover, the Staff states, to grant Detroit Edison's request would require reopening the record, which could open the door for further issues to be raised, such as increased sales over the projections adopted by the Commission.

The Attorney General agrees that increasing rates for the effect of inflation at this juncture would require the Commission to go outside the record. He states that if the Commission chooses to reopen the record for inflation information, it must permit rebuttal evidence supporting potential offsetting changes to revenues or expenses occurring after the record closed.

The Commission rejects Detroit Edison's proposed inflation adjustment as being unsupported by the record. The Commission must set rates based on the evidence presented on the record. To reopen the record for information concerning changes in costs due to inflation would require

permitting other parties to demonstrate other changes in costs, perhaps more than offsetting any inflation related increases. Thus, the case would never end, as it would continuously need reopening for further information. The Commission's lack of discussion of Detroit Edison's proposal beyond mentioning the company's position properly could have been read as a rejection of the proposal. Because the proposal is not supported by the record, the Commission perceived no need to discuss it further.

Low-Income/Energy Efficiency Fund (LIEEF)

Detroit Edison charges that the Commission's decision that LIEEF funds should be available throughout the state is unlawful and unsound. It argues that only Detroit Edison's customers are funding the LIEEF. Therefore, Detroit Edison argues, only its customers should receive the benefits of those funds, and they should be available to assist only those customers located in Detroit Edison's service territory. To do otherwise, Detroit Edison suggests, is to impose a tax on the utility's customers without authority to do so.

The Attorney General supports Detroit Edison's position and arguments on this issue.

The Staff responds that the Commission has already considered and rejected Detroit Edison's argument in the November 23 order. It argues that Detroit Edison has not raised any new arguments in support of its position. Therefore, it is not properly raised in the petition for rehearing.

Additionally, the Staff argues, Detroit Edison ignores the fact that the Commission may reach a similar result in the pending general rate case for Consumers Energy Company (Consumers). Thus, funding from the state's two largest electric companies could be available to continue the statutorily authorized program.

The Commission finds that Detroit Edison's petition for rehearing does not meet the standard for granting that petition on this issue. Detroit Edison merely restates the arguments that the Commission rejected in the November 23 order, pages 116-117.

Power Supply Cost Recovery (PSCR)

Detroit Edison argues that the Commission rejected the utility's proposal related to MCL 460.6j(18) [Section 6j(18)], and had no authority to approve a modified version of that proposal. It requests the Commission to either reject or adopt in total Detroit Edison's proposal as it appeared in the company's application. It requests the Commission to clarify its decision to permit Detroit Edison to file annual PSCR plan and reconciliation cases under the Case No. U-13808 docket. It argues that its proposal is consistent with Section 6j(18), which provides in part:

> If the commission sets power supply cost recovery factors in an order resulting from a general rate case:
>
> (a) The power supply cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new power supply cost recovery factors in a general rate case, whichever is the shorter period.
>
> (b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount pursuant to subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).
>
> (c) The power supply cost recovery factors shall not be subject to revision pursuant to subsection (10).

Detroit Edison's petition for rehearing, p. 25.

Detroit Edison argues that the statute should be applied according to its plain meaning, with no language treated as surplus or rendered nugatory. It argues that rehearing is required because the proceeding described in the November 23 order is contrary to MCL 460.6j(18) and Detroit Edison's application. Further, it argues that there is no requirement that the Commission mandate a 48-month PSCR factor, because each of the orders required by Section 6j(18) may be issued in the same general rate case docket, and the section does not require that the orders be issued in a subsequent rate case docket. Moreover, Detroit Edison argues, there is no limit to the number of factors that the Commission could order in this general rate case. Additionally, Detroit Edison argues, the statute permits the Commission discretion to authorize a 48-month PSCR factor if the utility requested it – which Detroit Edison emphatically points out it did not. According to Detroit Edison, the statute further permits the Commission to establish separate annual PSCR factors in a general rate case, or to establish PSCR factors in a future stand-alone PSCR proceeding. Detroit Edison further argues that the Michigan Court of Appeals (Court of Appeals) has approved other adjustment mechanisms employed in rate cases. *See, Attorney General* v *PSC*, 133 Mich App 719 (1984).

Detroit Edison argues that using a coordinated transition mechanism makes sense during the transition from the frozen rates, to partially capped rates, to totally uncapped rates, in order to consistently and harmoniously apply 1982 PA 304, MCL 460.6h *et seq.* (Act 304). Detroit Edison states that it essentially requested the Commission to establish annual PSCR factors within this main rate case docket, but only after full notice and hearing of the annual PSCR plan and PSCR reconciliation cases. It quotes the Court of Appeals in *Attorney General* v *PSC*, 249 Mich App 424, 432-33 (2002) for the proposition that 200 PA 141, MCL 460.10 *et* seq. (Act 141) suspended the operation of MCL 460.6j for a specified period.

Detroit Edison further states that the Commission's December 18, 2003 order reestablished Detroit Edison's PSCR clause for all customers, regardless of whether their electric rates were capped. It argues that the November 23 order, although it sets final rates, leaves unclear the mitigation process. Detroit Edison reiterates that it is lawful and proper for the remainder of the 2004 and 2005 PSCR process to take place in Case No. U-13808, with single purpose PSCR cases commencing in 2006. In this way, Detroit Edison argues, Act 141 and Act 304, and mitigation can be applied without conflict, and resulting electric rates will be just and reasonable. To accomplish this, Detroit Edison states, the Commission need only reassign Detroit Edison's pending PSCR case to this rate case docket. On the other hand, Detroit Edison insists, the Commission is free to issue an order directing that Detroit Edison's 2005 PSCR plan case (Case No. U-14275) proceed as docketed, and that all future PSCR cases take place in different dockets.

The Staff responds that Detroit Edison is correct that the Commission rejected the utility's proposal to reinstate the PSCR mechanism for 2004, coincident with approval of the company's request for a mitigation adjustment to operate in tandem with the PSCR mechanism. However, the Staff argues, Detroit Edison is not correct that the Commission lacks authority to modify Detroit Edison's proposal. The Staff asserts that the Commission has statutory authority to provide for recovery through rates of Detroit Edison's power costs by including the costs in base rates, or by including the costs in a PSCR factor. The Staff argues that the Commission is not bound to pick one method over another if, in the Commission's discretion, it determines that the circumstances warrant it. However, the Staff further argues that Detroit Edison is free to pursue gaining approval of its 2005 PSCR plan in a separate MCL 460.6j(3)-(7) proceeding. Finally, the Staff states that it supports the Commission's determination with regard to Detroit Edison's plan for its mitigation proposal to act in tandem with its PSCR factor.

ABATE argues that Detroit Edison cannot dictate any particular result and claim that the Commission is without power to regulate under existing statutes. ABATE states that Detroit Edison exercised its management prerogative in 1983 to request authority to implement a PSCR plan in its rate schedules, which the Commission granted in its December 20, 1983 order in Case No. U-7750. ABATE asserts that the Commission has the power to order that the PSCR clause be implemented after the temporary suspension of MCL 460.6j, as discussed in *Attorney General* v *PSC*, 249 Mich App 424 (2002). Moreover, ABATE argues, the Commission has the ratemaking authority to approve or reject the mitigation proposal. *See*, MCL 460.10a(10). Because the Commission found Detroit Edison would be unlikely to have future stranded costs, rational ratemaking policy required the Commission to reject the mitigation proposal.

The Attorney General argues that although Detroit Edison's argument appears to assert that the Commission did not set a PSCR base and factor within the scope of Section 6j(18), the utility's real claim is that the Commission did not approve all aspects of the PSCR proposal that Detroit Edison made in this case. In the Attorney General's view, the Commission implemented Section 6j(18) by setting a new PSCR base of $0.01732 per kilowatt-hour (kWh) and new PSCR factor of zero in the November 23 order.

The Attorney General argues that Detroit Edison's assertion that the Commission lacks jurisdiction to modify the company's proposal conflicts with the statutory language. He says Section 6j(18) authorizes the Commission to set PSCR factors in an order resulting from a general rate case. He points out that the statute does not restrict the Commission to approving or rejecting the factors proposed by the utility. Moreover, the Attorney General argues, the Commission has statutory authority to approve, reject, or amend proposed factors, and is empowered to establish just and reasonable rates. He argues that the Commission's decision was based on the record

evidence. Further, the Attorney General states, the dispute in the Court of Appeals case that Detroit Edison cites involved the power of the Commission to interfere with the utility's management decisions with regard to its demand-side management program, not the Commission's power to set rates. The Attorney General argues that although the Commission may not require certain management decisions, it may disallow costs resulting from unreasonable or imprudent management decisions. Because the Commission's decision concerning the PSCR factors in this case concern ratemaking, the Attorney General argues, the action was lawful.

Energy Michigan responds that Detroit Edison's position is legally and technically defective. It argues that the Commission has broad statutory discretion to fashion a method to determine and arrange recovery of stranded costs. Energy Michigan argues that the statute cannot be read to limit the Commission's role to merely accepting or rejecting the proposal offered by the utility. In Energy Michigan's view, the Commission used traditional legal authority and precedent to effecttively reestablish the PSCR mechanism along traditional lines. Thus, Energy Michigan maintains, the Commission should reject Detroit Edison's claim that the Commission lacked authority to reach the determinations contained in the November 23 order.

The Commission is not persuaded that it reached incorrect conclusions regarding the PSCR portion of the rate case and Detroit Edison's proposal for a mitigation factor that would be implemented in tandem with the PSCR factor. The Commission rejected Detroit Edison's mitigation proposal and the Staff's alternative mitigation proposal. However, the Commission did set the PSCR base and factors for Detroit Edison in this case.

In the November 23 order, the Commission noted that there are two statutory methods for a utility to implement PSCR factors. It may file a case pursuant to Sections 6j(3)-(7), which provide for annual plan and reconciliation cases, or it may request that its PSCR base and factors be set

pursuant to Section 6j(18), which requires the Commission to set PSCR factors that are not to be changed until the expiration of 48 months or the Commission issues a subsequent order in a general rate case. The statutory language does not support Detroit Edison's view that the Commission may approve a new PSCR base and factors in this rate case pursuant to Section 6j(18) and yet permit the annual PSCR plan case filings, within this rate case docket and without reopening the entire general rate case for review. The Commission is not free to rewrite its enabling statutes to meet the desires of any party, or even its own desires. Rather, the Commission must follow the dictates of the statute as passed by the Legislature.

The Commission concludes that it should treat Detroit Edison's request for PSCR reinstatement and establishment of PSCR base and factors to have been properly raised under Section 6j(3)-(7), rather than Section 6j(18). The Commission notes that the applicant did not present testimony to support factors that would be in effect for 48 months. Nor did any of the parties treat the PSCR base and factor issues as if they would be in effect for that period of time. Detroit Edison made it clear that it intended to file a 2005 PSCR plan case and a 2004 PSCR reconciliation case outside of this docket. Everything except the citation in its application suggests that Detroit Edison sought relief pursuant to Section 6j(3)-(7), not Section 6j(18). The Commission further notes that the published notice for this case did not specify under which subsection of Section 6j the Commission would consider Detroit Edison's request for PSCR factors. Moreover, any defect in notice has not prejudiced the parties because the issues are essentially the same, whichever subsection is used, and the parties have had ample opportunity to raise and argue issues related to the reasonableness and prudence of the projected costs and power supply. Therefore, the Commission concludes that it should grant rehearing on this issue and

amend the November 23 order to reflect that the PSCR portion of that order was completed pursuant to MCL 460.6j(3)-(7).

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 rehearing request filed by Detroit Edison should be granted in part and denied in part.

THEREFORE, IT IS ORDERED that the rehearing request filed by the Detroit Edison Company on December 2**7**, 2004 is granted in part and denied in part.

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