

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 authority)	
to implement a power supply cost recovery plan)	Case No. U-14702
in its rate schedules for 2006 metered jurisdictional)	
sales of electricity.)	
_____)	

At the May 22, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

On September 25, 2005, The Detroit Edison Company (Detroit Edison) filed an application requesting approval of its 2006 power supply cost recovery (PSCR) plan pursuant to 1982 PA 304 (Act 304), MCL 460.6h *et seq.* Specifically, Detroit Edison requested approval of a levelized PSCR factor of 4.99 mills per kilowatt-hour (kWh) for residential customers and a PSCR factor of 8.29 mills per kWh for commercial and industrial (C&I) customers.¹ On November 10, 2005, the Commission issued an order setting a schedule for an interim hearing on temporary PSCR factors to be implemented during the pendency of this matter. After an evidentiary hearing and briefing,

¹ Residential customers' bills were subject to the 2000 PA 141 (Act 141) rate caps during 2005, and C&I customers' bills were not. In addition, the C&I factor includes Detroit Edison's estimated underrecovery related to C&I customers for 2005.

the Commission issued an order on December 22, 2005 authorizing Detroit Edison to implement temporary PSCR factors on a quarterly basis for 2006.²

Pursuant to due notice, a prehearing conference was held before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ) on November 22, 2005. At the prehearing, the ALJ granted petitions to intervene filed by Attorney General Michael A. Cox (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), the Residential Ratepayer Consortium, Energy Michigan, and the Michigan Environmental Council and Public Interest Research Group in Michigan (MEC/PIRGIM). The Commission Staff (Staff) also participated.

Cross-examination of Detroit Edison's direct case occurred on January 11 and 12, 2006. Three of the parties filed direct testimony on February 10, 2006, and Detroit Edison filed its rebuttal testimony on March 17, 2006. On March 29, 2006, Detroit Edison and the Staff filed motions to strike the testimony and exhibits of both of MEC/PIRGIM's witnesses in their entirety. MEC/PIRGIM filed responses to the Staff's and Detroit Edison's motions to strike on March 31 and April 3, 2006, respectively. The ALJ granted these motions at the commencement of an evidentiary hearing on April 5, 2006.

On March 30, 2006, MEC/PIRGIM filed a request for a Declaratory Ruling requesting a determination that:

- 1) a proper and comprehensive PSCR plan and 5-year forecast filed by the utility under Act 304 should include as an energy resource the development and implementation of programs to reduce, moderate, or mitigate electric loads over time, through energy conservation, energy efficiency, or demand-supply-management efforts and programs; 2) the development and implementation of energy efficiency programs is fully lawful under Act 304, and in fact should be regarded as an ongoing duty of any utility subject to Act 304; 3) the development and implementation of energy efficiency programs is also directly relevant to the

² The approved temporary PSCR factors ordered by the Commission were as follows: January to March 2006, 0.38 mills per kWh; April to June 2006, 7.00 mills per kWh; July to September 2006, 7.98 mills per kWh; and October to December 2006, 2.15 mills per kWh.

proper functioning of Act 304, the statute was adopted to require the use of comprehensive energy resource and cost planning strategies by utilities, and to avoid many of the abuses that had occurred under automatic fuel adjustment clauses in effect in the 1970's and early 1980's, energy efficiency programs represent a valuable resource to reduce the cost of energy supplies, both in terms of price per unit of energy and through the reduction of energy waste and avoidable consumption, energy efficiency programs can accomplish these results by reducing energy loads and consumption, thereby reducing avoidable fuel and purchased power costs, transmission capacity and congestion charges, and pollution emission costs and allowances, among other costs; and 4) the implementation and development of energy efficiency programs would also greatly promote the public interests of the state and its citizens as it would assist in ameliorating energy costs, and the attendant outflow of billions of energy-cost dollars out of Michigan, and would also promote economic development and job creation by providing greater financial resources to businesses arising from the energy savings obtained from the more efficient utilization of energy resources in Michigan; said programs would also result in ongoing and long-term energy savings to the various units of local and state government in Michigan, thereby directly saving scarce taxpayer dollars for more beneficial uses, energy efficiency programs also result in significant other economic and environmental benefits.

MEC/PIRGIM request, pp. 1-3. The ALJ declined to rule on this request, determining that it was a matter proper for the Commission's consideration and not the ALJ.

On June 30, 2006, the ALJ issued a Proposal for Decision (PFD). Exceptions were filed by Detroit Edison, the Attorney General, ABATE, and MEC/PIRGIM. The Staff did not file exceptions. Replies to exceptions were filed by Detroit Edison, the Attorney General, MEC/PIRGIM, and the Staff.

On September 26, 2006, the Commission issued an order that: 1) allowed Detroit Edison to include the proposed 2006 sulfur dioxide emissions allowance expenses in its PSCR costs; 2) prohibited the costs of the chemical additive magnesium hydroxide from being included in the PSCR process; 3) allowed Detroit Edison to collect \$13.681 million for its 2006 oxides of nitrogen emissions allowances; 4) approved Detroit Edison's projection of \$185,083,000 in third party sales; 5) approved a factor of 5.45 mills per kWh for all PSCR customers; 6) granted MEC/PIRGIM's application for leave to appeal the ALJ's ruling striking the testimony of its two

witnesses and then affirmed the ALJ's ruling; and 7) declined to rule on MEC/PIRGIM's request for a declaratory ruling because a PSCR matter is not the appropriate venue to make such a request. The Commission encouraged MEC/PIRGIM to raise its energy efficiency and conservation concerns in a more appropriate forum.

MEC/PIRGIM

On October 26, 2006, MEC/PIRGIM filed a petition for rehearing and reconsideration. Specifically, MEC/PIRGIM requests that the Commission reverse its decision to strike MEC/PIRGIM's testimony in its entirety. MEC/PIRGIM argues that its evidence falls within the scope of Act 304, is fully relevant because it addresses unnecessary and avoidable costs within Detroit Edison's PSCR plan, and that striking this testimony violates MEC/PIRGIM's due process rights. The Attorney General, the Staff, and Detroit Edison filed responses to MEC/PIRGIM's petition. All three parties recommend that the Commission deny the petition because it merely repeats arguments MEC/PIRGIM has raised previously.

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.

The Commission finds that MEC/PIRGIM's petition reasserts arguments that it previously made in both its answer to Detroit Edison and the Staff's motions to strike as well as in

MEC/PIRGIM's own motion for a declaratory ruling. As a result, the Commission finds that MEC/PIRGIM's petition should be denied as it fails to meet the standard for granting rehearing.

Detroit Edison

On October 26, 2006, Detroit Edison filed a petition for rehearing. Detroit Edison argues that the Commission erroneously declined to rule on the company's request that all future PSCR under- and overrecoveries be automatically rolled into the next year's PSCR plan proceeding.³

Detroit Edison's request was subsequently granted in the Commission's order dated December 21, 2006 in Case No. U-15002. In that decision, the Commission granted Detroit Edison continuing authority to roll prior year under- and overrecoveries into its future power supply cost recovery plan. Therefore, the Commission finds that the company's petition for rehearing is 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.*; 1982 PA 304, as amended, MCL 460.6h *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. MEC/PIRGIM's petition for rehearing should be denied.
- c. Detroit Edison's petition for rehearing should be dismissed as moot.

³ Detroit Edison had originally requested that its 2005 PSCR reconciliation underrecovery be rolled into its 2006 plan. However, in its exceptions, the company abandoned this request but reiterated its proposed "rollover" of future over- and underrecoveries into subsequent PSCR plan proceedings.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing and reconsideration filed by Michigan Environmental Council and Public Interest Research Group in Michigan is denied.

B. The petition for rehearing filed by The Detroit Edison Company is dismissed as moot.

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/ Laura Chappelle

Commissioner

/s/ Monica Martinez

Commissioner

By its action of May 22, 2007.

/s/ Mary Jo Kunkle

Its Executive Secretary

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing and reconsideration filed by Michigan Environmental Council and Public Interest Research Group in Michigan is denied.

B. The petition for rehearing filed by The Detroit Edison Company is dismissed as moot.

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

Commissioner

By its action of May 22, 2007.

Its Executive Secretary