

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 reconciliation of its)	
power supply cost recovery plan for the 12-month)	Case No. U-14275-R
period ended December 31, 2005, and to reconcile)	
its pension equalization mechanism for years 2004)	
and 2005.)	
_____)	
)	
In the matter of the application of THE DETROIT)	
EDISON COMPANY to reconcile its pension)	Case No. U-14817
equalization mechanism for the years 2004 and 2005.)	
_____)	

At the March 11, 2008 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER DENYING REHEARING

Procedural History

On March 30, 2006, The Detroit Edison Company (Detroit Edison) filed applications, with supporting testimony and exhibits, for reconciliation of its power supply cost recovery (PSCR) revenues and costs for the 12-month period ended December 31, 2005 (Case No. U-14275-R), and for reconciliation of its pension equalization mechanism (PEM) for the years 2004 and 2005 (Case No. U-14817).¹

¹On April 18, 2006, the two cases were consolidated. All filings were made in Case No. U-14275-R.

A prehearing conference was held on May 11, 2006 before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). Attorney General Michael A. Cox (Attorney General), the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM), the Association of Businesses Advocating Tariff Equity (ABATE), the Michigan Retailers Association, and Energy Michigan were granted intervention status and participated in the proceedings. The Commission Staff (Staff) also participated in the proceedings.

An evidentiary hearing was held on October 11, 2006. Timely briefs and reply briefs were filed by Detroit Edison, the Staff, MEC/PIRGIM, and the Attorney General, and the ALJ issued a Proposal for Decision (PFD) on March 2, 2007. On March 16, 2007, the Attorney General, ABATE, and MEC/PIRGIM filed exceptions. On March 23, 2007, the Staff and Detroit Edison filed replies to exceptions.

The Commission issued an order in the consolidated dockets on May 22, 2007 (May 22nd order). On June 21, 2007, MEC/PIRGIM filed a motion for rehearing and reconsideration of the order (motion). The Staff and Detroit Edison filed answers in opposition to MEC/PIRGIM's motion on July 12, 2007.

Allocation of PEM Credits

The Commission's allocation of the PEM refund credit, according to MEC/PIRGIM, was unlawful because residential customers were denied recovery of their share of the credit. In their motion, MEC/PIRGIM allege that the Commission's apportionment "increase[s] its rates for 2004 and 2005 above the mandated statutory rate caps, in violation of [2000 PA 141] Act 141." Motion, p. 3. Act 141 established a rate reduction for residential customers of 5% through 2003 and a prohibition on rate increases in 2004 and 2005. *See*, MCL 460.10d. According to MEC/PIRGIM, the Commission decision to allocate the refunds to non-residential classes results in Detroit Edison

retaining all of the rate collections up to the cap in addition to the PEM refund credit owed to the residential class.

MEC/PIRGIM explain that preventing the residential class from recovering its share of the PEM refund credit also “fails to properly balance the long-term approach taken in U-13808 for pension costs, and undercuts the plain language and legislative intent that underscores the ‘rate cap’ concept.” Motion, p. 5. According to MEC/PIRGIM, the credit denied to residential ratepayers is instead going to Detroit Edison stockholders. In their motion, MEC/PIRGIM recommend that the Commission rehear the case and require an in-depth investigation by the Staff of the future of the PEM mechanism.

Detroit Edison asserts that MEC/PIRGIM have simply restated the same arguments that they raised in their exceptions. These arguments, Detroit Edison argues, have already been considered and rejected by the Commission. The Staff also argues that MEC/PIRGIM’s assertions have been rejected by the Commission’s May 22nd order. The Commission’s decision, according to the Staff, is supported by the Michigan Court of Appeals’ opinion in *In re Application of Detroit Edison Company*, 276 Mich App 216, 740 NW2d 685 (2007). The Court of Appeals in that case affirmed that the Commission’s “decision to increase some rates while reducing others to avoid an overall increase is clearly within the [Commission’s] broad ratemaking authority and discretion, and is a reasonable interpretation of the statutory scheme that it is empowered to administer.” *In re Application of Detroit Edison Company*, 276 Mich App at 227.

Discussion

The Commission has long held that 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. The Commission finds that MEC/PIRGIM's motion should be denied.

It is clear that MEC/PIRGIM's motion is a duplication of their exceptions which have been considered and addressed by the Commission in the May 22nd order.² Each of these arguments were asserted in the exceptions filed by MEC/PIRGIM on March 16, 2007. With regard to the argument that the Commission's decision violates the Act 141 rate caps, MEC/PIRGIM asserted in their exceptions that, "[Detroit Edison's proposal] renders nugatory the rate cap applicable for the 2004/2005 years for the residential class as mandated by Act 141." MEC/PIRGIM exceptions, p. 5. The issue of balancing the long-term approach taken by the Commission in Case No. U-13808 was addressed by MEC/PIRGIM when they asserted that:

[t]hese are long-term factors. They are not applicable to a single year or two. The residential class has long been fully charged in base rates for pension expense, and is also impacted by pension fund earnings over a long-term basis.

Id., p. 14. (Emphasis in original.) In their exceptions, MEC/PIRGIM even quoted their February 4, 2004 brief in Case No. U-13808, which advocated that the Commission evaluate and adjust pension costs in base rates every three years. See, MEC/PIRGIM exceptions, p. 17, quoting MEC/PIRGIM brief, Case No. U-13808, p. 8.

MEC/PIRGIM also previously voiced their concerns, in their exceptions, that the PEM refund credit not allocated to residential ratepayers might be going to Detroit Edison, stating that "[t]he non-refunded PEM overrecoveries certainly should not accrue by default to [Detroit Edison], or to [Detroit Edison] shareholders." MEC/PIRGIM exceptions, p. 12. (Emphasis in original.)

Finally, MEC/PIRGIM have also addressed and argued their suggestion of having the Staff study

²The sole allegation raised by MEC/PIRGIM and not previously argued in their exceptions, that the Commission's decision in the May 22nd order amounts to retroactive ratemaking as a result of the denial to the residential class of the PEM credit, was stated in one sentence and contains no supporting evidence or proof. The Commission, therefore, rejects this argument.

and report to the Commission whether improvements to the operation of the PEM clause should be undertaken in the future. *See*, MEC/PIRGIM exception, p. 21.

MEC/PIRGIM's motion is centered on issues which they have already litigated before the Commission and which they attempt to re-litigate. The Commission finds that the rehearing should be denied. The Commission notes that, as it stated in the May 22, 2007 order, "because residential base rates were not increased during [2004 and 2005] to reflect any PEM expenses, the residential class is not eligible for the PEM credit." Order, p. 9.

THEREFORE, IT IS ORDERED for the reasons stated in this order that the motion for rehearing and reconsideration of the Michigan Environmental Council and the Public Interest Research Group in Michigan 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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of March 11, 2008.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner