

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
THE DETROIT EDISON COMPANY for) Case No. U-14838-R
reconciliation of its choice incentive mechanism.)
_____)

At the January 11, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On March 30, 2009, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting that the Commission issue an order approving Detroit Edison's reconciliation of the choice incentive mechanism (CIM) for the period of January 1, 2008 to April 13, 2008. This request was made pursuant to the August 31, 2006 order in Case No. U-14838 that approved a settlement agreement which provided that the first CIM reconciliation would be filed on or before March 31, 2008 for the purpose of reconciling actual annual 2007 electric choice sales to the 3,400 gigawatt-hours (GWh) "base" level of sales adjusted for a dead band of 200 GWh. Accordingly, in an order issued on January 13, 2009, the Commission approved reconciliation of the first year's operation of the CIM, covering the 2007 calendar year. The new CIM period commenced January 1, 2008, and terminated on April 13,

2008, which is 12 months after the date Detroit Edison filed its April 13, 2007 general rate case (Case No. U-15244).

A prehearing conference was held on June 3, 2009 before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). Intervention was granted to the Association of Businesses Advocating Tariff Equity (ABATE). The Commission Staff (Staff) participated in the proceeding. An evidentiary hearing was held on September 15, 2009. Initial and reply briefs were filed by Detroit Edison, ABATE, and the Staff. The record consists of 39 pages of transcript and 7 exhibits.

The ALJ issued a Proposal for Decision (PFD) on November 16, 2009. On December 2, 2009, ABATE filed exceptions to the PFD, and on December 14, 2009, the Staff filed replies to exceptions.

Detroit Edison demonstrated that the increase in non-fuel revenue subject to refund under the CIM is \$20,067,000. Exhibit A-2. No party disputed the amount. The parties disputed how the CIM refund should be allocated. Detroit Edison argued that the terms of the settlement agreement require that the refund be allocated to the regulatory asset recovery surcharge (RARS) asset balance. Detroit Edison showed that the only RARS asset balance remaining applies to the residential class. This was undisputed by the parties. Thus, the company argued that the refund must be applied to the residential RARS asset balance as of year-end 2008. 1 Tr 24-26.

The Staff supported the company's application.

ABATE argued that the terms of the settlement agreement provide for the allocation of the refund among the rate classes as follows: \$4.2 million to residential, \$6.9 million to commercial, and \$9.0 million to industrial. Exhibit AB-5. This breakdown is premised upon a formula approved for the CIM in Case No. U-14838, but assumes that the settlement agreement does not exist. *Id.* ABATE appears to have contended that the language of the settlement agreement

should be understood to require that the CIM refund is based on a property entitlement. ABATE argues that “the funds collected from customers remain their property, and if they represent more than enough to fund the Commission-ordered purposes, then this property ought to be returned to those customers that provided it. . . . [T]he commercial and industrial classes provided the bulk of the funds which are subject to refund and those two classes should receive refunds in proportion to the amounts that were over collected from them.” 2 Tr 35.

Section 4.7 of the settlement agreement provides that, in the event of a refund,

For decreases in Choice sales volume, the additional non-fuel revenue will be first used to reduce unrecovered asset balances related to the RARS mechanism. The regulatory asset balance will be reduced by rate class and will be allocated on an equal percentage of full-service revenues. If those decreases result in credits larger than the RARS asset balances after RARS surcharges are credited, then the balance of non-fuel revenue credits will be credited to full-service customers in proportion to their share of the \$78.5 million rate reduction identified by this Settlement Agreement.

The ALJ found that the plain language of this section dictates that the CIM refund is to be credited to any RARS mechanism balances, and, in this case, the only rate class with a RARS balance is the residential rate class. PFD, p. 7. The ALJ recommends approval of the company’s CIM reconciliation application.

In its exceptions, ABATE again argues that this case turns on interpretation of Section 4.7 of the settlement agreement, and contends that the ALJ erred. ABATE argues that the ALJ’s recommendation does not result in reducing the regulatory asset balance by rate class, and will not result in an allocation on an equal percentage of full service revenues, thereby violating the language of the settlement agreement. ABATE maintains that, in signing the settlement agreement, “there is absolutely no way to infer that the intent of the parties was to allow anything other than reductions by class and refunds in proportion to each class’ share of the \$78.5 million rate reduction.”

ABATE’s exceptions, p. 2.

In reply, the Staff points out that ABATE's proffered interpretation of Section 4.7 fails to give any meaning to the first sentence of that section.

Section 4.7 of the settlement agreement provides that "the additional non-fuel revenue will be first used to reduce unrecovered asset balances related to the RARS mechanism." ABATE's proposed allocation method is explicitly based upon "assuming that the Settlement Agreement did not exist." Exhibit AB-5. The Commission agrees with the Staff, and adopts the recommendation of the ALJ. The meaning of the first sentence of Section 4.7 is plain. That sentence is not contradicted by the sentences that follow it, which simply describe how to allocate the refund where more than one rate class has a RARS balance remaining. In this case, it is undisputed that only the residential rate class has an existing RARS balance. As such, the \$20,067,000 increase in non-fuel revenue caused by lower than expected choice sales should be applied to the remaining RARS balance as of year-end 2008 in accordance with the settlement agreement.¹

THEREFORE, IT IS ORDERED that The Detroit Edison Company's application for reconciliation of its choice incentive mechanism for the period from January 1, 2008 to April 13, 2008 is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

¹Detroit Edison is required to file a final reconciliation of the residential RARS at or near the conclusion of the five-year collection period. *See*, July 5, 2007 order in Case No. U-15159, p.2; January 13, 2009 order in Case No. U-14848, p. 2.

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

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of January 11, 2010.

Mary Jo Kunkle, Executive Secretary