

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 period ending December 31, 2007 )  
and to reconcile its pension equalization mechanism )  
for the 12-month period ending December 31, 2007. )  
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Case No. U-15002-R

At the January 25, 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**

History of Proceeding

On March 31, 2008, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting reconciliation of its power supply cost recovery (PSCR) revenues and expenses for the 12-month period ended December 31, 2007, pursuant to 1982 PA 304, MCL 460.6j(12) *et seq.* (Act 304). Detroit Edison states that it experienced an underrecovery of \$43,625,610 including interest for 2007. Detroit Edison requests the Commission approve its refund factors associated with its Pension Equalization Mechanism (PEM) for the same period.

Pursuant to due notice, a prehearing conference was held on May 14, 2008 before Administrative Law Judge Barbara A. Stump (ALJ). At the prehearing conference, the ALJ granted

intervenor status to Attorney General Michael A. Cox (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), and the Michigan Environmental Council and the Public Interest Research Group in Michigan (MEC/PIRGIM). The Commission Staff (Staff) also participated in the proceedings.

On December 2, 2008, the testimony of all witnesses was bound into the record and the parties waived cross-examination. Detroit Edison, ABATE, the Attorney General, and the Staff filed briefs on January 8, 2009. Detroit Edison, the Attorney General, and the Staff filed reply briefs on January 22, 2009. The record consists of 201 pages of transcript and 29 exhibits.

On February 13, 2009, the ALJ issued a Proposal for Decision (PFD). Exceptions were filed by the Attorney General and the Staff. Replies to exceptions were filed by Detroit Edison, ABATE, and the Staff.<sup>1</sup>

### Positions of the Parties

#### Detroit Edison

Detroit Edison presented testimony addressing its 2007 power supply operations, which includes the company's system generation, purchases, third party wholesale sales of power, and emission allowance expenses.

Angela P. Wojtowicz, Supervisor of the Midterm Optimization Group in Detroit Edison's Fossil Generation Organization, testified that in 2007, Detroit Edison's electric system was operated in a reliable, reasonable, and prudent manner. In support of this assertion, she explained that there were no interruptions of customer load due to generation supply or transmission limitations, and interruptible air conditioners were used to reduce demand on only one day. Ms. Wojtowicz stated that the company generated 552 gigawatt-hours (GWh) more than

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<sup>1</sup>ABATE and the Staff limited their replies to the Attorney General's third Exception.

forecasted, with a fuel expense that was over \$25 million less than forecasted. She also testified that Detroit Edison made over 3,500 GWh of third party wholesale power sales, with associated gross revenue of \$200 million that reduced PSCR customers' costs.

Ms. Wojtowicz stated that during the summer of 2007, industrial interruptible customers were not required to curtail their interruptible load. According to Ms. Wojtowicz, Detroit Edison reliably served its customers by acquiring and utilizing a summer power purchase portfolio at a reasonable cost, as demonstrated by the fact that no firm customers were interrupted in 2007, and the ultimate cost of the overall portfolio was well below the actual Midwest Independent Transmission System Operator, Inc. (MISO) market price. 2 Tr. 138-39.

John C. Dau, Plant Manager of Detroit Edison's Belle River Power Plant, presented the 2007 actual periodic maintenance at Detroit Edison's fossil generation power plants, and discussed the differences from the 2007 planned maintenance schedule. 2 Tr. 23. He also testified regarding the development and execution of the company's 2007 periodic outage plan and explained that, in general, it followed the plan. Mr. Dau explained that all work scheduled during the outages on Monroe Unit 2, River Rouge Unit 3, St. Clair Units 6 and 7, Harbor Beach Unit 1, and Trenton Channel Unit 9 was completed, assuring continued availability of these generating resources to serve Detroit Edison's customers. 2 Tr. 24.

Steven M. DiGaetano, the Principal Analyst for Detroit Edison's Forecasting Group, supported the company's booked cost of fuel consumed, nitrogen oxide (NO<sub>x</sub>) emission allowances consumed, sulfur dioxide (SO<sub>2</sub>) emission allowances consumed, purchased power cost, cost of network transmission, and third-party wholesale power sales revenues for 2007. 2 Tr. 47.

James D. Good, Supervisor of Detroit Edison's Business Development and Administration, Fuel Supply Department, reconciled the differences between the 2007 actual unit cost of fossil fuel

and the corresponding planned costs from the 2007 PSCR plan. 2 Tr. 60. Mr. Good concluded that the company's 2007 fossil fuel expenses were reasonable and the result of prudent fuel procurement policies and practices. 2 Tr. 62.

Barbara J. Tuckfield, a Regulatory Accounting Expert in Detroit Edison's Consolidation and Regulatory Support Section, supported the calculation of the company's annual PEM, as approved in Case No. U-13808, for the 12-month period ending December 31, 2007. 2 Tr. 116. She stated that Detroit Edison has a regulatory PEM liability, before any carrying charges, of \$22,146,000 for 2007. 2 Tr. 118 and Exhibit A-15, line 15.

Kevin L. O'Neill, a Principal Project Manager in Detroit Edison's Regulatory Policy and Operations Organization, reconciled the company's 2007 PSCR revenues and expenses and calculated proposed refund billing factors for the PEM. 2 Tr. 69. He sponsored Exhibit A-9 (Revised), which summarizes the company's monthly and cumulative total annual PSCR costs and underrecovery. Mr. O'Neill calculated an underrecovery for all PSCR customers at year-end 2007 of \$40,818,309, which includes interest of \$254,885. Exhibit A-9 (Revised), lines 55 and 57. Mr. O'Neill calculated a 2007 PEM overcollection, after calculating monthly interest, of \$21,361,019. Exhibit A-10, line 9. Exhibit A-11 identifies the proposed PEM refund factors.

Michael W. Shields, Detroit Edison's Manager-Wholesale Market Development, Regulatory Affairs, explained the company's 2007 expenses associated with being a transmission customer of International Transmission Company, and with being a market participant of the MISO. Mr. Shields explained that all of the expense items listed on Exhibits A-12 (Revised) and A-13 were necessary and integral to Detroit Edison being able to provide power supply service to its retail electric customers. 2 Tr. 111.

## Staff

Alan Y. Droz, an auditing specialist in the Accounting and Auditing Section of the Commission's Regulated Energy Division, testified that the Staff accepted nearly all of the data included on Detroit Edison's original Exhibit A-9. Mr. Droz, however, proposed three adjustments:

(1) reducing Detroit Edison's transmission costs by \$241,873; (2) reducing the underrecovery beginning balance by \$2,384,559 (\$2,350,000, which is 50% of Detroit Edison's gain on its share of land sold at the Ludington Pumped Storage site auction, plus \$34,559 in interest); and (3) reducing the company's power costs by \$2,674,780 due to 76 days of the Harbor Beach outage extension. Accordingly, the Staff recommended a 2007 total underrecovery of \$38,235,587.

Detroit Edison accepted the Staff's transmission and Ludington adjustments only. 2 Tr. 194-195.

Jill M. Rusnak, a Public Utilities Engineer in the Act 304 Section of the Commission's Regulated Energy Division, testified in support of the Staff's proposed disallowance for 76 days of the Harbor Beach outage extension.

## Attorney General

On behalf of the Attorney General, Charles W. King, an independent consultant, proposed a disallowance of \$3,339,604 for the Harbor Beach outage, which includes 17 days of the 49-day extension and all of the 76-day extension. 2 Tr. 163. Mr. King also proposed a \$0.02342 per kilowatt-hour (kWh) surcharge for electric Choice customers returning to Detroit Edison's bundled service, and a \$0.00028 per kWh surcharge for all remaining PSCR customers. 2 Tr. 166. In total, the Attorney General proposed an underrecovery for Detroit Edison of \$40,286,006, with \$26,880,024 allocated to returning electric Choice customers through the new surcharge and \$13,405,982 paid by PSCR customers. Exhibit AG-1.

## Rebuttal

In his rebuttal testimony, Mr. Dau responded to the proposals by Ms. Rusnak and Mr. King to disallow replacement power costs associated with the Harbor Beach outage extension. 2 Tr. 39-42.

In her rebuttal testimony, Ms. Wojtowicz responded that, even assuming that the Commission finds a disallowance to be justified for 17-days of the 49-day outage extension, Mr. King miscalculated the incremental replacement energy costs. According to Ms. Wojtowicz, the correct amount is \$408,415, and not \$664,824. 2 Tr.141-143 and Exhibit A-23.

Kenneth D. Johnston, a Regulatory Consultant in Detroit Edison's Regulatory Affairs Department, presented rebuttal testimony opposing Mr. King's proposal to surcharge PSCR customers who returned to bundled service from electric Choice during the 2007 PSCR plan year as well as a separate surcharge for all other PSCR customers. (2 Tr. 152-156)

## **DISCUSSION**

There are only two issues in dispute in this case.<sup>2</sup> The first issue relates to the Staff's and Attorney General's proposal that certain replacement power costs associated with the Harbor Beach Unit 1 outage be disallowed. The second issue relates to the Attorney General's proposal to impose PSCR surcharges on those customers returning to retail service from electric Choice. The ALJ based the PFD on the following findings of fact and conclusions gleaned from arguments of the parties.

### Harbor Beach Unit 1 Outage

Detroit Edison's 103 megawatt (MW) Harbor Beach Unit 1 outage has been questioned in this case. Mr. Dau testified that this outage was originally scheduled for 84 days, beginning on

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<sup>2</sup>There is no dispute over Detroit Edison's reconciliation of its pension equalization mechanism.

March 3, 2007 and ending on May 27, 2007, and 15 items of major work were scheduled to be performed during this period. He explained that the outage was extended in connection with major work item number 12, *i.e.*, right hand and left hand low pressure turbine blade replacements. Mr. Dau stated that all 15 items of major work were successfully completed, and substantial additional work was completed during the outage extension. 2 Tr. 27.

Mr. Dau went on to explain that the outage was extended by 125 days, which was attributed to a 49-day delay in completing turbine repairs and turbine alignment, and a 76-day delay due to the loss of LP turbine blades on the right hand turbine. Mr. Dau stated that the 49-day delay was caused by additional work that emerged during the shutdown, and that this emergent work extended the outage by 32 days. He indicated that the balance of the 49-day delay, *i.e.*, 17 days, was attributable to issues encountered in performing LP turbine repairs and turbine alignment. According to Mr. Dau, the LP turbine exhaust flow guides were not properly machined by the vendor and required the LP turbine casings to be removed and sent back to the vendor for additional machining to correct the problem. 2 Tr. 30.

Mr. Dau further testified that, during the initial outage startup the week of July 16, 2007, the right hand LP turbine failed while operating under steam. This caused the 76-day delay, from July 16 to September 29, 2007. He described the right hand LP turbine failure that caused the additional delay as follows:

The turbine end 6th row lost 3 blades at one entry point location and 1 additional blade 90° away at the next adjacent entry point while spinning at no more than 2800 revolutions per minutes (RPMs). Based upon the results received during turbine balancing efforts, it is believed that the blades were thrown during a series of different turbine rolls. 2 Tr. 33.

Mr. Dau stated that an investigation revealed that, during the installation of the row 6 blades, the entry point blades were not installed correctly by the vendor. He further stated that the company identified additional problems when it investigated the vendor workmanship of the row

4 and 5 blades, which were replaced at the same time by the same vendor. He indicated that these rows had similar issues, thereby expanding the ultimate scope of the repair to include “. . . row number 6 RH LP turbine inboard end, all other replacement row’s entry points’ blade groupings, and undershroud welding on rows 4 and 5 due to improper tenon heights from the blade manufacturer and over peening by the vendor performing the installations.” 2 Tr. 34

In summary, Mr. Dau testified that the significant amount of emergent repair work led to unavoidable delays in completing the outage within the originally scheduled outage duration. Furthermore, he stated, the errors made by the vendors that performed the repairs led to additional delays.

The Staff did not propose any disallowance relative to the 49-day delay, however, it recommends a disallowance for the 76-day delay. Ms. Rusnak sponsored Exhibit S-1, a report prepared by Steam Turbine Engineering and Maintenance, Inc., a consulting firm that investigated the rotating blade damage. That report indicates the following:

1. The rotating blade on the right hand rotor, turbine end that came out of the wheel during the startup was not on the blade hooks, but in the notch opening. The pinning of the blades is designed to only hold the spacers in, not a full blade.
2. The 4th and 5th stage blades, on both rotors, did not come with the special trailing notch group blades designed to set the location for the remaining notch group hardware.
3. The 4th and 5th stage blades were manufactured with a tenon height of .190” and 5th state cover thickness is .125”. This leaves only .065” of tenon height above the cover for peening. The minimum recommended tenon height above the cover for peening is .085-.100” and the standard design height for this type of construction is .125” over the cover for peening. Due to the short tenon height for peening, the tenons were over-peened during the peening process in an effort to fill in the cover chamfers. One tenon of the 4th stage of the left hand LP rotor at the end of the group is broken and the cover has lifted.

4. The pinning of the notch groups on all 4th, 5th and 6th stages is in the wrong location. No pilot holes were drilled in the blades by any of the blade manufacturers. Exhibit S-1, pp. 1-2.

Ms. Rusnak testified that Detroit Edison should be held responsible for the vendor's improper performance of its work, and that customers should not be responsible for the costs associated with these vendor mistakes. In support of this position, Ms. Rusnak explained that, per Mr. Dau's testimony, Detroit Edison had personnel on site at each of the vendor facilities to oversee the quality of the work, which included ensuring that various equipment measurements conformed to specifications. According to Ms. Rusnak, improper equipment measurements were significant mistakes made by the vendor. She further stated that Detroit Edison's oversight responsibilities were even more consequential, because the company supplied the replacement blades to be installed by the vendor. 2 Tr. 189.

In its brief, the Staff argued that Exhibit S-5 also supports its proposed disallowance. That exhibit is an internal audit report prepared by DTE Energy Audit Services. The Staff contended that this report indicates that there was miscommunication with the turbine blade vendors and Detroit Edison management relative to the work requirements.

The Attorney General agreed with the Staff that the Commission should hold Detroit Edison responsible for the increased PSCR expense resulting from the portions of the outage attributable to vendor error. In addition to the Staff's proposed disallowance of \$2,674,780 for the 76-day portion of the outage, the Attorney General also proposed a disallowance for 17 days of the first 49 days of the outage. In his brief, the Attorney General agreed to accept Detroit Edison's recalculation of the incremental cost for those 17 days, which is \$408,415, reducing his proposed disallowance to \$3,083,195.

Detroit Edison argued that the Staff's and Attorney General's proposed disallowances should be rejected, because they are based on hindsight and incorrectly attempt to make the company the

guarantor of the best possible outcome for an unpredictable and complex situation, contrary to well-established and well-reasoned authority. Detroit Edison also contended that the Staff and Attorney General are essentially arguing that the proper standard of review for plant outages is perfection, not reasonableness and prudence. Relying on past Commission orders, Detroit Edison argued that a utility's reasonableness and prudence is measured by what the utility knew when it made its decision, and not on hindsight regarding the outcome of that decision.

Detroit Edison further asserted that it presented clear and satisfactory evidence that it did not cause or prolong the outage extension. The company contended that the record demonstrates that it could not have realistically known more or acted differently under the circumstances. It pointed out that Mr. Dau explained that Harbor Beach was first placed in commercial service in 1968, with 1960's era technology, design, and equipment. The 2007 outage was the first time that the rotor blades on the two Harbor Beach LP turbines had been replaced in the plant's 40-year history. 2 Tr. 28 and 40. Detroit Edison also argued that Mr. Dau, the only power plant engineering expert to testify in this case, stated that, as noted in Exhibit S-1, the original equipment manufacturer is no longer in the business of manufacturing or repairing steam turbines. That exhibit indicates that, "[t]he 4th and 5th stage blading was manufactured by Power Plant Services located in the Chicago area. The 6th stage blading was manufactured by Stork H&E located in Ithaca." Exhibit S-1, p. 1. Detroit Edison therefore maintained that the Staff's conclusion that Detroit Edison "supplied the replacement blades" is incorrect. To the contrary, it argued, the company could not manufacture the blades, because it did not possess the knowledge to do so. Mr. Dau testified that Detroit Edison does not possess complete design or assembly drawings for all of the turbine components because some of the drawings are proprietary, which is common for a complex turbine in the electric utility industry. 2 Tr. 41.

In contrast, Detroit Edison asserted, the Staff and Attorney General presented no evidence of what more the company knew or could have known or, for that matter, what it could have done differently. According to Detroit Edison, it would be entirely speculative to imagine that Detroit Edison could have foreseen and prevented the improper third-party blade installation being performed for the first time in 40 years on a unique piece of equipment and the resulting outage extension. Detroit Edison therefore concluded that the Commission should reject all proposed disallowances for the Harbor Beach outage extensions.

The Staff responded that, based on Exhibit S-1, it does understand that a third party vendor manufactured the replacement blades for Detroit Edison, and the company then provided or “supplied” those blades to another vendor whose job was to install them. However, the Staff pointed out that the tenon heights of these blades were incorrect for the application, which led to the erroneous installation of the blades, thereby extending the outage.

Furthermore, the Staff asserted, Detroit Edison had oversight responsibilities of the work that was performed as well as the equipment measurements and specifications. However, there was obvious miscommunication between the company and the two vendors, which had a significant effect on the 76-day delay of the outage. The Staff therefore contended that its position is not based on hindsight but, rather, on its evaluation of what happened at the time of the outage, which indicates that the outage was prolonged by Detroit Edison’s unreasonable and imprudent management. Finally, the Staff argued that, under the doctrine of respondeat superior, Detroit Edison is responsible for the negligent acts of its agents, the third party vendors who performed the work. In the Staff’s view, to say otherwise would be to say that the company is never responsible as long as it has hired an outside company to carry out its work.

The Attorney General also responded that Detroit Edison's argument that all proposed Harbor Beach disallowances should be rejected because they are based on hindsight is a specious argument. He pointed out that Exhibit S-5 indicates that several critical milestones were either not identified or not followed through and that bid specifications were not reviewed on a timely basis by all required parties. Furthermore, the Attorney General argued, that report also indicates that the company should have ensured that the vendors fabricated the special blades for all stages at some point in the monitoring and inspection process, and then ensured that the vendor properly reassembled all blade rows. According to the Attorney General, these were reasonably foreseeable facts, not hindsight.

Based on the foregoing, the ALJ found that Detroit Edison presented clear and satisfactory evidence that the entire 49-day delay of the Harbor Beach Unit 1 outage was not caused or prolonged by its negligence or by unreasonable or imprudent management. According to the ALJ, the evidence demonstrates that additional work that emerged during the shutdown which extended the outage by 32 days, was unanticipated and unavoidable. Indeed, none of the parties challenged the initial 32-day outage extension.

The ALJ rejected the Attorney General's proposed disallowance for the additional 17-day extension of the outage because it "lacks merit." The ALJ reasoned that Mr. Dau explained that the type of work performed on the turbine casing was unique; the damage was not apparent until the turbine casing was removed; and there are relatively few companies in the United States that could perform the repair work. The ALJ further found that Mr. Dau's testimony demonstrated that Detroit Edison's only other option was to have the turbine casings replaced entirely, which would have delayed completion of the outage for up to 18 months. 2 Tr. 41-42. Based on this evidence,

the ALJ agreed with Detroit Edison that it reasonably and prudently proceeded with a solution that ultimately allowed the turbine casing to be repaired within weeks rather than many months.

The ALJ further found that Detroit Edison presented clear and satisfactory evidence that the 76-day delay of the Harbor Beach outage, which were challenged by the Staff and the Attorney General, was not caused or prolonged by its negligence or unreasonable or imprudent management. The ALJ stated that the evidence demonstrated that, based on what Detroit Edison knew at the time, it could not have reasonably foreseen and prevented the vendor's incorrect installation of the turbine blades. The ALJ restated that Harbor Beach was first placed in commercial service in 1968, with 1960's era technology, design, and equipment. The 2007 outage was the first time that the blades on the two LP turbine rotors had been replaced in the plant's 40-year history.

The ALJ was also persuaded by the fact that the original equipment manufacturer is no longer in business and, consequently, Detroit Edison had to hire outside vendors to manufacture and install the blades. Because the company did not have the knowledge necessary to manufacture the blades and did not possess complete design or assembly drawings for all of the turbine components, the ALJ found that Detroit Edison was limited in its ability to determine whether the installation was performed correctly. Additionally, the ALJ noted the record demonstrated that the company took certain precautions to monitor the work of its vendors.

Despite finding that the vendor made mistakes installing the turbine blades, thereby prolonging the outage, the ALJ concluded that Detroit Edison's decision to rely on outside vendors was reasonable and prudent. The ALJ agreed with Detroit Edison that the Staff and the Attorney General had presented no evidence of exactly what more the company knew or could have known to have prevented the improper installation of the turbine blades.

## Exceptions and Replies to Exceptions

In his exception to the PFD, the Attorney General asks the commission to (1) disallow \$408,415 of additional costs incurred by Detroit Edison during the last 17 days of the 49-day extension of the Harbor Beach outage, and (2) disallow \$2,674,780 of additional costs incurred by Detroit Edison during the 76-day outage at Harbor Beach. The Staff asserts that Detroit Edison should not receive an A for C+ work in overseeing its vendors during oversight of the turbine blade replace and thus asks the Commission to disallow the \$2,674,780 of additional costs incurred by Detroit Edison during the 76-day extension of the Harbor Beach outage. Detroit Edison filed a reply to both the Attorney General's and Staff's exceptions asking the Commission to reject disallowance of all additional costs resulting from extension of the Harbor Beach outage.

In evaluating the positions of the parties related to the extended outages at Harbor Beach Unit 1, it is clear that the issue is whether Detroit Edison exercised reasonable and prudent oversight of the power plant in relation to the 49-day and 76-day delay of the outage. Because the extended delay was more than 90 days, the outage must be considered in light of MCL 460.6j(13)(c), which requires the Commission to:

Disallow net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

Thus, the statute creates a presumption of disallowance that can only be overcome by a higher standard of proof that the utility was not negligent or that expenses related to an outage in excess of 90 days were not the result of unreasonable or imprudent management.

The Staff argues, to some degree, that Detroit Edison should be held liable for the mistakes of its vendors under a theory of respondeat superior. Before respondeat superior liability attaches, however, the underlying conduct must be negligent. In this case, the vendor errors complained of

derive from performance of its contractual obligations. Negligence cannot be found where the resulting injury derives from the performance of a contractual duty. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 467; 683 NW2d 587 (2004). To prove negligence, the injured party must allege a duty that is separate and distinct from the contractual duty to perform. *Id.*

Disallowance for expenses for extended delay caused by vendor errors are appropriate, however, when the vendor's errors could have been avoided with reasonable and prudent oversight<sup>3</sup> by the utility.

The Commission has previously found that:

Act 304 does not hold utilities to a standard of omniscience or perfect performance, but rather to a standard of reasonableness and prudence. February 5, 1997 order in Case No. U-10640-R, p. 10. (July 26, 2006 order in Case No. U-13960-R, p. 7.)

In this case, reasonable and prudent oversight was especially important given the fact that in accordance with contractual arrangements, Detroit Edison could receive no damages for replacement power costs attributable to the specific vendor error. Additionally, it was known to Detroit Edison that Harbor Beach was first placed in commercial service in 1968, with 1960's era technology, design, and equipment. The 2007 outage was the first time that the rotor blades on the two Harbor Beach LP turbines had been replaced in the plant's 40-year history and that the original equipment manufacturer was no longer in the business of manufacturing or repairing steam turbines. Furthermore, Detroit Edison knew the importance placed upon precision in replacing parts for these specialized machines. Armed with such knowledge of the uniqueness of the situation, reasonable and prudent management required greater precaution to prevent vendor

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<sup>3</sup>Without limiting the definition, reasonable and prudent "oversight" of a vendor might begin with the selection process and run through final inspection and warranty work.

error from occurring. Detroit Edison bore a substantial risk associated with vendor error that necessitated greater oversight and could not be easily passed along to rate payers.

As previously stated, the legislature placed the burden on Detroit Edison to demonstrate by clear and satisfactory evidence that the added power supply costs were not the result of negligence or unreasonable and imprudent management. The Commission finds that Detroit Edison failed to meet its burden. The Commission agrees with the Staff's and the Attorney General's argument that Detroit Edison's lack of prudent management in overseeing vendor measurements and installation of specialized parts resulted in the 76-day extension. Thus, the Commission rejects the analysis provided by the ALJ and finds that Detroit Edison did not meet its burden to show by clear and satisfactory evidence that the extended delays at Harbor Beach Unit 1 were not caused or prolonged through the company's unreasonable or imprudent management.

#### Surcharge for Returning Electric Choice Customers

The Attorney General took the position that the Commission should reallocate increases in PSCR expenses resulting from customers returning from electric Choice service to full service. Mr. King testified that Detroit Edison paid more for fuel and purchased power than it had planned at the beginning of 2007 in order to serve electric Choice customers who returned to bundled service in 2007. More specifically, Mr. King stated that the company had planned to purchase 5,028 GWh of power, but it actually purchased 8,422 GWh. According to Mr. King, that purchased power had an average cost of \$70.81 per MWh, compared with only \$24.52 per MWh for all power, purchased and internally generated, inclusive of emissions control costs. He further stated that if the additional revenue from returning Choice customers had matched the added cost of fuel and purchased power to serve those customers, then the effect would be a wash.

However, Mr. King testified that they did not equal, and Detroit Edison allocated the increased PSCR expense to all customers, while crediting the additional revenues to offset the regulatory asset recovery surcharge obligation of returning Choice customers. 2 Tr. 164-65. Mr. King calculated \$26,880,024 as the incremental PSCR costs allocable to returning electric Choice customers and recommended that the Commission apportion the PSCR underrecovery through a \$0.02342 per kWh surcharge for returning electric Choice customers and a \$0.00028 per kWh surcharge for all remaining PSCR customers. Mr. King testified that these proposed surcharges would hold retail customers who never left bundled service harmless for the comings and goings of electric Choice customers. 2 Tr. 165 and Exhibit AG-1, Schedule 2.

Detroit Edison argued that the Attorney General's proposed PSCR surcharge is inappropriate because the customers who returned to bundled service in 2007 did so in accordance with Commission-approved orders and company tariffs. It stated that these customers have already paid additional power supply costs, thereby holding other PSCR customers harmless. Furthermore, Detroit Edison pointed out that Mr. Johnston testified that based on 2007 electric Choice sales of 2,239 GWh, the company realized almost \$40 million in additional non-fuel revenue during 2007, which it then credited to unrecovered regulatory asset recovery surcharges. He explained that these surcharges are power supply surcharges that only apply to customers taking bundled service from the company. 2 Tr. 153. According to Detroit Edison, this more than offsets Mr. King's calculation of \$26,660,024 in increased PSCR costs. The Staff and ABATE support Detroit Edison's position.

The Attorney General replied that the fact that Choice customers returned to PSCR service in accordance with Commission-approved orders and tariffs is not responsive. Instead, the Attorney General asserts, the question is whether or not their return caused Detroit Edison to incur incre-

mental PSCR costs that exceeded the company's annual average PSCR costs. In his view, because returning Choice customers did cause the company's PSCR costs to increase, it is only reasonable for the Commission to allocate, pursuant to MCL 460.6j(15), the resulting effect to the customer classes to which they returned.

The ALJ found that the Attorney General's proposed surcharge for electric Choice customers who return to bundled service should be rejected, because it is inconsistent with the Commission's return to service requirements. In its November 23, 2004 order in Case No. U-13808, the Commission established those requirements as follows:

After reviewing various proposed time frames, the Commission concludes that new choice customers should be prohibited from returning to bundled service for two years. Additionally, the Commission finds that customers returning to bundled service shall be required to provide the utility with notice no later than December 1 that the customer will be taking bundled service during the coming summer (footnote omitted) and obligating the customer to take such service. The obligation of a returning customer to remain on bundled service shall be for one year. Detroit Edison shall explicitly inform a returning customer of this obligation and of the consequences of a failure to abide with this requirement. Any customer who fails to give the appropriate notice as provided by this order or who does not stay on ROA service for two years shall be required to pay the higher of the applicable tariff energy prices plus 10% or the market priced power charge plus 10% for any power taken from the utility. In the Commission's opinion, these changes fairly balance the competing interests between utility and customers. order, p. 103.

The ALJ stated that it was clear that only those customers that do not meet these requirements are liable to pay the incremental cost of electricity. In this case, the record indicates that some returning Choice customers paid the higher of market priced power or PSCR charges. Specifically, Exhibit A-8, page 2, line 19, shows that electric Choice market priced power revenue totaled \$1,695,957 in 2007. The ALJ concluded it would be inappropriate to impose retroactive surcharges on customers that followed the return to service requirements and had no reason to expect that they might be subjected to such charges. The ALJ agreed with ABATE that if the

Attorney General or any other party wishes to make changes, it should do so through the return to service rules and not through the PSCR process. The ALJ concluded that Choice customers should not have the rules of the game changed in mid-course, especially when those rules have been approved by the Commission.

The Commission agrees with and adopts the analysis provided by the ALJ regarding the Attorney General's proposed surcharge for electric Choice customers who return to bundled service. The proposed surcharge is inconsistent with the Commission's return to service requirements as articulated in its November 23, 2004 order in Case No. U-13808, and is rejected.

The Commission also finds that Detroit Edison's reconciliation of its PEM was appropriate and that the company should be authorized to refund the PEM overrecovery, with appropriate interest, in accordance with the method and allocations shown in Exhibit A-11.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's application for reconciliation of its power supply cost recovery plan for the period ending December 31, 2007 is approved as modified to reflect the staff's adjustment accepted by Detroit Edison and the disallowance of \$2,674,780 for the 76-day extension of the Harbor Beach Unit 1 outage for a total underrecovery of power supply cost recovery expenses of \$38,235,587 including interest, for all power supply cost recovery customers from which it is authorized to collect.

B. At the end of 2007, The Detroit Edison Company had a pension equalization mechanism overrecovery, including interest, of \$21,361,019.

C. The Detroit Edison Company is authorized to refund the pension equalization mechanism overrecovery. Within 30 days, the Detroit Edison Company shall file with the Commission tariff

sheets that shall be effective for bills issued in the billing cycle. The tariff sheets shall be essentially the same as those attached to this order as Attachment A.

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

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Greg R. White, Commissioner

By its action of January 25, 2010.

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Mary Jo Kunkle, Executive Secretary

(Continued from [Sheet No. C-72.01](#))

**C8.5** SURCHARGES AND CREDITS APPLICABLE TO POWER SUPPLY SERVICE: Summary of surcharges and credits including PSCR, pursuant to [sub-rules C8.1, C8.2, and C8.3](#) of this rule. (Cents per kilowatt-hour or percent of base bill unless otherwise noted).

	PSCR (¢/kWh)	ESCS(1) (¢/kWh)	Total Power Supply Surcharges (excludes REPS ) (¢/kWh)	REPS (2)
<b>Residential</b>				
D1 Residential	(0.780)	0.0077	(0.7723)	See C8.4
D1a Farm	(0.780)	0.0077	(0.7723)	See C8.4
D1.1 Int. Space Conditioning	(0.780)	0.0077	(0.7723)	See C8.4
D1.2 Time-of-Day	(0.780)	0.0077	(0.7723)	See C8.4
D1.3 Senior Citizen	(0.780)	0.0077	(0.7723)	See C8.4
D1.4 Time-of-Day	(0.780)	0.0077	(0.7723)	See C8.4
D1.5 Supp. Space Heating	(0.780)	0.0077	(0.7723)	See C8.4
D1.7 Time-of-Day	(0.780)	0.0077	(0.7723)	See C8.4
D2 Space Heating	(0.780)	0.0077	(0.7723)	See C8.4
D2a Farm	(0.780)	0.0077	(0.7723)	See C8.4
D5 Water Heating	(0.780)	0.0077	(0.7723)	See C8.4
D9 Outdoor Lighting	NA	0.083%		3.8%
<b>Commercial</b>				
D1.1 Int. Space Conditioning	(0.780)	0.0077	(0.7723)	See C8.4
D1.7 Space Conditioning	(0.780)	0.0077	(0.7723)	See C8.4
D3 General Service	(0.780)	0.0077	(0.7723)	See C8.4
D3.1 Unmetered	NA	0.083%		3.2%
D3.2 Educ. Inst.	(0.780)	0.0077	(0.7723)	See C8.4
D3.3 Interruptible	(0.780)	0.0077	(0.7723)	See C8.4
D3.4 Time-of-Day	(0.780)	0.0077	(0.7723)	See C8.4
D4 Large General Service	(0.780)	0.0077	(0.7723)	See C8.4
D5 Water Heating	(0.780)	0.0077	(0.7723)	See C8.4
D9 Outdoor Lighting	NA	0.083%		3.2%
D10 Schools	(0.780)	0.0077	(0.7723)	See C8.4
R3 Standby (Secondary)	(0.780)	0.0077	(0.7723)	See C8.4
R7 Greenhouse Lighting	(0.780)	0.0077	(0.7723)	See C8.4
R8 Space Conditioning	(0.780)	0.0077	(0.7723)	See C8.4
<b>Industrial</b>				
D6 Primary Supply	(0.780)	0.0077	(0.7723)	See C8.4
D6.1 Alternative Primary	(0.780)	0.0077	(0.7723)	See C8.4
D6.2 Educ. Inst.	(0.780)	0.0077	(0.7723)	See C8.4
D7 Special Manufacturing	(0.780)	0.0077	(0.7723)	See C8.4
D8 Interruptible Primary	(0.780)	0.0077	(0.7723)	See C8.4
R1.1 Metal Melting	(0.780)	0.0077	(0.7723)	See C8.4
R1.2 Electric Process Heating	(0.780)	0.0077	(0.7723)	See C8.4
R3 Standby (Primary)	(0.780)	0.0077	(0.7723)	See C8.4
R10 Interruptible Supply	NA	0.0077	0.0077	See C8.4
<b>Governmental</b>				
E1 Streetlighting	NA	0.083%		3.2%
E1.1 Energy Only	(0.780)	0.0077	(0.7723)	See C8.4
E2 Traffic Lights	NA	0.083%		3.2%
E5 Secondary Pumping	((0.780)	0.0077	(0.7723)	See C8.4
<b>Electric Choice</b>				
EC2 Retail Access	NA	NA		NA
<b>Special Contracts</b>				
LCC	(0.780)	NA	(0.7800)	See C8.4

Notes: (1) For *ESCS* unmetered classes, % applies to base bill and surcharges excluding EOS, REPS and *PEM Credit*. (2) For *REPS* unmetered classes % applies to *base bill and surcharges excluding PEM Credit*.

(Continued on [Sheet No. C-74.00](#))

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(Continued from [Sheet No. C-76.00](#))

**C9 SURCHARGES AND CREDITS APPLICABLE TO DELIVERY SERVICE: CONTD**

**C9.7.5 PENSION EQUALIZATION MECHANISM PEM CREDIT**

*On January 25, 2010, the MPSC issued an order in Case No. U-15002-R which approved the reconciliation of Detroit Edison's 2007 Pension Equalization Mechanism PEM and authorized a one month PEM Credit to be applied to Residential, Commercial, Industrial and Governmental tariff customers for the February bill cycle. A PEM Credit of -0.889 cents per kWh will be applied to full service metered Residential tariff customers, -0.655 cents per kWh will be applied to full service metered Commercial, Industrial and Governmental tariff customers, -8.25% will be applied to unmetered customers, and -0.169 cents per kWh will be applied to Electric Choice customers.*

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(Continued from [Sheet No. C-76.00](#))

**C9 SURCHARGES AND CREDITS APPLICABLE TO DELIVERY SERVICE: CONTD**

**C9.8 Summary of Surcharges and Credits:** Summary of surcharges and credits, pursuant to sub-rules C9.1, C9.2, C9.3, C9.4, C9.5 and C9.6 of this rule. Cents per kilowatt-hour or percent of base bill, unless otherwise noted

	<u>NDS</u> ¢/kWh	<u>SBC</u> ¢/kWh	<u>SBTC</u> ¢/kWh	<u>CIS</u> ¢/kWh	<u>EOS(2)</u> ¢/kWh	<u>PEM</u> <u>CREDIT (3)</u> ¢/kWh	<u>Total</u> <u>Delivery</u> <u>Charges</u> ¢/kWh
<b>Residential</b>							
D1 Residential	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1a Farm	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1.1 Int. Space Conditioning	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1.2 Time-of-Day	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1.3 Senior Citizen	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1.4 Time-of-Day	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1.5 Supp. Space Heating	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D1.7 Time-of-Day	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D2 Space Heating	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D2a Farm	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D5 Water Heating	0.1234	0.473	0.194	0.05	0.1081	(0.889)	0.9485
D9 Outdoor Lighting	0.331%	see note 1	see note 1	NA	0.9%	(8.25%)	
<b>Commercial</b>							
D1.1 Int. Space Conditioning	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D1.7 Space Conditioning	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D3 General Service	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D3.1 Unmetered	0.848%	see note 1	see note 1	NA	0.5%	(8.25%)	
D3.2 Educ. Inst.	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D3.3 Interruptible	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D3.4 Time-of-Day	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D4 Large General Service	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D5 Water Heating	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D9 Outdoor Lighting	0.331%	see note 1	see note 1	NA	0.5%	(8.25%)	
D10 Schools	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R3 Standby Secondary	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R7 Greenhouse Lighting	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R8 Space Conditioning	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
<b>Industrial</b>							
D6 Primary Supply	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D6.1 Alternative Primary	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D6.2 Educ. Inst.	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D7 Transitional Primary	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
D8 Interruptible Primary	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R1.1 Metal Melting	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R1.2 Electric Process Heating	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R3 Standby Primary	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
R10 Interruptible Supply	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
<b>Governmental</b>							
E1 Streetlighting	0.265%	see note 1	see note 1	NA	0.5%	(8.25%)	
E1.1 Energy Only	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
E2 Traffic Lights	1.427%	see note 1	see note 1	NA	0.5%	(8.25%)	
E5 Secondary Pumping	0.1234	0.473	0.194	0.05	See C9.6	(0.655)	
<b>Electric Choice</b>							
EC2 Secondary	0.1234	0.473	0.194	0.05	See C9.6	(0.169)	
EC2 Primary	0.1234	0.473	0.194	0.05	See C9.6	(0.169)	
<b>Special Contracts</b>							
LCC	Per LCC	0.473	0.194	0.05	See C9.6	NA	

Notes: (1) The SBC and SBTC are included in this tariff's base rates and will be separately accounted for by Detroit Edison for remittance to the Detroit Edison Securitization Funding L.L.C. (2) For *EOS* unmetered classes, % applies to base bill and surcharges excluding REPS and *PEM Credit* (3) For *PEM Credit* unmetered classes, % applies to *total bill net of taxes*.

(Continued on [Sheet No. C-78.00](#))

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