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January 26, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Wideman:

Re: MPSC Case No. U-12359

I am enclosing for filing an original and 4 copies of the Attorney General's Reply Brief. I am also enclosing a proof of service. In addition, I am submitting a copy of this brief in PDF electronic format.

Sincerely,

Donald E. Erickson

Donald E. Erickson
Assistant Attorney General

c: All Parties
enc.
sld/cases/U-12359

PROOF OF SERVICE - U-12359

The undersigned certifies that a copy of the Attorney General's Reply Brief was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, or by State Interdepartmental mail as indicated, on the 26th day of January, 2001

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of THE DETROIT EDISON COMPANY to Recover Implementation Costs for its Direct Access Program for the period ended December 31, 1999

MPSC No. U-12359

/

Attorney General's Reply Brief

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January 25, 2001

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Introduction

The Detroit Edison Company (DECo or the Company) filed its application in the captioned case on March 31, 2000. DECo requested the Michigan Public Service Commission (MPSC or Commission) to authorize the Company to recover approximately $21 million in costs incurred by the Company to implement its open access program. DECo's application was submitted pursuant to orders issued by the MPSC in Case Nos. U-11290 et al. More specifically, the MPSC's October 29, 1997, Opinion and Order in Case No. U-11454 established a true-up mechanism for annual reviews of stranded costs, and the MPSC's "Rehearing on Restructuring" in Case Nos. U-11290 et al. dated January 14, 1998, provided a 5-point clarification of the methodology. Finally, pages 27-29 of the MPSC's Opinion and Order in Case Nos. U-11290 et al. dated March 8, 1999, discussed implementation costs, confirmed the Commission's intent to conduct annual true-up proceedings, and ordered DECo to file a 1998 true-up by March 31, 1999. DECo filed its 1998 true-up application in Case No. U-11956 and has filed its 1999 true-up application in this case.

Effective June 5, 2000, the Legislature enacted 2000 PA 141 and 2000 PA 142. Among other things, MCL 460.10a(5); MSA 22.13(10a)(5) was added to 1939 PA 3 and ratifies the orders described above. On October 24, 2000, the MPSC issued its Opinion and Order in Case Nos. U-11955 and U-11956. On pages 4-5 of that order, the Commission stated:

> Prior to discussing the implementation costs actually incurred during and before 1998, the Commission would emphasize that simply incurring costs to implement Michigan's retail open access program is not a sufficient justification for their recovery. Expenditures associated with the implementation of the retail open access programs must produce results. Procedures, policies, methods, or electronic data interfaces that prove to be ineffective, inefficient, or unworkable may not entitle the company to recover the costs of those systems.

Because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Consumers' and Detroit Edison's implementation programs at this time. The Commission notes, however, that it expects Consumers and Detroit Edison to file information in their 2000 and 2001 true-up cases from which the Commission can determine the effectiveness of the implementation costs that the companies seek to recover.

For purposes of the present case, the Commission has reviewed the expenditures on the record and has granted deferred recovery as appropriate. However, it would caution the parties that these findings are conditional. If subsequent events reveal that costs were incurred for projects or systems that ultimately prove to be ineffective, inefficient, or unworkable or otherwise impede the progress to retail open access, the Commission reserves the right to undertake another review of those costs and may foreclose their recovery.

Finally, the MPSC issued its Opinion and Order in Case No. U-12478. Pages 10-11 of that order state:

d. Implementation and customer education

The Staff recommends excluding the non-incremental labor costs for 1998 and 1999 because those costs are already reflected in rates. 3 Tr. 596. It recommends excluding the implementation costs for 2000 and the customer education costs because those are forecasts that the Staff has not been able to audit for reasonableness and prudence and are similar to items that the Staff has contested in past cases. 3 Tr. 612. On the other hand, the Staff does not oppose recovery of reasonable and prudent implementation costs in some other manner. Detroit Edison accepts the Staff's adjustment for 1998 and 1999. 2 Tr. 350-351. For the other costs, it proposes to use actual costs (or the most accurate estimates available) at the time it issues the bonds and to file reports with the Staff. 2 Tr. 351.

ABATE, the Attorney General, Energy Michigan, and Plastipak argue that the Commission should exclude the costs of implementation and customer education. They argue that neither set of costs has been reviewed by the Commission. The Attorney General argues that the implementation costs should be addressed in other cases where it can be determined whether the costs are incremental costs caused by ROA and prudently incurred.

The Commission adopts the Staff's view that costs for 1998 and 1999 that are non-incremental should not be securitized. The Commission adopted the Staff's adjustment to the costs incurred through 1998 in its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the transition cost true-up cases for Consumers and Detroit Edison, respectively. It is reasonable to treat the costs for 1999 in the same manner. The Commission does not find that all of the costs for

1998 and 1999 should be disallowed. As noted above, the Commission granted conditional approval to some of those costs in Cases Nos. U-11955 and U-11956. Further, it finds that the estimated costs for 2000 and the customer education program should not be securitized until there has been an opportunity for review. As discussed below, Detroit Edison may treat those costs as regulatory assets, and may seek recovery as appropriate in other proceedings.

The Attorney General contends that the final order in this case should be consistent with the Commission's previous orders, which have been ratified by the Legislature. In this light, the Attorney General will offer the following replies to the briefs submitted by the other parties.

Replies

Initial briefs have been filed by DECo, the Staff, Plastipak Packaging, and ABATE. Essentially, the Staff and Plastipak support approval of the Staff-adjusted total of $20,388,165, subject to the conditions set forth in the Commission's November 2, 2000, Opinion and Order in U-12478. The Attorney General supports those positions so long as the final order in this case faithfully adheres to what the MPSC previously said in U-11956 and U-12478, as quoted above.

Page 4 of DECo's initial brief seems to accept the Staff-adjusted total, but DECo's initial brief also indicates that the Company plans to securitize that sum. As the Attorney General understands the portions of the U-11956 and U-12478 orders quoted above, the Commission ruled that implementation costs should not be securitized but will be deferred and recovered only after the MPSC has conducted a future review and determined that those implementation actions have produced results. Therefore, the Attorney General contends the final order in this case should stay that course of action and indicate the costs reviewed in this case shall not be included in securitization.

In its initial brief, ABATE has requested the MPSC to adopt class specific surcharges for recovery of implementation costs. The Attorney General contends that this request is premature in light of the previous orders quoted above. In the alternative, ABATE has requested the Commission to take official notice of a December 2000 Staff Report and disallow cost because open access is not functioning. The Attorney General believes that the previous orders contemplate such a result, but it appears that those orders have deferred any such determination until at least the 2000 true-up proceeding.

Relief

For the reasons stated above, Attorney General Jennifer M. Granholm requests the Administrative Law Judge to issue a proposal for decision that recommends approval of the Staff-adjusted total of $20,288,165 for DECo's 1999 implementation costs subject to deferral and future review as previously ordered in Case Nos. U-11956 and U-12478.

Respectfully submitted,

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