S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of the **ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY** for a cease and desist order or, in the alternative, a declaratory ruling.	)))))	Case No. U-12579

At the February 22, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER

On August 21, 2000, the Association of Businesses Advocating Tariff Equity (ABATE) filed an application to address the consequences of a proposed transfer of transmission assets by The Detroit Edison Company (Detroit Edison) to its affiliate, International Transmission Company (ITC). The application requests that the Commission issue a cease and desist order to block the transfer of assets unless the following two conditions are imposed: (1) that Detroit Edison remove the transmission assets from rate base and adjust its retail rates to remove the revenue requirement associated with those assets, and (2) that the transfer does not have anticompetitive effects. In the alternative, the application proposes that the Commission itself set retail rates that reflect the removal of the transmission assets from rate base. In addition, the application requests that the

Commission undertake the following actions: (1) initiate a contested case to determine the rates that Detroit Edison should pay to ITC for using the transmission assets after the transfer, (2) order that new retail and wholesale open access customers of Detroit Edison obtain transmission services from ITC at the rates provided in Detroit Edison's existing open access transmission tariff, (3) issue a declaratory ruling that Detroit Edison's unbundled distribution rates will be reduced to offset any transmission rate increase that the Federal Energy Regulatory Commission (FERC) may grant with respect to retail open access, and (4) commence a proceeding to unbundle Detroit Edison's retail rates and determine the portion of rate base allocable to FERC-jurisdictional transmission services.

In support of its application, ABATE contends that the transfer of transmission assets to ITC creates a discrepancy between the rates administered by the FERC and this Commission. ABATE claims that a retail open access customer would pay twice for those transmission-related costs that continue to be embedded in Detroit Edison's unbundled distribution rates, once by paying the distribution rate approved by the Commission and a second time by paying the transmission rate approved by the FERC. As a result, ABATE argues, the distribution rate is unjust and unreasonable.

ABATE notes that the transmission rate increase at issue in FERC Docket No. ER00-3295-000 applies only to new customers, including participants in retail open access. ABATE argues that, by shifting the assets to the FERC's jurisdiction and securing a rate increase, Detroit Edison has effectively circumvented the rate freeze provided in Section 10d of Public Act 141 of 2000 (Act 141), MCL 460.10d; MSA 22.13(10d). ABATE contends that the Legislature did not contemplate a jurisdictional shift when it passed Act 141 and that this fundamental change in circumstances permits the Commission to make rate adjustments without violating the freeze.

ABATE claims that the transfer of assets will be anticompetitive because the increase in ITC's transmission rates will make retail open access uneconomical for prospective customers, particularly if their alternative is to continue paying the bundled retail rates that Detroit Edison will further reduce through securitization. ABATE also argues that it is discriminatory for ITC to charge grandfathered customers their preexisting rate, but to charge new customers a higher rate, as it is permitted to do under the rate proposal submitted to the FERC.

On August 30, 2000, Energy Michigan filed a reply that generally supports ABATE's application. Energy Michigan proposes that the Commission, after conducting a hearing, issue a declaratory ruling finding that Detroit Edison's actions increase rates for retail open access customers in violation of Act 141. If Detroit Edison does not adjust its rates to comply with the ruling, Energy Michigan says, the Commission should reduce Detroit Edison's rates and impose other remedies provided in Section 10c of Act 141, MCL 460.10c; MSA 22.13(10c).

On August 31, 2000, Detroit Edison, ITC, and DTE Energy Company (respondents) filed a response and a motion to dismiss the application. The respondents explain that the transfer of transmission assets from Detroit Edison to ITC was the first step in an intra-corporate reorganization, with the eventual goal being the divestiture of the transmission business to a party not affiliated with Detroit Edison. The respondents further explain that the FERC dealt with the transfer of assets and the request for transmission rate relief as separate matters in separate dockets and that approval of the transfer was not contingent upon the rate relief. The respondents argue that ABATE's application asks the Commission to intrude upon the FERC's jurisdiction. In view of the provisions in Section 10b(2) of Act 141, MCL 460.10b(2); MSA 22.13(10b)(2), for unbundling retail rates, the respondents suggest that the Commission retains the authority to allocate Detroit Edison's remaining revenues between the generation and distribution functions once the FERC-jurisdictional transmission component is removed.

The respondents deny that their rates produce a double recovery of costs, but they explain that the rates for ITC's transmission service and Detroit Edison's distribution service are based on entirely different classes of assets, with no overlap. The respondents further explain that even though Detroit Edison's base rates cover the cost of service related to the utility's prior ownership and operation of the transmission facilities, Detroit Edison will continue to incur the cost of obtaining network transmission services for its bundled customers when it pays ITC's charges. However, the respondents add, the rate freeze provisions of Section 10d(1) will protect customers from any change in Detroit Edison's cost of obtaining transmission service.

Section 10d of Act 141 provides for a rate freeze through December 31, 2003 and a rate cap thereafter that could extend through December 31, 2013. In this instance, Detroit Edison has undertaken an action that results in changes in rates that are subject to FERC jurisdiction. It is unclear what action, if any, is required under these circumstances to maintain compliance with the rate freeze/cap provisions and the overall effectiveness of customer choice as envisioned by the Legislature in enacting Act 141. Accordingly, the Commission finds that a contested case should be initiated to determine whether any of the alternative forms of relief requested by ABATE should be granted or whether any other actions are required to comply with Act 141.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201

et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. A contested case hearing should by held regarding ABATE's application.

THEREFORE, IT IS ORDERED that a contested case hearing be initiated to determine whether any of the alternative forms of relief requested by the Association of Businesses Advocating Tariff Equity in its application of August 21, 2000 should be granted or whether any additional actions are required to comply with the provisions of Public Act 141 of 2000.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of February 22, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. A contested case hearing should by held regarding ABATE's application.

THEREFORE, IT IS ORDERED that a contested case hearing be initiated to determine whether any of the alternative forms of relief requested by the Association of Businesses Advocating Tariff Equity in its application of August 21, 2000 should be granted or whether any additional actions are required to comply with the provisions of Public Act 141 of 2000.

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

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of February 22, 2001.

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Suggested Minute:

> "Adopt and issue order dated February 22, 2001 setting for hearing an application filed by the Association of Businesses Advocating Tariff Equity relating to the transfer of transmission assets by The Detroit Edison Company, as set forth in the order."