STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **THE DETROIT EDISON COMPANY** to recover implementation costs for the 12-month period ended December 31, 2000.	)))))	Case No. U-12892

At the July 23, 2002 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

OPINION AND ORDER

On March 30, 2001, The Detroit Edison Company (Detroit Edison) filed an application seeking deferred recovery of $28,269,326 for expenditures to implement a retail open access program made during the 12-month period ended December 31, 2000.

The Association of Businesses Advocating Tariff Equity (ABATE) and Attorney General Jennifer M. Granholm (Attorney General) filed petitions to intervene on April 9 and May 21, 2001, respectively. The Commission Staff (Staff) also participated in the proceedings.

Pursuant to due notice, a prehearing conference was conducted on May 31, 2001 by Administrative Law Judge Barbara A. Stump (ALJ). The prehearing conference was attended by Detroit Edison, ABATE, and the Staff. ABATE's intervention request was granted, but the Attorney General's intervention was deferred. Thereafter, the parties agreed to a schedule for conducting the evidentiary hearing. On July 3, 2001, the Attorney General's petition to intervene was granted after the parties filed a stipulation to that effect.

On September 13, 2001, the ALJ presided over the evidentiary hearing. Two witnesses testified and three exhibits were received into evidence. Subsequently, all parties filed briefs and Detroit Edison and the Attorney General filed reply briefs.

On November 1, 2001, the ALJ issued her Proposal for Decision (PFD). Exceptions to the PFD were filed by Detroit Edison. Replies to exceptions were filed by the Staff and the Attorney General.

Discussion

Because Detroit Edison indicated in its brief that it would agree to accept the Staff's position that the amount of recovery for its 2000 implementation costs should be $27,225,289, there is only one issue that remains to be addressed.

In their briefs, ABATE and the Attorney General urged the ALJ to find that Detroit Edison's right to recovery of the $27,225,289 of implementation costs should be conditional and subject to further review.

Citing the October 24, 2000 order in Cases Nos. U-11955 and U-11956, the March 29, 2001 order in Case No. U-12359, and the July 11, 2001 order in Case No. U-12358, the ALJ recommended that the Commission approve Detroit Edison's recovery of $27,225,289 subject to the conditional approval suggested by ABATE and the Attorney General.

In its exceptions, Detroit Edison maintains that it is error to subject its recovery of $27,225,289 of implementation costs to some undefined, backward-looking evaluation of the effectiveness of its direct access program. According to Detroit Edison, many factors over which it has no control could combine to thwart the success of its direct access program including

(a) high market costs for power, (b) customer apathy, (c) levels of customer education, (d) poor supplier marketing, (e) supplier apathy, (f) market forces, and (g) low customer savings.

Detroit Edison also insists that it would be inequitable to deny recovery of its 2000 implementation expenses, which it made in good faith and subject to the Commission's oversight. Further, citing Association of Businesses Advocating Tariff Equity v Public Service Comm, 208 Mich App 248; 527 NW2d 533 (1994), Detroit Edison maintains that the prudency of decisions and expenditures should be evaluated based on its knowledge at the time the decision was made. Indeed, Detroit Edison insists that Section 10a(1) of 2000 PA 141 (Act 141), MCL 460.10a(1), mandates full recovery of its implementation costs.

Finally, citing myriad case decisions, Detroit Edison argues that both the United States and the Michigan Constitutions provide it with substantive and procedural due process safeguards and protect it from "takings" and confiscatory rates.

In response, the Staff and the Attorney General argue that conditional approval of Detroit Edison's 2000 implementation costs is appropriate. According to them, the Commission correctly determined in its October 24, 2000 order in Cases Nos. U-11955 and U-11956 that because very little retail open access load is currently being served, it is difficult for the Commission to judge the effectiveness of Detroit Edison's implementation programs at this time. They maintain that the current lack of information regarding the effectiveness of Detroit Edison's implementation expenditures justifies making recovery of the implementation costs conditional and subject to further review.

The Commission finds that Detroit Edison's arguments regarding the Commission's conditional approval of the recovery of its implementation costs are not well taken. The Commission has repeatedly determined that implementation expenditures should be approved conditionally. The Commission recently reaffirmed its position on this issue in the December 20, 2001 order in Case No. U-12639 by stating:

> The Commission rejects Consumers' and Detroit Edison's proposals to use a portion of the securitization savings to pay implementation costs. The Commission has addressed the recovery of implementation costs in prior orders, and finds no reason to change those determinations at this time. The Commission has ruled that recovery of implementation costs is conditioned upon the success of the utilities in implementing the ROA programs. July 11, 2001 order, Case No. U-12358, p. 10, and October 24, 2000 order, Cases Nos. U-11955 and U-12956, p. 5. The record in this case does not provide a basis for concluding that the utilities' programs have been sufficiently successful to merit full recovery of previously reviewed implementation costs, much less costs that are at issue in pending cases or costs that have not even been incurred.
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> The Commission reaffirms that it will permit the utilities to recover prudently incurred implementation costs as provided for in the Commission's prior orders. It expects to provide recovery at the conclusion of the rate freeze. Except for any costs that should be assigned solely to ROA customers, implementation costs will be recovered from all customers. The Commission may provide for residual securitization savings to fund all or a portion of the recovery.

December 20, 2001 order in Case No. U-12639, pp. 28-29.

Accordingly, the Commission finds that Detroit Edison's exceptions to the PFD should be rejected. However, nothing in this order should be viewed as foreclosing Detroit Edison from seeking a determination from the Commission at an appropriate time in the future that assures recovery of all or a portion of its implementation costs at the conclusion of the rate freeze. To seek such a determination, Detroit Edison should file an application and supporting documentation that provides the Commission with a factual basis for reviewing the success of Detroit Edison's implementation efforts. Specifically, the Commission is looking for evidence that any component, system, or procedure that is necessary for a retail access program to fully function is in place, completely operational, and capable of seamlessly performing its role in conjunction with the other necessary components, systems, and procedures. Simply spending funds on a new component, system, or procedure is not sufficient to demonstrate that the expenditure furthered the utility's ability to conduct a retail access program in a manner that promotes customer choice and fair competition among suppliers. For example, in the case of Detroit Edison, recent spending to merge the billing systems of its gas distribution business with its electric distribution business generated numerous customer complaints due to flaws that had to be corrected. Notice of the application should be provided in accordance with the directions of the Commission's Executive Secretary. Any interested party may request a hearing as provided in the notice.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. Implementation costs of $27,225,289 incurred by Detroit Edison during 2000 should be approved for deferred recovery, subject to the conditions stated in this order.

THEREFORE, IT IS ORDERED that implementation costs of $27,225,289 incurred by The Detroit Edison Company during 2000 are approved for deferred recovery, subject to the conditions stated in this order.

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, pursuant to MCL 462.26.

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 July 23, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Laura Chappelle
Chairman

Commissioner

Robert B. Nelson
Commissioner

By its action of July 23, 2002.

Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-12892

County of Ingham)

Gloria P. Jones being duly sworn, deposes and says that on July 24, 2002, A.D. she served a copy of the attached Order by mailing copies thereof by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Gloria Pearl Jones

Subscribed and sworn to before me
this 24th day of July 2002

Sharon A. Allen
Notary Public, Ingham, County, Michigan
My Commission expires August 16, 2004

SERVICE LIST FOR DOCKET # U - 12892- CASE #
DATE OF PREPARATION: 04/12/2002

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