

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 the 12-month period	)	Case No. U-12892
ended December 31, 2000.	)	
_____	)	

At the April 28, 2004 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On July 23, 2002, the Commission approved recovery of \$27,225,289 for expenditures made by The Detroit Edison Company (Detroit Edison) during the 12-month period ended December 31, 2000 to implement a retail open access (ROA) program in accordance with previous orders of the Commission in Cases Nos. U-11290 et al. However, the Commission deferred immediate recovery of that amount by Detroit Edison. In so doing, the Commission indicated that its July 23, 2002 determination was conditional and subject to additional review. Citing its December 20, 2001 order in Case No. U-12639, the Commission held that recovery of implementation costs should be conditioned upon the success of the utility in implementing its ROA programs. According to the Commission, the record in the case did not provide a basis for concluding that the utility's ROA program was sufficiently successful to merit full recovery of implementation costs. The Commission also stated that the mere expenditure of funds was not an adequate basis for

recovery of costs. As an example, the Commission cited Detroit Edison's spending to merge the billing systems of its gas distribution business with its electric distribution business, which generated numerous customer complaints due to flaws that had to be corrected.¹

Detroit Edison appealed the July 23, 2002 order to the Michigan Court of Appeals. On April 1, 2004, the Court of Appeals found that the Commission should not have adopted a methodology that deferred determination of the amount to be recovered by Detroit Edison indefinitely:

MCL 460.10(1) requires the PSC to issue orders no later than January 1, 2002, and to establish the rates, terms, and conditions of service that allow all retail customers to choose an alternative electric supplier. The Legislature requires that these orders provide for a full recovery of implementation costs. The PSC has instead deferred, indefinitely, any decision regarding recovery of implementation costs. We do not believe the Legislature intended such an indefinite deferral when it required that orders be issued by January 1, 2002. Moreover, the decision of the PSC does not provide sufficient information to allow this Court to perform its task of judicial review.²

Slip decision, p. 3.

The Court of Appeals ordered the Commission to convene a hearing and to issue an order that provides for full recovery of Detroit Edison's 2000 implementation costs. The procedure established by the court for the remand proceeding allows for discovery by the Commission and the filing of data by Detroit Edison that "[Detroit] Edison believes is germane to the issue of its right to recover its implementation costs." Slip decision, p. 4.

¹ The Commission notes that Detroit Edison and its affiliated natural gas distribution company, Michigan Consolidated Gas Company, are still experiencing problems with their joint billing system. See, the April 20, 2004 order in Case No. U-13894.

² The Commission notes that the unpublished opinion of another panel of the Court of Appeals held that "the PSC properly deferred [the] determination" of implementation costs. Court of Appeals Case No. 241990, decided November 18, 2003.

The Commission notes that in paragraph 20 of its June 20, 2003 application in Case No. U-13808, Detroit Edison requested “that the Commission affirm for ratemaking purposes, continuation of regulatory asset treatment in 2004 and 2005 for items either provided by Act 141 or by prior Commission orders authorizing deferred recovery.” Application, Case No. U-13808, p. 7. This request includes the recovery of Detroit Edison’s 2000 implementation costs addressed by the Court of Appeals. Given that Case No. U-13808 is an ongoing proceeding that predates the April 1, 2004 order of the Court of Appeals, the Commission finds that Detroit Edison should have the option of choosing whether it prefers to recover its approved implementation costs pursuant to the Commission’s final order in Case No. U-13808 as part of its ongoing rate case, or whether the company would prefer to withdraw the implementation costs from consideration in Case No. U-13808 and have their recovery controlled by this proceeding. Detroit Edison should be directed to file its decision by May 7, 2004 in this docket. If Detroit Edison chooses the latter approach, the Commission intends to authorize recovery of such implementation costs through use of surcharges on all customer classes that coincide with the expiration of the Act 141 rate caps.³ The rap cap on large manufacturing and commercial customers expired January 1, 2004. The rate cap on small manufacturing and commercial customers will expire on January 1, 2005. The rate cap on residential customers will expire on January 1, 2006.⁴

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

³ See, MCL 460.10d(2). Detroit Edison’s May 7, 2004 filing should include proposed surcharges and documentation of their derivation for use in this proceeding.

⁴ In the event that Detroit Edison chooses to withdraw its implementation costs from Case No. U-13808, it should make a corresponding filing in Case No. U-13808 to that effect.

amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Detroit Edison should be ordered to make a filing in this docket by May 7, 2004 for the purpose of exercising the option of recovering its approved implementation costs in Case No. U-13808 or in this proceeding.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company shall make a filing in this docket by May 7, 2004 for the purpose exercising the option of recovering its approved implementation costs in Case No. U-13808 or in this proceeding.

B. The Detroit Edison Company shall simultaneously serve a copy of its May 7, 2004 filing on the parties to this proceeding and Case No. U-13808.

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

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ J. Peter Lark
Chair

By its action of April 28, 2004.

/s/ Robert B. Nelson
Commissioner

/s/ Mary Jo Kunkle
Its Executive Secretary

/s/ Laura Chappelle
Commissioner

amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

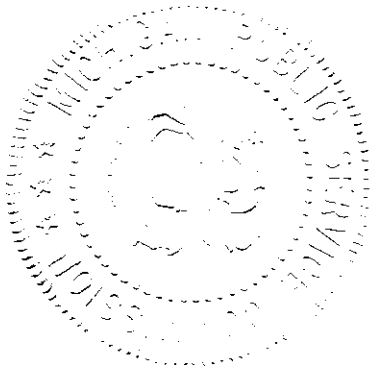
b. Detroit Edison should be ordered to make a filing in this docket by May 7, 2004 for the purpose of exercising the option of recovering its approved implementation costs in Case No. U-13808 or in this proceeding.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company shall make a filing in this docket by May 7, 2004 for the purpose exercising the option of recovering its approved implementation costs in Case No. U-13808 or in this proceeding.

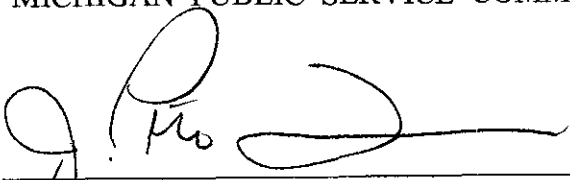
B. The Detroit Edison Company shall simultaneously serve a copy of its May 7, 2004 filing on the parties to this proceeding and Case No. U-13808.

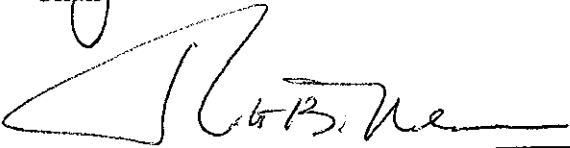
The Commission reserves jurisdiction and may issue further orders as necessary.

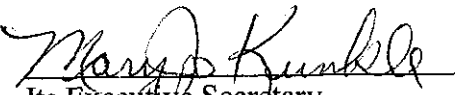


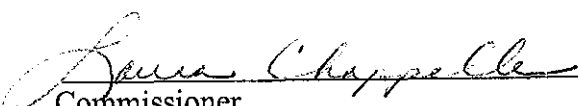
By its action of April 28, 2004.

MICHIGAN PUBLIC SERVICE COMMISSION


Chair


Commissioner


Its Executive Secretary


Commissioner

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-12892

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on April 28th 2004, A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Patricia Fronta

Subscribed and sworn to before me
this 28th day of April 2004

Notary Public, Eaton County, Michigan
Acting in Ingham County
My Commission expires November 22, 2004

SERVICE LIST
CASE NO. U-12892

Ms. Susan Beale
The Detroit Edison Company
2000 Second Ave.
Detroit, MI 48226

Ms. Patricia Barone
Assistant Attorney General
6545 Mercantile Way, 2nd Floor
Lansing, MI 48910 ID MAIL

Ms. Barbara A. Stump
PSC – ALJ Division
6545 Mercantile Way
Lansing, MI 48911 ID MAIL

Mr. Donald E. Erickson
Assistant Attorney General
Special Litigation Division
525 W. Ottawa, 6th Floor
G. Mennen Williams Bldg.
Lansing, MI 48933 ID MAIL

Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941

Mr. Jon P. Christinidis
The Detroit Edison Company
2000 Second Ave., 688 WCB
Detroit, MI 48226

**SUBSCRIPTION LIST
ALL ELECTRIC ORDERS**

Database Services
Lexis Nexis
P.O. Box 933
Dayton, OH 45401

Mr. Michael Peters
Michigan Electric Cooperative
2859 W. Jolly Rd.
Okemos, MI 48864

Mr. Phillip Cross
Public Utilities Reports, Inc.
8229 Boone Blvd., Ste. 401
Vienna, VA 22182

Ms. Monica Martinez
Senate Democratic Staff
Romney Building
Lansing, MI

ID MAIL

Mr. John Pestle
Varnum, Riddering, Schmidt & Howlett
Bridgewater Place
P.O. Box 352
Grand Rapids, MI 49501-0352