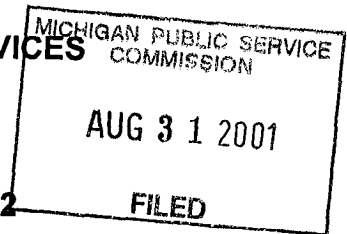


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**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**



In the matter of

Docket No. 2001-1172

The application of The Detroit
Edison Company to unbundle
its retail electric rates

Agency No. U-12966

Agency: Public Service Commission

Case Type: Electric Rates

Issued and entered
this 30th day of August 2001
by Barbara A. Stump
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On June 4, 2001, The Detroit Edison Company (Detroit Edison or the Company) filed an application to unbundle its retail electric rates pursuant to Section 10b(2) of the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141).

On June 29, 2001, Energy Michigan, the Association of Businesses Advocating Tariff Equity (ABATE), and Exelon Energy Inc. (Exelon) filed a Joint Motion and Brief to Reject Application and Order Refiling (the Joint Motion). A Notice of Hearing scheduled the Joint Motion to be heard on the date scheduled for the prehearing conference.

On July 2, 2001, the Commission Staff (Staff) filed a response in support of the Joint Motion. Detroit Edison filed a response in opposition to the Joint Motion on July 10, 2001.

A prehearing conference was held on August 23, 2001. At that time, the Administrative Law Judge (ALJ) granted the petitions to intervene filed by Energy

Michigan, ABATE, Exelon, the National Energy Marketers Association (National Energy), and Attorney General Jennifer M. Granholm (Attorney General). The Staff also participated in the proceedings.

Following the presentation of oral argument, the ALJ granted the Joint Motion.

DISCUSSION

In its application, Detroit Edison states that any complete unbundling of customer bills at this point, beyond the unbundling already accomplished by the Retail Access Service Tariff (RAST), would violate the rate freeze provision found in Section 10d(1) of Act 141. According to Detroit Edison, if it incorporated its RAST charges directly in its full service bundled tariffs, individual customers may see an increase or decrease in their bills based on existing bundled tariffs. More specifically, Detroit Edison states that the RAST contains various pricing provisions, e.g., service charge, energy charge, and demand charge. However, it points out that its existing bundled rates have only some of these components, or have ones that are at a different price level than the RAST charges. Consequently, Detroit Edison contends that it would be very difficult to incorporate RAST charges within existing unbundled tariffs and maintain customer revenue neutrality.

Detroit Edison states that the most effective way of providing customers with accurate information regarding the charges they would continue to pay the company for distribution service, while providing them with meaningful information regarding alternative electric suppliers' service offerings, is to present the RAST charges in a bill message to customers. Sample bills are attached to the company's application as Attachments A and

B. The company states that, at the end of the price freeze and price caps, it will then be in a position to complete the rate restructuring contemplated by Act 141 and to set distribution and generation rates as well as transmission charges with the then current cost of service.

In the Joint Motion, Energy Michigan, ABATE, and Exelon argue that Detroit Edison proposes to continue its current retail billing formats for commercial and industrial services in exactly the same bundled format used before the unbundling mandated by Act 141. They assert that this is a clear violation of Section 10b(2), which requires that the utility file revised industrial and commercial rate schedules that separately identify and charge for the discrete services in those rates. Energy Michigan, ABATE, and Exelon assert that Detroit Edison's approach of merely presenting open access charges alongside fully bundled rates falls far short of the mandate of Act 141 to break down the bundled rate into specific subcharges including a specific bulk power charge that can be compared with competitive power supplier alternatives. They contend that the company's filing frustrates the objective of Act 141 to facilitate customer comparisons between regulated and unregulated service offerings.

The Staff, National Energy, and the Attorney General agree that the application filed by Detroit Edison does not comply with the requirements of Act 141. In particular, the Staff points out that the application fails to separately identify and unbundle service into discrete distribution and other services; fails to separately identify charges for the services

unbundled; and fails to apply the unbundled charges to the identified unbundled discrete services.

In response, Detroit Edison asserts that its proposal promotes continuity between the various requirements of Act 141. In contrast, Detroit Edison claims, Energy Michigan, ABATE, and Exelon ignore the competing parts of Act 141 and demand that the Company be required to perform the exercise of unbundling without meaningful implementation of the new rate design. In Detroit Edison's view, such an exercise, while achievable, will not do anything to reconcile the mandates of Sections 10b(2) and 10d(1). Detroit Edison claims that its proposal produces a harmonious and consistent interpretation of the whole statute while creating charges that enable customers to calculate their actual savings under electric choice.

Section 10b(2) of Act 141 provides that:

No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from the effective date of the amendatory act that added this section, the commission may order the electric utility to file an application to unbundle existing residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection. [MCL 460.10b(2).]

This section explicitly requires Detroit Edison to file unbundled retail rates that are separated into their discrete elements. Given this clear and unambiguous language, the

ALJ rejects Detroit Edison's argument that the statute only requires it to file an application and "discuss some kind of proposal." (Tr. 23.)

Despite this statutory mandate, Detroit Edison proposes to actually continue its current bundled billing format for retail service and simply include a bill message to its customers informing them of its RAST charges that would be applicable if customers were to participate in open access service. However, the bill would not separate the existing charge into discrete services, and it would not separately identify those charges. Furthermore, customers would have to make a calculation to determine whether it would be beneficial to participate in open access. This is not what the statute requires.

The ALJ is not persuaded that, even if Detroit Edison is correct that some individual customers may experience an increase or decrease in their bills as a result of unbundling, that relieves the Company of its obligation to comply with Section 10b(2). As the ALJ noted, rather than taking it upon itself to file an application that does not comply with Section 10b(2), the Company should have made a compliance filing and then addressed the issue of whether it conflicts with Section 10d(1) during the course of the proceedings. That would be an important issue that would have to be addressed by the parties and ultimately resolved by the Commission. In fact, the Attorney General expressed the view that the parties could come up with separate tariffs and distinct services without changing rates in violation of Section 10d(1). (Tr. 18.)

Finally, Detroit Edison has relied on the long accepted rule of statutory construction that a statute must be read in its entirety such that all parts produce a harmonious and

consistent enactment of the whole, and that an interpretation that renders any part surplusage or nugatory must be avoided. Altman v Meridian Township, 439 Mich 623, 635 (1992.) However, Detroit Edison overlooks another longstanding principle that statutes are to be construed as to avoid absurd or unreasonable consequences. Joy Management Co v City of Detroit, 176 Mich App 722, 731 (1989). In the ALJ's view, Detroit Edison's interpretation that the complete unbundling of bills would violate the rate freeze provision in Section 10d(1) would produce an unreasonable consequence in that it would effectively negate Section 10b(2). The ALJ does not believe that the Legislature intended such a result.

The ALJ concludes that requiring Detroit Edison to comply with the statute is neither "capricious" nor a "pedantic, expensive and inefficient demand by Movants." (Detroit Edison's response, page 4.) Rather, it is necessary to implement meaningful customer choice under Act 141. The ALJ therefore recommends that the Commission dismiss Detroit Edison's application and order the Company to file a new application in compliance with Section 10b(2).

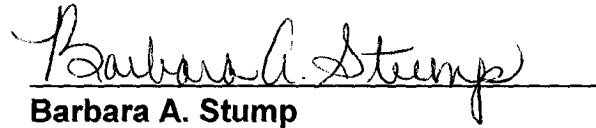
EXCEPTIONS

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record, on or before **September 13, 2001**. If exceptions are filed, replies may be filed on or before **September 24, 2001**. An original and 15 copies of either document are necessary to meet proper filing requirements, as well as proof of service on all other

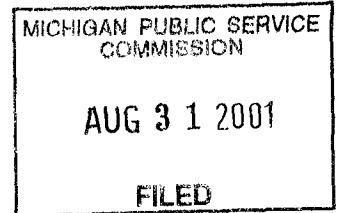
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parties of record. Either document must also include both the Bureau of Hearings docket number and the Michigan Public Service Commission case number.

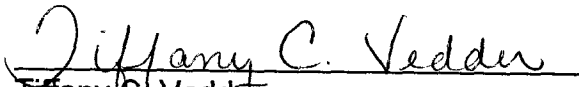
A handwritten signature in cursive script, reading "Barbara A. Stump", is written over a horizontal line.

Barbara A. Stump
Administrative Law Judge



PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 30th day of August, 2001.


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