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May 17, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

Re: In the matter of the application of The Detroit Edison Company for the authority to implement a Power Supply Cost Recovery Plan in its rate schedules for 2006 metered jurisdictional sales of electricity
MPSC Case No. U-14702

Dear Ms. Kunkle:

Attached for electronic filing is The Detroit Edison Company's Reply Brief in the above-referenced case. Also attached is a Proof of Service.

Very truly yours,

Jon P.
Christinidis
Jon P. Christinidis

Digitally signed by Jon P. Christinidis
DN: cn=Jon P. Christinidis, c=US,
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Date: 2006.05.17 13:46:01 -04'00'

JPC/kbt
Attachments
cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
THE DETROIT EDISON COMPANY	)	
For authority to implement a power supply	)	
Cost recovery plan in its rate schedules for	)	Case No. U-14702
2006 metered jurisdictional sales of	)	(Paperless E-file)
electricity.	)	
_____	)	

THE DETROIT EDISON COMPANY’S REPLY BRIEF

I.

INTRODUCTION AND BACKGROUND

On September 30, 2005 The Detroit Edison Company (hereinafter “Detroit Edison”, “Company” or “Applicant”) filed its 2006 power supply cost recovery (hereinafter “PSCR”) plan, seeking approval to include a PSCR Factor of 4.99 mills per kWh in the bills of residential customers whose rates were subject to the 2000 PA 141 rate caps during 2005 and a PSCR Factor of 8.29 mills per kWh in the bills of Commercial and Industrial (hereinafter “C&I”) customers whose rates were not subject to rate caps during 2005, both subject to a contingent factor matrix. These factors represent the amount by which the Company’s present base rates are projected to be insufficient to recover the Company’s projected fuel and purchased power expense, including transmission expense, during the 2006 PSCR Plan year. The C&I factor also included a 2005 PSCR undercollection factor of 3.30 mills/kWh.

The Company also filed a five-year forecast along with testimony and exhibits of the Company’s witnesses for purposes of complying with 1982 PA 304. The Michigan Public Service Commission (hereinafter “Commission”) issued a Notice of Hearing, which commenced

a prehearing conference that was held on November 22, 2005. (1T 1-16) This proceeding is held pursuant to MCL 460.6j et seq., Act 141 of the Public Acts of 2000, MCL 460.10 et. seq., and relevant Commission orders.

On November 10, 2005, the Commission, pursuant to MCL 460.6j(8), issued an Order initiating an abbreviated interim hearing to examine Detroit Edison's filed PSCR factors and determine whether to issue a temporary order prior to the Company's implementation of these PSCR factors on January 1, 2006. As a result of this interim hearing, on December 22, 2005 the Commission authorized the Company to implement temporary power supply cost recovery factors for bills rendered beginning with the January 2006 billing month, consistent with the proposal of the Commission Staff and the expiration of residential customer rate caps, on a service-rendered basis. On a temporary basis, the Commission denied Detroit Edison's request to include the projected 2005 PSCR underrecovery associated with C&I customers and an Electric Choice contingency matrix and ordered the temporary implementation of the following PSCR factors:

0.38 mills per kWh	January-March 2006
7.00 mills per kWh	April-June 2006
7.98 mills per kWh	July-September 2006
2.15 mills per kWh	October-December 2006 ¹

The Company's full direct case was cross-examined on January 11-12, 2006. On February 2, 2006, the Company filed a request for Corrections to transcription errors discovered in Transcript volumes three and four respectively. No action has been taken with respect to this request to date.

On February 10, 2006, the Staff, Attorney General and MEC/PIRGIM filed their direct cases. On March 17, 2006, the Company filed rebuttal testimony.

¹ MPSC Case No. U-14702 Order dated December 22, 2005 p. 7 and Exhibit A.

On March 29, 2006 both the Staff and the Company filed motions to strike the testimony and exhibits of MEC/PIRGIM witnesses Martin G. Kushler and Geoffrey C. Crandall. On March 30, 2006, MEC/PIRGIM filed a motion for Declaratory Ruling along with a Brief in support of their motion. A hearing was conducted on April 5, 2006 during which the ALJ granted the motions of the Company and Staff to Strike the testimony and exhibits. At that time, the ALJ denied MEC/PIRGIM's Motion for Declaratory Ruling.² (5T 565-567) Although the qualifications and testimony of Geoffrey C. Crandall and Martin G. Kushler were prefiled, MEC/PIRGIM was permitted to make an Offer of Proof of their stricken testimony in Transcript Volume 5A. By agreement among the parties, the balance of the direct and rebuttal witnesses' testimony was bound into the record in Transcript Volume 5.

The record in this proceeding consists of six transcript volumes and 653 pages of testimony. The parties offered 51 exhibits for admission into the record. The ALJ admitted 46 exhibits into the record and allowed an Offer of Proof for the prefiled testimony and five exhibits relating to MEC/PIRGIM's witnesses. Initial Briefs were filed by Detroit Edison, Staff, ABATE and the Attorney General on April 26, 2006.³ Reply Briefs are due on May 17, 2006. (1T 14) Detroit Edison's replies to the issues raised by the Initial Briefs of these parties are set forth below.

² On April 19, 2006, MEC/PIRGIM filed an appeal of the ALJ's rulings with the Commission. Detroit Edison filed a response in opposition. No action has been taken on the appeal to date.

³ MEC/PIRGIM also filed what was labeled as an Initial Brief, but in actuality was a request to the ALJ to reconsider and reverse his April 5, 2006 rulings.

II.

REPLIES OF THE DETROIT EDISON COMPANY

The vast majority of Detroit Edison's evidentiary presentation in this proceeding stands without opposing Staff or intervenor testimony or other opposing evidence. Further, no party elicited any information whatsoever to draw into question the reasonableness and prudence of Detroit Edison's 2006 PSCR Plan and five-year forecast. However, the parties raised (and relinquished) a handful of limited issues.

A. DETROIT EDISON REPLY TO STAFF

After the full hearing in this proceeding Staff has adjusted its position on two matters and now recommends (1) "that the Commission remove the 0.5 mill per kWh adjustment that was initially recommended by Staff in the temporary factor phase of this case..." and (2) "...that the Commission order that the methodology requested by Edison be used by Edison for recovery of all over or under recoveries in future plan years beginning with the Company's 2007 plan."⁴ (Initial Brief of Staff pp. 3, 5) Staff also supports the inclusion of SO₂ emission allowance costs and the costs of magnesium hydroxide as a fuel combustion additive in PSCR costs. (Initial Brief of Staff, p. 4) Detroit Edison agrees with these Staff positions.

Staff continues to oppose three discrete elements of Detroit Edison's 2006 PSCR Plan. The Staff opposes (1) the creation of an Electric Choice contingency factor matrix on the basis that Electric Choice sales are only one of many variables that the Company must predict. (Initial Brief of Staff pp. 4-5; 5T 575-576) Staff also opposes (2) inclusion of the Company's significant \$100+ million 2005 PSCR Reconciliation underrecovery in this case, notwithstanding the fact that waiting for future recovery will cause PSCR customers to pay additional interest on the

⁴ Staff continues, however, to oppose inclusion of the 2005 PSCR underrecovery in this 2006 PSCR Plan case. (Initial Brief of Staff p. 5) Detroit Edison disagrees with Staff's position in this regard as explained infra.

underrecovery. Staff incorrectly reasons that the brief and unavoidable 2005 Fermi 2 outages and the Company's similar proposal to "rollover" its 2004 overrecovery into its 2005 PSCR Reconciliation proceeding may affect the need for a "rollover" from 2005 into this proceeding. (Initial Brief of Staff p. 5; 5T 576-577)

The Company does not believe that Staff's concerns are warranted, nor likely to have a material impact on the amount of the Company's substantial 2005 PSCR underrecovery. The Company has proposed an Electric Choice contingency factor matrix and rollover of the Company's substantial \$100+ million 2005 PSCR Reconciliation underrecovery to address the significant electric customer load volatility associated with Electric Choice.⁵ This new load volatility represents a systemic upward shift in power supply risk for Detroit Edison and the effects of that new risk are clear and present in this proceeding. Mr. Johnston summarized the circumstances and justification succinctly:

"Now that a customer has the opportunity to choose its supplier of electricity, a under recovery 'rollover' mechanism would provide more immediate and accurate cost signals to customers, will facilitate proper economic decisions and will serve to apply the credits and surcharges to the customers that actually caused the over (under) collection to occur. The contingent matrix mechanism proposed by the Company in this proceeding would provide similar benefits and additionally act to mitigate or eliminate PSCR under recoveries. The present reality in Michigan is that (1) customer loads are uncertain, (2) Electric Choice customers aren't required to notify Detroit Edison when they will return to Detroit Edison service until months after Detroit Edison's PSCR plan must be filed with the Commission, (3) customers may choose to receive their electricity supply from alternative electric suppliers with less than a one-month notice to Detroit Edison unless they have recently returned from Electric Choice and have committed to stay with the Company for 12 months, (4) a new locational marginal pricing (LMP) energy market began in April 2005, and (5) all of the old operational issues remain. Thus, power supply planning is a much more difficult and dynamic process than in the past. New

⁵ The Company's proposal is set forth in Exhibit No. A-18 and transcript excerpt 4T 512-514. (See Initial Brief of Detroit Edison - Attachment A)

mechanisms are necessary to address this increasing system uncertainty.” (5T 644-645)

Mr. Johnston also demonstrated the real and significant impacts that the Company has already experienced with regard to the interplay between the PSCR process and Electric Choice. He explained that subsequent to the November 23, 2004 Order in the Company’s main electric rate case, approximately 2,500 GWh of Electric Choice load returned to Detroit Edison full service. However, Detroit Edison had already been required to file its 2005 PSCR Plan (Case No. U-14275) in September 2004 pursuant to Act 304. (4T 509-510) Planning for the 2005 PSCR Plan took place over the course of several weeks prior to the September 2004 PSCR Plan filings. This timing conundrum and the volatility associated with Electric Choice resulted in a substantial amount of the \$100+ million 2005 PSCR Reconciliation underrecovery that will be addressed in Case No. U-14275-R. The conundrum remains as Staff appears to acknowledge through its recommendation to permit over and underrecovery “rollovers” beginning with the Company’s 2007 PSCR Plan case. Detroit Edison believes that the “rollovers” should start in this proceeding.

The Company’s goal is to match revenues with expenses as accurately as possible. Mr. Johnston confirmed that:

“Should any portion of the Electric Choice contingency not materialize, the Company will self-implement a lower PSCR factor commensurate with its projected PSCR expense. Because the penalty for collecting revenues in excess of expense is payment of interest at 11%, there is clearly no incentive for the Company to bill a PSCR factor greater than what is absolutely necessary.”⁶ (4T 510)

⁶ MCL 460.6j(16) provides, in pertinent part: “If the commission orders refunds or credits pursuant to subsection (14), or additional charges to customers pursuant to subsection (15), in its final order in a power supply cost reconciliation, the refunds, credits, or additional charges shall include interest...The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period...” The Company’s presently authorized rate of return on common equity is 11%. (MPSC Case No. U-13808 Order dated November 23, 2004 p. 42)

and

“Based upon the Electric Choice sales run rate for the previous month and in accordance with Exhibit No. A-18 (KDJ-2), the Company will notify the Commission 10 days prior to the next billing month of its intended PSCR billing factor.” (4T 514)

Thus, there are ample protections in place, along with known and measurable increments of PSCR factor adjustment, to allay any reasonable concerns about the operation of the Company’s proposed Electric Choice contingency factor matrix. The use of a contingency factor matrix is clearly authorized under Section 460.6j(6) which states: “The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.” The Commission should therefore approve the matrix methodology for use in this and future PSCR Plan cases along with the Company’s proposed 2005 PSCR Reconciliation underrecovery rollover as soon as reasonably possible. The Company’s requested 2006 PSCR factors adjusted for the effects of the Commission’s December 22, 2005 Temporary Order and conformed to the Commission’s seasonal factor policy are shown in its Initial Brief on Attachment B, along with the Company’s contingency matrix and 2005 PSCR underrecovery rollover.

The Staff also takes positions regarding accounting for Financial Transmission Rights (“FTR”) costs that are not completely consistent with Detroit Edison’s proposals in this proceeding, although both Staff and Detroit Edison agree that the settled value of FTRs should be included in Detroit Edison’s PSCR process. (Initial Brief of Staff pp. 6-9) The Staff’s Mr. Aldrich explained:

“For the 2006 plan period, Staff agrees with Edison that the final, settled value of these FTRs should be included in Edison’s power supply costs. Of course, the costs of these derivative instruments would be subject to the same scrutiny as other fuel and purchased power costs, both in future PSCR plan and PSCR reconciliation

cases...[but] FAS 133 interim gains or losses should not be recorded in MPSC financial statements, and there is no need for the Commission to establish deferral accounting for those non-existent interim gains or losses.” (5T 584)

Ms. Theresa M. Uzenski, Detroit Edison’s Manager of Regulatory Accounting testified regarding FTR accounting. Ms. Uzenski requests that the Commission authorize the use of regulatory asset (Accounts 182.3 or 186) and liability accounts (Accounts 254 or 253) consistent with the Statement of Financial Accounting Standards No. 71, “Accounting for the Effects of Certain Types of Regulation” (FAS 71) to account for FAS 133 “Accounting for Derivatives and Hedging Activities” mark-to-market changes in the value of Detroit Edison’s FTR contracts. These regulatory assets and liabilities would be reversed and recorded against the PSCR under/over recovery upon cash settlement of the contracts. (3T 183, 187-188) Ms. Uzenski’s direct testimony is reported at 3T 174-211. Ms. Uzenski sponsored Exhibit Nos. A-24 and A-25.

Detroit Edison’s Ms. Uzenski thoroughly explained the FAS 133 basis for “mark-to-market” treatment in making Detroit Edison’s accounting request with respect to FTRs in the PSCR process. (3T 183-188; Exhibit Nos. A-24 and A-25) The Company maintains that its proposal is most appropriate.

B. DETROIT EDISON REPLY TO ABATE

ABATE takes virtually the same positions as Staff with respect to (1) the “rollover” of Detroit Edison’s 2005 PSCR underrecovery into this proceeding, (2) adoption of an Electric Choice Contingency Factor Matrix and (3) FTR accounting. (Initial Brief of ABATE pp. 1-2) ABATE’s Initial Brief addresses no other issues in this proceeding. Therefore, the Company’s Reply to Staff, *supra*, is incorporated by reference here in reply to ABATE.

C. DETROIT EDISON REPLY TO ATTORNEY GENERAL

The AG raises a handful of concerns that are easily dismissed through record evidence or are based on inaccurate perceptions and conclusions.

The AG opposes inclusion of the Magnesium Hydroxide $\text{Mg}(\text{OH})_2$ fuel additives the Company has requested for recovery through the PSCR process based on the faulty conclusion that the $\text{Mg}(\text{OH})_2$ is alternatively a “handling expense” of fuel that must be disallowed under MCL 460.6j(13)(d)⁷ or an O&M expense that must be recovered through Detroit Edison’s general rates. (Initial Brief of Attorney General pp. 13-16) Neither Attorney General conclusion is supportable or correct. Detroit Edison’s Mr. Hicks explained the Company’s use of $\text{Mg}(\text{OH})_2$:

“The St. Clair Power Plant units burn high sulfur eastern coal to mitigate some of the negative boiler performance impacts that result from burning lower cost LSW coal. This chemical, when injected into the boiler furnace, has been shown, through St. Clair’s experience over the past two years, to create a physical change in the deposits that form on the outside of boiler tubes (i.e. slag build-up and fouling) enabling the boiler cleaning devices (e.g. sootblowers) to remove the deposits more effectively. The enhanced cleaning effectiveness for these units that were not designed to burn LSW coal is especially helpful due to the fact that a majority of the LSW coal burned at St. Clair is the higher sodium Montana coal which characteristically has an ash deposit that is more difficult to remove. Overall, the injection of $\text{Mg}(\text{OH})_2$ results in a reduction in the amount of high sulfur eastern coal needed in the coal blend and increases the units’ ability to generate at higher load levels when needed compared to when $\text{Mg}(\text{OH})_2$ is not injected, which results in savings from lower fuel, replacement generation, and SO_2 emission allowance costs in excess of double the cost of the $\text{Mg}(\text{OH})_2$. The amount of chemical needed is variable and dependent upon such factors as unit generation demands and the quality of the high sulfur eastern and low sulfur western coals being burned. Furthermore, the savings can vary not only with the amount of chemical needed but also as the result of changing market prices of coal, power, and SO_2 emission

⁷ The context of MCL 460.6j (13)(d) makes clear that it does not apply to a chemical, such as $\text{Mg}(\text{OH})_2$, that is used to improve boiler operation and economics. The statute requires that the Commission “[d]isallow transportation costs attributable to capital investments to develop a utility’s capability to transport fuel or relocate fuel at the utility’s facilities and disallow unloading and handling expenses incurred after receipt of fuel by the utility.” Clearly, Detroit Edison is not “handling” coal by injecting $\text{Mg}(\text{OH})_2$ into the boiler furnace during combustion of the coal.

allowances and therefore is an integral element of the fuel and power supply acquisition decision-making analysis.⁸ Considering that the use of Mg(OH)₂ injection results in a substantial savings in the overall generation expense, it is reasonable and prudent to include this cost in fossil fuel expenses.” (3T 293-294) (emphasis added)

From Mr. Hicks expert explanation, two things become clear: (1) the Company’s use of Mg(OH)₂ is not related to “transportation costs attributable to capital investments”, “unloading” or “handling” coal as described in MCL 460.6j(13)(d), and (2) it is not merely a cleaning solution related to ordinary maintenance O&M costs. Mg(OH)₂ “is an integral element of the fuel and power supply acquisition decision-making analysis” and should be approved for inclusion in Detroit Edison’s PSCR process. Staff agrees. (Initial Brief of Staff p. 4) The Attorney General’s opposition to recovery of this fuel additive through the PSCR process is simply unfounded.

In the evidentiary phase of this proceeding, the Attorney General submitted testimony suggesting a downward adjustment for Detroit Edison’s NOx emission allowance expense “unless the Company shows that the number of allowances purchased and the prices paid for allowances in banked inventory were based upon thorough study and sound reasoning.” (5T 592-593; See also Initial Brief of Attorney General p. 17) Although Detroit Edison maintains that its direct case fully met its burden of proof in this proceeding, the Company submitted the rebuttal testimony of two witnesses in response to the Attorney General’s environmental concerns. (5T-

⁸ Mr. Johnston also noted that the Florida Public Service Commission has approved fuel additives for recovery in a fuel cost recovery clause because the fuel additives were dependent on the price, quantity and/or choice of fuel. (4T 508)

615-626 Rebuttal Testimony of Rogers; 5T 627-639 Rebuttal Testimony of Byron) Notwithstanding, the Attorney General continues to maintain that Detroit Edison's explanation was insufficient. (Attorney General's Initial Brief pp. 17-18) The Attorney General's criticisms boil down to an insubstantial complaint that Mr. Byron's rebuttal testimony and 2006 NOx cost projections were not sufficiently linked. The Attorney General's criticism, in effect, demands that Detroit Edison possess clairvoyance. Mr. Byron accurately described the operation of the NOx market and explained the Company's costs and experience in the context of his 2006 PSCR projections. The suggestion that the linkage between Mr. Byron's testimony and the Company's projected 2006 PSCR NOx expense is too indirect is meritless. Detroit Edison proved that the Attorney General's conclusions regarding NOx emission allowance expense were in error.

The Company's Mr. Byron explained that the Attorney General's simplistic conclusions make at least three important errors and clearly demonstrates that Detroit Edison utilized "thorough study and sound reasoning." (5T 635-639) The Attorney General compares one NOx emission allowance forecast to another NOx emission allowance forecast without considering actual NOx emission allowance requirements. Mr. Byron demonstrated that as the result of greater than projected coal-fired generation in 2004 and 2005, the Company was required to purchase more NOx emission allowances from the market for 2006, thereby increasing the inventory value of the Company's allowances, all things being equal. (5T 635-636; Exhibit No. A-31) The Attorney General also fails to consider the Company's delay in the scheduled installation of the selective catalytic reduction ("SCR") equipment at the Monroe power plant. Mr. Byron explained that the Company reasonably and prudently delayed the installation of the Monroe Unit No. 3 SCR equipment from 2005 to 2006 to coincide with a periodic outage (thus, eliminating one outage for this very economic coal-fired unit) while taking advantage of a period

of declining market prices for NOx emission allowance credits. (5T 637) Finally, the Attorney General ignores the “flow control” aspect of the NOx emission allowance program which, at times and depending on conditions, diminishes the value of the Company’s banked NOx emission allowances. (5T 637-639; Exhibit No. A-31) In sum, the AG’s concerns regarding the level of Detroit Edison’s NOx emission allowance expense are unfounded.

The Attorney General’s witness Mr. Walter asserted that the Commission should “allow the recovery of SO₂ allowance expenses for the current year only”⁹ and recommended that the Commission establish another docket to examine the Company’s strategy for complying with SO₂ emission reductions before any additional allowance purchases are allowed into Detroit Edison’s inventory. (5T 593) The Attorney General now recommends that “questions concerning allocation of SO₂ allowance expense should be deferred to DECo’s 2006 PSCR reconciliation case” “to await future legal developments.” (Attorney General’s Initial Brief p. 19)

Detroit Edison submits that the merit of including SO₂ emission allowance costs for recovery in the PSCR process is self-evident. It is an integral part of the fuel procurement and generation decision-making process. As Mr. Byron explained, “[i]n effect, SO₂ emission allowances are a component of the ‘as burned’ booked cost of coal.”¹⁰ (4T 434) The incremental SO₂ emission allowance expense would be the actual annual SO₂ emission allowance expense minus the expense included in Detroit Edison’s base rates established in Case No. U-13808, which was \$1.45 million. As Mr. Byron aptly concluded:

“Clearly, tight integration and optimization among fuel types, purchase power, interconnection sales, and SO₂ emission

⁹ Detroit Edison is proposing a refund on SO₂ emission allowance costs in 2006.

¹⁰ “‘Power supply cost recovery clause’ means a clause in the electric rates or rate schedules of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.” MCL 460.6j(1)(a)

allowances is required. Furthermore, SO₂ emission allowance cost will shift based on system conditions, fuel prices and purchase power costs. For these reasons the Company believes the PSCR process is an appropriate regulatory mechanism to collectively review these costs and provide for their recovery. Just like NO_x emission allowances, SO₂ emission allowances are used up or 'burned' in the process of burning fuel for electric generation. NO_x emission allowance expenses are included in PSCR costs and SO₂ emission allowance expense should also." (4T 434-435)

The Staff agrees:

"With respect to the inclusion of SO₂ allowance costs, Staff supports inclusion of these costs as a cost of power for the reasons articulated in Edison's testimony. See TR 433-436. Staff submits that these allowances are important considerations in the decisions that the Company makes in deciding which plants to dispatch as are the allowances for NO_x. Any amount for these costs would have to be offset by the amount currently in base rates, and by any proceeds made by selling allowances, however." (Initial Brief of Staff p. 4)

The Attorney General's request that the Commission delay consideration of this issue until the Company's 2006 PSCR reconciliation "to await future legal developments" lacks merit. No other party has opposed the inclusion of SO₂ emission allowance expense in Detroit Edison's PSCR process and the Attorney General offers no sound reason to exclude these costs.

The Attorney General also simplistically concludes that the Company's 2006 PSCR third party wholesale power sales projection should essentially match the higher amount of third party wholesale sales the Company projected it would make in 2005 in Case No. U-14275. (Attorney General's Initial Brief pp. 19-21; 5T 594) Mr. Byron explained that the Company's projections for third party wholesale power sales in 2006 is reasonable and prudent and that Mr. Walter fails to consider that the Company's projected NSO and periodic maintenance had both increased from the 2005 PSCR plan and, as a result, the Company had less excess generation with which to make third party wholesale power sales. Mr. Byron aptly stated:

“Off-system sales are made when the Company has generation available in excess of its own NSO and when this available excess generation is below the market price of power. Thus, when the Company has an increase in its own customer load and/or an increase in generating unit maintenance, this reduces the available excess generation to be sold into the market and reduces the quantity of off-system sales. Mr. Walter’s simplistic year over year comparison is not reasonable or meaningful if variations in system operating conditions are not considered.” (5T 631)

Clearly, the Company could only achieve the Attorney General’s suggested level of third party wholesale power sales revenue by either making the sales at a higher market price or by making purchases to support the higher level of sales. In the case of making sales at a higher market price, this same market price must also be used to determine the Company’s projected purchased power expense. If the Company were to make additional third party wholesale power sales, then the Company must include the additional purchased power expense associated with obtaining energy that is necessary to support the additional third party wholesale power sales. The Attorney General essentially fails to acknowledge the costs that the Company would incur in making the additional third party wholesale power sales that he projects. Mr. Byron demonstrates that these costs would virtually wipe out the additional revenue. (5T 633)

In his Initial Brief, the Attorney General also incorrectly concludes that Mr. Byron’s calculation of the cost of making third party sales “double counts the level of increased sales.” (Attorney General’s Initial Brief p. 20) The Attorney General’s discussion on this topic demonstrates a fundamental misunderstanding of Mr. Byron’s testimony. The Attorney General confuses the level of third party wholesale power sales with the level of power purchases. Mr. Byron very clearly stated:

“If the additional revenue is based on the same level of third party wholesale power sales of 2,877 GWh, then the market price that the power is sold at must be \$15.67/MWh higher (\$45.088 million divided by 2,877 GWh). If the market price of power is

\$15.67/MWh higher than the Company's projected cost of purchased power will also increase. The increased purchased power expense resulting from an increase in market price of \$15.67/MWh would be \$86.242 million (5,503 GWh multiplied by \$15.67/MWh). The net result of the increased third party wholesale power sales revenue and increased purchased power costs would be a net increase in PSCR cost of \$41 million." (5T 633)

The simple facts are that the Company can only achieve the Attorney General's suggested higher level of third party wholesale power sales revenue through the same level of sales at a higher market price or through a higher level of sales at the same market price. (5T 633) The same level of third party wholesale power sales at a higher market price could only correspond with a higher purchased power expense (it is unrealistic to assume that the Company can make sales at a market price that is much higher than the market price at which it makes purchases). On the other hand, if the Company makes additional third party wholesale power sales, it must obtain additional energy through power purchases to make those sales. The additional expense associated with the power purchases would, at best, offset the additional third party wholesale power sales revenue. The Attorney General simply misunderstands the dynamics of the Company's ability to make third party wholesale power sales.

Furthermore, Mr. Byron points out that the Attorney General reaches his third party wholesale power sales projection utilizing the year in which Detroit Edison had the most "freed up" generation due to Electric Choice participation and hence the lowest Net System Output. (5T 634) Despite this straightforward, common sense explanation (i.e. the more electric load that the Company is required to serve, the fewer of its electric generation resources that are available to make third party wholesale power sales), the Attorney General confusingly suggests that there may be more to it. (Attorney General's Initial Brief p. 20) There is nothing more to it and there is simply no merit in the Attorney General's position in this regard.

The Attorney General also opposes the Company's proposal to "rollover" the Company's 2005 PSCR underrecovery and implement an Electric Choice contingency factor matrix that would allow Detroit Edison to adjust its factor up or down by known amounts based on the level of Electric Choice sales. (Attorney General's Initial Brief p. 21) The Attorney General offers little in the way of analysis but refers to Staff's and Mr. Walter's testimony in opposition to the Company's proposal. (Attorney General's Brief p. 21) The Attorney General has, however, acknowledged the timing conundrum faced by the Company as it files its PSCR Plan case in September of the year before the plan year and Electric Choice customers have until February of the Plan year to notify the Company of their intent to leave or return. (5T 606) Notwithstanding, the Attorney General's Mr. Walter asserts some vague discomfort with such a mechanism and suggests that more analysis is in order. (5T 606-607) Detroit Edison submits that the need for an Electric Choice contingency factor matrix and over and under recovery mechanism is clear. The Company's Mr. Johnston elaborates on the multiple reasons for implementing such a mechanism. (5T 644-645) The Commission should approve such a mechanism in this proceeding as was explained in detail *supra* in reply to Staff.

Finally, the Attorney General sides with Staff on the issue of accounting for FTRs. (Attorney General's Initial Brief pp. 22-23) The Attorney General concludes that Staff's "accounting differs from that requested by DECo, but it would yield the same result in the PSCR mechanism." (Attorney General's Initial Brief p. 23) The Attorney General offers little, if any, independent analysis but appears to rely on the analysis of Staff. Therefore, Detroit Edison's Reply to Staff, *supra*, is incorporated by reference here in reply to the Attorney General.

D. DETROIT EDISON REPLY TO MEC/PIRGIM

The Administrative Law Judge (“ALJ”) properly declined to hear MEC/PIRGIM’s Motion for Declaratory Ruling.¹¹ The *Rules of Practice and Procedure Before the Commission* explain, with respect to Declaratory Rulings, that “[t]he commission...may require a contested case proceeding **instead of** issuing a declaratory ruling. The decision to issue a declaratory ruling is within the discretion of the commission.” R 460.17701(2)(3)(emphasis added) Therefore, the decision regarding whether to issue a declaratory ruling is the Commission’s to make, not the Administrative Law Judge’s decision.¹² In addition, it is clear that the *Rules of Practice and Procedure Before the Commission* do not contemplate both a contested case proceeding (which is what this case is) and a declaratory ruling in the same docket. Furthermore, it is clear that the Commission must in the first instance address a request for a Declaratory Ruling and determine whether to require a contested case or whether to issue the ruling, and has discretion to decline to make a ruling.

The above legal analysis concerning Declaratory Rulings is supported by a recent ruling from Administrative Law Judge Mark E. Cummins:

“Again, Mr. Keskey, with regard to the motion for declaratory ruling, we do part company rather quickly. My reading of Rule 701 of the Commission’s rules of practice and procedure leads me to agree with both Ms. Barone and Mr. Shea’s statements with regard to the fact that, as an ALJ, I do not have the power nor the discretion to rule on a motion for declaratory ruling. Even if you’re correct that it would be nice to have this as part of a contested case, it’s already open at the end of the contested case. I still would not

¹¹ Furthermore, MEC/PIRGIM’s Application for Leave to Appeal (and its request in its Initial Brief pp. 12-14; 32-36) will not (1) materially advance a timely resolution of the proceeding (the issue is not relevant here), nor prevent substantial harm to the applicant or the public at large (who have several other relevant dockets in which to address these issues). Thus, MEC/PIRGIM’s Application for Leave to Appeal fails to meet the requirements of R460.17337(2) and must be denied.

¹² MEC/PIRGIM’s Application for Leave to Appeal and Initial Brief do not contest this point. Therefore, the Commission may simply choose to consider MEC/PIRGIM’s Application as an appeal of the ALJ’s grant of Staff’s and the Company’s Motions to Strike MEC/PIRGIM’s testimony and exhibits.

have, in any way, gained the power to rule on that in the context of my Proposal for Decision. And I base this on the language, primarily of Subsection 2 and Subsection 3 of Rule 701. Subsection 2 refers to the fact that the Commission may require notice if it wants to even, and have a contested case proceeding if it wants to upon receipt of a declaratory ruling request. And, more importantly, Section – Subsection 3 which indicates that the decision to issue it is solely within the discretion of the Commission. That being the case, I'm going to reject the motion – or, actually, deny the motion for a declaratory ruling, albeit on procedural grounds. As far as the substantive grounds, I guess the better way to address those is in the context of the request for postponement of the hearings, since they do duplicate the request – or the basis for the request for declaratory ruling. And as I'm sure it will come to no one's great shock, I find that that motion should also be denied. As discussed earlier this morning, Consumers is currently under no obligation to address energy efficiency or conservation programs in the context of its PSCR plan filings. I guess also, with regard to an issue that Mr. Keskey raised about why we should go ahead and have this done here, there is a concern on my part with the PSCR process, plan cases in particular tend to be more time sensitive. Postponing this case in the hope that the Commission might reverse course on its prior rulings in Case U-13060 may do nothing but drag down the ultimate resolution of this case. I don't think that would be fair to all of the parties involved...That being the case, I'm going to deny the request for postponement of the proceedings as well.” (*MPSC Case No. U-14701 Consumers Energy Company's 2006 PSCR Plan 5 T 167-169 March 21, 2006*)

By the very filing of its Motion for Declaratory Ruling, MEC/PIRGIM implicitly admits that Detroit Edison has no present duty to address or create energy efficiency programs in its PSCR process or elsewhere. Hence, as a matter of fundamental due process and fairness there is no just or reasonable basis to conclude, as MEC/PIRGIM wrongly urges, that Detroit Edison's 2006 PSCR Plan filing is in any way deficient on the bases MEC/PIRGIM claim. (See, for example, MEC/PIRGIM Initial Brief, pp. 14-16; 36-38) In fact, MEC/PIRGIM does not point to

one PSCR proceeding in the 20+ year history of Detroit Edison's PSCR proceedings in which the Commission required what MEC/PIRGIM now urges.¹³

MEC/PIRGIM is resurrecting the issues of demand-side management and generation resource preferences that have historically been addressed in separate proceedings – not in PSCR cases. MEC/PIRGIM proposes no specific programs nor explains how these unknown programs would be funded. Clearly, this proceeding was initiated only for the purpose of evaluating Detroit Edison's 2006 PSCR Plan. The Company's Power Supply Cost Recovery Clause:

...permits the monthly adjustment of rates for power supply to allow the utility to recover¹⁴ the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility... (MCL 460.6j(1)(a)) (emphasis added)

MEC/PIRGIM's Appeal regarding its Request for Declaratory Ruling, simply stated, is a request that the Commission establish more regulatory programs unrelated to the statutory purpose of these proceedings. However, energy efficiency and conservation programs are specifically addressed in an entirely separate set of statutory provisions set forth in MCL 460.6c. *MCL 460.6(c)(2) expressly requires that recovery of costs for energy efficiency and conservation programs “shall be included only in general utility rates.”* (emphasis added) Thus, a PSCR

¹³ Curiously, the testimony presented by MEC/PIRGIM that was stricken by the ALJ and cited by MEC/PIRGIM as a reason to reinstate it, undermines the substance of its own argument. Mr. Crandall concludes “DECo in the past had beneficial and cost-effective programs in place...” (5A T 665) Mr. Kushler's stricken co-study concludes “Programs are achieving electricity savings, although the savings are still relatively small compared to total electricity sales when viewed on an annual basis. Over a longer period, however, these savings compound and can be significant since most efficiency measures have lives of 10 or more years.” (MEC-5) (MEC/PIRGIM Initial Brief pp. 4, 9) Therefore, with respect to the substance of MEC/PIRGIM's argument and assuming their assertions to be true for the sake of discussion, logic dictates that Detroit Edison's prior energy efficiency programs are, in fact, reducing the cost of electricity in 2006. Therefore, MEC/PIRGIM cannot accurately claim that the Company's 2006 PSCR Plan does not account for the effects of energy efficiency programs.

¹⁴ MEC/PIRGIM does not explain how Detroit Edison could recover the costs of implementing “energy efficiency” and “conservation” programs in the PSCR process. In fact, MCL 460.6c(2) requires that the costs of such programs be recovered in “general utility rates.” Clearly, MEC/PIRGIM may not equitably impose purported savings in this case for programs, the cost and terms of which, have not been approved in any case.

Plan proceeding is not the proper place to consider such matters, since there would be no mechanism in this proceeding for Detroit Edison to recover the costs of such a program.¹⁵

Furthermore, MEC/PIRGIM cites no specific MCL 460.6j authority (or case law on point) requiring what they urge, only general statutory authority to attempt to support its position that the Commission can address “energy efficiency” issues in a PSCR case. (MEC/PIRGIM Initial Brief pp. 16-21, 28-32) However, it is black letter law that specific statutory provisions (such as MCL 460.6c) control over general statutory provisions. Gebhardt v O’Rourke, 444 Mich 535, 542 (1994). The law is therefore clear in which type of case “energy efficiency” issues belong – in a general rate case.

The Commission has been previously presented with “energy efficiency” testimony in the context of an Act 304 proceeding (in that case a gas cost recovery proceeding) and has determined that evidence regarding energy efficiency measures that the utility might offer were not relevant in an Act 304 case. In MPSC Case No. U-13060, the Commission appropriately concluded that it would not consider energy efficiency issues in a GCR plan proceeding. The Commission ruled that similar material was properly struck by the Administrative Law Judge

¹⁵ Detroit Edison has protections against takings and confiscatory rates under the federal and Michigan Constitution. The Company has fundamental U.S. and Michigan ratemaking and constitutional due process rights to recover its costs of providing services such as “energy efficiency” and “conservation” programs. See U.S. Constitution, Fifth Amendment (“No person shall be... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”) See Michigan Constitution Article 1, Section 17 (“No person shall be...deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.”) See Bluefield Waterworks Improvement Co. v Public Service Commission of West Virginia, 262 US 679, 690-694; 43 S Ct 675; 67 L Ed 1176 (1923); Federal Power Comm. v Hope Natural Gas Co., 320 US 591, 603; 64 S Ct 281; 88 L Ed 333 (1944). See also Permian Basin Area Rate Cases, 390 US 747, 769-70; 88 S Ct 1344; 20 L Ed 2d 312 (1968); FPC v Memphis Light, Gas and Water Division, 411 US 458; 43 S Ct 1723; 36 L Ed 2d 426 (1973); General Telephone Co. v Public Service Comm., 341 Mich 620; 67 NW2d 882 (1954); Michigan Consolidated Gas Co. v Public Service Comm., 389 Mich 624; 209 NW2d 210 (1973). See generally, Missouri ex rel Southwestern Bell Telephone Co. v Public Service Comm. of Missouri, 262 US 276; 43 S Ct 544; 67 L Ed 981 (1923); Federal Power Comm. v Natural Gas Pipeline, 315 US 575; 62 S Ct 736; 86 L Ed 1037 (1942); Duquesne Light Co. v Barasch, 488 US 299; 109 S Ct 609; 102 L Ed 2d 646 (1989). See also, Northern Michigan Water Co. v Public Service Comm., 381 Mich 340; 161 NW2d 584 (1968); Consumers Power Co. v Public Service Comm., 415 Mich 134; 327 NW2d 875 (1982); ABATE v Public Service Comm., 430 Mich 33; 420 NW2d 81 (1988). Moreover, delay in correcting unreasonable rates also violates Edison’s constitutional right against a taking of its property. Smith v Illinois Bell Telephone Co., 270 US 587, 591; 46 S Ct 408; 70 L Ed 747 (1926) (“Property may be as effectively taken by long-continued and unreasonable delay in putting an end to confiscatory rates as by express affirmance of them...”).

because it is well established that the Commission has no authority to force a utility to engage in energy efficiency and conservation programs. (MPSC Case No. U-13060 Order dated March 12, 2003, pp. 31-32) Accord Detroit Edison v. Public Service Commission, 221 Mich App 370 (1997)¹⁶ The “energy efficiency” or “demand side management” testimony and exhibits proposed by MEC/PIRGIM in this proceeding are not materially different from those which the Commission agreed should be stricken in Case No. U-13060.¹⁷ Therefore, the Commission should deny MEC/PIRGIM’s Application for Leave to Appeal in its entirety, as MEC/PIRGIM provides no rational reason to do otherwise. (See MEC/PIRGIM Initial Brief in Support pp. 32-36 arguing unpersuasively that, notwithstanding multiple other relevant cases, the failure to also consider its wishes in this proceeding is unfair.)¹⁸ Furthermore, all of the decades old Commission rulings cited by MEC/PIRGIM for the proposition that “energy efficiency” issues should be discussed in PSCR proceedings predate both Detroit Edison v PSC, and the Commission’s 2003 determination in Case U-13060. (MEC/PIRGIM Brief in Support, pp. 20-25)

¹⁶ “The PSC decided the level of the program, eliminated certain aspects of the program proposed by Detroit Edison, and decided the savings that should be produced by the program. These were managerial decisions that exceeded the PSC’s authority... The PSC here exceeded its ratemaking authority by, in effect, requiring Detroit Edison’s management to adopt the DSM program the PSC thought best.” Detroit Edison v. PSC, pp.387-388. Even “the PSC’s power to fix and regulate rates does not carry with it, explicitly or implicitly, the power to make managerial decisions.” Detroit Edison v. PSC, p. 386; Accord Union Carbide v. PSC, 431 Mich 135 (1988) MEC/PIRGIM also incorrectly concludes that Union Carbide involved a holding pursuant to Act 304. (MEC/PIRGIM Initial Brief p. 28)

¹⁷ The Company has attached its Motion to Strike MEC/PIRGIM’s testimony to this pleading as it demonstrates the appropriateness of the ALJ’s ruling. (Attachment A – Detroit Edison’s Motion to Strike)

¹⁸ MEC/PIRGIM’s argument is somewhat disjointed but appears to be based upon (a) some vague notion of due process, and (b) an extraordinary interpretation of the general requirement that Commission rulings be based on competent and material evidence. (MEC/PIRGIM Initial Brief pp. 32-36) Clearly, due process does not require the admission of irrelevant evidence or evidence that would waste the parties’ and the Commission’s time and resources. Furthermore, customers such as MEC/PIRGIM have no property interest in utility rates. See, for example, Roedler v. Dept. of Energy, 255 F3d 1347, 1354-56 (CA Fed, 2001)

Finally, the Commission has instituted other active proceedings to address demand side management and energy efficiency. (See MPSC Case No. U-13129 “In the matter, on the Commission’s own motion, regarding administration and operation of the Low-Income and Energy Efficiency Fund”; MPSC Case No. U-14667 “In the matter, on the Commission’s own motion, directing the Commission Staff to explore options for energy efficiency programs in Michigan for customers of electric and gas utilities”) There is simply no merit in MEC/PIRGIM’s conclusion that this case is the appropriate place to address their concerns.

III.

CONCLUSION AND REQUEST FOR RELIEF

Detroit Edison’s 2006 PSCR Plan case, which includes its forecast of power supply costs through the year 2010, was largely un rebutted. Likewise, no party presented any substantial evidence to dispute the reasonableness and prudence of implementing the new items proposed for inclusion in Detroit Edison’s PSCR process. Thus, the ALJ may easily conclude this proceeding with a Proposal for Decision recommending approval of Detroit Edison’s reasonable and prudent 2006 PSCR Plan and five year forecast in its entirety along with the factors summarized in Detroit Edison’s Initial Brief in Attachment B.

Because the Commission’s December 22, 2005 Temporary Order adopted quarterly PSCR factors and a 0.5 mills/kWh reduction (which Staff now recommends should be removed), the Company is undercollected for the 2006 PSCR plan year as evidenced by the Company’s filed 45 day reports. In order to collect the PSCR costs that the Company has supported in this case, it will be necessary to continue with quarterly factors and reverse the effects of the Commission’s 0.5 mills/kWh reduction. The Company’s proposal for making this necessary

correction is shown on Attachment B to the Company's Initial Brief. Therefore, the ALJ should recommend and the Commission should approve:

- 1) The PSCR billing factors for 2006 as shown on Attachment B to the Initial Brief of Detroit Edison;
- 2) Use of the contingency factor matrix methodology in connection with Electric Choice sales levels for this and future plan cases;
- 3) Collection of the 2005 PSCR under-recovery factor until the under-collection, including ongoing interest, is fully collected;
- 4) The rollover of future year under/over collections into future PSCR Plan cases;
- 5) The inclusion of incremental SO₂ and Hg emission allowance expense, and Mg(OH)₂ fuel additive expense into the PSCR mechanism;
- 6) The use of regulatory asset and liability accounting for FTR contracts; and
- 7) The Company's five year forecast.

THE DETROIT EDISON COMPANY

**Jon P.
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Dated: May 17, 2006

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
THE DETROIT EDISON COMPANY)
for Authority to Implement a Power)
Supply Cost Recovery Plan in its)
Rate Schedules for 2006 Metered)
Jurisdictional Sales of Electricity)

Case No. U-14702

**MOTION TO STRIKE TESTIMONY AND EXHIBITS OF MESSRS. CRANDALL
AND KUSHLER FILED ON BEHALF OF MEC/PIRGIM**

NOW COMES THE DETROIT EDISON COMPANY, by and through its attorneys, pursuant to Rule 335, MAC R 460.17335 of the Commission's Rules of Practice and Procedure, the Michigan Court Rules, the Michigan Administrative Procedures Act and the various rulings of the Presiding Officer in this matter and herein moves to strike all of the prefiled testimony and exhibits of Geoffrey C. Crandall and Martin G. Kushler filed on behalf of The Michigan Environmental Council and The Public Interest Research Group in Michigan and in support states as follows:

KUSHLER TESTIMONY AND EXHIBITS

The Detroit Edison Company moves to strike all of the testimony and exhibits of Martin G. Kushler filed on behalf of the Michigan Environment Council and the Public Interest Research Group in Michigan for the reasons that follow:

1. Mr. Kushler proposes to testify that the "purpose of my testimony is to provide the Commission with information about the demonstrated effectiveness of energy efficiency as a low-cost electric resource that is being widely used in other states to help lower their total electric system costs and provide significant dollar savings to utility customers." (Testimony of Kushler p. 2) In essence, Mr. Kushler is resurrecting the issues of demand-side management and

generation resource preferences which have historically been addressed in separate proceedings – not in PSCR cases. Mr. Kushler proposes no specific programs nor explains how these unknown programs would be funded. Clearly, this proceeding was initiated only for the purpose of evaluating Detroit Edison’s 2006 PSCR Plan. The Company’s Power Supply Cost Recovery Clause:

...permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility... (MCL 460.6j(1)(a))

Mr. Kushler’s testimony, simply stated, is a request that the Commission establish more regulatory programs unrelated to the statutory purpose of these proceedings. Mr. Kushler’s testimony is not relevant to the question of whether Detroit Edison’s 2006 PSCR Plan is reasonable and prudent. Mr. Kushler’s testimony and exhibits have no tendency to make the existence of any fact that is of consequence to these proceedings more probable or less probable than it would be without his testimony. This irrelevant evidence is inadmissible. (MRE 401,¹ 402²)

2. Further, the Commission has been previously presented with “energy efficiency” testimony in the context of an Act 304 proceeding (in that case a gas cost recovery proceeding) and has determined that evidence regarding energy efficiency measures that the utility might offer were not relevant in an Act 304 case. In MPSC Case No. U-13060, the Commission

¹ MRE Rule 401 provides:

“Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.”

² MRE Rule 402 relevantly provides:

“Evidence which is not relevant is not admissible.”

appropriately concluded that it would not consider energy efficiency issues in a GCR plan proceeding. The Commission ruled that similar material was properly struck by the Administrative Law Judge because it is well established that the Commission has no authority to force a utility to engage in energy efficiency and conservation programs. (MPSC Case No. U-13060 Order dated March 12, 2003, pp. 31-32. Accord Detroit Edison v. Public Service Commission, 221 Mich App 370 (1997)) The “energy efficiency” or “demand side management” testimony and exhibits proposed by Mr. Kushler in this proceeding are not materially different from those which the Commission agreed should be stricken in Case No. U-13060. In addition, in the Company’s 2000 PSCR plan, MPSC Case No. U-12121, Mr. Kushler’s testimony was appropriately stricken by Administrative Law Judge James N. Rigas. The Commission’s June 19, 2000 Order in that proceeding encouraged MEC/PIRGIM to participate in other proceedings involving energy efficiency.³ In the October 29, 2001 Order denying rehearing in the same proceeding, the Commission stated that non-rate energy efficiency issues could be more appropriately addressed in other proceedings, specifically Case No. U-13129.⁴ Therefore, Mr. Kushler’s testimony and exhibits should be stricken in their entirety.⁵

3. In addition, the primary basis for Mr. Kushler’s testimony is a study which he co-authored with two (2) other persons. Clearly, since Mr. Kushler did not prepare the entire study (and MEC/PIRGIM does not offer the testimony of the two (2) other co-authors) this study

³ “Although the testimony sought to address issues outside of the jurisdiction of the Commission prior to June 5, 2000, the new law gives the Commission specific authority to require environmental disclosures (subsection 10r (3)) and creates an energy efficiency fund (subsection 10d(6)) as advocated by these parties. They are encouraged to participate in Case No. U-12487 and any subsequent proceedings involving the energy efficiency fund.” (June 19, 2000 Order, Case No. U-12121, p. 2)

⁴ “The Commission sees no merit in the view that the case should be continued to address the non-rate energy efficiency and Nuclear Waste Fund issues raised by MEC/PIRGIM. Those issues can be more appropriately addressed in other proceedings. In particular, MEC/PIRGIM’s concerns may be addressed in Case No. U-13129, in which the Commission will determine how to implement the provisions of Section 10d(6) relating to low-income energy efficiency funding. (October 29, 2001 Order, Case No. U-12121, p. 4)

⁵ Mr. Kushler’s proposed exhibits include his resume’ and a hearsay study.

constitutes impermissible hearsay⁶ evidence and should not be admitted on this basis as well. (MRE 801) Also, the risk of unfair prejudice, confusion of the issues, undue delay and waste of time under MRE 403 outweighs the probative value of this 50+ page single-spaced hearsay study. Further, MEC/PIRGIM has not laid any foundation whatsoever to establish that this hearsay study's conclusions and the techniques utilized in arriving at them are recognized by disinterested and impartial experts. Thus, aside from their relevance and hearsay problems, there has been nothing to establish that the studies are accurate or reliable.

4. Finally, the Commission has no authority to issue an order mandating that Detroit Edison implement a demand side management program, as recommended by Mr. Kushler, and Detroit Edison has no intention to voluntarily implement one outside of its next general electric rate case. Detroit Edison v. Public Service Commission, 221 Mich App 370 (1997)⁷ Thus, Mr. Kushler's program preferences are clearly irrelevant.

CRANDALL TESTIMONY AND EXHIBITS

The Detroit Edison Company moves to strike all of the testimony and exhibits of Geoffrey C. Crandall filed on behalf of the Michigan Environmental Council and the Public Interest Research Group in Michigan for the reasons that follow:

1. Mr. Crandall's testimony proposes to criticize Detroit Edison's 5-year PSCR plan because it "fails to specifically include demand management and usage reduction in its long-range plan to acquire electricity resources in the future." (Crandall Testimony p. 3)

⁶ MRE Rule 801(c) defines hearsay as:

"Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered to prove the truth of the matter asserted."

⁷ "The PSC decided the level of the program, eliminated certain aspects of the program proposed by Detroit Edison, and decided the savings that should be produced by the program. These were managerial decisions that exceeded the PSC's authority... The PSC here exceeded its ratemaking authority by, in effect, requiring Detroit Edison's management to adopt the DSM program the PSC thought best." Detroit Edison v. PSC, pp.387-388.

2. Notwithstanding the obvious purposes of an Act 304 proceeding, the Commission's prior admonitions to address these matters elsewhere, and Detroit Edison v. PSC's holding that utilities cannot be mandated to implement demand side management programs, Mr. Crandall illogically concludes that this Act 304 PSCR proceeding is the appropriate place to address those issues. Mr. Crandall makes this assertion based principally on a March 29, 1990 Order in Case No. U-9172 that addressed the Commission's now abandoned Integrated Resource Planning ("IRP") process.⁸ (Crandall Testimony p. 4) Mr. Crandall fails, however, to mention that the IRP process on which he relies was abandoned by the Commission, in that same docket, in 1997 due to the advent of Electric Choice.⁹ (See MPSC Case No. U-9172 Order dated January 28, 1997 p. 2) In addition, energy efficiency and conservation programs are specifically addressed in an entirely separate set of statutory provisions set forth in MCL 460.6c. MCL 460.6c(2) expressly requires that recovery of costs for energy efficiency and conservation programs "**shall be included only in general utility rates.**" (emphasis added) Thus, a PSCR Plan proceeding is *not* the proper place to consider such matters. Furthermore, the Commission has instituted other active proceedings to address demand side management and energy efficiency. (See MPSC Case No. U-13129 "In the matter, on the Commission's own motion, regarding administration and operation of the Low-Income and Energy Efficiency Fund"; MPSC Case No. U-14667 "In the Matter, on the Commission's Own Motion, Directing the Commission Staff to Explore Options for Energy Efficiency Programs in Michigan for Customers of Electric

⁸ Mr. Crandall also briefly engages in a similarly irrelevant discussion of Section 14 of 1929 PA 9 which does not apply to an Act 304 proceeding. (Crandall Testimony p. 4)

⁹ The Commission stated "[i]n recognition of its goal of increased competition in Michigan's electric industry, the Commission concludes that Consumers should no longer be required to file integrated resource plans. Public review of and comment on integrated resource plans are not consistent with the competitive electric industry environment envisioned for Michigan. Such plans might provide information that could be useful to potential competitors and thus create a competitive disadvantage for Consumers." (MPSC Case No. U-9172, Order dated January 28, 1997, p. 2)

and Gas Utilities”) There is simply no merit in Mr. Crandall’s conclusion that this case is the appropriate place to address his concerns.

2. Mr. Crandall’s testimony, simply stated, is a request that the Commission establish more regulatory programs unrelated to the statutory purpose of these proceedings. Mr. Crandall’s testimony is not relevant to the question of whether Detroit Edison’s 2006 PSCR Plan is reasonable and prudent. Mr. Crandall’s testimony and exhibits have no tendency to make the existence of any fact that is of consequence to these proceedings more probable or less probable than it would be without his testimony. This irrelevant evidence is inadmissible. (MRE 401, 402)

3. In addition, Detroit Edison submits that Mr. Crandall’s testimony is irrelevant to these proceedings because Mr. Crandall’s testimony is merely repetitive. Repetitive evidence is not relevant. (MRE 401, 402) Mr. Crandall relies on the testimony of Mr. Kushler as well as the hearsay study offered by Mr. Kushler as an exhibit. (Crandall Testimony p. 7) Mr. Crandall then adds 1 more incomplete hearsay document as an exhibit on behalf of MEC/PIRGIM and references a meaningless quotation from a U.S. Department of Energy report. (Crandall Testimony pp. 6-7; See incomplete Wisconsin PSC filing “Joint Reply Comments of Madison Gas and Electric Company, Wisconsin Public Power, Inc., Wisconsin Power and Light Company, and Wisconsin Public Service Corporation”) In sum, Mr. Crandall’s proposed testimony and exhibits are duplicative assertions that Detroit Edison should be required to implement some undetermined demand side management programs. Finally, even if arguably relevant, the probative value of Mr. Crandall’s testimony is substantially outweighed by the danger of unfair prejudice, confusion of the issues, undue delay, waste of time and needless presentation of cumulative evidence and should therefore be stricken. (MRE 403)

4. Of course, MPSC Case No. U-13060 Order dated March 12, 2003 (pp. 31-32) and Detroit Edison v. Public Service Commission, 221 Mich App 370 (1997) also operate to render Mr. Crandall's proposed testimony inadmissible in this Act 304 proceeding. The "energy efficiency" or "demand side management" testimony and exhibits proposed by Mr. Crandall in this proceeding are not materially different from those which the Commission agreed should be stricken in Case No. U-13060 and Detroit Edison v. PSC, conclusively establishes that the Commission has no authority to mandate that a utility implement a demand side management program. Therefore, Mr. Crandall's testimony and exhibits should be stricken in their entirety.¹⁰

5. Finally, Mr. Crandall's last exhibit has no tendency to make any fact that is of consequence to these proceedings more probable or less probable than it would be without the exhibit because it addresses Consumers Energy's load and power supply expenses, not Detroit Edison's, and speculates about the demand and power supply expense effects of some undisclosed, imaginary demand side management program. Consumers Energy data and unsupported, theoretical speculation is not relevant in this Detroit Edison 2006 PSCR Plan case. Therefore, this irrelevant evidence is inadmissible. (MRE 401, 402)

¹⁰ One of Mr. Crandall's (3) three proposed exhibits is his resume'.

WHEREFORE, THE DETROIT EDISON COMPANY respectfully requests that the Presiding Officer strike the testimony and exhibits of Messrs. Kushler and Crandall in their entirety.

Respectfully submitted:

THE DETROIT EDISON COMPANY

Jon P.

Christinidis

By: _____

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Dated: March 29, 2006

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

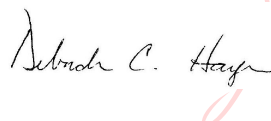
In the Matter of the Application of)
The Detroit Edison Company for Authority)
to Implement a Power Supply Cost)
Recovery Plan in its Rate Schedules)
for 2006 Metered Jurisdictional Sales)
of Electricity)
_____)

Case No. U-14702

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Deborah C. Hayes, being duly sworn, deposes and says that on the 17th day of May, 2006, a copy of The Detroit Edison Company's Reply Brief in the above-captioned matter was filed with the Commission and served upon the persons on the attached service list via e-mail and first class mail.



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me this 17th day of May, 2006

Estella R. Branson

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MPSC Case No. U-14702

May 3, 2006

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