

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**
(e-file/paperless)

**REPLY BRIEF OF THE
THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF**

The Michigan Public Service Commission Staff, by its counsel, Patricia S. Barone,
Assistant Attorney General, files the following Reply Brief.

Reply to MEC/PIRGIM

In its initial brief, MEC/PIRGIM reiterates its position that the Administrative Law Judge (“ALJ”) should grant its Motion for Declaratory Ruling, that the ALJ should reverse its ruling striking MEC/PIRGIM’s testimony, that the ALJ should find that Edison’s plan is inadequate because it fails to incorporate any energy efficiency measures, and that the ALJ should recommend approval of a lower PSQR factor to reflect this inadequacy.

Staff continues to support the ALJ’s ruling that MEC/PIRGIM’s request for a Declaratory Ruling may only be addressed to the Commission in the first instance because of the requirements of the Administrative Procedures Act (“APA”),¹ and the Commission’s Rules of Practice and Procedure.² MEC/PIRGIM make the point at page 14 of its brief that the APA and Rule 701 of the Commission’s Rules of Practice and Procedure do not exclude making a declaratory ruling request to the agency or Commission within the context of a contested case.

¹ 1969 PA 306; MCL 24.101 *et seq.* and Section 63, MCL 24.263.

² The Commission’s Rules of Practice and Procedure, Rule 701, R 460.17701.

The proper point, however, is that a decision regarding whether to grant a request for a declaratory ruling, and whether to consider the request during a contested case proceeding is the Commission's decision. The ALJ cannot make that decision for the Commission according to the plain language of the statute.³

With regard to MEC/PIRGIM's claim that its testimony was improperly stricken, that claim should be rejected because in recent orders the Commission has determined that it will not consider energy efficiency issues in an Act 304 case. Unless and until the Commission reverses this position, the ALJ properly struck MEC/PIRGIM's testimony.⁴

Similarly, since the ALJ properly struck the evidence regarding energy efficiency measures, it is not possible to adopt MEC/PIRGIM's recommended finding that Edison's plan is inadequate or that a lower factor should be adopted due to the absence of energy efficiency measures in Edison's supply mix.

Consequently, the ALJ should continue to reject MEC/PIRGIM's positions.

Reply to the Detroit Edison Company

The Detroit Edison Company ("Edison") has urged the Commission to adopt a contingent PSCR factor based on changes in the level of customer choice sales. Staff continues to oppose this proposal for the reasons articulated in Staff witness, Ronald Ancona's testimony. TR 575-576. Staff opposes Edison's request that contingent factors be approved for variations in customer choice sales level because other variables can also cause wide swings in PSCR costs. For instance, increased economic activity and weather extremes, and extended outages at large

³ See the Michigan Public Service Commission Staff's Procedural Response to the Motion for Declaratory Ruling of MEC/PIRGIM, Case No. U-14702, April 3, 2006.

⁴ See the Michigan Public Service Commission Staff's Motion to Strike the Testimony of Martin G. Kushler and Geoffrey C. Crandall, Case No. U-14702, March 29, 2006.

base load generating plants can cause PSCR costs to increase when compared to an original projection. The Company possesses the ability to utilize its expertise to make a projection of sales and costs that it presents in its PSCR plan case and to the extent that significant variations occur in either sales or costs, the PSCR process provides an opportunity for the utility to file supplemental testimony or seek to reopen the case if the record has been closed. Therefore, Staff does not see a need for the Commission to approve Edison's proposed contingent factors.

Staff also opposes Edison's proposal to include its claimed 2005 underrecoveries in its 2006 PSCR plan and factors. Staff's position is that any underrecovery related to the extended Fermi outage and other issues to be litigated in the Company's 2005 PSCR reconciliation case, Case No. U-13808-R, should not be collected from customers until the review has been completed in that case. TR 565. Staff does support the Company's proposal to allow it to prospectively roll-in over or underrecoveries in future plan years. If Staff's position in this regard is adopted, the Company would be able to roll-in its over or underrecovery associated with its 2006 costs only, and not its 2004 or 2005 over or underrecoveries.

With regard to Edison's request for authority to account for financial transmission rights ("FTRs"), Staff supports inclusion of these costs as a cost of power to the extent that the costs are shown to be reasonably and prudently incurred, but opposes Edison request for the Commission to approve its requested accounting treatment for FTRs. The reasons for Staff's position are presented by Staff's witness, William Aldrich, at TR 580-586, and in Staff's initial brief at pages 6-9.

With regard to the PSCR factor, Staff recommends that the 0.5 mill per kWh adjustment approved in the Temporary Order phase of this case be eliminated and that the factors set forth in Edison's Attachment B (excluding the Matrix adder) be approved.

Reply to the Attorney General

The Attorney General has recommended Edison's requested NO_x allowances be reduced by \$4.199 million unless Edison shows that the number of allowance purchases and the price paid for allowances were based upon a thorough study and sound reasoning. Attorney General, initial brief, page 8. The Attorney General also recommends that the issue of recovery of the Company's SO₂ allowance expense be deferred for consideration in Edison's reconciliation. Third, the Attorney General recommends that the Commission not allow any expense in PSCR factors for the \$1.871 million projection that Edison included for magnesium hydroxide.

Staff supports the amounts that Edison has included for SO₂ allowances, NO_x allowances and for magnesium hydroxide as a fuel additive based on the reasons stated in Edison's testimony. Any amounts included in the PSCR factors must be offset by the amount currently in base rates, and by any proceeds made by selling allowances. Further, with respect to magnesium hydroxide, since Edison has testified that it is used as a fuel combustion additive and that the power cost savings will exceed the costs of the chemical additive, the costs associated with it should only be included to the extent that power cost savings exceed the costs of the chemical additive. See Staff's initial brief at page 4.

Conclusion

Staff urges the Administrative Law Judge and the Commission to adopt its findings and recommendations as set forth in its testimony, exhibits, and briefs.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in black ink, reading "Patricia S. Barone". The signature is written in a cursive, flowing style.

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Dated: May 17, 2006

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Linda Andreas, being first duly sworn, deposes and says that on **May 17, 2006**, she served a true copy of **Reply Brief of the Michigan Public Service Commission Staff** upon the following parties via e-mail and by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

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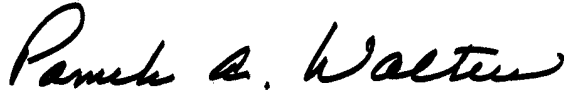
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Linda Andreas

Subscribed and sworn to before me
this 17th day of May, 2006.



Pamela A. Walters, Notary Public
State of Michigan, County of Ionia
Acting in the County of Ingham
My Commission Expires: 02/04/2007