

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,	)	
ordering THE DETROIT EDISON COMPANY to	)	
show cause why its retail rates for the sale and	)	Case No. U-14838
distribution of electric energy should not be	)	
decreased.	)	
_____	)	

At the June 15, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

On March 23, 2006, out of concern that ratepayers should not be "required to pay rates that are no longer justified by current financial data, questionable sales projections, or outdated cost information," the Commission, on its own motion, ordered The Detroit Edison Company (Detroit Edison) to show cause why its retail electric rates should not be reduced. Order, Case Nos. U-13808, U-14522, and U-14838, p. 4. The Commission directed Detroit Edison to file testimony and exhibits addressing this issue by June 1, 2006. In so doing, the Commission stated:

Detroit Edison shall, by June 1, 2006, file testimony and exhibits showing cause why its retail electric rates should not be reduced and serve a copy of such testimony and exhibits upon each party that has been granted status as an intervenor. Detroit Edison shall base its June 1, 2006 filing on historical data from calendar year 2005, adjusted for known and measurable changes, to reflect the sales, costs, and financial conditions that are expected to occur by 2007. As part of its filing Detroit Edison is directed to provide a schedule that reconciles the company's historical 2005 revenues and expenses to its projected revenue and

expenses clearly showing each known and measurable change to the historical test year revenue and expenses in a fashion similar to Attachment B to this order. Further, Detroit Edison is directed to file historical sales and customer billing determinants by rate schedule and to reconcile all known and measurable changes separately by rate schedule for all billing determinants to the historical levels. In addition, pro-forma revenues should be reconciled to the historical revenues. All traditional matters pertinent to rate case determinations, including the appropriate level of the company's authorized rate of return on common equity, will be reviewed in this proceeding, with the exception of the cost of service study methodology. For the purposes of this filing, the parties shall use the cost of service study methodology used in the Commission's December 22, 2005 order in Case No. U-14399.

March 23 order, Case Nos. U-13808, U-14522, and U-14838, p. 5.

On June 1, 2006, Detroit Edison filed a "response and application" along with prepared direct testimony and exhibits from 20 witnesses. In so doing, Detroit Edison contended not only that its current rates are not excessive, but also that as of January 1, 2007 its rates will be insufficient by \$45 million on an annual basis. For that reason, Detroit Edison proposed a new notice of hearing¹ that it urged the Commission to provide to interested parties as required by law. Detroit Edison also requested an assortment of other forms of regulatory relief, including authority to reset its power supply cost recovery base, approval of a choice cost tracking mechanism, approval of an other post employment benefits equalization mechanism, reaffirmation of the company's existing pension equalization mechanism, elimination of certain subsidies embedded in current rate schedules, continuation of surcharges associated with the recovery of accumulated regulatory assets, the recovery of costs associated with replacement of aging computer systems, accounting authority related to the retirement of existing meters and implementation of its automated meter reading program, and approval of a settlement agreement that arose out of the electric choice metering collaborative conducted pursuant to the Commission's directive in Case No. U-13808.

¹Detroit Edison acknowledges that it has already published the notice of hearing prepared by the Commission's Executive Secretary on April 18, 2006.

Finally, Detroit Edison requested that the Commission designate July 3, 2006 as the date for a second prehearing conference in this matter.

Detroit Edison's June 1, 2006 filing prompted responses from the Commission Staff (Staff), Energy Michigan, the Association of Businesses Advocating Tariff Equity (ABATE), and Attorney General Michael A. Cox (Attorney General).

The Staff filed a motion on June 8, 2006 requesting the Commission to compel Detroit Edison to comply with the Commission's March 23 order. Specifically, the Staff asserted that in ordering paragraph "F" the Commission required Detroit Edison to file specific schedules that reconcile Detroit Edison's historical data to projected data adjusted for known and measurable changes. According to the Staff, Detroit Edison failed to comply with this requirement. The Staff argued that Detroit Edison's attempt to comply with this requirement failed for the following reasons:

Mr. Edward L. Falletich filed testimony that purports to comply with the Commission's filing directive in its March 23, 2006 order, paragraph F. Mr. Falletich's 2007 billing determinants were derived using the Corporate Sales Forecasts. Mr. Falletich's Exhibit DE-13, page 2, does not reconcile the historical revenues to projected test year revenues adjusted for known and measurable changes. Contrary to the Commission's Order, Exhibit DE-13, page 2, merely shows an arithmetic difference between actual 2005 revenues and the projected 2007 revenues. Mr. Falletich's Exhibit DE-13, pages 3-43, do not reconcile the billing 2005 determinants to the 2007 projected billing determinants adjusted for known and measurable changes. Contrary to the Commission's Order, Exhibit DE-13, pages 3-43, merely shows an arithmetic difference between actual 2005 billing determinants and the projected 2007 billing determinants.

Staff motion, p. 2.

The Staff requested that the Commission order Detroit Edison to file, on or before June 23, 2006, a schedule that reconciles the company's actual 2005 revenues to its projected 2007 revenues in a manner that clearly shows each known and measurable change to the historical test year revenues. The Staff also requested that the Commission order Detroit Edison to file, on or before June 23, 2006, a schedule that reconciles actual 2005 sales and customer billing

determinants by rate schedule to the 2007 projected sales and customer billing determinants by rate schedule in a manner that clearly shows each known and measurable change separately by rate schedule for all billing determinants to the 2005 levels.

Energy Michigan filed its response on June 8, 2006. After reminding the Commission of the recent denial of its attempt to expand the scope of this proceeding,² Energy Michigan pointed out that Detroit Edison witness Falletich has proposed two cost reallocations between bundled and choice customers that on a combined basis would produce 27-63% rate increases for specific choice distribution rates. According to Energy Michigan, Detroit Edison is proposing to allocate the entire \$45 million proposed rate increase to distribution customers. Energy Michigan explained its concern as follows:

Mr. Falletich arrives at this conclusion by reallocating 100% of the inter-class rate subsidies included in the distribution rates paid by Choice customers returning to full service to a reduction of generation costs and none of the additional revenue to a reduction of distribution costs. The result is that a \$62,874,000 power supply revenue deficiency and a \$17,591,000 distribution function revenue sufficiency turn into a distribution revenue deficiency of \$45,283,000. Id., p. 10-11. This financial alchemy is accomplished by determining that the Commission's Order in U-14399 which specifically prohibited this outcome for Choice customers should be reversed because it was "inappropriate". P. 11-13. Thus, by reallocating inter-class rate subsidy revenue between distribution and generation, Mr. Falletich is able to turn a generation revenue deficiency into a distribution revenue deficiency.

Energy Michigan reply, p. 2.

Energy Michigan's other concern involves Mr. Falletich's proposal to collect the inter-class rate subsidy favoring residential customers from both choice and bundled commercial and Industrial (C&I) customers, rather than from bundled C&I customers only. Energy Michigan insisted that Mr. Falletich's proposal conflicts with the December 22, 2005 order in Case No. U-14399, in

²See, May 25, 2006 order in Case No. U-14838.

which the Commission held that the inter-class rate subsidy favoring residential customers should be borne only by Detroit Edison's bundled C&I customers.

Energy Michigan complained that these two changes to Detroit Edison's allocation of costs are outside the scope of this proceeding. Energy Michigan argued that the announced purpose of this proceeding is to determine whether Detroit Edison's rates should be reduced, not to increase rates or completely reverse Case No. U-14399. Therefore, Energy Michigan insisted that the Commission should deny Detroit Edison's request to re-notice this proceeding and reverse the May 25, 2006 order in this matter so as to permit Energy Michigan to present testimony regarding the proper allocation of costs between generation and distribution functions.

In its June 12, 2006 response, ABATE maintained that the scope of this matter must be limited to the issue of whether Detroit Edison is able to show cause why its rates should not be decreased. According to ABATE, increasing rates in the context of this proceeding is not an option for the Commission. ABATE asserted that Detroit Edison is always free to file a rate increase proceeding in another docket, but that the utility cannot expropriate this proceeding for that purpose.

The Attorney General filed a response on June 13, 2006. In so doing, the Attorney General stressed that this matter is effectively a complaint proceeding under MCL 462.22(c), and that the forms of relief sought by Detroit Edison and Energy Michigan could be viewed as either affirmative defenses or counterclaims under the Michigan Court Rules. For this reason, the Attorney General requested that, in the event that the Commission were to grant either or both requests for relief by Detroit Edison and Energy Michigan, then the Commission should schedule a new prehearing conference to revise and extend the current schedule.

In its reply to the Staff's motion, which was filed June 12, 2006, Detroit Edison maintained that the Staff's concerns are unfounded. According to Detroit Edison, its June 1, 2006 filing should not be considered either incomplete or contrary to the March 23 order because the Staff and Detroit Edison have differing interpretations of that order. Detroit Edison also asserted that because the Commission's March 23 order did not define the term *billing determinants*, it cannot be faulted for preparing proposed Exhibit DE-13, Schedule E7 in accordance with the Commission's rate case filing procedures and past practice. Detroit Edison stated that:

In general, Detroit Edison does not engage in business analyses that attempt to speculate how (for example), macro trends affecting the Michigan and national economies correlate to impacts on individual rate schedules and customers. Furthermore, Detroit Edison believes that creating such data (which does not now exist and would require substantial additional time and effort to create), is likely to suggest a false level of precision with respect to individual rate schedule and customer projections that will not provide meaningful additional information over and above what Detroit Edison's filing has already provided. Given enough time and resources, values can be assigned to all sorts of elements that might impact electric loads and revenues without necessarily developing a more informed projection.

Detroit Edison's June 12, 2006 filing, ¶ 10, p. 4.

Nevertheless, Detroit Edison indicated its willingness to cooperate "with Staff to provide available data that is reasonable and relevant in a meaningful format and otherwise attempt to address Staff's needs and concerns." Detroit Edison's June 12, 2006 filing, ¶ 10, p. 4.

In its reply to Energy Michigan's and ABATE's filings³, which was filed June 13, 2006, Detroit Edison maintained that Energy Michigan's responsive pleading violates Rule 335 of the Commission's Rules of Practice and Procedure, R 460.17335, because it lacks a notice of hearing, improperly argues factual matters before the hearing without a supporting affidavit, and contains no citations of authority. Detroit Edison also stressed that Energy Michigan's position is

³Detroit Edison's reply focused primarily on Energy Michigan's filing and incorporated its responses to Energy Michigan's positions as its response to ABATE's filing.

inconsistent with the Commission's statement in the May 25, 2006 order in this case that observed that its denial of Energy Michigan's motion for declaratory ruling "should not be interpreted as prejudging the issue of how any rate change should be allocated between rate classes." May 25, 2006 order, Case No. U-14838, p. 2.

Detroit Edison also contended that the Commission should reject Energy Michigan's position that the scope of this matter is limited to rate decreases and cannot result in a rate increase. Citing language from the Commission's March 23 order that "[a]ll traditional matters pertinent to rate case determinations, including the appropriate level of the company's authorized rate of return on common equity, will be reviewed in this proceeding, with the exception of the cost of service study methodology,"⁴ Detroit Edison insisted that the scope of this proceeding is not limited to a rate decrease and all parties have the right to develop their position on cost allocation issues. Further, according to Detroit Edison, its prefiled testimony and exhibits describe numerous additional costs that necessitate a rate increase as of January 1, 2007 and justify Detroit Edison's request to re-notice the case to provide for this possibility.

On June 13, 2006, the Staff filed a reply to Detroit Edison's response. In so doing, the Staff contended that:

The issue before the Commission is whether the Detroit Edison Company complied with the Commission's March 23, 2006 Order by providing a schedule that reconciles the company's actual 2005 revenues to its projected 2007 revenues clearly showing each known and measurable change to the historical test year revenues and to provide a schedule that reconciles actual 2005 sales and customer billing determinants by rate schedule to 2007 projected sales and customer billing determinants by rate schedules clearly showing each known and measurable change separately by rate schedule for all billing determinants to the 2005 levels.

Staff's June 13, filing, p. 1.

⁴March 23 order, p. 5.

The Staff maintained that there cannot be any confusion by Detroit Edison over the meaning of the term *billing determinants*, which the Staff illustrates by calling attention to the utility's use of billing determinants in its 43-page Exhibit DE-13, Schedule E-7. Rather, it is the Staff's complaint that Detroit Edison failed to clearly show each known and measurable change therein in a schedule that reconciles actual 2005 sales and customer billing determinants by rate schedule to the 2007 projected sales and customer billing determinants by rate schedule. According to the Staff, Detroit Edison's citation to Exhibit DE-3, Schedules C-1,11,13,14,15, and 16, Exhibit DE-11, Schedule C-1, and Exhibit DE-11, Schedule C-13, add nothing to the debate because these schedules do not address the Staff's concern regarding the lack of adjustments by rate schedule.

Discussion

The Commission finds that Detroit Edison's request to re-notice this proceeding should be denied. The Commission never intended that this proceeding should supersede Detroit Edison's obligation to file a general rate case by July 1, 2007, which was imposed in the December 22, 2005 order in Case No. U-14399 at page 38. The Commission finds that Detroit Edison is not harmed by this ruling. At any time that a public utility believes it appropriate to do so, it may file a general rate case.⁵ In addition, a utility may seek partial and immediate rate relief. MCL 460.6a. However, the partial and immediate rate relief provision contained in MCL 460.6a is not a two-way street. Rather, it operates only in favor of utilities. There is no comparable regulatory mechanism in MCL 460.6a for customers to seek partial and immediate rate relief if rates are excessive other than through the filing of a complaint or via a rate investigation initiated on the Commission's own motion. Moreover, due to the prohibition against retroactive ratemaking, rate

⁵Of course, given the Commission's prohibition on "pancaking" rate cases, a utility may not file a second rate case while an earlier rate case is still pending.

relief resulting from a customer complaint or Commission initiated investigation may only be ordered on a prospective basis. For these reasons, the Commission is not persuaded that this matter should be re-noticed as proposed by Detroit Edison. If it wanted a general rate increase at this time, it could have filed such a case. It did not do so.

With regard to the Staff's concerns, the Commission finds that Detroit Edison's June 1, 2006 filing does not comply with the letter or the spirit of the March 23 order. The Commission's order was quite explicit. It provided that Detroit Edison's June 1, 2006 filing should include a schedule that reconciles the company's historical 2005 revenues and expenses to its projected revenue and expenses clearly showing each known and measurable change to the historical test year revenue and expenses and that reflects historical sales and customer billing determinants by rate schedule. The utility was also directed to reconcile all known and measurable changes separately by rate schedule for all billing determinants to historical levels. In the Commission's opinion, Exhibit DE-13, Schedule E-7 does not contain the information required by the March 23 order because the arithmetic difference between actual 2005 revenues and the projected 2007 revenues or the arithmetic difference between actual 2005 billing determinants and the projected 2007 billing determinants is insufficient to allow the parties or the Commission to determine how particular known and measurable changes supported by Detroit Edison transform actual 2005 revenues and billing determinants into projected 2007 revenues and billing determinants.

In reaching this determination, the Commission finds that Detroit Edison's contention that the commonly used term *billing determinants* is subject to varying interpretations is thoroughly disingenuous. The use of billing determinants is a necessary and essentially non-controversial part of the rate design portion of every rate case. For the utility to blame its failure to comply with the

March 23 order on a misunderstanding of a commonly used term that has never before caused a misunderstanding is simply not credible.

The Commission is aware that in ¶10 of its June 12, 2006 reply to the Staff's motion, Detroit Edison stated that it does not currently have the requested information and that it would require substantial time and effort to create it. The Commission is also aware that the Staff's June 13, 2006 reply indicates that, in the event that Detroit Edison cannot now provide the required information, the company should be directed to (1) file a statement that it is incapable of providing the data, and (2) file a schedule that clearly shows Detroit Edison's projected electric choice migration by rate schedule within 5 days from the date of the order.

The Commission required the filing of this information to ensure that the parties and the Commission would have the ability to track the effect of the known and measurable changes proposed by Detroit Edison of Detroit Edison's proposed rates. The Commission also required this information to expedite this proceeding.

The Commission intends to keep this proceeding on a fast track to decision. Accordingly, the Commission finds that Detroit Edison should be given the opportunity to create and file the required information by 5:00 p.m., Friday, June 23, 2006, or bear the consequences of its failure to do so. Toward that end, the Commission directs Detroit Edison to submit a letter to the Commission's Executive Secretary by noon, Tuesday, June 20, 2006 indicating one of the following:

- a. That the company intends to fully comply with the requirement to provide the information sought in the Staff's June 8, 2006 motion to compel, or
- b. That the company is incapable of creating and filing the required information by 5:00 p.m., Friday, June 23, 2006.

Detroit Edison's selection of option "b" shall obligate the company to simultaneously file the schedule requested by the Staff that shows Detroit Edison's projected electric choice migration by rate schedule.

Energy Michigan's request for the Commission to make specific rulings on proposals by Mr. Falletich regarding his proposal to allocate 100% of the \$45 million proposed rate increase is mooted by the determination that this case is limited to the scope as set forth in the March 23 and May 25 orders and the case's caption, namely whether Detroit Edison's rates should be decreased. Further, although not intending to prejudge any issue, the Commission would like to indicate its continuing support for the findings set forth in its December 22, 2005 order in Case No. U-14399.

The Commission also rejects Energy Michigan's request to reverse the May 25, 2006 order that denied Energy Michigan's request for a declaratory ruling at this time. Energy Michigan's June 8, 2006 pleading is simply not an appropriate vehicle for petitioning the Commission to rehear that order. Petitions for rehearing are governed by R 460.17403 (Rule 403). If the Commission were to have construed Energy Michigan's June 8, 2006 filing as a petition for rehearing, Rule 403 would require the Commission to delay a determination on that issue for at least 21 days to allow time for the filing of responses.

Finally, given the rulings set forth in this order, the Commission finds that the Attorney General's request for the scheduling by the Commission of another prehearing conference should be denied. However, nothing in this ruling is meant to preclude Administrative Law Judge Daniel E. Nickerson, Jr., from scheduling another prehearing conference if he finds it appropriate to do so.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. Detroit Edison's request for issuance of a new notice of hearing should be denied.
- c. The Staff's June 8, 2006 motion to compel should be granted as set forth in the order.

THEREFORE, IT IS ORDERED that:

- A. The Detroit Edison Company's request for issuance of a new notice of hearing is denied.
- B. By June 20, 2006, The Detroit Edison Company shall inform the Commission's Executive Secretary whether it will either fully comply with the requirement to provide the information sought in the Commission Staff's June 8, 2006 motion to compel or file a statement that the company is incapable of creating and filing the required information by 5:00 p.m., Friday, June 23, 2006.
- C. If The Detroit Edison Company files a statement on June 20, 2006 that the company is incapable of creating and filing the required information by 5:00 p.m., Friday, June 23, 2006, The Detroit Edison Company shall simultaneously file the schedule requested by the Commission Staff that shows the company's projected electric migration by rate schedule.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chairman

(S E A L)

/s/ Laura Chappelle

Commissioner

/s/ Monica Martinez

Commissioner

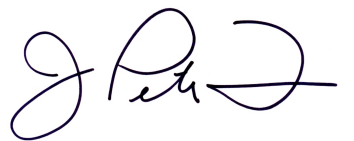
By its action of June 15, 2006.

/s/ Mary Jo Kunkle

Its Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

By its action of June 15, 2006.



Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-14838

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on June 15th 2006, A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Patricia
A. Fronta

Digitally signed by Patricia
A. Fronta
DN: CN = Patricia A.
Fronta, C = US, O = Case
Management, OU = MPSC
Date: 2006.06.16 13:34:36
-04'00'

Patricia Fronta

Subscribed and sworn to before me
this 15th day of June 2006

Sharron A.
Allen

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o=MPSC, ou=Case Management,
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Date: 2006.06.16 12:35:10 -04'00'

Notary Public, Ingham County, Michigan
My Commission expires August 16, 2011

SERVICE LIST FOR DOCKET # U – 14838 CASE #

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