

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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
Paperless/Efiling

**REPLY BRIEF OF THE
MICHIGAN ENVIRONMENTAL COUNCIL AND THE
PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN**

The Michigan Environmental Council (MEC) and the Public Interest Research Group in Michigan (PIRGIM), file this reply brief in this case in accordance with the schedule set by the presiding Administrative Law Judge (ALJ).

- I. DECo's PSCR rate recovery request applicable to several costs, including fuel, purchased power, transmission, and emission allowance costs, could be mitigated and minimized with the adoption of demand side management, load mitigation, energy efficiency, and energy conservation programs.**

The evidence submitted in this case establishes that DECo is claiming substantial PSCR rate recoveries for fuel, purchased power, transmission, and pollution emission or emission allowance costs. In contrast, DECo has made no ascertainable evidentiary presentation on its efforts to mitigate or minimize these costs, or to consider and adopt alternative resources or strategies for meeting its customers energy demands, and in minimizing its costs. Instead, DECo essentially seeks "carte blanche" cost-pass-through of these costs in its PSCR rate factors. DECo's approach is contrary to the duties assigned the utility (and Commission) under Act 304, including Sections 6j(3) and 6j(6), MCL 460.6j(3) *et seq.*

Both on a short-term and long-term basis, the sizeable and growing costs for fuel, purchased power, transmission, and emission or emission allowance costs, all could be mitigated or minimized through the adoption of Commission decisions and policies requiring that the utility develop and implement cost effective integrated resource planning, demand-side management, load mitigation, energy efficiency programs, and energy conservation strategies and programs (sometimes collectively referred to herein as “energy efficiency programs”).

The stricken testimony of MEC/PIRGIM witnesses Crandall and Kushler also establish directly that these various costs could be mitigated or minimized through the adoption of the above referenced programs. Witness Crandall also identified and calculated fuel and purchased power costs that DECo could save in 2006 from energy efficiency and demand management programs (wholly aside from the additional benefits arising from avoided NO_x allowances and transmission costs).

II. The Commission has full jurisdiction and authority to require the above referenced energy efficiency programs and resource planning, which authority has been re-enforced by several decisions of the Michigan Courts.

MEC/PIRGIM’s initial brief establishes that the Commission possesses full jurisdiction and authority under its various enabling statutes, and also Act 304, to implement the various resource planning and energy efficiency programs referenced above.

As a separate and additional basis of jurisdiction and authority, the Michigan Courts have strongly affirmed the position that the MPSC has full ratemaking authority to make downward rate adjustments in a utility’s rates if the utility fails to undertake reasonable and prudent action in the provision of electric service or in minimizing costs (e.g. *Union Carbide Corporation v Public Service Commission*, 431 Mich 135; 428 NW2d 322 (1988); *City of Detroit v PSC*, 308 Mich 706; 14 NW2d 784 (1944)). The Commission has the power and ability to ensure that the ratepayers do not become solely responsible for paying unnecessary or unwarranted expenses, or

for the assignment of costs that should be shared by the utility's stockholders through a balancing of utility shareholders and ratepayers (e.g. *City of Detroit, Id.*).

III. MEC/PIRGIM support Staff's position to reject DECo's proposed customer choice PSCR matrix and inclusion of 2005 claimed under-recoveries in its 2006 Plan case.

MEC/PIRGIM support Staff's position recommending rejection of DECo's request to establish a PSCR matrix of variable rate factor charges based upon the number of customers returning to bundled service, and also DECo's inclusion of claimed 2005 under-recoveries in this 2006 Plan case.

First, neither of these requests are consistent with any provision of Act 304. Instead, Act 304 envisions that these matters be reviewed in the reconciliation phase of an Act 304 case.

Second, neither of these requests represent the type of variable costs that cannot be easily reviewed in a reconciliation case.

Third, these requests add unnecessary complexity to Act 304 Plan cases. The request for the 2005 under-recovery seeks to prejudge and duplicate the 2005 PSCR reconciliation, which is already underway. The customer choice PSCR charge matrix does not represent an "expense" or a "mechanism" recognized by Act 304, and is not a cost that is so variable that it needs to be covered by a matrix mechanism. The matrix also represents another attempt to insulate DECo from risks of any kind – including costs and risks that DECo itself should address and minimize rather than to seek yet another unnecessary adjustment clause unauthorized by Act 304.

IV. CONCLUSION AND RELIEF

Based upon the above, and the initial brief filed by MEC/PIRGIM, and also based upon the April 19, 2006, application for leave to appeal and brief in support thereof, MEC/PIRGIM request the following relief in this case:

(A) that the ALJ reconsider and reverse his rulings of April 5, 2006: striking the testimony of MEC/PIRGIM's witnesses; denying MEC/PIRGIM's motion to postpone these proceedings to require DECo to refile its deficient and incomplete plan and forecast case; and denying MEC/PIRGIM's Motion for Declaratory Ruling;

(B) that the ALJ recommend in his Proposal For Decision (PFD) that DECo be required to implement appropriate resource planning and energy efficiency programs as referenced above;

(C) that the ALJ recommend that the Commission issue findings and a Section 6j(7) warning that DECo's PSCR rate factors may be reduced in the future due to its failure to undertake cost effective resource planning and energy efficiency programs;

(D) that DECo's PSCR rate request in this case be reduced to recognize the PSCR costs that could be reduced, and are being unnecessarily charged in this case, due to DECo's failure to have implemented resource planning and energy efficiency programs; and

(E) such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Mary E. Turney, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on **May 17, 2006**, a copy of **REPLY BRIEF OF MICHIGAN ENVIRONMENTAL COUNCIL AND PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN** in the above-captioned proceeding was served upon:

SEE ATTACHED SERVICE LIST

Service was accomplished by depositing same in a regular United States Post Service mail depository, enclosed in envelopes bearing first-class postage, fully prepaid and properly addressed, and via electronic mail.

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Mary E. Turney

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

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Acting in Ingham County, Michigan
My Commission expires: April 5, 2011

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U-14702

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