

S T A T E O F M I C H I G A N
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 1997) metered jurisdictional sales of electricity.)	Case No. U-11175
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At the November 25, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On September 30, 1996, The Detroit Edison Company (Detroit Edison) filed an application requesting authority to implement a power supply cost recovery (PSCR) plan for 1997, pursuant to 1982 PA 304, MCL 460.6h et seq.; MSA 22.13(6h) et seq., (Act 304). The plan projected that Detroit Edison would incur \$621,892,000 in net power supply costs in 1997 to provide service for 46,805 gigawatt-hours of customer load, exclusive of interruptible service under its R-10 tariff and special manufacturing contracts. The proposed PSCR factor was negative 2.37 mills per kilowatt-hour. Ex. A-15.

At a prehearing conference on November 4, 1996, Administrative Law Judge James N. Rigas (ALJ) granted leave to intervene to Attorney General Frank J. Kelley (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), and the Residential Ratepayer Consortium (RRC). The Commission Staff (Staff) also appeared.

At the same prehearing conference, the ALJ denied Detroit Edison's motion to adjourn the case or, in the alternative, to suspend or postpone proceedings on the five-year forecast. Detroit Edison filed an application for leave to appeal that ruling. On December 12, 1996, the Commission granted Detroit Edison leave to appeal, adjourned proceedings on the five-year forecast until further order of the Commission, and suspended discovery relating to the five-year forecast.¹ As a result of the limited scope of proceedings since that order, today's decision addresses only the 1997 PSCR plan year and not the "out" years (1998-2001) of the five-year forecast.²

The ALJ conducted evidentiary hearings on Detroit Edison's PSCR plan from February 27 through June 30, 1997. Thereafter, Detroit Edison, the RRC, the Attorney General, and the Staff filed briefs, and Detroit Edison, the RRC, ABA TE, and the Attorney General filed reply briefs. On September 15, 1997, the ALJ issued a Proposal for Decision (PFD) recommending that the 1997 PSCR plan be adopted. The RRC and the Attorney General filed exceptions, and Detroit Edison and the Staff filed replies to exceptions.

The basis for the PFD's recommendation was the ALJ's findings that Detroit Edison met its burden of proving that its PSCR plan was reasonable and prudent, that there was no evidence put forward by the other parties to support a contrary finding, and that Detroit Edison's projected 1997 fuel

¹Disputes related to the discovery and use of commercially sensitive information continued after the December 12, 1996 order. On February 11, 1997, the Commission determined that a protective order was necessary, and the ALJ issued the protective order on February 27, 1997. On April 29, 1997, the Commission modified the ALJ's protective order in some respects.

²On July 31, 1997, the Commission issued an order resuming proceedings on the five-year forecast. On September 2, 1997, Detroit Edison filed a petition for rehearing that is now pending.

costs are less than those it incurred in 1979. The ALJ rejected the Attorney General's and the RRC's procedural challenges based on their asserted lack of access to information that they needed to address some of the issues. The ALJ stated that it was not reasonable to expect Detroit Edison to file a plan with enough detail to anticipate and respond to the intervenors' specific issues. The ALJ emphasized that the actual PSCR costs incurred by Detroit Edison in 1997 would be reviewed in the reconciliation case. PFD at 18-19.

In their exceptions, the RRC and the Attorney General argue that the ALJ shifted the burden of proof from Detroit Edison to the intervenors and committed other procedural errors. These intervenors contend that Detroit Edison's evidence lacked sufficient detail or information to meet the standards of Act 304, which requires a utility to include the following in its plan:

[A] utility annually shall file . . . a complete power supply cost recovery plan describing the expected sources of electrical power supply and changes in the cost of power supply anticipated over a future 12-month period The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

MCL 460.6j(3); MSA 22.13(6j)(3). The Attorney General argues that a utility's obligation to file a detailed PSCR plan in full compliance with Act 304 is essential if the Commission is to discharge its statutory responsibility to evaluate the reasonableness and prudence of the plan.

The RRC characterizes the testimony filed by the Detroit Edison witnesses as unsupported conclusions asserting opinions as though they were fact. The Attorney General and the RRC say that Detroit Edison's plan offered nothing more than summations of expenses covering broad categories of PSCR costs. As examples of the lack of supporting details, they note that the plan does not reveal Detroit Edison's forecast of spot market coal prices or the amounts it expects to purchase, its coal transportation costs, the cost effects of changes in contracts with coal suppliers, the heating value of its coal sources, or the sources and prices of its natural gas purchases. The RRC faults the ALJ for concluding that the plan is reasonable without undertaking any analysis as to how the record supports that conclusion.³

The Attorney General and the RRC argue that the ALJ shifted the burden of proof to them by stating that it was incumbent upon the intervenors to provide evidence showing that Detroit Edison's plan was unreasonable. The Attorney General contends that imposing the burdens of production and persuasion on the utility is in accord with Act 304's policy of ensuring that a utility's PSCR costs undergo intensive scrutiny. The Attorney General recommends that the Commission grant only a conditional approval of Detroit Edison's plan and subject it to further de novo review in the reconciliation case. The RRC recommends that the Commission withhold a finding that the plan is reasonable.

Detroit Edison says that the substantial evidence sponsored by its five witnesses meets Act 304's requirements and demonstrates the reasonableness of its plan. Detroit Edison points out that no party offered evidence to

³The RRC adds that the PFD's statement that the 1997 PSCR plan costs are less than those incurred in 1979 is irrelevant, given the lack of a showing that 1979 and 1997 are comparable.

the contrary. Detroit Edison observes that its projected 1997 PSCR costs are 1.3% lower than those in its 1996 plan, which the Commission approved in the September 12, 1996 order in Case No. U-10965.

The Commission finds that the evidentiary support for Detroit Edison's PSCR plan meets the standard governing PSCR plan cases in Act 304. As Detroit Edison contends, its witnesses provided a forecast of the utility's PSCR costs and revenues in 1997 and an uncontroverted evaluation of the reasonableness of the plan. No evidence was put forward to contradict or undermine their testimony.⁴

The Attorney General also challenged two power transactions in the plan: Detroit Edison's lease of 312 megawatts (MW) of its capacity in the Ludington Pumped Storage Hydroelectric Plant to The Toledo Edison Company (Toledo Edison) and its concomitant purchase of 300 MW of summer capacity from Ontario Hydro. The Attorney General's position was that more information was necessary to determine whether each transaction individually or both transactions viewed as a package were reasonable. The Attorney General recommended that Detroit Edison be ordered to undertake this review in the reconciliation case.

The ALJ rejected the Attorney General's position. The ALJ found that the two transactions should be viewed as a whole because they are mutually dependent on each other from the standpoint of Detroit Edison's system planning. The ALJ further found that the transactions were reasonable and did reduce costs. PFD at 19.

In his exceptions, the Attorney General argues that Exhibit I-16, a copy of the cost justification of the Ludington lease that Detroit Edison submit-

⁴However, this finding does not preclude a reexamination of the issues of reasonableness and prudence in the PSCR reconciliation case.

ted to the Federal Energy Regulatory Commission, raises doubts as to the economic justification for the transactions. According to the Attorney General, Exhibit I-16 shows that the total lease revenues for 1997 are less than the costs associated with the Ludington capacity. The Attorney General disputes Detroit Edison's claim that the lease affects capacity that would otherwise be underused, arguing that Ludington's low energy output is consistent with its role as peaking capacity. The Attorney General also questions Detroit Edison's claim that the net effect of both transactions will be cost savings of more than \$10 million, arguing that there is no evidence showing that either transaction was conditioned upon the other. The Attorney General urges the Commission to evaluate the transactions in light of all their consequences, some of which have not yet been disclosed by Detroit Edison.

The Attorney General further argues that the reconciliation case is an appropriate forum for conducting this evaluation. He notes that the Commission's previous approval of the arrangement was ex parte. October 25, 1995 order in Case No. U-10939, aff'd sub nom Attorney General v Public Service Comm, 220 Mich App 561; 560 NW 2d 348 (1996). Thus, the Attorney General reasons, a contested case hearing on this issue should be conducted in the reconciliation because there has not yet been an opportunity to review the transactions. To support this position, the Attorney General observes that, in affirming the Commission's ex parte approval in Case No. U-10939, the Court stated that this action was subject to "the understanding that any party could dispute the reasonableness and prudence of the purchase at least in a power supply cost recovery case and perhaps in a general rate case." Attorney General v Public Service Comm, supra at 566.

Detroit Edison responds that it sponsored substantial evidence supporting the reasonableness of the transactions with Toledo Edison and Ontario Hydro and that, absent new or additional evidence to the contrary, there is no need to make a provision for further hearings.

The Staff agrees with Detroit Edison's economic evaluation, which indicates that the two transactions together produce a net savings of \$10.3 million.

The Commission finds that nothing in the record rebuts Detroit Edison's evidentiary presentation regarding the Ludington lease or the Ontario Hydro purchases. Detroit Edison witness James H. Byron described the transactions and provided an analysis showing that together they produce cost savings. Although the Commission will not adopt the Attorney General's recommendation to require Detroit Edison to reopen these issues in the reconciliation case, it also does not foreclose the parties from addressing the transactions as appropriate in the reconciliation or other future PSC R proceedings.

The Attorney General raises an issue regarding the scope of cross-examination. The ALJ's ruling in question was the last of a series of rulings relating to cross-examination, which began when Detroit Edison witness David H. Hicks testified on February 27, 1997 regarding Detroit Edison's fuel supply contracts and projected fuel costs for 1997. During that hearing, the ALJ sustained objections to cross-examination on the ground that the questions sought protected information. Tr. 376-78, 394-95. In response to an application for leave to appeal filed by the Attorney General and the RRC, the Commission issued an order on April 29, 1997 reversing the ALJ's rulings and remanding the matter for further cross-examination. The ALJ set a hearing for June 30, 1997 to recall Mr. Hicks

in accordance with the Commission's April 29, 1997 order. At a preliminary hearing on June 12, 1997, the ALJ ruled that Mr. Hicks' cross-examination would be limited to the specific issues discussed in the Commission's order, which related to the minimum and maximum tonnages in Detroit Edison's coal supply contracts. Tr. 689-97.

The Attorney General challenges the June 12, 1997 ruling by the ALJ in his exceptions. The Attorney General argues that the purpose of cross-examination is to elicit relevant information and that this purpose was defeated by the ALJ's overly restrictive interpretation of the Commission's April 29, 1997 order. The Attorney General says that if he had been permitted to cross-examine Mr. Hicks, he might have elicited evidence showing whether Detroit Edison's fuel procurement decisions were reasonable.

The Staff agrees with the Attorney General that the ALJ's limitation of cross-examination was improper.

Detroit Edison responds that the ALJ acted properly in restricting cross-examination as a means of protecting confidential information.

The Commission finds that the Attorney General's exception should be rejected. The ALJ permitted cross-examination to proceed as directed in the Commission's April 29, 1997 order. The Commission, in issuing that order, did not intend to remove all constraints on cross-examination or to allow the parties to circumvent earlier rulings regarding the protection of confidential information. The ALJ struck an appropriate balance between the interests of Detroit Edison in protecting commercially sensitive information and the public in conducting a thorough examination of Detroit Edison's PSCR plan case.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; MSA 22.13(6h) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AAC S, R 460.17101 et seq.

b. Based on the record in the present case, Detroit Edison's 1997 PSCR plan and factors should be approved.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's 1997 power supply cost recovery plan is approved.

B. During 1997, The Detroit Edison Company is authorized to implement a power supply cost recovery factor of negative 2.37 mills per kilowatt-hour.

C. Within 30 days of the date of this order, The Detroit Edison Company shall file tariff sheets reflecting the power supply cost recovery factor approved by this order.

D. Should The Detroit Edison Company desire to apply a lesser power supply cost recovery factor than that approved by this order, it shall notify the Commission ten days prior to the use of the lesser factor and shall file during that billing month tariff sheets showing the lesser factor applied.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

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MICHIGAN PUBLIC SERVICE COMMI

(S E A L)

/s/ John G. Strand
Chairman

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of November 25, 1997.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated November 25, 1997 approving the power supply cost recovery plan and factor proposed by The Detroit Edison Company, as set forth in the order.”