

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 January 28, 1998 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 and factors for 1997, pursuant to 1982 PA 304 (Act 304), MCL 460.6h et seq.; MSA 22.13(6h) et seq. As required by Act 304, it also filed a five-year forecast of power supply requirements, sources, and costs. 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 participated in the case.

After preliminary proceedings, the Commission issued an order on December 12, 1996 granting Detroit Edison's request to adjourn proceed-

ings on the five-year forecast. On July 31, 1997, the Commission issued an order requiring that proceedings on the five-year forecast resume. In response to that order, only Detroit Edison filed testimony and exhibits.¹

On November 26, 1997, the Attorney General filed a motion to submit the five-year forecast to the Commission without further hearings, the submission of briefs, the issuance of a proposal for decision, or the filing of exceptions and replies to exceptions. He stated that the remaining issue in the case was whether the Commission should warn Detroit Edison, pursuant to MCL 460.6j(7); MSA 22.13(6j)(7), that there are costs in the five-year forecast that the Commission would be unlikely to permit Detroit Edison to recover from its customers. The Attorney General asserted that the protective order under which the parties had access to Detroit Edison's information did not permit them to have a basis for seeking any warnings. He therefore concluded that the case should be submitted to the Commission without further proceedings, which would permit the Commission to determine independently whether to issue any warnings.

ABATE, the RRC, and the Staff filed responses indicating no objection to the relief requested in the motion. Detroit Edison also filed a response indicating no objection to the relief, although it would not accept all of the conclusions and characterizations in the motion. It also suggested that it would be appropriate for the testimony and exhibits that it filed to be bound into the record, and asserted that the Commission should explicitly conclude that the parties had waived their rights to

¹On November 25, 1997, the Commission issued an order addressing the other issues in the case; i.e., the issues related to the 1997 PSCR plan and factors.

cross-examine the company's witnesses and to submit briefs, reply briefs, exceptions, and replies to exceptions.

On December 17, 1997, the ALJ issued a ruling granting the Attorney General's motion, binding the testimony and exhibits of Detroit Edison's witnesses into the record, and transmitting the matter to the Commission.

On the record submitted to it, the Commission finds no reason to issue any warning that it would be unlikely to permit Detroit Edison to recover certain costs from its customers. The Commission therefore does not issue any warnings, and this docket may be closed, although this action does not end the review of the years covered by the forecast. The first year (1997) remains at issue in the 1997 PSCR reconciliation, Case No. U-11175-R, to be filed by March 31, 1998. The last four years (1998-2001) are at issue in the 1998 PSCR plan and forecast, Case No. U-11528. The parties remain free to propose (and the Commission to order) disallowances in Case No. U-11175-R and the parties remain free to request (and the Commission to issue) warnings in Case No. U-11528. Consequently, granting the Attorney General's motion, as the ALJ recommended, will prevent the simultaneous review of the same information in multiple proceedings.

In light of this conclusion, Detroit Edison's September 2, 1997 petition for rehearing and motion for stay of the July 31, 1997 order that required the resumption of proceedings on the five-year forecast may be denied as moot.

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. The record does not justify the issuance of any warnings under MCL 460.6j(7); MSA 22.13(6j)(7).

c. Detroit Edison's September 2, 1997 petition for rehearing and motion for stay should be denied.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing and motion for stay filed by The Detroit Edison Company on September 2, 1997 are denied.

B. This docket is closed.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner, concurring in a separate opinion.

By its action of January 28, 1998.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated January 28, 1998 concluding action on The Detroit Edison Company’s 1997 power supply cost recovery case and denying the company’s petition for rehearing and motion for stay, as set forth in the order.”

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SEPARATE CONCURRING OPINION OF COMMISSIONER DAVID A. SVANDA
(Submitted on January 28, 1998)

I join with my colleagues in approving today's order to close the docket in Case No. U-11175. Although I concur with the majority that it is time to end this case, I believe that the earlier grant of a protective order (February 11, 1997) to The Detroit Edison Company (Detroit Edison) may have led to today's result. As I noted in my separate opinions in this case issued on February 11, 1997 and April 29, 1997, protective orders tend to disadvantage parties in power supply cost recovery (PSCR) proceedings. The claims made by Detroit Edison in January, 1997 that normal disclosure of PSCR information would result in defined and serious injury due to the imminent development of a competitive market were unfounded. Instead, it appears that this entire effort has resulted in a misapplication of scarce resources that could have been better utilized in the serious development of that same competitive market that would make these types of proceedings unnecessary. Until competition in the electricity industry arrives, access to information by interested parties, unfettered by protective agreements is essential.

MICHIGAN PUBLIC SERVICE COMMISSION

David A. Svanda, Commissioner