

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
THE DETROIT EDISON COMPANY)
for accounting authority related to the)
accelerated amortization of the Fermi 2)
Nuclear Generating Plant.)
_____)

Case No. U-11726

OPINION AND ORDER

December 28, 1998

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At the December 28, 1998 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

OPINION AND ORDER

I.

BACKGROUND

In order for Michigan’s customers to begin receiving the benefits of a competitive electric generation market, the Commission issued an order on June 5, 1997 in Case No. U-11290 (the June 5 order) setting forth the framework for implementing open access in Michigan. Among other things, that order did the following: First, it concluded that approximately 2½% of each Michigan electric utility’s retail load should become eligible for open access each year from 1997 through 2001, beginning with 225 megawatts (MW) for The Detroit Edison Company (Detroit Edison), 150 MW for Consumers Energy Company (Consumers), and equivalent amounts for other utilities. Second, it held that the phase-in schedule should be applied equally to all customer classes. Third,

it directed that all remaining customers would be given the option of choosing their power suppliers in 2002. Fourth, it stated that, if prudently incurred, five categories of stranded costs should be recovered by the utilities: (1) capital costs of nuclear plants, (2) regulatory assets, (3) capacity costs arising from power purchase agreements, (4) employee retraining costs, and (5) costs related to the implementation of restructuring. Fifth, it indicated that some mechanism should be developed to true up (on an annual basis) the amounts collected through transition and implementation surcharges paid by customers electing to use open access, on the one hand, and each utility's actual stranded costs, on the other. Sixth, it established December 31, 2007 as the last day for recovering stranded costs. Seventh, it directed Consumers and Detroit Edison to file all tariffs necessary to implement open access service in a manner consistent with that order, as well as proposals for an annual stranded cost true-up mechanism. Eighth, it directed the Commission Staff (Staff) (after conducting a series of public meetings) to develop a methodology for implementing a Michigan or regional independent system operator and to explore other methods of addressing market power issues, including the adoption of standards of conduct. Ninth, recognizing that customers will need access to sufficient and reliable information in order to compare and select among products and services provided in the electricity market, it requested the Staff to (1) review existing billing practices and available sources of customer information and (2) report to the Commission regarding any steps that should be taken to ensure or enhance customer education.

After the utilities made the filings required by the June 5 order, the Commission issued an order on July 14, 1997 in Case No. U-11290 et al. establishing contested case proceedings in several new dockets. These included Case No. U-11451 (Consumers' direct access tariff), Case No. U-11452 (Detroit Edison's direct access tariff), Case No. U-11449 (Detroit Edison's request to suspend its power supply cost recovery clause), and Case No. U-11454 (stranded cost true-up

mechanism for Consumers and Detroit Edison). On October 29, 1997, the Commission issued several orders addressing the issues raised in those dockets. It also issued an order in Case No. U-11290 suspending the bidding process for the first increment of open access capacity to provide time to implement those orders.

In Case No. U-11452, the Commission specifically authorized Detroit Edison to recover its stranded costs, in part, by including a transition charge in its open access tariff. Similarly, in Case No. U-11454, it concluded that:

In the context of restructuring the electric industry, utilities are seeking only to recover prudently incurred costs that will become stranded in the transition. Those are costs that the Commission has previously reviewed and incorporated into the utilities' rates. Customers who choose to continue as full-service customers of [Detroit Edison] will continue to pay those stranded costs in their bundled rates. Customers who choose to obtain generation services elsewhere will pay those stranded costs for their continued use of the distribution system. Either way, customers will pay those costs in connection with services over which the Commission has jurisdiction . . .

October 29, 1997 order in Case No. U-11454, p. 6.

Several parties requested rehearing concerning the orders issued in those dockets. One of the key points raised in the requests for rehearing was the Commission's decision not to make any findings regarding the calculation of stranded costs for Consumers and Detroit Edison in the context of Cases Nos. U-11451 and U-11452, thus leaving the issue for resolution in future true-up proceedings. The Commission clarified this issue in its January 14, 1998 order on rehearing in Case No. U-11290 et al., in which it stated that:

The Commission has been, and remains, concerned about the wide variation in estimates of the utilities' stranded costs and in the assumptions needed to calculate those costs. Nonetheless, the Commission has now determined that it would be beneficial to the open access process to make an initial estimate of stranded costs and related charges.

January 14, 1998 order, p. 12. According to the Commission, establishing an initial estimate of stranded costs would help customers make informed decisions before committing to open access and “should simplify and help to expedite the true-up process.” Id.¹

Relying on what can best be described as highly uncertain assumptions regarding the market price of power and the number of customers that will ultimately choose open access, the Commission estimated that Detroit Edison’s total stranded costs would be approximately \$2.4 billion, that \$1.95 billion of those stranded costs would come from its Fermi 2 Nuclear Generating Plant (Fermi 2), and that a transition charge of 1.25¢ per kilowatt-hour (kWh) would be needed to recover those costs from every Detroit Edison customer that takes open access service.² It went on

¹Despite reaching that conclusion, the Commission went on to explain the reasons for its continued hesitancy in issuing a precise stranded cost estimate. Specifically, it stated that:

The June 5 order pointed out that there existed a great diversity of opinion regarding the estimated market price of power. It indicated that Detroit Edison used a price of 2.53¢/kWh in 1997 with escalations thereafter, that Consumers used approximately the same, that ABATE used 3.4 ¢/kWh, that Energy Michigan used a range of 3.24 to 3.35¢/kWh, and that the Attorney General estimated a market price of 3.9¢/kWh in 2000. The record in Cases Nos. U-11451 and U-11452 has done little to narrow the range of expected market prices.

* * *

[Moreover,] the number of customers choosing open access is impossible to predict with any degree of certainty at this time. The customer participation level will have a significant effect upon the amount of stranded costs (if half as many participate, the total stranded costs will be about half as much).

Id., pp. 13-14.

²The primary assumptions relied on by the Commission were that the market price of power would be 2.9¢ per kWh and that all of Detroit Edison’s customers would choose open access in 2002. The first assumption was roughly the midpoint of the estimates proposed by the parties in Case No. U-11290 et al. See, the January 14, 1998 order at 13. The second assumption represents the adoption of Detroit Edison’s prediction in that case regarding the number of customers that would opt for open access. Id., at 14.

to emphasize that those stranded cost calculations were heavily dependent on the assumptions used. Specifically, the Commission noted that if the actual number of open access customers were only half of that assumed when undertaking its estimate, Detroit Edison's total stranded costs would drop by approximately \$1.2 billion. Similarly, it noted that "if the market price of power were to change by more than 0.5¢ per kWh from the assumed level of 2.9¢ per kWh, then the estimated stranded costs would change by more than \$750 million." *Id.*, p. 15.

II.

HISTORY OF PROCEEDINGS

On July 1, 1998, Detroit Edison filed an application seeking authority to revise its accounting procedures to allow for the accelerated amortization of Fermi 2 (and its related regulatory assets) in a manner that will assure full recovery of the utility's investment in the plant by the December 31, 2007 deadline for stranded cost recovery. Among other things, Detroit Edison sought specific approval of its plan to increase its annual amortization of Fermi 2 net plant investment by \$144.2 million effective January 1, 1999. According to the application, this proposed increase will allow the plant's net asset balance to be recovered over the next 9 years (from 1999 through 2007) instead of over the next 26 years (1999 through 2025) as would occur if the utility's existing depreciation schedule remains unchanged. The application went on to assert that granting Detroit Edison's request for accelerated amortization is necessary to ensure that both those customers that switch to open access service and those that remain full-service customers of the utility pay their appropriate shares for the "return of" the utility's investment in Fermi 2.

Pursuant to due notice, a prehearing conference was held on August 4, 1998 before Administrative Law Judge Robert E. Hollenshead (ALJ). At the prehearing conference, the ALJ granted

petitions to intervene filed by Attorney General Frank J. Kelley (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, and the Residential Ratepayer Consortium. The Commission Staff (Staff) also participated in the proceedings.³

Evidentiary hearings were conducted on August 25 through 27, September 28 through 30, and October 1, 1998. The record consists of 1,194 pages of transcript and 34 exhibits, 33 of which were admitted into evidence.

Detroit Edison, the Staff, the Attorney General, ABATE, and Energy Michigan filed briefs and reply briefs on October 26 and November 9, 1998, respectively.⁴ The Commission agreed to read the record, thus dispensing with the need for a proposal for decision, exceptions, and replies to exceptions.

III.

POSITIONS OF THE PARTIES

Detroit Edison

In support of its application, Detroit Edison provided testimony from three witnesses during the direct phase of the case and eight during rebuttal. These witnesses testified that although Detroit Edison “is deeply committed to moving the electric utility industry in Michigan to a competitive environment,” the utility cannot reasonably abide by the open access program described in the Commission’s prior orders. 4 Tr. 254. They claim this is due to the fact that, as

³On October 1, 1998, a special appearance was also entered on behalf of a non-party deponent called by Detroit Edison. That individual’s participation in this case, which included filing a reply brief, was limited to issues concerning his deposition and is discussed later in this order.

⁴On December 8, 1998, ABATE filed additional arguments in support of its position.

currently designed, the Commission's program "does not provide Detroit Edison a reasonable opportunity for full recovery of approved Fermi 2 assets" by the December 31, 2007 stranded cost recovery deadline. Id.

Specifically, Detroit Edison's witnesses note that the Commission's prior orders regarding open access authorized recovery of Fermi 2's net asset balance in two ways. First, customers electing to remain full-service customers of Detroit Edison would continue to pay the bundled rates set by the Commission, which include a component for recovery of the utility's investment in Fermi 2. Second, customers opting for open access service would, until January 1, 2008, pay a transition charge that includes a component for the recovery of their share of the Fermi 2 assets. However, these witnesses go on to note, the utility's "current bundled rates presume that all of its [full-service] customers will continue to pay rates reflecting Fermi 2 cost components" through the expiration of the plant's operating license in 2025. 5 Tr. 353. Detroit Edison contends that this structure makes it highly unlikely that all of its Commission-approved investment in Fermi 2 can be recovered, thus resulting in a significant amount of stranded investment. This conclusion follows because any full-service customers that wait until the end of the transition period on December 31, 2007 before opting for open access will escape payment for their full share of the Fermi 2 cost recovery. 4 Tr. 260; 5 Tr. 353-354.

Detroit Edison claims that such a result would be inequitable and in conflict with the Commission's prior orders regarding restructuring the electric industry. To avoid this, the utility seeks authority to increase its annual amortization of the Fermi 2 net plant investment by \$144.2 million starting January 1, 1999. According to Richard C. Viinikainen, Manager of Rates and Financial Evaluation for Detroit Edison, "this will ensure that both customers going [to open access] and customers staying with the Company pay for the 'return of' investment" in Fermi 2 before the

stranded cost recovery deadline of December 31, 2007. 5 Tr. 357. Mr. Viinikainen further noted that (1) the “Wolverine buyback⁵ portion of Fermi 2” must be amortized more quickly so that it, too, will be recovered by December 31, 2007, (2) the amortization of deferred taxes and investment tax credits arising from past investment in Fermi 2 likewise must be accelerated so that they are “fed back” by December 31, 2007, and (3) the revenue requirement must be increased to cover additional tax liability “for tax benefits derived from the Fermi 2 plant that were refunded to customers through lower rates during construction of the plant.” 5 Tr. 357-358. Taken as a whole, the utility’s recommended adjustments would increase its annual revenue requirement by a total of \$164.2 million.

Detroit Edison goes on to note that, pursuant to the settlement agreement approved in Case No. U-8789, the utility is scheduled to reduce its revenue requirement by approximately \$170 million effective January 1, 1999. The utility therefore points out that because the revenue requirement reduction from Case No. U-8789 more than offsets the increase requested in the present case, authorizing accelerated amortization for Fermi 2 will require no increase in Detroit Edison’s existing full-service rates.

Finally, the utility contends that rejection of the accounting changes requested in its application could imperil Detroit Edison’s financial position. According to Robert L. Hahne, Managing Director of Public Utility Services for Deloitte & Touche, LLP, when Detroit Edison drops its appeal of the January 14, 1998 order in Case No. U-11290 et al. and begins offering open access

⁵The construction of Fermi 2 was initially a joint venture in which Detroit Edison and Wolverine Power Supply Cooperative, Inc., (Wolverine) agreed to share the plant’s cost of construction and generation output. Detroit Edison subsequently purchased Wolverine’s rights to the plant and placed them in an account whose amortization schedule would have resulted in their full cost recovery by December 31, 2008.

service under the terms established by the Commission, the utility will be required to cease applying Statement of Financial Accounting Standards No. 71 (SFAS 71) to its generation-related assets. 3 Tr. 123-125. Mr. Hahne went on to state that once Detroit Edison ceases applying SFAS 71 to these assets, the utility could be required to perform an “impairment test” pursuant to Statement of Financial Accounting Standards No. 121 (SFAS 121) to determine whether Fermi 2's carrying costs will be recoverable in the future. 3 Tr. 126. Under that test, the sum of the estimated cash flows from each year of Fermi 2's future operation would be compared to the sum of its annual carrying costs. If at any time the total of the predicted cash flows is found to be less than future carrying costs, which the utility's rebuttal testimony indicated was already the case,⁶ Fermi 2 would be considered impaired and Detroit Edison would be required to write down the plant's net asset balance. The utility therefore asserts that unless the Commission approves its request for accelerated amortization, the expected cash flows from its Fermi 2 assets would be inadequate to offset its carrying costs and the impairment test mandated by SFAS 121 would require a huge write-off to Detroit Edison's equity.

Staff

The Staff disagrees with Detroit Edison's assessment that, absent approval of accelerated amortization, Fermi 2 will be considered impaired pursuant to SFAS 121. According to Staff witnesses Gerald F. Geml and George R. Stojic, the utility overestimated the percentage of its customers that would switch from full-service rates to open access. These witnesses further

⁶The Staff objected to the admission of much of this testimony on the grounds that the utility's factual support for finding Fermi 2 to be impaired pursuant to SFAS 121 should have been presented in its direct case, and thus constituted improper rebuttal. The ALJ's rejection of the Staff's motion to strike this testimony, as well as the Staff's request for reversal of the ALJ's decision, is addressed later in this order.

asserted that Detroit Edison understated the likely market price of power that it could expect to receive both now and in the future, and erroneously failed to include all potential sources of revenue when conducting its impairment test. After correcting for these and other alleged errors, Mr. Stojic performed his own test pursuant to SFAS 121 and concluded that Fermi 2 is not impaired at this time. See, Exhibit S-16. Mr. Geml concurred in that conclusion. See, 8 Tr. 496.

Notwithstanding their belief that no impairment currently exists for Fermi 2, the Staff's witnesses went on to assert that "there are a number of reasons it would be beneficial to allow a more rapid amortization of the plant." 8 Tr. 500-501. Specifically, Mr. Geml testified that:

I believe writing the plant off the books as expeditiously as possible will maintain the financial integrity of the company, which will allow it to achieve a number of objectives. It must be remembered that the company will remain regulated and the obligation to serve may require considerable capital outlays in the future to meet loads. It has been demonstrated this past summer that the reserve margins are precariously low and new sources of power will certainly be needed in the future. Secondly, by lowering the company's cost of service in the future, it will assure the company's rates remain competitive. After all, if the goal is to move the Michigan electric industry to a more competitive environment, [then] it is logical to proceed into the future with sound, financially viable utilities. Clearly, this is an enormously expensive plant and in my opinion an expeditious write-off makes sense.

Additionally, the amortization can be achieved without a rate increase due to the scheduled cost of service reductions to become effective on 1/1/99 pursuant to the settlement agreement in Case No. U-8789. Finally, the company has indicated it will not implement a direct access program unless this issue is resolved.

8 Tr. 501-502. The Staff therefore recommends an alternative to Detroit Edison's proposal.

Instead of approving the utility's request to recover all of its Fermi 2 investment by the stranded cost recovery deadline, the Staff suggests authorizing the utility "to amortize enough of the plant to get it down to its fair market value by the end of 2007." Staff's brief, p. 35.

Regardless of which alternative the Commission finds most appropriate, the Staff continues, any order authorizing the accelerated amortization of Fermi 2 should include the following

conditions. First, any change to the utility's revenue requirement "must be adjusted to reflect jurisdictional splits between Michigan retail and [Federal Energy Regulatory Commission (FERC)] jurisdictional wholesale sales." 8 Tr. 547. Assuming that the Commission adopts the utility's more expansive amortization proposal, applying the usual retail/wholesale jurisdictionalization factor of 99% would reduce the change in Detroit Edison's annual revenue requirement from the \$164.2 million requested by the utility to \$163.2 million. Second, the Staff notes that accelerating Fermi 2's amortization would also increase the rate at which the utility must write down the net plant balance. According to Mr. Stojic, this would gradually reduce Detroit Edison's rate base and generate an annual reduction in the utility's revenue requirement. Assuming a pretax recovery of \$163.2 million, he calculated the incremental annual return reduction to be \$14.3 million. Mr. Stojic went on to suggest that, in order to recognize this effect, the Commission should either (1) "predetermine and mandate annual rate reductions" of \$14.3 million to be implemented each year from 1999 to 2007, or (2) order the implementation of a levelized rate reduction of \$62.6 million in 1999. 8 Tr. 548.

Third, because any decision to accelerate the amortization of Fermi 2 will be based on several important (albeit untested) assumptions, the Staff also recommends establishing a way to true up the plant's accelerated recovery. Specifically, Mr. Stojic testified that:

The Commission should open a docket in three years to determine the course of market prices, the results of its customer choice program, and other relevant data on the value of Fermi 2. If market conditions produce prices higher than anticipated, or the economics turn in favor of traditional integrated electric utility operations, the Commission should use the proceeding to adjust the accelerated amortization.

Id. Fourth, the Staff asserts that any approval of accelerated amortization should be conditioned upon a sharing of net proceeds in the event that Detroit Edison subsequently sells Fermi 2 for more than its book value. "To the extent that customers are paying for an accelerated write-down of

[Fermi 2],” Mr. Stojic testified, they should receive the profit gained as a result of that write-down.
8 Tr. 549.

Fifth, the Staff suggests that the Commission should impose some type of safeguard to ensure that if Detroit Edison abandons the plant after being allowed to accelerate its amortization, the utility will continue to meet its obligation to serve its customers at prices that do not exceed the “to go” costs of continuing to operate Fermi 2. Sixth and finally, Staff witness Geml noted that Detroit Edison’s customers currently are paying approximately \$590 million annually to supply the utility with a return of and on its investment in Fermi 2. The Staff therefore asserts that the approval of any accelerated amortization program for Fermi 2 in this case must be tied directly to a \$590 million rate reduction, which will take effect immediately upon the plant’s net asset balance reaching zero.

Attorney General

The Attorney General agrees with the Staff that Fermi 2 cannot be deemed to be impaired within the context of the test set forth in SFAS 121. His conclusion is based on the fact that when one of his own witnesses, Michael J. Majoros, applied the impairment test to Fermi 2, he reached a result that was nearly identical to that of Staff witness Stojic. Specifically, the Attorney General notes, both Mr. Majoros and Mr. Stojic concluded that estimated future cash flows derived from Fermi 2 should significantly exceed the plant’s carrying costs.

Moreover, a second witness offered by the Attorney General, William A. Peloquin, testified that in light of Detroit Edison’s current financial condition, neither the utility’s accelerated amortization proposal nor the Staff’s “more rapid amortization” alternative are necessary to ensure that the utility remains economically sound. Among other things, Mr. Peloquin noted that Detroit

Edison's earnings have exceeded its authorized rate of return for at least the last three years and that the utility's common equity ratio increased from 40% to 48.3% during the same period. 8 Tr. 600-601. Mr. Peloquin also noted that, according to an October 1996 study commissioned by Detroit Edison and conducted by First Chicago Capital Markets, Inc., (the First Chicago study), Fermi 2 could be worth as much as \$1.86 billion in 2005. 8 Tr. 593. According to the Attorney General, this contradicts Detroit Edison's claim that the plant should be assumed to have a value of zero once the transition period ends on December 31, 2007. Although conceding that the First Chicago study listed Fermi 2's estimated value at less than its net book value, Mr. Peloquin further noted that the study found the cumulative value of Detroit Edison's generating plants to be in excess of the utility's net investment in those plants. In light of this testimony, the Attorney General asserts that Detroit Edison is already well situated to compete with other generation suppliers once the market is opened to competition.

Finally, the Attorney General contends that regardless of how the Commission might view the record, a recent decision by the FERC indicates that the Commission cannot grant the relief sought by Detroit Edison. Specifically, he asserts that In re Ohio Edison Co, et al., 84 FERC ¶ 61,157 (August 4, 1998), stands for the proposition that the use of accelerated depreciation "to assign potential stranded costs to current generation customers based on criteria developed by state regulators [violates] FERC accounting rules and generally accepted accounting principles." Attorney General's reply brief, p. 1. The Attorney General therefore concludes that the relief requested by the utility, as well as the alternative relief proposed by the Staff, would not be appropriate even if Fermi 2's circumstances could be shown to satisfy the impairment test.

ABATE

ABATE agrees with the Attorney General that, in light of the First Chicago study and other testimony offered in this case, Detroit Edison is likely to have little in the way of stranded costs even after the advent of open access. Moreover, ABATE's witness in this case, James T. Selecky, warned that approving the utility's application could allow Detroit Edison to "collect dollars from ratepayers that are earmarked for stranded costs that are significantly in excess of [the utility's] actual stranded costs." 9 Tr. 630. According to Mr. Selecky, this is due to the fact that although the transition charge to be imposed on open access customers would be subject to true-up, the increased revenue requirement envisioned in Detroit Edison's application would not.

ABATE likewise agrees with the Staff and the Attorney General that the utility failed to prove that Fermi 2 will constitute an impaired asset under SFAS 121. According to ABATE, the failure in proof arose in significant part from Detroit Edison's decision to refrain from submitting a detailed impairment study in its direct case and to wait until rebuttal before doing so. As a result, ABATE contends, Detroit Edison not only failed to meet the burden of proof, but also neglected to satisfy the burden of going forward.

ABATE concludes by arguing that the record also provides insufficient support for adopting the Staff's "more rapid amortization" proposal. It therefore recommends that the Commission refrain from authorizing any accelerated amortization for Detroit Edison's investment in Fermi 2. Instead, ABATE contends, the Commission should implement a \$170 million rate reduction effective January 1, 1999, which it claims is called for by the settlement in Case No. U-8789. According to ABATE witness Selecky, the best way to accomplish this would be to apply a per kilowatt-hour credit to the bill of each customer (except for those taking service under special manufacturing contracts) as was done in Case No. U-11588. 9 Tr. 635.

Energy Michigan

Energy Michigan asserts that granting Detroit Edison's application will do little to advance the ultimate goal of implementing open access in Michigan. It takes this position for two reasons.

First, Energy Michigan notes, Detroit Edison has consistently indicated that it will not offer open access to any of its customers until it receives a legally enforceable order providing for accelerated amortization of Fermi 2. Energy Michigan continues by noting that Detroit Edison's definition of a "legally enforceable order" is an order that is no longer appealable in any forum or with respect to which all appeals that have been taken have either been decided (with no further appeals possible) or withdrawn. 4 Tr. 320-321. It therefore contends that even if the Commission approves the application and authorizes Detroit Edison to implement accelerated amortization effective January 1, 1999, the utility would likely refuse to offer open access service until at least two or three years later (when all appeals have been exhausted).

Second, Energy Michigan argues that the implementation plan filed by Detroit Edison in Case No. U-11290 is "unworkable, unaffordable, and will take months to revise." Energy Michigan's brief, p. 4. Specifically, it asserts that the utility's plan imposes excessive fees on prospective open access customers, contains unreasonable deposit requirements, fails to provide load following, and lacks a code of conduct to prevent affiliate abuses, among other things. Energy Michigan contends that until these problems are resolved, few, if any, customers will be willing to take open access service from Detroit Edison.

For these reasons, Energy Michigan recommends that the Commission condition any grant of accelerated amortization on (1) Detroit Edison's agreement to revise its open access implementation plan in a manner acceptable to all of the other parties in Case No. U-11290, and (2) full implementation of 675 MW of open access service.

IV.

DISCUSSION

In light of the arguments offered by the parties, three broad issues must be addressed in ruling on Detroit Edison's application. First, the Commission must decide whether the FERC's August 4, 1998 order in Ohio Edison, supra, bars the relief sought by the utility. Second, the Commission must consider whether adequate justification exists for granting the application. Third, if the Commission elects to grant the application, it must decide what, if any, conditions or limitations should be placed on Detroit Edison's authority to accelerate the amortization of the Fermi 2 assets. These issues are addressed below.

Effect of the FERC's August 4, 1998 Order

As noted earlier, the Attorney General contends that the FERC's order in Ohio Edison precludes the Commission from authorizing Detroit Edison to accelerate the amortization of its Fermi 2 assets. In support of that contention, the Attorney General points out that the FERC's order rejected attempts by various state commissions to use accelerated depreciation as a means of assigning potential stranded costs to current generation customers. The FERC found those attempts improper, the Attorney General continues, because they conflict with the FERC's accounting rules and its prior orders promoting open access. He therefore concludes that, in light of the FERC's ruling, the Commission must reject Detroit Edison's application in its entirety.

The Commission disagrees with this conclusion and finds that the Attorney General gives an overly broad reading to the Ohio Edison order. Specifically, in Ohio Edison the FERC dealt exclusively with attempts by several utilities to reduce the threat of stranded investment in relatively high-cost generating plants by accelerating or decelerating the depreciation of plant assets

or by shifting depreciation expense from one functional property class to another. The FERC rejected each of those requests on the grounds that “including accelerated and decelerated amounts in recorded depreciation” would circumvent its accounting and stranded cost recovery rules. Id., at ¶ 61,159. According to the FERC, the proper way for those utilities to achieve their stated goal would be to “account for the economic effects of state approved retail stranded cost mitigation measures as a regulatory liability or asset, as appropriate.” Id. This could be accomplished, the FERC continued, by using Account 182.3 (other regulatory assets), Account 254 (other regulatory liabilities), Account 407.3 (regulatory debits), and Account 407.4 (regulatory credits), among other things. See, Id., at ¶ 61,173.

Unlike the requests rejected in Ohio Edison, Detroit Edison’s application does not seek authority to alter the balances in its depreciation accounts or to transfer depreciation expense from one functional class of assets to another. Rather, it proposes to accelerate the annual amortization of its Fermi 2 net plant investment through the creation and gradual elimination (from 1999 through 2007) of a regulatory asset. To accomplish this, the utility plans to debit Account 407.3 and credit Account 182.3, among other things.⁷ See, application, pp. 7-9. Because this is precisely the procedure recommended by the FERC in Ohio Edison, the Commission finds that the order cited by the Attorney General does not preclude granting the relief requested in Detroit Edison’s application.

Justification for Accelerated Amortization

⁷As noted above, Detroit Edison’s proposal also recognizes the need to make adjustments to various accounts concerning deferred taxes, investment tax credits, and tax benefits derived (and subsequently refunded to ratepayers) during Fermi 2’s construction.

The Attorney General, ABATE, and the Staff contend that Detroit Edison failed to prove that Fermi 2 is “impaired” within the meaning of SFAS 121. According to them, the impairment studies presented by Staff witness Stojic and Attorney General witness Majoros indicate that estimated future cash flows from Fermi 2 can be expected to exceed the plant’s carrying costs. They further assert that although Detroit Edison submitted an impairment study reaching the opposite conclusion, the utility’s study should be ignored for four reasons. Specifically, they claim that Detroit Edison (1) overestimated the number of customers that will ultimately take open access service, (2) underestimated the market price of power that the utility could expect to receive for Fermi 2’s future generation, (3) failed to include all potential sources of revenue that the plant could provide, and (4) improperly submitted its study during rebuttal, instead of as part of its direct case.

These parties go on to question Detroit Edison’s claim that Fermi 2 may be of no significant value to the utility in the future. According to them, the results of the First Chicago study undercut the utility’s claim. Specifically, they argue that although that study indicates that Fermi 2 could be worth as much as \$1.86 billion as of 2005, Detroit Edison assumes that the plant’s value could be as little as zero by the end of 2007.

Moreover, the Attorney General and ABATE assert that the utility’s current financial condition, when coupled with its continued possession of valuable coal-fired generating plants, indicates that Detroit Edison will remain economically sound following the implementation of open access. In support of this assertion, they cite testimony to the effect that although the utility’s authorized rate of return on common equity is 11%, its actual returns for 1995, 1996, and 1997 were 13.9%, 12.8%, and 12.4%, respectively. See, 8 Tr. 600. They further note that based on the estimations contained in the First Chicago study, the value of Detroit Edison’s total generating assets (including Fermi 2) exceeds their embedded cost. See, 8 Tr. 604. For these reasons, the Attorney General

and ABATE contend that Detroit Edison is already well positioned to meet whatever competition arises in its service territory.

Finally, ABATE warns that approving Detroit Edison's application will merely assist the utility in overrecovering any stranded costs that may arise from open access. According to ABATE, the fact that no true-up mechanism exists with regard to the portion of stranded costs that will be collected through full-service rates means that the utility will be able to permanently retain that portion of the overrecovery. For all of these reasons, the Attorney General, ABATE, and the Staff conclude that the Commission should reject the utility's proposal.

Detroit Edison responds by challenging the assumption that its application is based primarily upon whether Fermi 2 constitutes an impaired asset. According to the utility, the correct issue to be addressed in this case is whether the structure currently in place will allow Detroit Edison to recover all of Fermi 2's stranded costs by the Commission-imposed deadline of December 31, 2007. With regard to that issue, Detroit Edison contends, uncontroverted evidence shows that a significant shortfall is likely to occur unless it accelerates the amortization of its investment in Fermi 2. The utility goes on to state that the potential for a mandatory write-off pursuant to SFAS 121 merely underscores the need for the Commission to clearly indicate that Detroit Edison will be allowed to recover all of its stranded investment in that plant. Without such an indication, the utility concludes, it would be unable to establish the regulatory asset necessary to avoid a potentially devastating write-off.

Nevertheless, the utility goes on to dispute assertions that the Fermi 2 assets are not impaired. Specifically, Detroit Edison notes that individuals who helped develop the implementation rules for SFAS 121 agree with the utility that the plant will meet the definition of an impaired asset once competition begins. According to these witnesses, Messrs. Stojic and Majoros made several errors

when conducting their impairment studies. These included (1) incorporating into their respective estimates of future Fermi 2 cash flows regulated revenues that exceed the market price for power, (2) neglecting to account for future income tax-related expenses, and (3) including 1998 revenues in their calculations. See, 9 Tr. 660; 9 Tr. 756-757; and 10 Tr. 967-968. When these errors are corrected, Detroit Edison argues, it becomes clear that the implementation of open access will render Fermi 2 an impaired asset under SFAS 121.

Detroit Edison further challenges the opposing parties' claims that, based on the First Chicago study, Fermi 2 may have a market value of up to \$1.86 billion. According to Charles F. Loeher, Detroit Edison's Director of Revenue Requirements, those parties misinterpreted the study's findings. Foremost among their errors, Mr. Loeher stated, was their failure to recognize that the numbers set forth in Table 1 of the study (which the opposing parties repeatedly cite in support of their claims) do not represent residual asset values in the years stated. Rather, Mr. Loeher testified, those numbers represent the sum of (1) the regulated revenues received prior to the implementation of open access and (2) the expected cash flows from sales, at market rates, that would occur after the implementation date. 11 Tr. 1071.

Finally, Detroit Edison contends that the best way to estimate Fermi 2's fair market value is to look at other utilities' experiences when trying to sell nuclear generating plants. According to Detroit Edison, testimony offered by one of its rebuttal witnesses, John J. Reed, indicates that recent efforts to sell all or part of the River Bend Nuclear Generating Facility, Three Mile Island Nuclear Station -- Unit 1, Oyster Creek Nuclear Generating Station, and Maine Yankee Atomic Power Station, to name a few, have been largely unsuccessful. 11 Tr. 1018-1025. Based on Mr. Reed's analysis, Detroit Edison claims that Fermi 2 will have virtually no market value in a competitive generation market. The utility therefore asserts that approval of its accelerated

amortization proposal is essential to ensure the recovery of all previously approved investment in Fermi 2.

The Commission finds adequate justification for granting Detroit Edison's request to accelerate the amortization of its Fermi 2 assets if certain conditions are met and if the accelerated amortization is implemented in the context of the utility's move to a competitive market. The June 5 order (1) held that stranded costs will include "nuclear capital costs and regulatory assets that are currently reflected in rates," and (2) set December 31, 2007 as the "last day for collecting stranded costs." June 5 order, pp. 13 and 47. Moreover, the Commission's October 29, 1997 order in Case No. U-11454 stated that customers who choose to remain full-service customers during the transition to a competitive market will pay those costs as part of their bundled rates. In light of those orders, the issue is simply whether the open access program established by the Commission will provide a reasonable opportunity for Detroit Edison to recover its investment in Fermi 2. The Commission concludes that, due to the significant differential between the length of the transition period established by these orders and the projected operating life of Fermi 2, it will not.

The stranded cost recovery structure adopted by the Commission assumed that any customer electing to take open access service would pay its share of Detroit Edison's Fermi 2 investment by the time the transition charge expires on December 31, 2007. It further assumed that customers remaining on Detroit Edison's full-service rates would pay their share of that investment (due to the existence of a Fermi 2 cost recovery component in the utility's base rates) over the remainder of the plant's operating life, which may extend until 2025. It did not account for the fact that a full-service customer could avoid paying (and the utility could be precluded from collecting) its full share of the Fermi 2 cost recovery by switching to open access after the transition charge expires but before the plant is removed from rate base. As noted by Detroit Edison's Chief Financial

Officer, Larry G. Garberding, expiration of the transition charge will create a substantial economic incentive for full-service customers to switch to open access after the transition period ends. 4 Tr. 260. Thus, he continued, “there may be very few customers remaining on bundled service in the post-transition period, and the Company will be left with a significant amount of unrecovered Fermi 2 assets.” Id.

The Commission therefore concludes that, consistent with its previously expressed intent to provide full recovery of the utility’s nuclear capital costs, it should authorize Detroit Edison to make the accounting entries set forth in Paragraph 13 of the application,⁸ as well as any other entries necessary to reflect the tax effects of implementing accelerated amortization. This action should also provide more economic incentive for full-service customers to switch to open access even before the transition period ends by reducing the amount of Detroit Edison’s stranded costs that are to be recovered through its transition charge.

Despite reaching this conclusion, the Commission recognizes that several valid concerns were expressed by the Attorney General, ABATE, and the Staff. These include the apparent conflict between the utility’s current estimate of Fermi 2’s value and the value ascribed to the plant in the First Chicago study, as well as Detroit Edison’s earned rate of return. Although those concerns are not determinative of the narrow issue addressed above, they figure prominently in the discussion contained in the following section.

Proposed Conditions and Limits

⁸As a result of this conclusion, the Staff’s request to implement its “more rapid amortization” alternative is moot.

As mentioned earlier, the Staff and intervenors assert that granting Detroit Edison's application could allow the utility to significantly overrecover its stranded costs. This could occur, they contend, because Detroit Edison's assumption regarding the number of customers that will switch to open access is unreasonably high, its estimate regarding the market price for power that will be produced by Fermi 2 is too low, and the fair market value of the plant itself will be significantly higher than the utility's estimate of zero. These parties go on to contend that, consistent with Detroit Edison's history of earning more than its authorized rate of return, approving the utility's proposal would merely increase the likelihood of excess earnings in future years. They further claim that, based on the utility's longstanding opposition to competition, Detroit Edison might simply accept all benefits from a ruling in its favor while continuing to forestall the implementation of open access in its service territory. The Staff and intervenors therefore recommend imposing several conditions and limits on any grant of authority to undertake accelerated amortization.

Detroit Edison challenges both the accuracy and relevance of those assertions. According to the utility, no valid reason was offered for approving any of the parties' proposed limitations.

Notwithstanding Detroit Edison's claims to the contrary, the Commission concludes that granting the extraordinary relief requested in the application requires the imposition of several safeguards. Based on its review of the record, the Commission finds these safeguards necessary to prevent the overrecovery of stranded costs, the receipt of excess earnings, and the unnecessary postponement of customer choice. For example, it should be noted that to ensure recovery of all potential stranded costs, the Commission's January 14, 1998 order in Case No. U-11290 assumed the worst possible scenario for stranded costs. Namely, it adopted Detroit Edison's assertion that every one of its full-service customers would switch to open access in 2002. This conflicts with Mr. Stojic's testimony that in states where open access is already in place, such as California, as

little as 6% of the incumbent utilities' load switched to open access. 8 Tr. 558-559. It also conflicts with the general knowledge that the existing system in Michigan contains significant capacity constraints and has little in the way of alternative generation. Moreover, it should likewise be noted that although it was designed for purposes other than estimating the amount of stranded investment in Fermi 2 that will arise from the Commission's open access program, the First Chicago study undercuts Detroit Edison's claim that the plant will have no value after December 31, 2007. Exhibit I-34. Finally, testimony offered by Mr. Peloquin shows that in addition to exceeding its authorized rate of return for calendar years 1995, 1996, and 1997, Detroit Edison is on track to have excess earnings in 1998 as well. See, 8 Tr. 600. For these reasons, the Commission concludes that the following six conditions should be placed on its approval of Detroit Edison's application.

First, the Commission finds that, effective January 1, 1999, Detroit Edison's rates should include a credit of 2.787%, which will lower the rates of all customer classes in order to reflect the reduced cost of service from Fermi 2. In its order issued today in Case No. U-8789, the Commission finds that pursuant to the provisions of a 1988 rate case settlement agreement: (1) reductions in the cost of service from Fermi 2 are required in 1998 and 1999, (2) no specific mechanism for implementing those reductions was provided for in the settlement agreement, and (3) the Commission should adopt reasonable means to implement the cost of service reductions consistent with the settlement agreement. The cost of service reductions include a \$53 million reduction due to the Fermi 2 phase-in plan in 1998, an additional \$128 million Fermi 2 phase-in reduction in 1999, and a \$42 million reduction due to the expiration of a 10-year amortization of some Fermi 2 costs.

In its brief, Detroit Edison argues that "granting the Company's request will not raise the Company's current base rates. Nor, however, would the Company's rates decrease appreciably."

Detroit Edison's brief, p. 10. In support of this position, Detroit Edison contends that the scheduled \$170 million reduction in its Fermi 2 cost of service for 1999 more than offsets the increase caused by the accelerated amortization in this case. Detroit Edison is correct that granting its request for accelerated amortization will not increase rates because of the scheduled reduction in its cost of service. However, it is incorrect in its assertion that rates will not decrease appreciably. As previously discussed, the 1988 settlement agreement reduces Detroit Edison's cost of service in 1998 and 1999. Even though the settlement agreement does not specifically indicate how those reductions in the utility's cost of service are to be utilized, the Commission should adopt reasonable approaches to recognize those reductions. Although accelerated amortization as proposed by Detroit Edison is one such approach, there are others, such as a reduction in rates as proposed by other parties in this proceeding.

As the Staff points out, accelerated amortization has the effect of reducing the company's rate base more quickly than it otherwise would. All other things being equal, this reduction in rate base results in a reduction in rates. To account for this, the Staff recommended either annual \$14.3 million rate reductions that would continue over the amortization period or a levelized reduction of \$62.6 million that would be effective immediately. In its rebuttal testimony, Detroit Edison claims that the Staff's calculation of the levelized rate reduction used year-end plant balances (which do not reflect average plant balances for the year) and failed to recognize the reduction in zero cost capital from deferred taxes. According to Detroit Edison, these adjustments result in a levelized rate reduction of \$41.9 million.

Detroit Edison is correct that year-end plant balances are not appropriate for use in this calculation. Accelerated amortization has the effect of reducing plant balances over the course of

each year of the amortization period. Thus, the year-end plant balance understates the average plant balance for each year, causing an undercollection.

However, Detroit Edison's objection is not well-taken regarding the use of zero cost capital. Detroit Edison's explanation of this issue is remarkably sparse, consisting of the statement that "Mr. Stojic [Staff's witness] does not compute the impact on revenue requirements of the reduction in zero cost capital due to the increase in the Deferred Tax feedback." 11 Tr. 1093. In its brief and reply brief, Detroit Edison offers a single sentence that paraphrases the sentence quoted above. In contrast, the Staff provides extensive detail in showing that Detroit Edison's calculation is in error. Specifically, it notes that:

Mr. Loeher [Detroit Edison's witness] is technically in error on this issue. The rapid amortization also provides cash flow of capital (at the rate of about \$144 million per year) to pay down equity and debt, as well as deferred taxes. The amortization serves the same role as depreciation to return capital to investors, including equity and debt investors of Detroit Edison. This capital that is flowed back to the Company through the amortization process is then available to pay down the debt or to be returned to the equity investor. In fact, it should provide capital to pay down these items in roughly the same proportion in which the amortization contributes to the reduction in zero cost capital - thereby having no appreciable cost to capital effect.

If the capital returned to the Company through a more rapid amortization is used instead to invest in more plant, the new plant will generate additional deferred taxes, again keeping the Applicant's capital structure in balance. Thus, the reductions proposed by Mr. Loeher are improperly calculated in isolation. When the entire picture is presented, Mr. Loeher's proposal can be seen to be entirely inappropriate and, therefore, should be rejected.

Staff's reply brief, pp. 18-19.

This issue, which has a revenue impact of almost \$14 million, has not been well-developed. Detroit Edison, which raised the issue for the first time in its rebuttal testimony, failed to even attempt any explanation of the full impact of changes in deferred taxes and the resulting impact on zero cost capital. Conversely, the Staff has presented a cogent argument that the amortization will

either be used to reduce debt and equity in proportion to the reduction in zero cost capital or will be invested in new plant to produce additional deferred taxes. Accordingly, the Commission finds that the Staff's levelized rate reduction calculation should be used, but should be adjusted to use mid-year rather than year-end plant balances. This results in a levelized rate reduction of \$55.4 million.

In addition to rate reductions resulting from rate base reductions, it is also necessary to incorporate the impact of the 1998 cost of service reduction. On November 25, 1997, the Commission issued an order in Case No. U-11588, which adopted a one-year negative surcharge designed to reduce Detroit Edison's rates by \$38.4 million. This reflected the net effect of the \$53 million cost of service reduction associated with the Fermi 2 phase-in for 1998 and a two-year amortization of incremental storm damage expenses. Although the cost of service reduction and the storm damage amortization continue in 1999, the negative surcharge does not. Absent further Commission action, this would result in a windfall to Detroit Edison.

Consequently, the Commission determines that Detroit Edison's rates should be reduced by \$93.8 million (the sum of \$55.4 million and \$38.4 million) to recognize the levelized rate base reduction and the 1998 cost of service reduction.⁹ This should be accomplished by providing a credit equal to 2.787% of base rates on the monthly bill of each tariff customer and of any special contract customer if provided for in the contract, thus reducing the rates paid by each of Detroit Edison's customer classes.¹⁰

⁹In today's order in Case No. U-8987, the Commission is directing parties to file briefs on whether any further actions are necessary to implement the cost of service reductions called for by the 1988 settlement agreement.

¹⁰In the January 21, 1994 order in Case No. U-10102, which was Detroit Edison's last rate case, the Commission found that the company's adjusted operating revenue was \$3,443.3 million

Second, Detroit Edison must agree to reduce its rates by removing Fermi 2 balances on January 1, 2008, when the existing plant balance for Fermi 2 is scheduled to reach zero, or any earlier date upon which the plant's accelerated amortization produces a zero balance.¹¹ As noted by Staff witness Geml, customers are already paying the utility \$590 million annually to cover the return of and on its investment in Fermi 2. In exchange for paying higher rates than they might otherwise during the interim (due to the increased revenue requirement arising from accelerated amortization), Detroit Edison's customers should not be required to wait until the utility's next rate filing is reviewed and resolved before seeing the effect of Fermi 2's net plant balance reaching zero.¹²

Third, any profit from the sale of Fermi 2 that arises from the plant's accelerated write-down of Fermi 2 should be passed on to the utility's customers. As correctly noted by Mr. Stojic, this is consistent with the fact that the utility's customers will have paid for the accelerated portion of the plant's write-down. See, 8 Tr. 549. Thus, if Detroit Edison sells Fermi 2 for more than its book value at any time following the initiation of the accelerated amortization approved in this order, or if the utility itself is purchased, Detroit Edison (or its successor utility) shall immediately refund to its customers the total amount of the accelerated amortization collected from those customers up to and including the date of the plant's sale.

less the \$78 million rate reduction ordered in that case (for a net of \$3,365.3 million). A reduction of \$93.8 million divided by \$3,365.3 million results in a credit of 2.787%.

¹¹This provision does not include the effect of capital additions made after the date of this order.

¹²If rates are not changed subsequent to this order, this provision would result in a rate reduction of approximately \$496 million (the \$590 million calculated by the Staff less the \$94 million reduction required by this order).

Fourth, if Detroit Edison (or any successor utility) seeks to abandon Fermi 2 after being allowed to accelerate the plant's amortization, it must first initiate a contested case proceeding to evaluate the effect of the proposed abandonment on its customers. Unless either (1) the utility can show that it would be able to satisfy the obligation to serve its customers at rates that do not exceed the "to go" costs of continuing to operate Fermi 2 or (2) the Commission determines that customers can best be served by reliance on the marketplace, the request to abandon the plant will be denied.

Fifth, in response to Energy Michigan's concerns regarding the future of open access in Detroit Edison's service territory, the Commission finds that the accelerated amortization approved in this order is contingent upon the utility's agreement to abide by the open access program (including the schedule) set forth in Commission orders.¹³ Requiring an agreement of this nature is only reasonable in light of the fact that, unless Detroit Edison implements open access, there is no risk of stranded investment in Fermi 2.

Sixth, because the goal of stranded cost recovery is to ensure that utilities remain strong enough to compete in a market where open access will be offered, and because the utilities' customers are being required to bear at least part of these costs, it is only fair to require that utilities take reasonable steps to limit the amount of stranded costs that are passed through to their customers. Testimony received in this case points to one such step that could be taken without danger of leaving Detroit Edison in a financially vulnerable condition. Specifically, it was shown that Detroit Edison continually exceeded its authorized rate of return from 1995 to the present.

¹³This requirement includes the June 5, 1997 order in Case No. U-11290, the October 29, 1997 orders in Cases Nos. U-11290, U-11449, U-11451, U-11452, U-11453, U-11454, and U-11456, the January 14, 1998 order in those cases, the February 11, 1998 order in those cases, and any subsequent orders on those or related matters. It also includes immediately making available a minimum of 90 MW under the "Experimental Service Rate for Customer-Procured Power" approved by the Commission's April 14, 1998 order in Case No. U-10840.

See, 8 Tr. 600. To the extent that this situation continues in any year from 1999 on, Detroit Edison should apply at least 50% of its excess earnings for that year as a reduction to its otherwise recoverable Fermi 2 stranded investment.

Just as the extraordinary nature of the relief requested in this case requires imposing the above mentioned conditions,¹⁴ previous delays in implementing the Commission's open access program necessitate the swift and unequivocal acceptance of these conditions. The Commission therefore finds that its approval of Detroit Edison's request to implement accelerated amortization with regard to its investment in Fermi 2 shall become effective only if the utility files, before January 7, 1999, a document signed by Detroit Edison's Chief Executive Officer, President, and Chairman of the Board specifically accepting the conditions imposed by this order.

V.

MISCELLANEOUS PROCEDURAL ISSUES

In the course of these proceedings, several parties submitted requests for rulings on procedural issues. Three remain to be addressed in this order.

Staff's Motion to Strike

On September 25, 1998, the Staff filed a motion seeking to strike much of the rebuttal testimony offered by five of Detroit Edison's witnesses on the grounds that it should have been presented as part of the utility's direct case. On September 28, 1998, the ALJ denied the motion to strike.

¹⁴Among the proposed conditions that are not being imposed by this order is the Staff's recommendation to open a docket and conduct a review of the accelerated amortization three years from now. Notwithstanding its decision on this issue, the Commission will closely monitor the market to ensure that the purposes of accelerated amortization are being met.

In its brief, the Staff challenges the propriety of the ALJ's ruling. According to the Staff, Detroit Edison needed to prove that Fermi 2 was an impaired asset pursuant to SFAS 121 in order to prevail upon its application. Thus, the Staff continues, the utility should have submitted testimony describing and supporting its own impairment study as part of its direct case. Nevertheless, the Staff argues, Detroit Edison's direct testimony offered only generalized assertions that the Commission's failure to approve its application would render Fermi 2 impaired and result in a significant write-off for the utility. According to the Staff, Detroit Edison improperly waited until the time established for the filing of rebuttal (and after the Staff and the Attorney General had prepared and submitted their impairment studies) before submitting a study of its own. The Staff therefore requests that the Commission reverse the ALJ's September 28, 1998 ruling.

Detroit Edison responds by asserting that, contrary to the Staff's belief, a formal impairment test was not required to be submitted as a part of the utility's direct case. According to the utility, "whether or not the [Fermi 2] assets are impaired is a financial reporting issue that must be decided by the Company and its independent auditors." Detroit Edison's reply brief, p. 21. Thus, Detroit Edison contends, the fact that Fermi 2 might have to be written-off as an impaired asset upon implementation of direct access "simply underscores the need for a clear Commission decision concerning the recovery of stranded costs" associated with that plant. *Id.* In contrast, the utility continues, the focus of this case (and, correspondingly, its witnesses' direct testimony) is on the need for Commission approval to create a regulatory asset that can be used to ensure that all customers pay their appropriate shares for the return of Detroit Edison's investment in Fermi 2. Detroit Edison therefore contends that the testimony in question, which was designed to respond to flaws in the impairment tests presented by witnesses for the Staff and the Attorney General, was properly submitted during the rebuttal phase of these proceedings.

The Commission concludes that the ALJ's September 28, 1998 ruling was correct and that the Staff's request should be denied. In reaching this conclusion, the Commission agrees with Detroit Edison that it was not necessary to find that Fermi 2 was an "impaired asset" pursuant to SFAS 121 in order to grant the utility's application. Therefore, although the other parties (and even the Commission) may have preferred having at least some of the challenged testimony offered during the direct phase of the proceedings, this fact does not make the testimony improper rebuttal. Because the testimony in question responds to the impairment studies submitted by the Staff and the Attorney General, and offers Detroit Edison's study as an example of how the utility believes these studies should be conducted, the ALJ was correct in allowing its admission during rebuttal.

Admitting the First Chicago Study into Evidence

During discovery, the Staff requested that Detroit Edison provide all studies or reports prepared either by or on behalf of the utility that estimate the market value of the utility's generating plants. Detroit Edison initially rebuffed the Staff's request and engaged in a lengthy dispute regarding the need to provide the requested information. The ALJ ultimately granted the Staff's motion to compel the production of those documents, albeit pursuant to a protective order. As a result, the utility provided the parties with confidential copies of the First Chicago study¹⁵ on August 24, 1998, one day before evidentiary hearings commenced in this case. Over Detroit Edison's objection, the ALJ received the First Chicago study into evidence (as Exhibit I-34) on October 1, 1998.

In its brief, Detroit Edison challenges the ALJ's decision to allow that exhibit into evidence. The utility argues that although several of the opposing parties' witnesses discussed the First

¹⁵Following the public dissemination of the First Chicago study pursuant to Freedom of Information Act requests submitted later in the proceedings, Detroit Edison waived its claims regarding the confidentiality of this study. See, 8 Tr. 469; 11 Tr. 1099-1100.

Chicago study in their testimony, none of them “testified as to the truth or veracity of this study.” Detroit Edison’s brief, p. 55. The utility therefore claims that they failed to satisfy the authentication and identification requirements imposed by Michigan Rules of Evidence (MRE) 901. Detroit Edison goes on to assert that the statements contained in the study are not relevant to the resolution of issues in this case and constitute inadmissible hearsay, and that including them in the record thus violated both MRE 402 and MRE 802. For all of these reasons, the utility contends, the Commission should find that it is precluded from relying on Exhibit I-34.

The Commission disagrees with the utility’s contention and finds that the ALJ was correct in admitting this exhibit. It reaches this conclusion for the following three reasons. First, because Detroit Edison provided the First Chicago study to each of the parties as part of a sworn response to a discovery request received in this case, and because Detroit Edison witness Loehner offered extensive testimony as to the study’s meaning (See, 11 Tr. 1066-1092), no valid question exists with regard to its authenticity. Second, because the study was commissioned by, paid for, and retained for use by Detroit Edison, and because its production in this case cast at least some doubt on the utility’s claims regarding the future value of its generating plant assets, it may be considered an admission by a party-opponent under MRE 801(d)(2). As a result, it could not be deemed inadmissible under MRE 802. Third, among the numerous issues considered by the Commission in determining whether Detroit Edison’s application should be granted and deciding what, if any, conditions should be placed on that grant, was the issue of Fermi 2’s future value. Because the First Chicago study pertains directly to that issue, its relevance is beyond dispute.

Before moving on, it should be noted that Detroit Edison sought and received an expedited hearing on its application. This was done in reliance on the utility’s assertions that its request for accelerated amortization needed to be examined and approved by the end of 1998 in order for the

utility to implement all necessary accounting changes by January 1, 1999. In light of the efforts by all parties to complete this case by the close of 1998, the Commission is offended that Detroit Edison was not open and forthcoming with the information found on Exhibit I-34 in a good faith effort to resolve the issue.

Detroit Edison's Motion to Compel

In the course of the proceedings, Detroit Edison became convinced that one of the parties had violated the previously mentioned protective order and discussed the First Chicago study with one or more non-parties. On October 1, 1998, the utility attempted to depose one of those non-parties in an effort to discover the source of the alleged disclosure. Because the deponent refused to answer the utility's questions, Detroit Edison filed a motion to compel. Immediately after closing the evidentiary record in this case on the afternoon of October 1, 1998, the ALJ heard arguments on this issue and denied Detroit Edison's motion. According to the ALJ, the information sought by the utility was neither relevant nor reasonably calculated to lead to the discovery of relevant evidence.

In its brief, Detroit Edison argues that the ALJ's ruling on its motion to compel was incorrect and should be reversed. The utility therefore requests that the Commission order the deponent to provide full and complete answers to the utility's deposition questions.

The Commission finds that Detroit Edison's request should be rejected. The issues in this case involve whether the utility should be allowed to implement accelerated amortization in an effort to ensure that, with the advent of open access in Detroit Edison's service territory, the utility will have a reasonable opportunity to recover its investment in Fermi 2. The ALJ was therefore correct in concluding that questions regarding who, if anyone, the deponent may have talked to about the First Chicago study were in no way relevant for purposes of this proceeding. Similarly, the ALJ

was correct in concluding that answers to those questions were unlikely to lead to the discovery of relevant evidence. Thus, the Commission finds that the ALJ correctly rejected Detroit Edison's October 1, 1998 motion to compel.

VI.

SUMMARY

The Commission's order in this proceeding is one of a series designed to introduce competition and customer choice to the electric generating industry. By encouraging the move to a competitive marketplace, the Commission has taken its charge to act in the public interest very seriously. It has attempted to balance many countervailing forces. It has taken into account international, national, and other state actions and trends which directly impact Michigan. It has recognized the unprecedented economic health which this state has been able to achieve. It has noted the technological, managerial, and financial innovations which have altered, and which will continue to alter, the electric industry as we have known it. Finally, it has observed the maturing attitude of consumers, who want the freedom to choose their supplier and make other related choices, such as if their power is generated from renewable resources. This order contributes to the overall goal by accomplishing three objectives.

First, it removes the last objection of Detroit Edison to moving forward expeditiously with a customer choice program. Second, it accelerates the amortization of Fermi 2, which promotes competition by reducing future stranded costs. Third, it provides significant and immediate rate reductions for all customers. In addition, the order puts to rest a long-running dispute about the meaning of an ambiguous provision in the 1988 Fermi 2 rate settlement. All of these accomplishments (immediate rate reductions, reduced stranded costs, and providing certainty in the market)

move toward a common goal -- bringing the benefits of competition to all Michigan citizens. The time is past for debating how to achieve that goal; the time has arrived for actually providing competition and customer choice in Michigan.

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.; 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 AACCS, R 460.17101 et seq.

b. Detroit Edison should be authorized to make the appropriate accounting entries, subject to prior approval by the Commission, to reflect the accelerated amortization of the remaining net book balances (as of December 31, 1998) for the Fermi 2 Nuclear Generating Plant and its associated regulatory assets in a manner that will provide an opportunity for full recovery under current base rates, taking into account the related tax consequences, of those assets by December 31, 2007. For accounting purposes, the authorization provided in this order should provide accelerated amortization of those assets that are recorded as regulatory assets in Account 182.3, Other Regulatory Assets, effective January 1, 1999.

c. The accumulated deferred income tax balance in Account 283, Accumulated Deferred Federal Income Taxes – Other, should be amortized at the same rate as the Fermi 2 regulatory asset balance in Account 182.3.

d. The investment tax credits that will be included as a reduction to Account 182.3 should be returned to customers through Detroit Edison's rates on a straight-line basis over the transition period established by the Commission.

e. The amount of the unamortized investment tax credits that will be included as a reduction to Account 182.3 should not reduce Detroit Edison's rate base until they are amortized on the books of account maintained by Detroit Edison under Section 46(f)(2) of the United States Internal Revenue Code.

f. Detroit Edison should reduce its rates by \$93.8 million effective January 1, 1999 and should implement this rate reduction through the application of a credit equal to 2.787% of base rates reflected on the monthly bills of Detroit Edison's tariff customers and any special contract customers whose contracts provide for such a reduction, thus reducing the rates paid by each of Detroit Edison's customer classes.

g. Detroit Edison should immediately reduce its rates by removing Fermi 2 plant balances from rate base on January 1, 2008, when the currently-existing net plant balance of Fermi 2 is anticipated to reach zero, or any earlier date upon which the plant's accelerated amortization produces a zero balance.

h. If in the future Fermi 2 is sold for more than its net book value, or if Detroit Edison itself is sold to another entity, the utility (or its successor) should immediately refund to its customers the total amount of the accelerated amortization received from those customers (from January 1999 through the date of the sale) with regard to Fermi 2 and its related regulatory assets.

i. If in the future Detroit Edison (or any successor utility) proposes to abandon Fermi 2, it should initiate a contested case proceeding seeking Commission approval of its abandonment plan and show, in the context of that case, that the proposed abandonment will not harm its customers.

j. Detroit Edison should agree to (1) fully abide by the open access program (including the schedule for implementing that program) set forth in Commission orders, (2) immediately withdraw all of its appeals of previous Commission orders concerning open access, (3) agree not to

appeal this order, and (4) assist the Commission in defending its orders concerning open access from appeal by other parties.

k. If Detroit Edison exceeds its authorized rate of return during any year from 1999 on, it should apply at least 50% of its excess earnings for that year as a reduction to its otherwise recoverable stranded investment in Fermi 2.

l. Approval of Detroit Edison's request to implement accelerated amortization with regard to its investment in Fermi 2 and to undertake the accounting entries set forth above is contingent upon Detroit Edison's filing with the Commission, before January 7, 1999, a document signed by its Chief Executive Officer, President, and Chairman of the utility's Board of Directors specifically accepting all conditions discussed in, and imposed by, this order.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company is authorized to make the appropriate accounting entries, subject to prior approval by the Commission, to reflect the accelerated amortization of the remaining net book balances (as of December 31, 1998) for the Fermi 2 Nuclear Generating Plant and its associated regulatory assets in a manner that will provide an opportunity for full recovery under current base rates, taking into account the related tax consequences, of those assets by December 31, 2007. For accounting purposes, the authorization provided in this order shall provide accelerated amortization of those assets that are recorded as regulatory assets in Account 182.3, Other Regulatory Assets, effective January 1, 1999.

B. The accumulated deferred income tax balance in Account 283, Accumulated Deferred Federal Income Taxes – Other, shall be amortized at the same rate as the Fermi 2 Nuclear Generating Plant regulatory asset balance in Account 182.3.

C. The investment tax credits that will be included as a reduction to Account 182.3 shall be returned to customers through The Detroit Edison Company's rates on a straight-line basis over the transition period established by the Commission.

D. The amount of the unamortized investment tax credits that will be included as a reduction to Account 182.3 shall not reduce The Detroit Edison Company's rate base until they are amortized on the books of account maintained by The Detroit Edison Company under Section 46(f)(2) of the United States Internal Revenue Code.

E. The Detroit Edison Company shall reduce its rates by \$93.8 million effective January 1, 1999 and shall implement this rate reduction through the application of a credit equal to 2.787% of base rates reflected on the monthly bills of The Detroit Edison Company's tariff customers and any special contract customers whose contracts provide for such a reduction, thus reducing the rates paid by each of The Detroit Edison Company's customer classes.

F. The Detroit Edison Company shall immediately reduce its rates by removing all Fermi 2 Nuclear Generating Plant balances from rate base on January 1, 2008, when the currently-existing net plant balance of the Fermi 2 Nuclear Generating Plant is anticipated to reach zero, or any earlier date upon which the plant's accelerated amortization produces a zero balance.

G. If in the future the Fermi 2 Nuclear Generating Plant is sold for more than its net book value, or if The Detroit Edison Company itself is sold to another entity, The Detroit Edison Company (or its successor) shall immediately refund to its customers the total amount of the accelerated amortization received from those customers (from January 1999 through the date of the sale) with regard to the Fermi 2 Nuclear Generating Plant and its related regulatory assets.

H. If in the future The Detroit Edison Company (or any successor utility) proposes to abandon the Fermi 2 Nuclear Generating Plant, it shall initiate a contested case proceeding seeking

Commission approval of its abandonment plan and must show, in the context of that case, that the proposed abandonment will not harm its customers.

I. The Detroit Edison Company shall agree to (1) fully abide by the open access program (including the schedule for implementing that program) set forth in Commission orders, (2) immediately withdraw all of its appeals of previous Commission orders concerning open access, (3) agree not to appeal this order, and (4) assist the Commission in defending its orders concerning open access from appeal by other parties.

J. If the Detroit Edison Company exceeds its authorized rate of return during any year from 1999 on, it shall apply at least 50% of its excess earnings for that year as a reduction to its otherwise recoverable stranded investment in the Fermi 2 Nuclear Generating Plant.

K. Approval of The Detroit Edison Company's request to implement accelerated amortization with regard to its investment in the Fermi 2 Nuclear Generating Plant and to undertake the accounting entries set forth above is contingent upon The Detroit Edison Company's filing with the Commission, before January 7, 1999, a document signed by its Chief Executive Officer, President, and Chairman of the Board of Directors specifically accepting all conditions discussed in, and imposed by, this order.

L. If The Detroit Edison Company files the required document expressing its acceptance of the conditions set forth in this order, it shall file tariff sheets in conformity with this order within 30 days of this order's issuance.

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/ David A. Svanda
Commissioner

By its action of December 28, 1998.

/s/ Dorothy Wideman
Its Executive Secretary

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

Chairman

Commissioner

By its action of December 28, 1998.

Its Executive Secretary

In the matter of the application of)
THE DETROIT EDISON COMPANY)
for accounting authority related to the)
accelerated amortization of the Fermi 2)
Nuclear Generating Plant.)
_____)

Case No. U-11726

Suggested Minute:

“Adopt and issue order dated December 28, 1998 authorizing The Detroit Edison Company to implement accelerated amortization with regard to its investment in the Fermi 2 Nuclear Generating Plant, requiring the utility to reduce its rates by \$93.8 million, ordering the utility to fully abide by the Commission’s open access program, and imposing additional safeguards against the overrecovery of stranded costs, as set forth in the order.”