

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>THE DETROIT EDISON COMPANY</b> to increase	)	
rates, amend its rate schedules governing the	)	
distribution and supply of electric energy, implement	)	Case No. U-13808
power supply cost recovery plans, factors, and	)	
reconciliations in its rate schedules for jurisdictional	)	
sales of electricity, and for miscellaneous accounting	)	
authority and regulatory asset recovery.	)	
_____	)	

At the June 30, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**ORDER**

On November 23, 2004, the Commission issued its final order in this rate proceeding. On December 27, 2004, Energy Michigan filed a petition for rehearing and clarification. On January 18, 2005, the Commission received answers to Energy Michigan’s petition from The Detroit Edison Company (Detroit Edison), Attorney General Michael A. Cox (Attorney General), and the Commission Staff (Staff).

Rule 403 of the Commission’s Rules of Practice and Procedure, 1999 AC, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party

to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

#### Credit to Choice Customers for Market Value of Fermi Power

Energy Michigan argues that the Commission failed to rule on its proposal to credit choice customers for the market value of Fermi 2, when the market price of power exceeds Fermi 2's variable costs. It argues that its proposal would give choice customers a credit equal to the portion of Fermi 2's fixed costs that choice customers pay. In the alternative, Energy Michigan proposes that choice customers be allowed to buy 20% of their power requirements from Detroit Edison at the variable cost of production. In Energy Michigan's view, adopting either of its proposals would recognize that choice customers pay securitization charges, which include Fermi 2 costs, with no offset for when Fermi power may be sold at a profit. Energy Michigan argues that, although the Commission discussed Energy Michigan's proposal, the order did not explicitly accept or reject the proposal. In Energy Michigan's view, the lack of explicit ruling constitutes error.

Detroit Edison responds that the Commission appropriately did not adopt Energy Michigan's proposed credit, which it states is an ill-conceived, inequitable scheme to have the utility pay choice customers to leave its system. Detroit Edison states that the most glaring flaw in the proposal is that it uses only the variable cost of Fermi 2 production, and ignores other critical and relevant production cost items.

Further Detroit Edison argues, Energy Michigan's proposal awards choice customers a full pro-rata share of the operational benefits of Fermi 2 without requiring them to pay a full pro-rata share of the associated costs, such as property taxes, insurance, operation and maintenance, administrative overheads, and post-securitization capital additions. It states that the proposal

would further result in a shift of costs from choice customers to bundled retail customers. Finally, Detroit Edison argues, it is the existence and operation of base-load plants like Fermi 2 that make it possible for alternative electric suppliers to conduct transactions on the utility's system. In Detroit Edison's view, that is one reason that the statute makes the securitization surcharge nonbypassable.

The Attorney General argues that the proposed credit would be unlawful, because it would violate the provisions of MCL 460.10h and MCL 460.10i(4), which require the securitization charge to be nonbypassable, irrevocable, and not subject to reduction, impairment, or adjustment, except as provided by law. He argues that all customers pay the securitization charge. Thus, the Attorney General concludes, the Commission may not authorize a credit for some customers to offset securitization charges because doing so would violate the statutory provisions cited above.

The Staff adds that it opposes Energy Michigan's proposal because it conflicts with the concept of stranded costs.

The Commission is not persuaded that it should adopt Energy Michigan's proposed credit. In the Commission's view, the proposed credit would create a bypass of the securitization surcharge, which the statute requires to be nonbypassable. Further, choice customers' payment of the securitization surcharge does not purchase a right to obtain energy at variable cost. That surcharge recognizes the stranded costs related to the creation of the choice program. Implementation of the proposed credit would alter the burdens and benefits as designed by the Legislature. For all of these reasons, the Commission rejects Energy Michigan's proposals.

## Stranded Costs

Energy Michigan contends that the Staff's position on historic stranded costs should be rejected because it is based on numerous factual errors, two of which it raises for Commission consideration on rehearing: (1) the allocation factor, and (2) the exclusion of hedge revenues.

### 1. Allocation Factor

Energy Michigan states that other parties, including Detroit Edison, agreed that the Staff's allocation factor used to calculate stranded costs was erroneous. Energy Michigan argues that the error in the Staff's allocation factor was worth more than \$66 million, and, if corrected, would change the Commission's finding of stranded cost into stranded benefit. Moreover, Energy Michigan argues, the Staff's calculation excluded the liquidation of unneeded hedges, options, and sale of imbalance power, from which Detroit Edison obtained \$78 million. This income, Energy Michigan argues, must be taken into account by offsetting stranded costs.

Detroit Edison responds that there is no merit in Energy Michigan's positions regarding stranded costs. According to Detroit Edison, Energy Michigan's claim that Detroit Edison agreed with its calculation of the 16.32% revenue allocation factor to offset production fixed costs, is misleading. Detroit Edison states that the Staff's revenue allocation factor is 15.23% based on initial data from Case No. U-10102. That data was updated during the hearing process and the final order was based on the update. Detroit Edison states that although it believes that the 16.32% allocation factor is more representative of Case No. U-10102 than the Staff's 15.23% factor, the higher factor has the same inherent flaws as the Staff's factor, including the failure to fully allocate production plant, ignoring production working capital, and allocating revenues based on ten-year old costs of service approved in Case No. U-10102. In Detroit Edison's view, those costs of service do not reflect the current revenue mix between production and distribution. Rather, Detroit

Edison states, it calculated the appropriate amount of stranded costs, as explained and set out in its reply brief. Detroit Edison states that it has justified \$14.8 million and \$74.5 million of net stranded costs for 2002 and 2003, respectively, and \$10.4 million for 2004 through the date of the Commission's February 20, 2004 order granting interim relief.

The Staff responds that Energy Michigan's argument that the Staff made an error in its calculations mistakenly assumes that production revenues were used in certain calculations, when those calculations actually used total cost of service revenues. At this late date, the Staff states, it is unclear whether the failure about which Energy Michigan complains occurred.

The Commission is not persuaded that it reached an incorrect result with respect to stranded costs. The Commission rejects the claim by Detroit Edison and Energy Michigan that the calculations of the allocation factor were flawed. Therefore, the Commission concludes that rehearing should be denied on this issue.

## 2. Hedge Revenues

Energy Michigan argues that the Commission did not address the contention that revenue from liquidation of unneeded hedges and options for 2002 and 2003 should be used to offset stranded costs. Energy Michigan argues that the Staff did not supply a reason for excluding this revenue from stranded cost calculations. It argues that if the Commission includes these revenues, the Staff's evaluation of \$43 million in stranded costs becomes \$20 in stranded benefits.

Detroit Edison responds that Energy Michigan's contention that revenues associated with hedges should be included in stranded cost calculations should be rejected. According to Detroit Edison, sales of hedges and options resulted in a net loss of \$32.4 million. Detroit Edison points out that Energy Michigan's proposal would add in the revenues without including the costs associated with the hedges and options.

The Staff responds that Energy Michigan's proposal is one-sided. The Staff says that its calculation of stranded costs did not include the costs associated with hedges and should not include the associated revenue. Moreover, the Staff argues, these costs and revenues were not included in Case No. U-12639 or Case No. U-13350. It states that these revenues are not dependent on Detroit Edison's production plant, and, therefore, they should not be included in the stranded cost calculation.

The Commission finds that Energy Michigan's proposed inclusion of revenues associated with hedges should be rejected. These costs and revenues are not properly included in the stranded cost calculations. Moreover, if the proposal is corrected for its one-sided treatment, it would actually increase stranded costs, not decrease them as argued by Energy Michigan.

#### Return to Service

Energy Michigan argues that the Commission's conclusions regarding return to service provisions require clarification in order to avoid unintended consequences. The Staff does not oppose granting these requests for clarification.

On the other hand, Detroit Edison opposes the requests. It argues that any clarification granted Energy Michigan must maintain consistency with the November 23, 2004 order's primary principle of providing adequate notice to Detroit Edison of the customer's return so that Detroit Edison can effectively plan for those customers. Moreover, the utility argues, the return to service provisions must ensure that it can rely on the customer's notice by requiring that the customers return for at least a minimum term.

The following are the specific requests for clarification, Detroit Edison's specific response to each request, and the Commission's resolution.

1. Energy Michigan requests that the Commission define the end of “summer” as that term is used in the order.

Detroit Edison states that the meaning of summer is clear within the order, and is defined as the utility’s regularly scheduled billing periods beginning June 1 through September 30.

The Commission finds that Exhibit A to the November 23 order defines summer as it relates to the return to service provisions. No further clarification is needed.

2. For a return to service after summer 2005, Energy Michigan asks, assuming summer is June 1 through September 30, may a customer taking choice service during the summer months return to bundled utility service on 60 days’ notice if that notice is given after August 1?

Detroit Edison responds that if a customer intends to take service during the following summer, notice is required on or before December 1 prior to the summer the customer intends to return. According to Detroit Edison, the 12-month minimum term for returning customers means customers returning after the summer 2005 but before the December notice dates, will have provided notice for the following summer, because they must continue on full service. Further, Detroit Edison states, customers are also subject to the 30- and 60-day written notice provisions of Section 5.1.1 of the retail access service tariff (RAST).

The Commission finds that the 30- and 60-day notice provisions of the RAST apply to customers seeking to return to service in addition to the required notice by December 1 to return to bundled service for a period including the summer months. As noted below, customers may return to bundled service with or without a commitment to remain for 12 months, with the consequences of that decision provided in the tariff.

3. Energy Michigan asks the Commission to confirm its understanding that a customer that **gave** notice by December 31, 2004 of its intent to use retail service during summer 2005, but that does not stay on bundled utility service for at least one year, would be charged the higher of tariff plus 10% or market plus 10% for power taken during the time period, starting with the customer's return to retail service and ending with the customer's return to choice.

Detroit Edison responds that the November 23 order specifically requires that a returning customer agrees to take bundled service for a minimum of one year. It states that to the extent any clarification is necessary, the Commission should issue an order indicating that all customers returning to bundled service shall have a one-year minimum term.

As reflected in the provisions of Section 5.3.2.1 of M.P.S.C. Tariff 9, the November 23 order imposes a 12-month minimum term when a customer returns to bundled service with the utility, if the customer desires to obtain the rate benefits of that commitment. However, Detroit Edison's tariff still provides an option for return to full service without a 12-month commitment. *See*, Section 5.3.2.2 of that tariff. If a customer returns to bundled utility service with the required notice and 12-month commitment, but does not remain on that service for the required minimum time period, it will be back-billed the appropriate higher rate for service during the period that it received bundled utility service, as if it had not made the 12-month commitment. Contrary to Detroit Edison's argument, the November 23 order did not abolish the option of returning to full service without a 12-month commitment.

4. Energy Michigan asks what a customer must pay for service if it returns to full service without notice on or after January 2005. It further asks whether such a customer must remain on retail service for a full year.

Detroit Edison states that the Commission order specifically and clearly requires that customers returning to bundled service must continue that service for one year. In addition, Detroit Edison states, the price paid is clearly outlined in the order as the higher of the market priced power charge or tariff, plus 10%. Thus, it argues, no clarification is needed on this issue.

The Commission cannot agree with Detroit Edison's understanding and finds that clarification is warranted. Return to full service, including the summer months, without notice prior to December 1 of the preceding year may be accomplished without a commitment to a minimum of 12 months full service, pursuant to the provisions of Section 5.3.2.2 of Tariff M.P.S.C. No. 9. That section provides for a modified rate that is higher than would apply if the customer commits to service for a minimum of 12 months. The 10% adders of Section 5.3.1 would also apply to service during the summer months for which timely notice was not given.

5. Energy Michigan asks whether the 10% penalty provision (for those customers that fail to give appropriate notice) refers to the energy portion of the tariff or market service, not any demand component or distribution component.

Detroit Edison states its understanding that the 10% charge applies only to the energy portion, as it has since the implementation of the RAST in December 2001. Detroit Edison counters the characterization of the 10% adder as a penalty, with the Commission's language that the additional sum is needed to provide compensation for Detroit Edison to fairly balance the competing interests between the utility and the customers.

Whether the charge is thought of as a penalty or merely an additional charge, clarification is warranted. The 10% adder should be calculated on the energy charges for the power taken.

6. Energy Michigan requests that the Commission order Detroit Edison to explain on the record how it will calculate the market price of power for purposes of the return to service provision.

Detroit Edison states that the methodology has not changed from that approved by the Commission in the December 20, 2001 order in Case No. U-12489. It points out that the November 23 order did not redesign the mechanics of the pricing calculation.

The Commission agrees with Detroit Edison that the approved calculation method has not changed following the November 23 order. Therefore, the Commission sees no reason to require an additional explanation on the record.

7. Energy Michigan asks whether a customer that is enrolled and in confirmed status, but is not yet being served due to processing delays, must wait two years or one year to return to unbundled utility service.

Detroit Edison responds that it understands the Commission's order to reflect that all customers who were enrolled in the electric choice program prior to the issuance of the Commission's November 23 order should be considered existing choice customers. The November 23 order states that new choice customers are prohibited from returning to bundled service for two years. For purposes of implementing that provision, an existing choice customer is one that, as of November 23, 2004, was enrolled in the electric choice program, even if it had not yet taken service.

The Commission finds Detroit Edison's summary to correctly characterize the conditions stated in the November 23 order.

8. Energy Michigan asks whether the Commission might delay the December 1, 2005 deadline for notifying the utility of an intent to return to service during the summer of 2006<sup>1</sup> if the Commission has not decided the deskewing/unbundling case well before that time. Energy Michigan argues that such a delay would be necessary to prevent a recurrence of the current situation in which choice customers do not have adequate time to evaluate return to service economics.

Detroit Edison responds that the deskewing proceeding should proceed as expeditiously as possible to meet the intent of the Commission to resolve the matter in 2005. Further, Detroit Edison states its confidence that the Commission will issue its order as early as possible in 2005, so that the issue is unlikely to arise. However, Detroit Edison argues, the notice requirement is needed for planning purposes and the deadline should not be extended based on the timing of the separate case.

The Commission finds that it would be premature to grant Energy Michigan's request for clarification on this issue. In fact, the Commission is hopeful that this issue will not arise. However, if a problem develops, the Commission will address it at the appropriate time.

The Commission Finds that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. The petition for rehearing filed by Energy Michigan should be denied.
- c. The request for clarification should be granted in part as discussed in this order.

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<sup>1</sup>Actually, Energy Michigan states the question with 2005, but the Commission believes that to be a typographical error.

THEREFORE, IT IS ORDERED that the December 27, 2004 petition for rehearing filed by Energy Michigan is denied, and the request for clarification is granted in part, as provided in this order.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark  
Chairman

( S E A L )

/s/ Robert B. Nelson  
Commissioner

/s/ Laura Chappelle  
Commissioner

By its action of June 30, 2005.

/s/ Mary Jo Kunkle  
Its Executive Secretary

THEREFORE, IT IS ORDERED that the December 27, 2004 petition for rehearing filed by Energy Michigan is denied, and the request for clarification is granted in part, as provided in this order.

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of June 30, 2005.

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Its Executive Secretary

# P R O O F   O F   S E R V I C E

STATE OF MICHIGAN    )

Case No. U-13808  
Energy Michigan

County of Ingham        )

Patricia A. Fronta being duly sworn, deposes and says that on June 30<sup>th</sup>, 2005, A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

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Patricia Fronta

Subscribed and sworn to before me  
this 30<sup>th</sup> day of June 2005

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Notary Public, Ingham, County, Michigan  
**My Commission expires June 5, 2007**

SERVICE LIST FOR DOCKET # U – 13808 -  
DATE OF PREPARATION: 11/23/2004

CASE #

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