

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
THE DETROIT EDISON COMPANY for )  
authority to increase its rates for the generation )  
and distribution of electricity and for other relief. )  
\_\_\_\_\_ )

Case No. U-16472

In the matter of the application of )  
THE DETROIT EDISON COMPANY for )  
approval to defer certain pension and )  
post-employment benefits expense for )  
future amortization and recovery. )  
\_\_\_\_\_ )

Case No. U-16489

At the December 20, 2011 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman  
Hon. Orjiakor N. Isiogu, Commissioner  
Hon. Greg R. White, Commissioner

OPINION ON REHEARING

On October 26, 2010, The Detroit Edison Company (Detroit Edison) filed an application in Case No. U-16489 seeking authority to defer certain pension and post-employment benefit expenses for future amortization and recovery. On October 29, 2010, Detroit Edison filed an application in Case No. U-16472 requesting a \$443 million rate increase and other relief.

A prehearing conference was held before Administrative Law Judge Mark E. Cummins (ALJ) on November 23, 2010. The ALJ granted petitions to intervene filed by, among others, the Department of the Attorney General (Attorney General); the Association of Businesses

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Advocating Tariff Equity (ABATE); Detroit Medical Center (DMC); Utility Workers Local 223 (Utility Workers); and the Michigan Community Action Agency Association (MCAAAA). The Commission Staff (Staff) participated in the proceedings. The ALJ also granted the late petition for intervention filed by Henry Ford Health System, William Beaumont Hospital, and Trinity Health – Michigan (collectively, with DMC, the Hospitals). On January 5, 2011, the ALJ consolidated Case Nos. U-16472 and U-16489.

On October 20, 2011, the Commission issued an order in Case Nos. U-16472 and U-16489 (October 20 order) finding that Detroit Edison is experiencing a jurisdictional revenue deficiency of \$174,931,000. Additionally, among other things, the Commission found that depreciation rates approved by the Commission in Case No. U-16117 should be applied to this case. Specifically, the Commission determined that: “The old depreciation rates shall apply to the self-implementation period and the new rates shall apply to the time period from the date of this order forward.” October 20 order, p. 78. On November 1, 2011, the Commission issued an order (November 1 order) clarifying that the quoted language indicates that the old depreciation rates shall apply to the self-implementation period for rate making purposes and the new depreciation rates authorized in Case No. U-16117 shall apply for rate making purposes to the time period from the date of the final order in this case (October 20, 2011).

On November 14, 2011, ABATE filed a petition for rehearing and/or clarification. On November 18, 2011, Detroit Edison filed a petition for rehearing. On November 21, 2011, the Attorney General, MCAAAA, Utility Workers, and the Hospitals filed petitions for rehearing. On December 5, 2011, the Staff and Detroit Edison filed responses to the petitions filed by the Attorney General and ABATE. On December 8, 2011, ABATE filed a response to Detroit Edison’s petition for rehearing. On December 9, 2011, the Staff filed a response to Detroit

Edison's petition for rehearing. On December 12, 2011, the Staff and Detroit Edison filed responses to the petitions filed by MCAAA, the Hospitals, and the Utility Workers; and the Attorney General filed responses to the petitions filed by MCAAA and the Utility Workers.

#### Rule 403 and the Standard of Review

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.

#### Petitions Addressing Depreciation Expense

The petitions for rehearing filed by ABATE, Detroit Edison, and the Attorney General address issues related to depreciation expense. ABATE argues that the October 20 and November 1 orders have the unintended consequence of decreasing depreciation without a matching decrease in revenue. ABATE maintains that this provides Detroit Edison's shareholders a windfall of \$94,055 per day. ABATE proposes the Commission rehear this issue and find that the old depreciation rates applied to the self-implementation period and continued to be in effect until October 29, 2011.

Detroit Edison argues that net operating income (NOI) should be recalculated because the amount used for depreciation expense is incorrect. Detroit Edison argues that if the depreciation rates approved in Case No. U-16117 are applied correctly, the depreciation expense approved

should have been higher than the amount proposed in the Proposal for Decision (PFD). According to the utility, the proper calculations did not carry through to the jurisdictional NOI and the revenue requirement. Detroit Edison proposes the Commission recalculate the adjusted jurisdictional NOI to be \$544.6 million, and increase the depreciation expense and revenue deficiency by \$13.4 million and \$13.3 million, respectively. *See*, Attachment 1 to Detroit Edison's petition for rehearing.<sup>1</sup> Detroit Edison urges the Commission to adopt these recalculations; order Detroit Edison to file a new rate design, tariffs, and rate realignment sheets; and allow Detroit Edison to recover lost revenue caused by this error.

The Attorney General also argues that the timing of the implementation of the depreciation rates approved in Case No. U-16117 had the unintended consequence of giving the utility a windfall of \$94,055 per day. The Attorney General proposes that the Commission grant rehearing on this issue and resolve it by synchronizing the effective dates of the new depreciation rates and the new retail rates, to eliminate the windfall. The Attorney General proposed the following language to clarify the issue:

The old depreciation rates modified in Case U-16117 shall apply from June 6, 2011 through October 28, 2011, and the new depreciation rates set in U-16117 shall apply from the date of October 29, 2011 forward. This will synchronize the calculation of Detroit Edison's booked depreciation expenses with the method adopted to calculate depreciation expenses for purposes of determining retail rate increases approved in this case.

Attorney General's petition for rehearing, p. 6.

In its response to ABATE's and the Attorney General's petitions, Detroit Edison agrees that the new depreciation rates approved in Case No. U-16117 should not be in effect until October 29,

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<sup>1</sup>The Staff identified discrepancies in the company's calculations, to which Detroit Edison agreed, and the company used the Staff's proposed calculations in re-determining the rate design, tariffs, and rate realignment figures. The Staff's corrections are presented in Attachment D to this order.

2011. Detroit Edison argues that the windfall ABATE and the Attorney General express concern about did not actually occur. Detroit Edison argues that the petitions should be denied because the arguments are moot.

ABATE opposes Detroit Edison's request regarding an adjustment to depreciation expense. ABATE argues that the \$493.5 million figure referenced in Detroit Edison's petition and shown on Attachment 1 to the petition is not recorded anywhere in this proceeding. ABATE argues that since the figure does not appear on the record, the Commission should deny Detroit Edison's petition for rehearing.

The Staff also agrees that the depreciation rates approved in Case No. U-16117 should be synchronized with the new retail rates approved in this case. The Staff requests that the Commission grant both petitions and adopt the clarification regarding depreciation rates proposed by the Attorney General. Further, the Staff agrees with Detroit Edison that an error was made in calculating NOI and that rehearing should be granted on this issue. However, the Staff argues that, when doing its calculation, Detroit Edison did not take into account the new depreciation expense within the accumulated provision for depreciation expense that is included in rate base. Taking this into consideration, the Staff recalculated the jurisdictional revenue deficiency to be \$187,608,000.<sup>2</sup> The Staff requests that the Commission grant Detroit Edison's petition for rehearing on this issue and adopt the Staff's calculation.

The Commission is persuaded that an error occurred in the October 20 and November 1 orders regarding the timing of new depreciation expense rates, and finds that the petitions for rehearing filed by ABATE, Detroit Edison, and the Attorney General should be granted on this issue. The Commission finds that the jurisdictional NOI shall be decreased by \$8.128 million and the

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<sup>2</sup>The Staff later modified this calculation to \$187,526,000, as reflected on Attachment D.

jurisdictional revenue deficiency shall be \$187,526,000. The Commission also finds that the old depreciation rates for rate making purposes modified in Case No. U-16117 shall apply from June 6, 2011 through October 28, 2011, and the new depreciation rates for rate making purposes set in Case No. U-16117 shall apply from October 29, 2011 forward. The Commission notes that any recovery of lost revenue would violate the prohibition against retroactive ratemaking.

*Michigan Bell Tel Co v Public Service Comm*, 315 Mich 533; 24 NW2d 200 (1946).

#### Detroit Edison's Petition

Detroit Edison petitions for rehearing on the Commission's decision to terminate the utility's current uncollectible expense tracker mechanism (UETM) because of facts and circumstances arising subsequent to the close of the record. Detroit Edison argues that rehearing should be granted because now the uncertainty regarding the Low-Income and Energy Efficiency Fund (LIEEF) coupled with the expected reductions in the Low-Income Home Energy Assistance Program (LIHEAP) for 2012 will result in a more volatile level of uncollectible expense than anticipated.

ABATE and the Staff oppose Detroit Edison's position. ABATE argues that the provisions of 2008 PA 286, which allow a utility to file a rate case and self-implement rates after 180 days from the date of filing a complete application sufficiently protect the company from speculative uncollectible expenses. The Staff, although cognizant that reductions in money available through LIEEF and LIHEAP will have an impact on uncollectible expenses, argues that Detroit Edison's concerns were articulated during the rate case and the company is just reasserting a previously made argument.

The Commission agrees that Detroit Edison has not articulated a cogent reason for granting rehearing, because its concerns related to the availability of low-income funds were considered in

the rate case. Thus, Detroit Edison is merely reasserting a previous position, and its petition for rehearing is denied. Additionally, the Commission notes that the Legislature, over the course of the past week, addressed this issue.

The Commission will address the company's additional arguments regarding its tracker mechanisms in a forthcoming order.

### The Utility Workers' Petition

In the October 20 order, the Commission found that, at this time, it would be inappropriate to require Detroit Edison to fund an external trust to train a new workforce and to file a report regarding the company's workforce training plans without the benefit of the technical conference's consensus report. The Commission noted that as of October 20, 2011, the consensus report had not yet been issued.

In its petition for rehearing, the Utility Workers state that the Commission mistakenly assumed that the consensus report is forthcoming. The Utility Workers claim that the technical conference has not met since February 9, 2011, there was no consensus among the parties, and a consensus report will never be issued. Therefore, the Utility Workers assert that it is inappropriate for the Commission to "defer decision in anticipation of a future event that will not occur." Utility Workers' petition for rehearing, p. 2.

In response, Detroit Edison states that the Utility Workers are reasserting the same arguments that were presented in their exceptions and were rejected by the Commission. Detroit Edison contends that the Utility Workers have not met the criteria for a rehearing pursuant to Rule 403, because they have not presented a claim of error, newly discovered evidence, facts or circumstances arising subsequent to the close of the record, or unintended consequences. Detroit Edison



states that the relief requested by the Utility Workers is unlawful because it is a collective bargaining issue, and unnecessary because the company has already budgeted for workforce training.

The Staff responds that the Utility Workers have presented this issue in a previous case, Case No. U-16191, and in response, the Commission ordered a technical conference and a consensus report. The Staff notes that the Utility Workers do not dispute that the technical conference last met on February 9, 2011. In addition, the Staff asserts that a consensus report is forthcoming. In the October 20 order, the Commission indicated that it would take no further action on this issue without the benefit of the consensus report. The Staff states that the Commission is entitled to rely upon its previous orders. The Staff recommends that the Commission deny the Utility Workers' petition for rehearing.

The Attorney General responds that the Utility Workers have not cited any statutory or legal authority that permits the Commission to "include in current rates expenses related to costs that may be incurred to serve future customers without evidence of any current benefits for current ratepayers." Attorney General's revised answer, p. 4. The Attorney General asserts that the Commission may not require Detroit Edison to fund an external trust for workforce training because it is a collective bargaining issue. In addition, the Attorney General states that the Commission may not make management decisions on behalf of Detroit Edison. Therefore, the Attorney General recommends that the Commission deny the Utility Workers' petition for rehearing.

The Commission finds that the Utility Workers' petition for rehearing should be denied because they have not presented a claim of error, newly discovered evidence, facts or circumstances arising subsequent to the close of the record, or unintended consequences of the October 20 order. The Commission is not mistaken in its belief that the technical conference will



produce a consensus report; the Commission finds the Staff's assertion credible that the consensus report is forthcoming. In its petition, the Utility Workers reiterated the same arguments regarding the workforce training trust and report as were presented in its brief, reply brief, and its exceptions to the PFD. The Commission addressed these issues in its November 4, 2010 order in Case No. U-16191 and the October 20 order, and, as stated in these orders, the Commission declines to decide these issues without the benefit of the consensus report. The Commission directs the Staff to file the consensus report by February 29, 2012.

#### The Hospitals' Petition

Since 1996, the Hospitals have taken service through large customer contracts (LCC); these contracts expire on December 31, 2011. In their petition for rehearing, the Hospitals argue that Detroit Edison failed to meet its burden of proof to show that movement of the Hospitals to a new rate class is just and reasonable. The Hospitals contend that the company's previous cost of service studies (COSS) establish that the LCC rates already put the Hospitals at their cost of service, and the Commission's decision in the October 20 order to allow the expiration of the LCC contracts was plain error. The Hospitals argue that the modified COSS provided by Detroit Edison in response to the Hospitals' second discovery request, which showed that the LCC rates did not collect the cost to serve these customers, was not sufficiently supported and should not have been relied upon by the Staff or the Commission. The Hospitals point out that their motion to compel seeking further information underlying the modified COSS for LCC customers was denied, and they contend that they were not provided a full and complete hearing.

The Hospitals argue that they have "many unique operating characteristics, such as 24/7/365 continuous operations." Brief in support of the Hospitals' petition for rehearing and/or reconsideration (hereinafter Hospitals' brief), p. 1. The Hospitals contend that it was up to Detroit Edison to

show that the rate that the Hospitals would be moved to after expiration of the LCC contracts would reflect their cost of service. They argue that in the October 20 order, the Commission erroneously placed this burden on the Hospitals. The Hospitals reject the company's indication that it inadvertently overstated LCC revenue in its prior rate case, Case No. U-15768. The Hospitals argue that the company never provided enough detail about the new COSS to fully explain the results. The Hospitals say that they could not verify the company's new data.

The Hospitals argue that they are unique within the group of LCC customers because of their important social role in providing jobs and healthcare. The Hospitals "believe that their cost of service is significantly less than the other LCC customers." Hospitals' brief, p. 4. They note that each of them will experience an annual rate increase as a result of the expiration of the special contracts of approximately \$2-3 million. They note that they "are also a vital backstop to many without health insurance." Hospitals' brief, p. 8.

In response, the Staff points out that though the Hospitals complain that the denial of their motion to compel prevented them from receiving a full hearing, they chose not to appeal that denial to the Commission. The Staff argues that the Hospitals simply disagree with the Commission's order, and repeat the arguments that were already considered and rejected by the Commission. The Staff contends that the Hospitals are not being forced into a higher rate, but are actually being enrolled into the rate class that is their rightful place with the utility's rate schedules after the expiration of their special discounted contracts.

Detroit Edison also responds that the Hospitals reassert the same arguments made in their briefs and exceptions.

The Commission finds that the Hospitals are simply re-arguing the positions that they presented in the rate case, which were considered and rejected by the Commission in the October 20 order. Their petition for rehearing is denied.

MCAAA's Petition

MCAAA seeks rehearing of the October 20 order regarding the ratemaking treatment of spent nuclear fuel (SNF) storage costs and SNF contract fees, associated with the U.S. Department of Energy's failure to perform under the Standard Contract. MCAAA disagrees with the Commission's findings in the October 20 order, and presents the same arguments in its petition that it presented in the rate case. In response, Detroit Edison, the Attorney General, and the Staff noted that these arguments were considered and rejected by the Commission, and have been repeatedly rejected by the Commission in other cases, as described in the October 20 order and other orders. The Commission agrees with the parties and finds that MCAAA's petition for rehearing should be denied as it does not meet the standard of Rule 403.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's petition for rehearing is granted in part. The Commission finds that The Detroit Edison Company's jurisdictional net operating income shall be \$8.128 million less than the amount determined in the October 20, 2011 order, and The Detroit Edison Company is experiencing an annual revenue deficiency of \$187,526,000. The Detroit Edison Company is authorized to implement rates consistent with the findings of this order on a service rendered basis for service provided on and after December 21, 2011, as summarized in Attachment A and set forth in Attachment B. Within 30 days of the date of this order, The Detroit Edison Company shall file tariff sheets substantially similar to those contained in Attachment B. Due to

the size of Attachment B, it is physically attached only to the original order contained in the official docket, but is electronically appended to this order, which is available on the Commission's website. Attachment C reflects the rate realignment for the remaining realignment period. The Detroit Edison Company shall implement the realigned surcharges/credits reflected on Attachment C, until the company's next rate case filing. The Detroit Edison Company is directed to file a tariff sheet reflecting the realigned rate 30 days prior to each year's implementation date. Attachments A-C to this order replace Attachments A-C to the October 20, 2011 order.

B. The petition for rehearing or clarification filed by the Association of Businesses Advocating Tariff Equity is granted.

C. The petition for rehearing filed by the Michigan Department of the Attorney General is granted.

D. The petition for rehearing filed by the Michigan Community Action Agency Association is denied.

E. The petition for rehearing filed by Utility Workers Local 223 is denied.

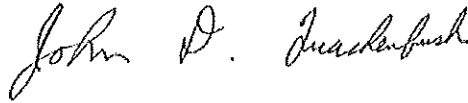
F. The petition for rehearing filed by Henry Ford Health System, William Beaumont Hospital, Trinity Health – Michigan, and the Detroit Medical Center is denied.

G. The old depreciation rates for rate making purposes modified in Case No. U-16117 shall apply from June 6, 2011 through October 28, 2011, and the new depreciation rates for rate making purposes set in Case No. U-16117 shall apply from the date of October 29, 2011 forward.

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



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John D. Quackenbush, Chairman



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Orjiakor N. Isiogu, Commissioner



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Greg R. White, Commissioner

By its action of December 20, 2011.



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Mary Jo Kunkle, Executive Secretary

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