STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the approval of a code of conduct for **CONSUMERS ENERGY COMPANY** and **THE DETROIT EDISON COMPANY.**	))))	Case No. U-12134 (Detroit Edison)

At the October 3, 2002 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On December 4, 2000, the Commission issued an order adopting a code of conduct, as required by Section 10a(4) of the Customer Choice and Electricity Reliability Act:

> Within 180 days after the effective date of the amendatory act that added this section, the commission shall establish a code of conduct that shall apply to all electric utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, information sharing, and preferential treatment, between a utility's regulated and unregulated services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10bb.

MCL 460.10a(4). Among other things, the order required the filing of compliance plans and permitted the filing of requests for waivers.

On January 23, 2001, the Commission issued an order amending the code of conduct to require the filing of compliance plans within 60 days after the issuance of an order on rehearing of the December 4, 2000 order. On October 29, 2001, the Commission issued the rehearing order, and adopted a revised code of conduct. Detroit Edison filed a compliance plan and requested waivers.

Waiver Requests

Detroit Edison requests waivers of sections II.D, II.E, II.G, and II.H to permit it to provide development support for distributed generation technologies by DTE Energy Technologies. It requests waivers of sections III.A, III.C, III.E, and III.F to facilitate the assessment of possible uses of distributed generation technologies on Detroit Edison's distribution system and possible customer applications by DTE Energy Technologies. It also requests waivers of sections IV.A and IV.D to permit information sharing with DTE Energy Technologies in connection with distributed generation technologies on its distribution system and possible customer applications.

The Commission recognizes that the use of distributed generation technologies for customer-based generation and in support of the company's distribution system potentially is innovative, improves efficiency, and reduces both the company's and its customers' costs of electricity. The Commission is therefore interested in this emerging field and the efficiency gains that it may hold for the state. The Commission will grant Detroit Edison all but two of the waivers that it seeks for this program, with appropriate safeguards. The Commission will not grant a waiver of section III.C, the affiliate pricing standards. This provision represents a fundamental regulatory pricing requirement and is one of the most effective tools for preventing ratepayer subsidization of a utility's unregulated operations. The Commission will also not grant a waiver of section III.A. Detroit Edison has not sufficiently explained why a waiver of this provision is necessary because a waiver may permit the company to actively favor an affiliate over other competitors in providing regulated services. Also, the waiver of section III.F is conditioned on Detroit Edison not steering a potential customer away from a non-affiliated alternative electric supplier or distributed generation supplier. The waivers permitted in this order are granted with these exceptions and upon condition that Detroit Edison keep separate books and accounts for regulated and unregulated operations, properly and fully allocate costs between regulated and unregulated operations, and take all steps necessary to assure that no cross-subsidization occurs.

Furthermore, Detroit Edison has used words like "development," "review," "testing," and "evaluation" when describing the distributed technology program, which leaves the impression that the program is in its formative stages. The Commission has granted Detroit Edison a broad set of waivers to help it implement a potentially valuable resource option. That approval is based, in part, upon the immature nature of distributed generation technologies at this time. Therefore, the Commission will limit the waivers to a two-year term. During that time, the Commission will evaluate Detroit Edison's program and the distributed generation technology field to determine whether the waivers should be continued or terminated.

Detroit Edison requests waivers of sections II.A, II.C, II.D, II.E, and II.H for various unregulated customer service programs including appliance repair, surge protection, lighting products and services, energy auditing services, and uninterruptible power supplies for devices like personal computers. It says that it has offered these programs for many years and that they are offered in fully competitive markets.

On January 30, 2002, the Michigan Alliance for Fair Competition (MAFC) filed an objection to Detroit Edison's request for waivers with respect to these services. It says that the waivers, if granted, would explicitly approve Detroit Edison's cross-subsidization, information sharing, and preferential treatment between the utility's regulated and unregulated services in violation of

Section 10a(4). It says that Detroit Edison has not demonstrated that the requested waivers will not inhibit the development or functioning of the competitive market.

On March 19, 2002, Detroit Edison filed a response. It says that the code of conduct and the Commission's rules do not permit the MAFC's filing, and says that the allegations are unsupported by the facts or law. It also says that the MAFC's objections should be viewed as limited to the heating, ventilating, and air conditioning market, while its waiver request involves businesses that have little or no relationship to that industry.

The Commission notes that many of the products and services for which Detroit Edison seeks a waiver are requested by customers or are offered in markets that are competitive. Certainly this is true of products such as lighting products and surge protectors, which can be purchased in numerous retail outlets throughout the state. Many of the competitors in those markets are large and well-established, have a national presence, and may have a significant market share, and information on those devices and services may be readily available. In those markets, Detroit Edison would not seem to have any advantage due to its size or its business experience. In other markets, Detroit Edison may not actively advertise its services or may not be a major provider. The Commission concludes that as long as costs are appropriately allocated, regulated operations do not subsidize unregulated services and products, and Detroit Edison provides the reports required by this order, the waivers for many of these services and products are appropriate.

Appliance repair services, however, are provided in localized markets characterized by numerous small firms. In those markets, Detroit Edison may have a major advantage due to its relatively large size, name recognition that follows from its participation in the energy markets, and the lack of sufficient information on those services being readily available to customers. The Commission has received numerous letters expressing concern about utilities unfairly subsidizing appliance related services, especially heating and air conditioning services that they provide. One way to assure that a utility's resources are not being used to unfairly subsidize these business activities or to unfairly dominate the local markets is to require full functional separation for the appliance repair business from the utility itself, preferably through a separate affiliate, i.e., to deny the requested waivers for this program. At the same time, the Commission does not want to deprive the utility's customers of services that they request from the utility, especially if the request is for a minor repair or adjustment that can be viewed as part of providing utility-related services. To do so would be to prevent customers from exercising a choice of service providers.

For the company's appliance repair program, the Commission will require that these services be provided through full functional separation, preferably through a separate affiliate; i.e. no waivers will be granted for these programs and for any other appliance repair services that are actively marketed or promoted by the utility. When a request for a utility-related repair or adjustment is made by the customer, the utility may perform those services as part of its normal business. Such non-marketed services will be considered incidental to the utility's primary energy service functions.

The Commission realizes that the services for which it has denied a waiver are currently functioning programs that involve the use of corporate employees and other resources. The Commission does not expect the utility to decide immediately whether, when, or how to redeploy these employees and resources. The Commission also recognizes that these programs involve customer contractual obligations and relationships built upon the direct interaction of Detroit Edison with its customers. The Commission will therefore grant temporary waivers of the separation requirement of the code for these services for up to six months from the date of this order.

All of the waivers granted by this order apply narrowly to the programs described in the company's December 28, 2001 compliance plan. Any new programs or modifications to the programs described in the compliance plan will require additional waiver requests on the part of Detroit Edison.

Finally, the Commission has provided flexibility to Detroit Edison (and other utilities) in this case by granting requests for waivers from selected provisions of the code. This additional flexibility requires the Commission and its Staff to be diligent in preventing cross-subsidization between utilities and their non-regulated operations and affiliates. A particularly helpful tool in doing so has been the prior reports required by the Commission and submitted by Detroit Edison, providing crucial information relating to affiliate relations and access to affiliate information. Information and access necessary cover the following:

(1) The utility shall ensure that the Commission has access to books and records of any holding company owning the utility and each of the holding company's affiliates and their joint ventures. Any objections to providing access as requested under this requirement must be raised before the Commission, and the burden of showing that the request is unreasonable or unrelated to the Commission's responsibilities is on the party seeking to deny or withhold access.

(2) Consolidated 10k reports and shareholders' reports of the consolidated utility and/or its parent holding company on an annual basis.

(3) Annual balance sheet and income statements of the non-regulated subsidiaries of the utility and/or the non-consolidated subsidiaries of the holding company.

(4) Reports of internal audits conducted regarding transactions between the utility and its nonutility affiliates. Such reports will be submitted every three years beginning with a report for the year 2003. The audit report shall address transactions occurring since the last audit report and shall describe whether appropriate cost allocation procedures and transfer pricing methodologies were followed and whether the utility and its affiliates are maintaining records that are adequate to facilitate an effective audit of the transactions. The Commission Staff may require more frequent reports or additional audits when appropriate.

(5) A notification to the Commission 30 days prior to any transfer to non-utility affiliates of any utility assets or property exceeding a fair market value of $100,000. At the time notice is provided, the utility shall make available to the Commission information that demonstrates how the transfer price was determined.

(6) In its annual report, each utility shall provide information on any arrangement that allows an affiliate to obtain credit in a manner that permits a creditor, upon default, to have recourse to or in any way encumber the utility's assets.

As an additional condition for granting these waivers, the Commission will require Detroit Edison to continue to file these reports annually.

Compliance Wording

Detroit Edison made several assumptions regarding the scope of the code of conduct in its compliance filing. In its orders, the Commission fashioned a code that is broad enough to promote and preserve competitive markets in a manner that accommodates the many activities pursued by electric utilities today. Detroit Edison has pointed out, however, that its affiliated unregulated activities include businesses predominately involved in interstate commerce or taking place in other states. It also provides services that are regulated by the Federal Energy Regulatory Commission (FERC), are subject to a FERC code of conduct, or are covered by the Midwest Independent System Operator, Inc. (MISO).

When a service or product is provided in other states, is subject to a FERC code of conduct, or is otherwise regulated directly by the FERC or through a regional transmission organization like MISO, this code of conduct may be duplicative. Under these circumstances, as long as the FERC or another governmental regulatory agency requires adherence to a code or regulatory requirements that are equivalent to the Michigan code of conduct, it will not be necessary to adhere to this code. However, the Commission will make a decision on whether an alternate code is applicable after a waiver request has been made by a utility. The previous discussion does not include all of the affiliates identified by Detroit Edison in its filing. For example, Detroit Edison's relationship with Syndeco remains subject to the code.

Finally, the Commission will not allow Detroit Edison to modify the scope of the code through statements in its compliance plan. For example, Detroit Edison suggests that code provisions, including the transfer pricing standards, do not apply to Detroit Edison's relationship with its parent, DTE Energy. In support, it quotes the Commission's December 4, 2000 order, where the Commission stated, "sharing of financial, personnel, and payroll information, for example is permissible." The wording refers only to the sharing of information, and it would be improper for Detroit Edison to assume that it means more in the absence of a waiver. The Commission will not grant waivers in the absence of specific requests, and general statements in a compliance plan cannot serve to create waivers that the Commission has not granted.

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, 1992 AACS, R 460.17101 et seq.

b. Detroit Edison's compliance filing should be accepted, subject to the discussion above.

c. The requests for waivers should be granted in part and denied in part, as discussed above.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's compliance filing is accepted, subject to the discussion above.

B. The requests for waivers are granted in part and denied in part, as discussed above.

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/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of October 3, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

B. The requests for waivers are granted in part and denied in part, as discussed above.

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

Laura Chappelle
Chairman

Commissioner

Robert B. Nelson
Commissioner

By its action of October 3, 2002.

Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-12134
(Detroit Edisons waivers)

County of Ingham)

Gloria P. Jones being duly sworn, deposes and says that on October 3, 2002, A.D. she served a copy of the attached Order by mailing copies thereof by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Gloria P. Jones

Subscribed and sworn to before me
this 3rd day of October 2002

Sharon Allen

Notary Public, Ingham, County, Michigan
My Commission expires August 16, 2004

SERVICE LIST FOR DOCKET # U - 12134- CASE #
DATE OF PREPARATION: 10/04/2002

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