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 recover implementation costs for its direct access program for the 12-month period ended December 31, 1999.	)	Case No. U-12359

At the March 29, 2001 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 March 31, 2000, The Detroit Edison Company (Detroit Edison) filed an application for authority to recover costs incurred during the 12-month period ended December 31, 1999 to implement electric restructuring and to initiate a direct access program in its service territory. Based on information submitted in support of its application, Detroit Edison sought recovery of $21,237,548 in what it concluded were prudently incurred implementation costs.

Pursuant to due notice, prehearing conferences were held in this case on June 19 and 27, 2000 before Administrative Law Judge Barbara A. Stump (ALJ). Detroit Edison, the Commission Staff (Staff), Energy Michigan, the Association of Businesses Advocating Tariff Equity (ABATE), Plastipak Packaging, Inc. (Plastipak), and Attorney General Jennifer M. Granholm (Attorney General) participated in the proceedings.

An evidentiary hearing was conducted on December 5, 2000. Although three witnesses testified at the hearing, the parties waived cross-examination of each. The record consists of 50 pages of transcript and three exhibits, each of which were received into evidence. Detroit Edison, ABATE, Plastipak, and the Staff filed briefs on January 12, 2001. Reply briefs were filed on January 26, 2001 by Detroit Edison and the Attorney General.

On February 5, 2001, the ALJ issued a Proposal for Decision (PFD) in which she found, among other things, that several adjustments should be made to the total cost recovery sought by Detroit Edison. Those adjustments (which were proposed by the Staff) produced a $849,383 reduction in the utility's recoverable direct access implementation costs. As a result, the PFD recommended authorizing Detroit Edison to recover $20,388,165 of its costs incurred during 1999, subject to all conditions (which concern the policies and procedures controlling direct access implementation cost reviews) set forth in the Commission's October 24, 2000 order in Cases Nos. U-11955 and U-11956, and its November 2, 2000 order in Case No. U-12478.

None of the parties filed exceptions to the findings and recommendations set forth in the PFD. Rather, the Staff filed a note clarifying the basis for one of its proposed adjustments that had been adopted by the ALJ, and the Attorney General submitted a document specifically indicating that she took no exception to the PFD. The Commission finds that: (1) the PFD is supported by the record and the law, (2) each of the ALJ's findings and recommendations should be adopted, and (3) Detroit Edison should be authorized to recover $20,388,165 in incremental direct access implementation costs incurred during 1999, subject to the conditions set forth in the Commission's orders in Cases Nos. U-11955, U-11956, and U-12478. Those conditions include the deferral of the means of cost recovery until the disposition of a stranded cost recovery mechanism is developed.

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 AACS, R 460.17101 et seq.

b. The findings and recommendations of the PFD issued on February 5, 2001 should be adopted.

c. Detroit Edison should be authorized to recover up to $20,388,165 of its implementation costs incurred during 1999, subject to certain conditions.

THEREFORE, IT IS ORDERED that:

A. The findings and recommendations of the Proposal for Decision, issued in this case on February 5, 2001 and attached to this order as Exhibit A, are adopted.

B. The Detroit Edison Company should be authorized to recover up to $20,388,165 of its incremental direct access implementation costs incurred during the 12-month period ended December 31, 1999, subject to all conditions set forth in the Commission's October 24, 2000 order in Cases Nos. U-11955 and U-11956, and its November 2, 2000 order in Case No. U-12478.

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/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of March 29, 2001.

/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

Laura Chappelle
Chairman

Commissioner

Robert B. Nelson
Commissioner

By its action of March 29, 2001.

Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **THE DETROIT EDISON COMPANY** to Recover Implementation Costs for its Direct Access Program for the period ended December 31, 1999.	)	Case No. U-12359

PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

On March 31, 2000, The Detroit Edison Company (Detroit Edison) filed an application to recover implementation costs for its direct access program for the period ended December 31, 1999.

A prehearing was held on June 19, 2000, at which time the parties agreed to schedule a second prehearing for June 27, 2000. Detroit Edison, Energy Michigan, Plastipak Packaging, Inc., (Plastipak), the Association of Businesses Advocating Tariff Equity (ABATE), Attorney General Jennifer M. Granholm (Attorney General), and the Commission Staff (Staff) participated in the proceedings. In accordance with the schedule established at that prehearing conference, which was subsequently amended by stipulation of the parties, an evidentiary hearing was conducted on December 5, 2000.

At the December 5, 2000 hearing, Detroit Edison presented the testimony of Joseph A. McCormick; ABATE presented the testimony of James T. Selecky; and the Staff presented the testimony of Nancy G. Katsarelas. The parties waived cross-examination of the witnesses. Three exhibits were also admitted into evidence. The Attorney General, Plastipak, and Energy Michigan did not present any evidence.

Detroit Edison, ABATE, Plastipak, and the Staff filed briefs on January 12, 2001. Detroit Edison, ABATE, and the Attorney General filed reply briefs on January 26, 2001.

In their briefs, Detroit Edison, Plastipak, and the Staff indicated that they would waive Section 81 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended (APA); MCL 24.201 et seq.; MSA 3.560(101), which provides for the issuance of a Proposal for Decision (PFD). ABATE subsequently submitted a letter, in which it also agreed to waive Section 81 of the APA. However, neither the Attorney General nor Energy Michigan have indicated their willingness to do so. Consequently, the ALJ issues this PFD in compliance with Section 81 of the APA.

SUMMARY OF THE EVIDENCE

Mr. McCormick is the supervisor in the Budget and Management Information Group of Detroit Edison's Electric Choice Implementation Team (ECIT). He is responsible for the administration of, and reporting on, the entire ECIT budget. He has assisted in the creation of the accounting structure, implemented a process for the appropriation of funds, and developed the 1999 budget. (3 Tr. 22-23.)

Mr. McCormick provided details regarding Detroit Edison's incurred 1999 implementation costs and the accounting for those costs. He also sponsored Exhibit A-1, which is the 1999 full year actual expenses by source department and by resource type. He indicated that the direct resource types are Detroit Edison labor, consultant/contract labor, material and equipment, and all indirect charges including overhead expenses. He also went on to describe the five source departments that make up the budget. Those source departments are Customer Transactions, Supplier Transactions, Communication and Education, Data Acquisition, and Information Technology. (3 Tr. 24-26.)

Mr. McCormick also explained his cost of capital calculations. He stated that he used the pre-tax rate of 10.01%, because the Commission used this figure for the return on assets to determine rates in Cases Nos. U-10102 and U-11726. (3 Tr. 27.)

Mr. McCormick further indicated that he removed Line 38, Non-Incremental Labor and Benefits, from the 1999 implementation costs, because it represents the 45% of 1998 labor expenses that were asserted to be non-incremental during the Staff's audit and subsequent testimony presented by Gerald F. Geml in Case No. U-11956. He explained that this amount was moved to Operating and Maintenance expense following that proceeding. As a result, he stated that Detroit Edison is not seeking recovery of that amount. (3. Tr. 27.)

Mr. McCormick also confirmed that, based on the Staff's position in Case No. U-11956 that implementation costs for the first quarter of 1999 should be deferred until this case, the company is not seeking to recover the first quarter implementation costs twice. Rather, it is providing full-year 1999 implementation costs for the sake of completeness and to permit the Commission to approve those costs in the case it deems appropriate.

Mr. McCormick indicated that the total amount of 1999 implementation costs that Detroit Edison is seeking to recover is $21,237,548. He explained that this figure differs from estimated 1999 expenses of $38,203,000, which was presented in Case No.

U-11956, because the level of participation was lower than forecasted. The lower level of participation caused certain projected expenses to be deferred. (3 Tr. 29.)

Finally, Mr. McCormick also sponsored Exhibit A-2, which is a list of the key milestones achieved by the ECIT during 1999.

Mr. Selecky is a consultant in the field of public utility regulation. (3 Tr. 32.) He reviewed Detroit Edison's implementation costs and noted that the majority of those costs represent customer and retailer billing costs. He stated that in standard cost of service and associated rate design before the Commission, all of these customer-related costs would be allocated to customer classes based on numbers of customers. According to Mr. Selecky, none of these costs are energy or kilowatt-hour (kWh) related. Consequently, he opined that the costs should be allocated to classes based on the number of customers in each class and collected on that basis. (3 Tr. 34.)

Based on Detroit Edison's response to a data request in Case No. U-11956, Mr. Selecky recommended that rate class specific surcharges be developed recognizing that 44% of the customer costs are residential, 11% are small commercial, 29% are large commercial, and 16% are primary. Mr. Selecky opposes any allocation of implementation costs to customers on a uniform per kWh basis. However, he did not propose a specific cost recovery mechanism in this case for prudent implementation costs. Rather, he recommended that the Commission require the Staff to perform an audit of the company's proposed implementation costs to determine whether they were prudently incurred and incremental. Based on that audit, he indicated that the rate class surcharges should be developed using an appropriate cost allocation method. Relying on the Commission's

October 24, 2000 order in Case No. U-11956, in which it deferred recovery of Detroit's Edison's 1998 implementation costs until the resolution of the stranded cost recovery issue, Mr. Selecky recommended that recovery of the 1999 implementation costs also be deferred. (3 Tr. 36-37.)

Ms. Katsarelas is an auditor in the Commission's Electric Division. She described the results of the review that she performed relative to Detroit Edison's implementation costs. She indicated that the Staff performed an on-site audit of the implementation costs for the 12 months ending December 31, 1999. According to Ms. Katsarelas, the audit consisted of reviewing contractor invoices, company-related labor and expense summaries, Internal Audit Reports for the years 1998 and 1999, and the overall reasonableness of the charges recorded on the company's books for the open access program. As a result of that audit, Ms. Katsarelas made various adjustments, which are embodied in Exhibit S-3. Specifically, lines 10-13 are the Staff's adjustments. (3 Tr. 46.)

Ms. Katsarelas explained that she reversed $521,524, which is the amount that Staff witness Geml adjusted in Case No. U-11956 and that Mr. McCormick adjusted in this testimony. She also reduced the labor costs submitted by Detroit Edison by 37% to eliminate non-incremental labor costs. She did so based on a Detroit Edison internal audit of the implementation program, which revealed that a certain percentage of Detroit Edison labor is from a labor force already employed by the company prior to the start-up of the electric choice program. In short, it did not result from any additional expense to the company since its last major rate case and, therefore, it is non-incremental. (3 Tr. 47.)

Ms. Katsarelas went on to explain that line 11 of Exhibit S-3 is a reversal of Detroit Edison's carrying costs, because the company did not make an adjustment for non-incremental labor. Line 12 is the Staff's carrying costs with the 37% non-incremental labor removed. Ms. Katsarelas stated that Detroit Edison has yet to arrive at an estimate for non-incremental labor during the year and, as a result, it has been unable to remove any portion of its own labor that would represent non-incremental labor. (3 Tr. 48.)

Ms. Katsarelas also made an adjustment to the cost of capital to reflect the difference between the method that Detroit Edison used to calculate carrying costs and the preferred method to calculate those costs. She explained that Detroit Edison used a 12-month cumulative balance, but the preferable accounting method starts with the beginning cumulative balance for implementation costs. One-half of the new additional costs for the year are then added to determine a base amount. Detroit Edison's rate of return of 10.01% is then applied to the base to arrive at the new carrying cost amount. (3 Tr. 48.)

The foregoing adjustments resulted in a total reduction of $849,383 in the costs submitted by Detroit Edison, that is, from $21,237,548 to $20,388,165.

POSITIONS OF THE PARTIES

Based on its adjustments, the Staff recommends that the Commission permit Detroit Edison to recover its incremental direct access implementation expenses for 1999 in the amount of $20,388,165, subject to the conditions set forth in the Commission's October 24, 2000 order in Cases Nos. U-11955 and U-11956 and its November 2, 2000 order in Case No. U-12478. In its brief, Detroit Edison agrees to accept this amount as its recoverable direct access implementation costs as well as the policies and procedures for future direct access implementation cost reviews set forth in the Commission's October 24 and November 2, 2000 orders.

Plastipak also agrees that Detroit Edison's requested amount should be reduced using the Staff's adjustments. Plastipak further agrees with ABATE's position that most of the implementation costs are customer-related, and that such costs should be allocated to customer classes based upon the number of customers. It therefore supports ABATE's recommendation that rate class specific surcharges should be developed to recognize this cost causation principle in the event the Commission authorizes Detroit Edison to recover its implementation costs.

ABATE takes the position that Detroit Edison's 1999 implementation costs should be deferred because both the 1998 and 1999 costs should be addressed at the same time and accorded similar treatment. However, if the merits of cost recovery are decided in this case, then ABATE argues that the entire amount should be disallowed pending a showing by Detroit Edison that it has created a workable retail open access program. In the alternative, if the costs are approved and a cost recovery mechanism is adopted, ABATE submits that rate class specific surcharges should be developed.

In its brief, ABATE also requests that, pursuant to Rule 327 of the Rules of Practice and Procedure before the Commission, the Commission take official notice of the results of a Staff audit of Detroit Edison's enrollment procedures, which it performed during October and November 2000. That report is entitled, "MPSC Staff Report on Investigation of Detroit Edison Company Retail Open Access Program Customer Enrollment and Supplier Support Systems and Process" and is dated December 2000. Among other things, ABATE represents that the Staff does not believe that Detroit Edison's enrollment process is prepared to handle full open access, which is scheduled to commence on January 1, 2002. ABATE submits that this report should be used as justification for the disallowance of the implementation costs requested by Detroit Edison in this case. In ABATE's view, the disallowance should be contingent on Detroit Edison showing that it has successfully implemented a retail open access program.

The Attorney General supports approval of the Staff's adjusted total of $20,388,165, subject to the conditions set forth in the Commission's orders in Cases Nos. U-11956 and U-12478. The Attorney General also contends that the Commission should adhere to its prior orders and indicate that implementation costs shall not be included in securitization. Finally, the Attorney General asserts that ABATE's request that the Commission adopt class specific surcharges for recovery of implementation costs is premature in light of the Commission's prior orders.

DISCUSSION AND FINDINGS

By way of background, on June 5, 2000, after Detroit Edison had filed its application in this case, the Customer Choice and Electricity Reliability Act, 2000 PA 141(Act 141) and 2000 PA 142 (Act 142), which amended 1939 PA 3, MCL 460.1 et seq.; MSA 22.13(1) et seq., became effective. That legislation codified, in large part, the Commission's prior open access orders. Among other things, the new law provides for the recovery of net stranded costs through a true-up mechanism.

As a result of the new legislation, Detroit Edison filed an application to use securitization bonds to secure some of its stranded costs, including its 1998 and 1999 direct access implementation costs. On November 2, 2000, the Commission issued an order in Case No. U-12478, Detroit Edison's securitization case. In that order, the Commission adopted the Staff's view that costs for 1998 and 1999 that are non-incremental should not be securitized. The Commission then noted that it had adopted the Staff's adjustment to the costs incurred through 1998 in its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the transition cost true-up proceedings for Consumers Energy Company and Detroit Edison, respectively. Based on that order, the Commission determined that it is reasonable to treat the costs for 1999 in the same manner. Also in its November 2, 2000 order, the Commission permitted Detroit Edison to treat implementation and customer education costs as regulatory assets. In doing so, the Commission stated that:

> Detroit Edison is entitled to recover the reasonable and prudent costs that it incurs to implement the retail open access program. Although the Commission does not agree that all of those costs should be treated as qualified costs, it is reasonable to allow Detroit Edison to treat those costs as regulatory assets that can be recovered at another time if found to be reasonable and prudently incurred. (p. 27.)

In this case, the ALJ finds that the Staff's adjustments to Detroit Edison's 1999 implementation costs should be adopted, and that the company should be permitted to recover its 1999 incremental direct access implementation expenses in the amount of $20,388,165. Indeed, Detroit Edison has agreed to accept the Staff's disallowance of non-incremental costs as it did in Case No. U-11956. Plastipak and the Attorney General also support this position.

As to the recovery of the implementation costs, in its October 24, 2000 order in Cases Nos. U-11955 and U-11956, the Commission concluded that it would defer the means of recovery of the company's 1998 implementation costs ". . .until pending questions regarding the stranded cost recovery mechanism are resolved." (p.12.) Consistent with the Commission's order, the ALJ finds that the means of recovery of Detroit Edison's 1999 implementation costs should be deferred in the same manner.

ABATE is the only party to take the position that, if the Commission decides the merits of cost recovery in this case, it should disallow the entire amount of Detroit Edison's 1999 implementation costs. However, the ALJ rejects that position because ABATE did not present any evidence disputing the reasonableness of those costs. In fact, as Detroit Edison correctly points out, none of the parties presented any evidence contesting the reasonableness of at least $20,388,165 of incremental 1999 direct access implementation costs.

ABATE now requests that the Commission take official notice of a Staff report that was issued after the close of the record in this case to justify a disallowance of implementation costs. Rule 327 of the Rules of Practice and Procedure Before the Commission provides that:

> Except as otherwise provided by law, the commission and the presiding officer may take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission's specialized knowledge. (460.17327.)

Michigan Rule of Evidence 201(b) explains that:

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

According to ABATE, the Staff report consists of a study that embodies the results of an audit of Detroit Edison's enrollment procedures during October and November 2000. The ALJ does not believe that such a study constitutes facts that are not subject to reasonable dispute. The ALJ therefore finds that ABATE's request for official notice of this report should be denied, because it is an effort to inject into this case extra record information that has not been subject to cross-examination.

CONCLUSION

The ALJ recommends that the Commission issue an Order adopting the Staff's adjustments to Detroit Edison's 1999 direct access implementation costs and approving those costs in the amount of $20,388,165, subject to the conditions set forth in the Commission's orders in Cases Nos. U-11956 and U-12478.

MICHIGAN PUBLIC SERVICE COMMISSION

Barbara A. Stump

Barbara A. Stump
Administrative Law Judge
Department of Consumer & Industry Services - Bureau of Hearings

February 1, 2001
Lansing, Michigan
dp

ISSUED AND SERVED: February 5, 2000

PROOF OF SERVICE

STATE OF MICHIGAN)

County of Ingham)

Case No. U-12359

Marcia Hoskins, being duly sworn, deposes and says that on March 29, 2001, A.D. she served a copy of the attached order, by mailing copies thereof by first class mail, postage prepaid, or by inter-department mail, to the persons as shown on the attached service list.

Marcia Hoskins

Subscribed and sworn to before me
this 29th day of March 2001

Sharon A. Allen

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

SERVICE LIST FOR DOCKET # U - 12359-   CASE #
DATE OF PREPARATION: 03/23/2001

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