

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
THE DETROIT EDISON COMPANY
to increase rates, amend its rate schedules
governing the distribution and supply of electric
energy, implement 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.

Case No. **U-13808**
(e-file)

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
REPLY TO ABATE'S PETITION FOR REHEARING**

I. Reply to ABATE's Petition with respect to SMCs

The Commission did not err when it found that the proposed large manufacturing tariff should be based on the Staff's recommendation and limited to those customers currently served by SMC contacts. The tariff in question is the Transitional Primary Supply Rate (TPSR), or Rate D7. ABATE claims that establishing a transitional tariff that is available to only former Special Manufacturing Contract customers is discriminatory. ABATE opines that "Any tariff must apply to *all* customers that are receiving like contemporaneous service, so any customer with a demand of 5 MW or greater must be eligible for the new tariff." The Commission, however, did distinguish the SMC customers from other large manufacturing customers based on the fact that the SMC customers were taking service under special contracts. At page 76 of its November 23, Order the Commission stated:

The Commission rejects the argument that all large customers should be permitted to take service under this tariff. The TPSR shall be limited to those customers that have previously been served pursuant to a special contract approved by the

Commission. This does not violate the prohibition against discriminatory rates, as special contract customers differ in circumstance from those customers that have not been served under those contracts.

ABATE simply does not like the Commission's distinction because it would prefer to force the Commission to offer discounts to more large manufacturing customers in addition to those who previously had the SMCs. The Commission approved the SMCs and therefore can speak authoritatively with respect to the special circumstances that were considered when the contracts were approved. In this case the Commission has exercised its legal discretion and determined that the SMCs should not be continued in the future, instead the SMCs as a class should return to full service rates, *albeit* gradually through a transitional tariff - TPSR. The Commission has applied the principle of gradualism many times before when moving a class of customers to a more cost-based rate in order to avoid rate shock.

The Commission approved the SMCs because Detroit Edison made a case that those customers could reasonably be distinguished from other customers who were similar in size. The Commission has the authority now to determine whether it is appropriate to create a tariff that will provide a gradual transition from those discounted contracts to a more cost-based tariff rate. The Commission is not obligated to offer that transitional rate to other large customers which it did not deem eligible for the initial SMC discounts. If ABATE prevails in its argument that the Commission cannot distinguish between the SMCs and other large customers, Staff would recommend that the Commission adopt Staff's initial recommendation to impute \$37,845,000 of revenue associated with the discounts to the SMCs and simply require them to return to full rates. The TPSR as modified by the Commission is a superior solution which provides a gradual transition from the SMCs to full rates for customers with unique circumstances while balancing the economic interests of both the participating and non-

participating customers. If the Commission abandons the TPSR, the SMCs should have to return to the full tariff rates at an additional cost of approximately \$20,862,000 (\$18,923,000 discounts plus 10.25% equal percent increase).

Finally, ABATE cites section 85 of the Administrative Procedures Act of 1969 as stating, “Each conclusion of law shall be supported by authority or reasoned opinion.” The Commission was within its authority to approve the SMCs and is now within its authority to create a tariff for those customers to provide a gradual transition from the discounted contracts to more cost based rates. Staff recommends that the Commission reject ABATE’s request to adopt its proposed tariff for all customers with at least a 5 MW load.

II. Reply to ABATE’s Petition with respect to the TPSR tariff

The Commission did not err in the design of the new Transitional Primary Supply Rate (TPSR) tariff because it adopted Staff’s proposal with a reasonable modification that is within the Commission’s ratemaking discretion. In its November 23, 2004 Order the Commission approved a new TPSR tariff to replace the Special Manufacturing Contracts that were due to expire in the near future. The Commission addressed the rate design of the TPSR rate at pages 74-77. The Commission dealt with the threshold question of whether it was appropriate to create a TPSR tariff or simply assume the SMC customers would return to full service tariffs (probably Rate D6, Primary Supply Rate). If the Commission did not create the TPSR tariff then it had to decide whether to impute all of the SMC discounts, \$37,845,000, to Detroit Edison or allocate a portion of the discount to other classes. At page 76, the Commission found it was appropriate to adopt a TPSR tariff as proposed by Staff and further found that it should not impute revenue from the discounts. Instead, the Commission found that 50% of the discounts should be

allocated to the SMC customers in creating the TPSR tariff and the remaining 50%, \$18,923,000, should be allocated to the other classes of customers on an equal percentage basis. The Commission also found that the TPSR should be limited to SMC customers.

At the top of page 74 the Commission directly addressed the manner in which any rate relief granted would be allocated among the various classes of customers including the newly created TPSR class. The Commission stated in pertinent part:

The Commission finds that the ALJ properly recommended adoption of the Staff's proposal to increase all rates on an equal percentage basis with some modifications. Before the equal percentage increase is applied, the revenue for each class should be restated to reflect the Commission's treatment of SMC's, as discussed later, and the Commission's determination that the rates for secondary choice customers should be increased by 1 mill per kWh to prevent increasing the current rate differential that exists between bundled and choice customers for distribution charges. (Emphasis added.)

The above passage makes its clear that the Commission intended that the first step in the process was to create the TPSR rate then apply the equal percentage increase, which is the noted modification to the ALJ's recommendation to adopt Staff's proposal. That means that the approximately 10.25% increase was applied to the TPSR pro forma (present) revenue of \$298,438,000 (\$279,515,000 plus \$18,923,000) for an increase of \$30,582,000, or total revenue of \$329,020,000 for the TPSR class as a whole. These figures come directly from Exhibit S-128 (MLC-2) and, therefore, are based on material and substantial record evidence. Staff's proposal, shown on Exhibit S-128, would have increased the SMCs by 50% of the discounts and only 50% of the overall increase. Staff's approach would have required the other customers to absorb another \$14,321,000 in addition to the first \$18,923,000 they are being asked to absorb, for a total of \$33,244,000. The Commission clearly rejected that approach and elected to only require the non-SMC customers to absorb 50% of the original discounts.

ABATE claims that the method used by the Commission to calculate the TPSR rate is unsupported by the record and adds \$14,295,000 in costs to the TPSR if Staff's method is followed. (The difference of \$26,000 between ABATE claim of \$14,295,000 and the \$14,321,000 cited by Staff is due to ABATE's assumption that the equal percentage increase applied was 10.5% rather than 10.25%). It is not uncommon for the Commission to adopt a proposed rate design with some modifications. In this instance the Commission determined that it was appropriate for the newly created rate class, TPSR, to receive the same equal percentage increase that other classes of customers were receiving. The Commission may use the material and substantial evidence on the record to modify Staff's recommended rate design for the TPSR in such a manner. The Commission is not restricted to accepting or rejecting any party's recommendation without modification in a rate case proceeding. The language in the Commission's order makes it clear that there were no unintended consequences in calculating the TPSR rate in the manner that it did.

The consequence of the Commission's modification to Staff's proposal is that the overall rate increase to the SMC customers is approximately 17.7% ($\$49,505,000/\$279,515,000$) while the other classes see approximately a 10.9% increase. If the Commission were to agree with ABATE and order rates designed based on Staff's proposal as set forth on Exhibit S-128 then the rate increase to the SMC customers would be reduced by \$14,321,000 for a total increase of \$35,184,000. The total increase to the SMC's would be approximately 12.6% ($\$35,184,000/\$279,515,000$) while the total increase to the other customers would be approximately 11.45%. The advantage of this approach is that it brings the overall increase to the SMC's closer to the increase to other customers if the comparison is based on the SMC

original revenues. The advantage of the Commission's rate design is that it affords the same increase to all customers if the comparison is based on the new TPSR revenue.

III. Reply to ABATE's Petition with respect to the R10 tariff

The Commission did not err in the way that it allocated costs to the R10 tariff. The Commission adopted the equal percentage allocation methodology recommended by Staff and adopted by the ALJ at page 68. That method was based on the present revenue calculation provided in Exhibit A-13, Schedule E6, page 34 of 48. R10 is an interruptible supply rider which allows customers to purchase interruptible supply at the highest hourly marginal fuel cost experienced by Detroit Edison rather than the PSCR factor. ABATE does not indicate in its request for rehearing where it challenged Detroit Edison's assumption for the fuel cost for R10. Further, ABATE does not state where in the record or its briefs it challenged the use of different power supply costs for R10. ABATE's request for rehearing on this matter should be rejected as ABATE is simply attempting to have another opportunity to raise arguments that it could have raised in response to Staff's filing.

IV. Reply to ABATE's Petition with respect to Return to Service Requirements

Staff has reviewed ABATE's request for clarification of the Commission order with respect to return to service requirements and is not opposed to this request for clarification.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

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Linda Andreas

Subscribed and sworn to before me
this 18th day of January, 2005.

Pamela A. Walters, Notary Public
State of Michigan, County of Ionia
Acting in the County of Ingham
My Commission Expires: 02/04/2007