

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,	)	
regarding the regulatory reviews, revisions,	)	
determinations, and/or approvals necessary for	)	Case No. U-16582
<b>THE DETROIT EDISON COMPANY</b> to fully	)	
comply with Public Acts 286 and 295 of 2008.	)	
_____	)	

At the March 8, 2012 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

**ORDER DENYING REHEARING**

On June 2, 2011, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting a biennial review of its currently-approved renewable energy plan (REP), approval of an amended REP and the company’s updated schedule of transfer prices, and other related relief, all pursuant to the provisions of 2008 PA 295, MCL 460.1001 *et seq.* (Act 295). Administrative Law Judge Theresa A. Sheets (ALJ) held a prehearing conference on June 13, 2011, at which she granted petitions to intervene filed by the Michigan Environmental Council (MEC) and the Environmental Law & Policy Center (ELPC). The Commission Staff (Staff) also participated in the proceedings.

On December 20, 2011, the Commission issued an order (December 20 order) in which, among other things, it granted the MEC’s motion to strike Detroit Edison’s updated transfer price

schedule on grounds that the company failed to provide a foundation for the schedule, in violation of Rule 703 of the Michigan Rules of Evidence (MRE 703). The Commission directed the Staff to convene a technical conference to work with interested parties and address the appropriate inputs and methods for developing transfer prices, along with measures for protecting confidential information, within 90 days of the date of the order. The Commission indicated that after the technical conference is completed, if Detroit Edison wishes to amend its transfer price schedule, the company may file an amended REP.<sup>1</sup>

On January 19, 2012, Detroit Edison filed a petition for rehearing of the December 20 order. On February 9, 2012, the Staff and the MEC filed responses to Detroit Edison's petition.

Detroit Edison first requests that, in the event the Commission does not reverse its order rejecting the updated transfer price schedule, it clarify that the current transfer price schedule remains in effect until superseded by an approved schedule. The Staff agrees with Detroit Edison's request. The MEC claims that clarification is unnecessary because Detroit Edison's original transfer price schedule, approved in 2009, was effective until 2029. According to the MEC, because the Commission has not approved a new transfer price schedule, it is clear that the original schedule is still in effect.

The Commission finds that Detroit Edison's request should be granted. Accordingly, the Commission clarifies that the transfer price schedule approved in 2009 remains in effect until a new transfer price schedule is approved by the Commission.

Next, Detroit Edison claims that the Commission erred in rejecting the company's updated schedule of transfer prices. According to Detroit Edison, the company's responses to the MEC's various discovery requests were appropriate, and the Commission's decision to reject the transfer

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<sup>1</sup>The company may also request approval of a new transfer price schedule in an REP reconciliation case.

price schedule for failure to provide forecast information was effectively a discovery sanction. Detroit Edison contends that because the MEC did not file a motion to compel discovery, and the company did not violate any order requiring it to produce the forecasts, the utility cannot be penalized by having its evidence stricken from the record. Detroit Edison asserts that because there was no violation of a discovery order, the Commission's decision was an abuse of discretion. Detroit Edison adds that if the Commission fails to grant rehearing, there could be significant unintended consequences for the handling of confidential information in this and other cases that come before the Commission.

The Staff argues that Detroit Edison's petition for rehearing does not meet the standards set forth in 1999 AC, R 460.17403 (Rule 403). According to the Staff, the Commission did not err in striking the company's updated transfer price schedule, noting that Detroit Edison's petition merely repeats arguments that the Commission already considered and rejected. The Staff contends that the Commission correctly found that the MEC was not obligated to continue to pursue discovery and that Detroit Edison refused to provide the energy and capacity forecasts underlying its transfer price schedule, despite the requirements of MRE 703. The Staff argues that the company bore the burden to provide competent, material, and substantial evidence on the record to support its transfer prices, adding that the company could have availed itself of a protective order for the underlying forecasts but failed to do so.

The MEC similarly responds that Detroit Edison's petition for rehearing simply reargues its position and does not cite any actual error of law or fact, or any unintended consequences resulting from the Commission's decision. The MEC points out that the text of MRE 703 is clear: "The facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence." (Emphasis supplied.) The MEC contends that the MRE 703 standard was not met here

and 1999 AC, R 460.17325 (Rule 325) does not apply to the circumstances of this case. The MEC adds that Detroit Edison's extensive arguments concerning discovery sanctions are irrelevant and incorrect in any event.

### Discussion

The standard for rehearing as set forth in Rule 403 provides:

A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

The Commission has repeatedly explained that a petition for rehearing is not simply an opportunity to reargue a position or 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 rehearing.

The Commission finds that Detroit Edison's petition for rehearing on this issue should be denied because the petition simply repeats arguments made in Detroit Edison's brief in opposition to the MEC's motion to strike. These arguments were fully considered and rejected by the Commission in the December 20 order. Thus, Detroit Edison's petition for rehearing does not meet the standard set forth in Rule 403.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's request for clarification is granted; the currently approved transfer price schedule remains effective until superseded by Commission approval of a new transfer price schedule.

B. The petition for rehearing filed by The Detroit Edison Company is denied.

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, under 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 March 8, 2012.

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Mary Jo Kunkle, Executive Secretary

# P R O O F   O F   S E R V I C E

STATE OF MICHIGAN    )

Case No. U-16582

County of Ingham        )

Mignon Middlebrook being duly sworn, deposes and says that on March 8, 2012 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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Mignon Middlebrook

Subscribed and sworn to before me  
This 8<sup>th</sup> day of March 2012

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Gloria Pearl Jones  
Notary Public, Ingham County, MI  
My commission expires June 5, 2016  
Acting in Eaton County

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# P R O O F O F S E R V I C E

STATE OF MICHIGAN )

Case No. U-16582

County of Ingham )

Lisa Felice being duly sworn, deposes and says that on March 8, 2012 A.D. she served a copy of the attached **Commission Order (Commission's Own Motion) via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

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Lisa Felice

Subscribed and sworn to before me  
this 8th day of March 2012

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Gloria Pearl Jones  
Notary Public, Ingham County, MI  
As acting in Eaton County  
My Commission Expires June 5, 2016

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