

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. BOX 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

July 18, 2013

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

RE: MPSC Case No. U-17097

Pursuant to the Commission's E-Dockets User Manual, I am attaching the Attorney General's Reply Brief along with a proof of service.

Sincerely,

Donald E. Erickson
Assistant Attorney General
Environment, Natural Resources &
Agriculture Division
(517) 373-7540

c: All parties

PROOF OF SERVICE - U-17097

The undersigned certifies that a copy of the Attorney General's Reply Brief was served upon the parties listed below by e-mailing the same to them at e-mail addresses listed below on the 18th day of June 2013.

Donald E. Erickson

Administrative Law Judge:

SHARON L. FELDMAN
feldmans@michigan.gov

MPSC Staff:

PATRICIA S. BARONE
baronep@michigan.gov

LAUREN D. DONOFRIO
donofriol@michigan.gov

MEC and NRDC:

CHRISTOPHER M. BZDOK
chris@envlaw.com

EMERSON HILTON
emerson@envlaw.com

JESSIE R. ROSSMAN
jrossman@nrdc.org

JAMES CLIFT
james@environmentalcouncil.org

The Detroit Edison Company:

mpscfilings@dteenergy.com

DAVID S. MAQUERA
maquerad@dteenergy.com

MCAAA:

DON L. KESKEY
donkeskey@publiclawresourcecenter.com

ABATE:

ROBERT A W STRONG
rstrong@clarkhill.com

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of The Detroit
Edison Company for Authority to Implement a
Power Supply Cost Recovery Plan In Its Rate Schedules for 2013 Metered Jurisdictional Sales
of Electricity

MPSC No. U-17097

Attorney General's Reply Brief

Bill Schuette
Attorney General

Donald E. Erickson (P13212)
John A. Janiszewski (P74400)
Assistant Attorneys General

ENRA Division
Sixth Floor Williams Bldg.
525 W. Ottawa Street
P. O. Box 30755
Lansing, MI 48909

(517) 373-7540

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Introduction

On June 27, all parties in this case filed initial briefs. In its initial brief, Detroit Edison requests the Michigan Public Service Commission to approve its 2013 PSCR plan and factor.

The Commission's Staff supports the relief requested by Detroit Edison.

The Michigan Environmental Council (MEC) and the Natural Resources Defense Council (NRDC) requests the Commission (A) to reject the 2013 PSCR plan and forecast, (B) to require the Company to develop a newer and more accurate method for forecasting sales, generation, and market purchasing, or in the alternative to provide a detailed explanation why a better methodology cannot be developed or implemented, (C) to indicate that it is unlikely to allow future recovery of costs for various sorbents (D) to reject the Company's 5-year forecast as overly and imprudently reliant on a "business as usual" strategy, (E) to indicate that based on present evidence the Commission is unlikely to permit full recovery of PSCR costs for continued operation of aging coal units, and (F) disapprove the Company's proposed REF project as unreasonable and imprudent and contrary to the Code of Conduct and Affiliate Transaction guidelines.

MCAAA contends that Detroit Edison's REF project is unreasonable and imprudent and that the Commission should disallow recovery of REF costs, that the Commission should adopt ratemaking remedies to determine the amount of production tax credits from the REF program that should be incorporated as a reduction in PSCR expense.

The Attorney General contends that Detroit Edison's proposal to recover REF costs as a PSCR expense is not covered by MCL 460.6j(1)(a), or in the alternative, those costs must be disallowed under MCL 460.6j(13)(d).

Replies to Detroit Edison

Pages 7-16 in Detroit Edison's initial brief describe the Company's load forecast, system operation, transmission and MISO expenses, and fuel supply plan, and Detroit Edison argues that its 2013 PSCR plan is reasonable and prudent and that the Commission should approve the plan under MCL 460.6j(6). In addition, pages 27-28 argue that the Company's proposed 4.74 mills per kWh PSC factor is reasonable and prudent and should be approved.

MCL 460.6j(6) requires the Commission to review a utility's plan and shall approve, disapprove, or amend the plan and shall approve, reject, or amend the PSCR factors requested.

Ms. Patricia H. Richards, who is an energy planner and power supply specialist with over 20 years of experience in the electric utility industry, testified that the Company's approach to power supply and its generation resource mix, cannot be meaningfully evaluated given the lack of data and analysis in the filing (2 T 344-347) and that Detroit Edison's plans have been increasingly inaccurate for at least the past six years (2 T 348-354 and Exhibits MEC-3 & MEC-4). Pages 8-15

and 92 in MEC's and NRDC's initial brief argue that the Commission should reject Detroit Edison's plan for these reasons.

The Attorney General contends that the Commission should make a decision based upon the whole record (*see* MCL 24.285 and MCL 460.6j(5)). With regard to the plan arguments presented in the testimony and exhibits filed by Detroit Edison and MEC and NRDC, the Attorney General responds that the Company has presented specific projections, while MEC and NRDC have presented testimony and exhibits that significantly questions whether or not the Commission should accept the credibility of the projections. There is an evidentiary basis for disapproving the 2013 plan and rejecting the 2013 factor, but specific impacts of methodological errors have not been quantified.

Pages 16-26 in Detroit Edison's initial brief argue that the Commission should decide that projected expenses from the Company's REF project qualify as booked costs of fuel burned [*see* MCL 460.6j(1)(a)] and that the reported costs are reasonable and prudent. This question is also pending for the 2011 PSCR reconciliation in U-16434-R and for the 2012 PSCR plan in U-16892. The Attorney General requests the Commission to review this question concurrently in connection in these three case (without consolidating them), and the Attorney General believes the most complete evidentiary records have been developed in U-16434-R and then in this case. An important decision such as this issue must be based upon the whole record. MCL 24.285. Detroit Edison has the burden of going forward with evidence to support its REF project and the burden of persuasion. *In re Michigan Gas*

Utilities Co, MPSC Case No. U-7484, Opinion & Order dated 8-30-83, p 10, and *In re Detroit Edison*, MPSC Case No. U-8020-R, Opinion and Order dated 7-9-87), pp 16-17. *See also*, *BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW 2d 1 (1985).

Furthermore, reasonableness and prudence questions are subject to review in Act 304 reconciliation cases under MCL 460.6j(12) and MCL 460.6h(12).

The Attorney General presented relevant arguments in his initial brief in this case. The Attorney General contends that REF expenses do not qualify as PSCR expenses within the scope of the statutory definition in MCL 460.6j(1)(a), and in the alternative, that REF expenses must be disallowed under MCL 460.6j(13)(d) because the REF expenses are incurred during the fuel handling process, which is fully proved by a review of the terms and conditions stated in REF contract documents between Detroit Edison and its affiliates as discussed in the Attorney General's initial brief.

In addition, the Attorney General also contends that Exhibits MEC-34 through MEC-42 provide evidence supporting a conclusion that Detroit Edison's arrangements with its REF affiliates enable the affiliates to obtain production tax credit benefits that Detroit Edison could have obtained as a part of a strategy to reduce air emission costs and offset PSCR expenses in a manner similar to the way revenues from wholesale sales offset PSCR expenses. Therefore, the Commission should rule that those production tax credits should be calculated and included as offsets to PSCR expense.

Replies to the MPSC's Staff

The Commission's Staff presented no evidence and filed an initial brief totaling three pages. The Staff's brief supports a finding by the Commission that Detroit Edison's plan and 5-year forecast are reasonable. The Staff's brief contains no citations to record evidence; therefore, the Staff's brief does not satisfy the requirement in MCL 24.285 that the Commission's decision must be based upon the record as a whole.

The Staff's argument that the Commission should find that the 5-year forecast is reasonable recommends relief that is outside the scope of the powers granted to the Commission by MCL 460.6j(7).

MCL 460.6j(6) authorizes the Commission to "approve, disapprove, or amend the power supply cost recovery plan." But MCL 460.6j(7) contains no similar provision requested the 5-year forecast.

That subsection states:

In its final order in a power supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.

In other words, the plain language in subsection (6) differs from the plain language in subsection (7). And the omission of language from

one part of a statute that is included in another part should be construed as intentional. *South Haven v Van Buren Bd of County Comm'rs*, 478 Mich 518, 530, n 16; 734 NW2d 533 (2007). Thus, the MPSC cannot read into MCL 460.6j(7) read into the statute that which is not within the manifest intention of the Legislature as derived from the statute itself. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). In conclusion, the Commission lacks statutory power to decide that a 5-year forecast is either reasonable or unreasonable.

Replies to MEC and NRDC

As indicated above, pages 8-15 and 92 in MEC's and NRDC's initial brief argue that the Commission should reject Detroit Edison's plan. Since this issue is discussed in replies to Detroit Edison above, the Attorney General will offer no additional replies.

Pages 38-92 in MEC's and NRDC's brief argue that Detroit Edison has failed to justify its proposed REF project. Since the Attorney General has address this question in his initial brief and above, the Attorney General will offer no replies MEC's and NRDC's arguments.

Replies to MCAAA

The initial brief filed by MCAAA argues that the Commission should not approve recovery of REF expenses as PSCR expense and should treat production tax credits arising out of the REF process as revenue offsets to PSCR expense.

Since MCAAA's arguments are consistent with the arguments presented by the Attorney General, this brief offers no responses to MCAAA.

Relief Requested

Attorney General requests the Administrative Law Judge to issue a proposal for decision that recommends ruling that Detroit Edison's proposal to recover REF costs as a PSCR expense is not within the scope of MCL 460.6j(1)(a), or in the alternative, those expenses must be disallowed under MCL 460.6j(13)(d).

Respectfully submitted,

Bill Schuette
Attorney General

Donald E. Erickson (P13212)
John A. Janiszewski (P74400)
Assistant Attorneys General

ENRA Division
Sixth Floor Williams Bldg.
525 W. Ottawa Street
P. O. Box 30755
Lansing, MI 48909

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