

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the investigation, on the )  
Commission's own motion, into the electric )  
supply reliability plan of **THE DETROIT** )  
**EDISON COMPANY** for the year 2004. )  
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Case No. U-14109

At the June 3, 2004 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**OPINION AND ORDER**

For each of the last several years, the Commission has initiated investigations of the adequacy and reliability of the near-term electric generation capacity available to meet the needs of customers located in the service territories of Consumers Energy Company, The Detroit Edison Company (Detroit Edison), and Indiana Michigan Power Company. By order dated January 22, 2004 in Case No. U-14005, the Commission initiated such an investigation for 2004. The Commission ordered these companies to file by March 31, 2004 an assessment of the ability of the utility to meet customers' expected electric requirements in 2004. Each assessment was to include a discussion of all relevant factors, both those discussed in prior assessments and any new factors that could affect the adequacy of supply and the quality and reliability of service in 2004. Further, the Commission required the utilities to classify resources between in-state and out-of-state

generation and analyze how that balance is expected to affect service to customers. Finally, the order provided that interested persons could file comments on the filed plans by April 30, 2004.

On March 31, 2004, Detroit Edison filed a 13-page report regarding the company's Summer 2004 capacity plan. In that document, Detroit Edison forecasted the peak load of all customers in its service territory for Summer 2004 to be 13,015 megawatts (MW). Detroit Edison forecasted the load for customers on the electric choice program to be 2,165 MW, which will be supplied by a variety of alternative electric suppliers (AESs). Adjustments were also made to exclude load served by the Dearborn Industrial Generation and load that is served pursuant to interruptible tariffs for which the utility will not make advance seasonal purchases. Subject to these exclusions, Detroit Edison's net summer peak demand is 10,585 MW. Detroit Edison added a planning reserve of 15% to the adjusted demand. Detroit Edison explained that the 15% planning reserve excludes reserves for interruptible load in the amount of 38 MW, but includes the operating reserve requirement of 4% of the choice demand supplied as an ancillary service by the utility through Midwest Independent System Operator (MISO). Detroit Edison also indicated that it would sell 151 MW of capacity as part of its efforts to mitigate choice sales loss. The end result is a 12,372 MW supply requirement to serve Detroit Edison's adjusted peak demand for the summer of 2004.

However, in discussing the availability of transmission services from Michigan Electric Transmission Company (METC) and International Transmission Company (ITC) Detroit Edison stated:

The transmission interface between METC and ITC could become a major bottleneck as the result of the increasingly large west-to-east intra-state power flow requirements due to the combination of AES sourcing preferences, location of merchant generators in Michigan and the attractiveness of the Ontario wholesale power market. In fact, to date, MISO has denied Edison's requests for 875 firm seasonal network transmission capacity to link Designated Network Resources

(DNR) or contracted merchant generators to Southeast Michigan. Edison was able to reserve 1,605 MW of firm seasonal network transmission capacity across the METC/ITC interface last summer.

If Edison is unsuccessful in obtaining firm seasonal transmission capacity from MISO, then the Company will request firm transmission on a weekly/daily basis throughout the summer, as needed. At this time, Edison will be forced to rely upon non-firm transmission capacity this summer to import 875 MW of merchant capacity from Western Michigan. In fact MISO has confirmed 875 MW of non-firm network transmission reservations of [sic] for the summer for the Company. The Company will continue to request monthly/seasonal firm network transmission.

Report, p. 9.

On April 30, 2004, Attorney General Michael A. Cox (Attorney General) filed comments criticizing the submitted plans. Among other things, the Attorney General stated concerns over Detroit Edison's lack of a plan to obtain the firm transmission capacity that will be needed to serve the projected demand for summer 2004. The Attorney General charges that "Detroit Edison fails to explain why it is unable to acquire additional firm transmission. Detroit Edison fails to address how the addition of approximately 5,300 MW of utility and non-utility generating capacity since 1999 in Michigan and the 2,000 MW of increased transmission capacity in Michigan since 2002 impacts its decision to request 500 MW from its affiliates." Attorney General Comments, Case No. U-14005, p. 5.

Electric utilities regulated by the Commission are legally required to plan to meet the needs of their customers. MCL 460.6j(4), R 460.3101(2), R 460.3503, and R 460.721 speak to this duty.

For example, R 460.721 provides:

An electric utility shall plan to operate and maintain its distribution system in a manner that will permit it to provide service to its customers without experiencing an unacceptable level of performance as defined by these rules.

R 460.3503 provides:

The electric capacity regularly available from all sources shall be large enough to meet all normal demands for service and to provide a reasonable reserve for emergencies.

Indeed, at the heart of the relationship between a public utility and its customers is an obligation to serve those customers through the provision of safe and adequate service at just and reasonable rates. “The duty to serve is a cardinal obligation imposed upon all public utilities.”<sup>1</sup> The duty to serve was statutorily established in Michigan for railroads through adoption of Section 4(a) of 1909 PA 300, (Act 300), which created the Michigan Railroad Commission:

Every common carrier is hereby required to furnish reasonably adequate service and facilities and shall provide and furnish transportation of passengers and property upon reasonable requests thereof . . .

In 1919, the Michigan Railroad Commission’s authority was transferred to the newly-created Michigan Public Utilities Commission (MPUC), which was vested with “the same measure of authority with reference to such utilities” as the Railroad Commission once had over railroads.<sup>2</sup>

In 1939, the current Commission replaced the MPUC, but retained “all rights, privileges, and the jurisdiction in all respects” as had been conferred upon the MPUC.<sup>3</sup>

Numerous court decisions establish that, whether it be by extension of Act 300, or on other bases, public utilities in Michigan have an obligation to serve their customers.

For example, the Michigan Supreme Court cited with approval a trial court’s opinion regarding the grant to a public utility of the right to use the streets and the corollary obligation to serve the public:

In granting the use of the streets for public utility purposes, the legislature recognized the public purpose to be subserved through such use. The legislature tendered the use of the streets for public utility purposes to such individuals and corporations as would

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<sup>1</sup>The Economics of Public Regulation, Irston R. Barnes, Yale University; F.S. Crafts & Co., New York, New York, 1942.

<sup>2</sup>Section 4 of 1919 PA 419, MCL 460.54.

<sup>3</sup>Section 4 of 1939 PA 3, MCL 460.4.

provide the public with a necessary utility service, knowing that the creation of such a utility and its service would entail the expenditure of large sums of money and benefit the public by providing a common service of the utility, knowing also that as soon as it should be installed in the public streets it would become affected with a public interest, and that its owner would have to surrender the right to serve whom and where it willed, or to charge as it willed, and that it would become subject to the laws regulating public service corporations.<sup>4</sup>

Likewise, the duty to serve has been affirmed with regard to the provision of utility services by a resort company.

The resort company was engaged in serving the public with water and light. This was a public service, and it was its duty to serve all patrons alike and not to discriminate against any one of them, and this rule would apply even though defendant were only a semipublic utility corporation . . . . It had a right to provide reasonable rules and regulations in the conduct of its business of furnishing water and electric light, and unless these rules and regulations were complied with it would have a right to decline service. It was, however, the duty of the resort company to furnish water and light under reasonable rules and regulations.<sup>5</sup> (Citations deleted)

Finally, it should be noted that the United States Supreme Court has concluded that the enforcement of the obligation to serve is one of the primary purposes for state regulatory commissions:

Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve, and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render. To correct this disposition to serve where it is profitable and to neglect where it is not is one of the most important purposes for which these administrative commissions, with large powers, were called into existence, with an organization and with duties which peculiarly fit them for dealing with problems such as this case presents.<sup>6</sup>

The Commission finds that Detroit Edison's supply reliability planning report fails to meet the standard that the Commission expects of this company and that is required by law. The Commis-

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<sup>4</sup>City of Lansing v Michigan Power Co., 183 Mich 400, 410; 150 NW 250 (1914).

<sup>5</sup>Ten Broek v Miller, 240 Mich 667, 669; 216 NW 385 (1927).

<sup>6</sup>People of New York and Queens Gas Co v McCall, 245 US 345, 351; 38 S Ct 122; 62 L Ed 337 (1917).

sion finds unacceptable Detroit Edison's claim that MISO's denial of its request for firm seasonal network capacity to deliver 875 MW of generation from the western to the southeastern portions of Michigan can form the basis of its position that "[Detroit] Edison cannot provide the Commission with complete assurance that adequate power supply resources through firm transmission capacity to Southeastern Michigan are available this summer to serve bundled customer load."

Report, p. 11. Basing the reliability assessment of its system on a single factor, in this instance the relative firmness of a specific transmission reservation path, reflects less than thorough planning and falls far short of the Commission's expectations for a major utility company, which employs over 11,000 people to manage over \$12 billion in assets in order to provide service to over 4 million Michigan customers. The Commission is convinced that Detroit Edison can, and must, do better. In fact, the utility has an obligation to ensure that its customers' electricity needs are reliably met. Given adequate supply resources in the Midwest region, a company with Detroit Edison's assets and expertise must explore and develop an array of alternative options.

As to the transmission reservation path in question, the Commission has learned that MISO has addressed the requested capacity. MISO has informed the Commission that over 600 MW of the 875 MW requested capacity has been made firm, with the remaining capacity to be made available as conditional firm service through MISO identification of redispatch opportunities, considerations not mentioned in the report. Thus, it appears that Detroit Edison's report unnecessarily creates distress for the Commission and for Detroit Edison's Michigan customers.

The Commission expects more. For example, with regard to the MISO reservation discussed above, Detroit Edison should have taken actions to firm up the reservations in question or seek alternative paths, instead of leaving the matter for the Commission Staff (Staff) to address on the company's behalf. It should have explored redispatch opportunities with MISO, which might lead

to firming the MISO reservations, instead of leaving it to the Staff to address on Detroit Edison's behalf. Further, Detroit Edison should have identified other supply options it considered from non-affiliate sources before concluding that it would be required to purchase electric supplies from its affiliates.<sup>7</sup>

The Commission notes that the May 5, 2004 "MegaWatt Daily" reports that the East Central Area Reliability Council projects a capacity margin for Summer 2004 at greater than 20%. The Commission is not persuaded that there is any excuse, with so many alternatives available within the region, for this utility to claim an inability to provide supply and service reliability assurances for its bundled customers. Such assurances are expected, needed, and deserved. Further, the Staff should not be expected to interpose itself into Detroit Edison's supply planning responsibilities. In this case, the Staff's undertaking with MISO to secure additional firm transmission rights was done to ensure that Detroit Edison would be in a better position to meet its summer responsibilities to its retail customers. This situation was created in part by Detroit Edison's own failure to perform its planning responsibilities adequately and to show reasonable diligence in managing the availability of the resources available to it.

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, 1999 AC, R 460.17101 et seq.

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<sup>7</sup>In an order issued today in Case No. U-14138, the Commission approved in part, with firm concrete conditions, Detroit Edison's proposal to purchase up to 300 MW from its affiliates.

b. Detroit Edison's March 31, 2004 report on its Summer 2004 capacity plan is deficient, in that it indicates that Detroit Edison devoted inadequate efforts to its planning functions, fails to demonstrate that Detroit Edison used reasonable diligence to secure necessary transmission capabilities or reasonable, cost-efficient alternatives, and does not adequately address all issues related to the reliability of service expected during peak summer periods.

c. Detroit Edison must use a higher standard when preparing reports, assessing peak capacity and reliability, and in planning to meet projected peak demand, as discussed in this order.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company shall be fully responsible to fulfill its obligations to its retail customers to provide reliable electric service in accordance with relevant statutes and rules during the summer months of 2004 and shall employ reasonable, prudent, cost-effective measures, consistent with the safe and reliable operation of its electric system, to ensure adequate service.

B. The Detroit Edison Company shall use a higher standard when preparing reports assessing peak capacity and reliability and in planning to meet projected peak demand.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

( S E A L )

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of June 3, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

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Commissioner

By its action of June 3, 2004.

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Its Executive Secretary