

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 accounting authority related to the) Case No. U-11726
accelerated amortization of the Fermi 2)
Nuclear Generating Plant.)
_____)

At the March 8, 1999 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On July 1, 1998, The Detroit Edison Company (Detroit Edison) filed an application in this case seeking authority to revise its accounting procedures to allow for the accelerated amortization of its Fermi 2 nuclear generating plant (and its related regulatory assets) in a manner that would assure full recovery of the utility's investment in the plant by December 31, 2007. On December 28, 1998, the Commission issued an order (the December 28 order) approving the accelerated amortization provided that Detroit Edison agreed to the following six conditions designed to protect the interests of the utility's customers: (1) rates would be reduced by \$93.8 million effective January 1, 1999; (2) rates would be reduced to remove Fermi 2 plant balances on January 1, 2008, when the existing

plant balance is scheduled to reach zero, or any earlier date upon which the plant's accelerated amortization produces a zero balance; (3) any profit from the sale of Fermi 2 that arises from the accelerated write-down of Fermi 2 plant balances should be passed on to the utility's customers; (4) if Detroit Edison seeks to abandon Fermi 2 after being allowed to accelerate the plant's amortization, it must first initiate a contested case proceeding to evaluate the effect of the proposed abandonment on its customers; (5) the utility must agree to abide by the open access program set forth in Commission orders; and (6) Detroit Edison must apply at least 50% of any earnings above its authorized return as a reduction to its otherwise recoverable Fermi 2 stranded investment.

On January 15, 1999, Detroit Edison filed a statement accepting the conditions and explaining its understanding of some of them. Responses to Detroit Edison's statement were filed by the Association of Businesses Advocating Tariff Equity (ABATE) and Attorney General Jennifer M. Granholm (Attorney General). A reply was filed by Detroit Edison.

Requests for rehearing or clarification were filed by ABATE, the Commission Staff (Staff), the Attorney General, and Energy Michigan. Responses to various requests for rehearing were filed by Detroit Edison and the Attorney General. Replies were filed by ABATE and Detroit Edison.

On January 28, 1999, Detroit Edison filed a letter explaining the accounting entries the company will make as a result of the December 28 order. A motion to reject this letter was filed by the Attorney General on February 8, 1999. Detroit Edison filed a response.

II.

DETROIT EDISON'S ACCEPTANCE

As previously noted, on January 15, 1999 Detroit Edison filed a statement by Anthony F. Earley, Jr., its President and Chief Executive Officer, accepting the conditions on behalf of the

company, subject to necessary Board of Directors approval. As part of its acceptance, Detroit Edison explained its understanding of several conditions and requested that the Commission issue an order clarifying that Detroit Edison's understanding is consistent with the intent of the Commission's December 28 order.

Condition Two

With regard to condition two, the December 28 order states that "Detroit Edison must agree to reduce its rates by removing Fermi 2 balances on January 1, 2008, when the existing plant balance for Fermi 2 is scheduled to reach zero, or any earlier date upon which the plant's accelerated amortization produces a zero balance." December 28 order, p. 27.¹

In addition to declaring that "I accept the conditions as I understand them," Mr. Earley's January 15, 1999 statement concludes that:

The second condition is also clear. [Detroit] Edison will reduce its jurisdictional retail rates by removing the Fermi 2 regulatory asset from the rate base on a pro rata jurisdictional rate basis when the regulatory asset related to Fermi 2 reaches zero. Presently, this is anticipated to be completed by January 1, 2008.

January 15, 1999 Statement of Anthony F. Earley, Jr., pp. 1-2.

The Attorney General challenges Detroit Edison's acceptance of condition two. Specifically, she states that:

Mr. Earley's statement talks about "pro rata" removal from rate base, but prorating any amount conflicts with the [Commission's] condition requiring removal of \$496 million per year from rates when the Fermi 2 net plant balances reach zero. [Detroit Edison's] acceptance as well as footnote 11 of the Commission's Opinion and Order imply that [Detroit Edison] is entitled to treat future plant additions as stranded costs, and this conflicts with the [Commission's] prior ruling ([Case No.] U-11290 Opinion and Order[,] 6-5-97, pp[.] 12-13) that if the [Commission] has previously

¹Footnote 11 at the end of the quoted sentence states: "This provision does not include the effect of capital additions made after the date of this order."

ruled that such costs were reasonably and prudently incurred, then they will be treated as eligible for stranded cost recovery. Since plant additions after [Case No.] U-10102 have not been previously approved, costs for such plant additions are, at a minimum, not yet stranded costs. On the other hand, if the cost of future plant additions could not be recovered via market prices, that would mean total marginal costs would exceed marginal market revenues. In such a situation, those costs would not be reasonably or prudently incurred. Furthermore, future additional costs are avoidable, so they should not be treated as stranded costs.

Attorney General's February 8, 1999 motion, pp. 5-6. The Attorney General thus asserts that Detroit Edison failed to adequately accept condition two.

Condition two was intended to assure that, when the plant balance for Fermi 2 reaches zero, rates are reduced to reflect that fact. It was not intended to modify Detroit Edison's stranded cost. Moreover, the Commission does not understand Detroit Edison to be proposing any modification to stranded cost. The Attorney General's concern about the prudence of stranded cost is more properly addressed in the annual stranded cost true-up proceeding. The Commission therefore finds that Detroit Edison has properly accepted condition two.

Condition Three

With respect to condition three, the December 28 order states as follows:

Third, any profit from the sale of Fermi 2 that arises from the plant's accelerated write-down of Fermi 2 should be passed on to the utility's customers. As correctly noted by Mr. Stojic, this is consistent with the fact that the utility's customers will have paid for the accelerated portion of the plant's write-down. See, 8 Tr. 549. Thus, if Detroit Edison sells Fermi 2 for more than its book value at any time following the initiation of the accelerated amortization approved in this order, or if the utility itself is purchased, Detroit Edison (or its successor utility) shall immediately refund to its customers the total amount of the accelerated amortization collected from those customers up to and including the date of the plant's sale.

December 28 order, p. 28. Detroit Edison's acceptance indicates that it has no current plans to sell Fermi 2, but if such a sale does occur, it will return to its customers the difference between the net book value of Fermi 2 at the time and the actual sale price received by the company, consistent with

the order. Furthermore, Detroit Edison agrees that if the utility is purchased by a third party, it will immediately notify the Commission of the purchase in order to allow the Commission to determine whether the proposed transaction is in the public interest and properly balances the interests of investors and customers.

The Attorney General objects to Detroit Edison's acceptance on the grounds that, under the terms of the December 28 order, an immediate refund should be made if either the plant or Detroit Edison is sold. Similarly, ABATE argues that Detroit Edison's acceptance of condition three makes no commitment to return any portion of the sales price in the event that the utility is purchased by a third party.

The Commission finds that Detroit Edison's response complies with the intent of condition three, provided it is understood that as part of its review of the proposed transaction, the Commission, consistent with its statutory authority, may make appropriate rate adjustments to reflect the accelerated amortization of Fermi 2. If Detroit Edison does not have the same understanding, then it should notify the Commission by March 18, 1999 that it is unable to accept this condition.

The intent of condition three is to ensure that the profit from any sale of Fermi 2 arising from the accelerated amortization goes to the utility's customers. In the case of a direct sale of Fermi 2, this determination is relatively straight-forward and an immediate refund can be implemented. However, if Detroit Edison itself is sold, it may not be obvious what profit, if any, is associated with the accelerated amortization. Under these circumstances, Detroit Edison's statement that it will notify the Commission in order to allow the Commission to determine whether the proposed transaction is in the public interest and properly balances the interests of investors and customers, is appropriate, provided that it is understood from the outset that the Commission, consistent with its statutory authority, may make appropriate rate adjustments to reflect the accelerated amortization

of Fermi 2 plant balances consistent with the intent of condition three. This is the reason for requiring Detroit Edison to notify the Commission by March 18, 1999 if that is not the company's understanding of condition three.

Condition Four

The December 28 order goes on to state as follows with regard to condition four:

Fourth, if Detroit Edison (or any successor utility) seeks to abandon Fermi 2 after being allowed to accelerate the plant's amortization, it must first initiate a contested case proceeding to evaluate the effect of the proposed abandonment on its customers. Unless either (1) the utility can show that it would be able to satisfy the obligation to serve its customers at rates that do not exceed the "to go" costs of continuing to operate Fermi 2 or (2) the Commission determines that customers can best be served by reliance on the marketplace, the request to abandon the plant will be denied.

Id., p. 28. Detroit Edison explains that its acceptance of this condition applies only if electric generation has not been deregulated by either state or federal action. In addition, Detroit Edison explains that it understands the term "to go" costs to mean future cash costs.

The Commission concludes that Detroit Edison's position with regard to those two points is consistent with the intent behind condition four. Specifically, if electric generation is deregulated, then it necessarily follows that the United States Congress or Michigan's Legislature has made a determination that customers can best be served by reliance on the marketplace. Obviously, it is not the role of the Commission to second-guess such a determination. Moreover, the utility's understanding of the term "to go" costs is consistent with the Commission's use of that term.

Nevertheless, the Attorney General challenges the utility's acceptance on two grounds. First, she claims that Detroit Edison failed to accept condition four because it did not repeat verbatim some of the terms of that condition. However, Mr. Earley's statement includes the following: "The fourth condition imposed by the Commission is clear and acceptable based on my understanding that

it applies only if electric generation has not been deregulated by either State or Federal action.”

January 15, 1999 statement of Anthony F. Earley, Jr., p. 3. From this, it is clear to the Commission that Detroit Edison has accepted condition four.

Second, the Attorney General claims that Detroit Edison’s “position on abandonment nullifies and violates the 1988 settlement agreement in Case No. U-8789, which already limits cost recovery for abandonment of Fermi 2.” Attorney General’s February 8, 1999 motion, p. 6. However, the Attorney General does not expand on this argument about the purported relationship of Detroit Edison’s acceptance of condition four and the settlement in Case No. U-8789. In the absence of any further identification and explanation of the issue, the Commission cannot accept the Attorney General’s argument.

Condition Five

The fifth condition requires Detroit Edison to agree to abide by the open access program set forth in Commission orders. According to Detroit Edison:

The sole uncertainty in the Commission’s fifth condition arises from a phrase in footnote 13 (p. 31), which states that [Detroit] Edison must agree to abide by “any subsequent orders on those or related matters.” [Detroit] Edison agrees to abide by this condition as it relates to existing rates, terms, conditions and services of the retail open access program approved by the Commission. [Detroit] Edison also recognizes that changes in rates, terms, conditions and services may be necessary as the program is implemented or subsequently as a result of factors such as new technologies or structural changes in the market. Under these circumstances, [Detroit] Edison will continue its commitment to implement in good faith the retail open access program and to promote a competitive and open electric power supply market for retail customers. However, it must be recognized that there have always been, and likely will continue to be, disagreements regarding specific rates, terms, conditions and services. Although [Detroit] Edison will continue its commitment to

considers to be unlawful or unreasonable. However, the Company agrees not to challenge the Commission's jurisdiction to implement a retail open access program.

January 15, 1999 statement of Anthony F. Earley, Jr., p. 4.

The Attorney General argues that Detroit Edison has failed to agree that it will not appeal any Commission orders and thus has not complied with condition five. Similarly, ABATE argues that Detroit Edison should not be allowed to retain its right to take positions the utility considers appropriate on changes to specific rates, terms, conditions, and services, and, where appropriate, to appeal Commission decisions on specific rates, terms, conditions, and services that the utility considers to be unlawful or unreasonable. According to ABATE:

If [Detroit] Edison is allowed to retain this right, it will seriously undermine and probably delay the implementation of the Retail Open Access program. [Detroit] Edison's behavior to-date is very compelling on the issue of whether it can be trusted in the future.

ABATE's January 27, 1999 response, p. 5.

The Commission finds that Detroit Edison's commitment is consistent with the purpose of condition five. The objective of that condition is to recognize the necessary linkage between the need for accelerated amortization and the achievement of open access. That linkage is accomplished by Detroit Edison's commitment to implement in good faith the open access program. That commitment does not require Detroit Edison to give up all of its rights to support specific rates, terms, conditions, and services that the utility considers appropriate.

Condition Six

With regard to condition six, Detroit Edison states:

The sixth condition is that, if [Detroit] Edison's earned rate of return exceeds its authorized rate of return during the period of time that amortization of Fermi 2 is being accelerated, it will apply 50% of the excess earnings to reduce its stranded investment. This condition is acceptable to [Detroit] Edison.

January 15, 1999 statement of Anthony F. Earley, Jr., p. 4.

ABATE claims that the utility is proposing to modify condition six and that Detroit Edison's "current proposal is ambiguous, subject to misinterpretation, and must be corrected." ABATE's January 27, 1999 response, p. 6.

Notwithstanding ABATE's protestations to the contrary, it is clear to the Commission that Detroit Edison has accepted condition six without modification.

Chairman of the Board of Directors

The December 28 order required that the conditions be accepted by Detroit Edison's Chief Executive Officer, President, and Chairman of the Board of Directors. The Attorney General indicates that Mr. Earley's statement does not indicate whether he is the Chairman of the Board of Directors. In addition, his acceptance of the conditions is specifically made subject to approval by the Board of Directors.

In reply, Detroit Edison states that Mr. Earley is the Chairman of the Board of Directors.

The Commission therefore finds that by March 18, 1999, Detroit Edison shall notify the Commission as to whether the Chairman of the Board of Directors has given its approval to Mr. Earley's acceptance of the conditions.

III.

MOTIONS FOR REHEARING OR CLARIFICATION

Rate Reduction on January 1, 1999

In the December 28 order, the Commission found that rates should be reduced by \$93.8 million on January 1, 1999. That figure consisted of a levelized rate reduction of \$55.4 million due to the

accelerated amortization of Fermi 2 and a \$38.4 million negative surcharge associated with the Fermi 2 phase-in that was due to expire on January 1, 1999.

The Commission also noted that, in an order issued the same day in Case No. U-8789, it was directing parties to file briefs on whether any further actions are necessary to implement the cost of service reductions called for by the 1988 settlement agreement. Duplicate arguments have been filed in both cases regarding the rate reduction that some parties believe the Commission should have ordered in this proceeding. Since they involve factual matters on this record, the arguments are discussed in this order rather than in Case No. U-8789.

In its motion for rehearing filed on January 6, 1999, ABATE argues that the Commission should have calculated a rate reduction of \$99.6 million, consisting of \$38.4 million for reauthorization of the Fermi 2 rate reduction, plus \$128 million for the 1999 Fermi 2 settlement amount, plus \$42 million for the 1999 amortization settlement amount, plus \$55.4 million for accelerated amortization, minus \$164.2 million for accelerated amortization expense. ABATE reiterates its position that this is the proper calculation in its brief filed on January 13, 1999. The Attorney General argues for essentially the same calculation in a brief filed on January 15, 1999 in Case No. U-8789.²

In its January 27, 1999 response to Detroit Edison's acceptance of the conditions in the December 28 order, ABATE modifies its position on the rate reduction to argue that the jurisdictionalized accelerated amortization expense should be \$163.2 million and the rate reduction should be \$100.6 million. Also on January 27, 1999, the Attorney General filed a motion for

²The only difference is that the Attorney General breaks the \$38.4 million component into two parts.

rehearing, which includes the same change in position from that which the Attorney General had previously advocated.

Detroit Edison responds to the motions of ABATE and the Attorney General by arguing that the rate reduction should include offsets for zero cost capital, which ABATE and the Attorney General failed to incorporate.

In reply, ABATE argues that Detroit Edison does not quarrel with ABATE's arithmetic and that Detroit Edison's proposed offset is not a matter of record evidence in this proceeding.

ABATE is certainly correct that there is no disagreement with the arithmetic presented by ABATE and the Attorney General, but arithmetic is not the issue. The relevant matter for consideration is whether the methodology that ABATE and the Attorney General have developed is appropriate for calculating the rate reduction in this proceeding. ABATE criticizes Detroit Edison because of the lack of record evidence to support the utility's proposed offsets, but neither ABATE nor the Attorney General have been able to cite any record evidence that supports their methodology. It is far from obvious that the most-recently proposed methodology is correct, as is evidenced by the fact that neither ABATE nor the Attorney General have maintained consistent positions on the rate reduction.

In the absence of any record evidence to support their methodology, the Commission must reject the motions for rehearing filed on this issue by ABATE and the Attorney General.

Rate Reduction on January 1, 2000

ABATE and the Attorney General argue that the Commission should have ordered that rates be reduced by \$14.8 million on January 1, 2000 to reflect the expiration of the two-year storm damage amortization authorized in Case No. U-11588.

In reply, Detroit Edison argues that:

It would be premature to lock in a rate decrease, at this time, since the Company continues to recover extraordinary storm expenses previously authorized by the Commission. Moreover, it would be a simple matter for the Commission, under its continuing jurisdiction in this matter to issue an order decreasing rates commencing on January 1, 2000 with the expiration of the storm damage amortization.

Detroit Edison's January 26, 1999 response, p. 7.

There appears to be no dispute regarding the amount of the rate reduction due on January 1, 2000 as a result of the expiration of the storm damage amortization. Detroit Edison is correct that it continues to recover these expenses, but the point is that it will cease to do so on January 1, 2000. Accordingly, the Commission finds that rates should be reduced by \$14.8 million on that date.

Rate Design

The December 28 order reduced rates for each customer by an equal percentage amount. ABATE requests rehearing on this issue, arguing that since "it was not anticipated by any party that rate design evidence would have to be presented, and thus there was no evidence presented by any party on the subject," it would be unfair to ABATE to adopt a rate design that treated all customers equally. ABATE's January 13, 1999 brief, p. 17. In its brief, ABATE claims that its members have high load factors and thus should receive a greater proportion of the rate reduction.

ABATE's claim that no party presented evidence on rate design is quite simply untrue. For example, ABATE's own witness, James T. Selecky, testified that the rate reduction in this case should be implemented by a credit factor on a per kilowatt-hour basis. 9 Tr. 635. This would have the effect of giving a greater rate reduction to ABATE members than to other customers. It is the same position that ABATE now advocates in its motion for rehearing.

The Commission did not adopt the rate design advocated by ABATE's witness because there was no adequate basis for doing so. The only reason offered by ABATE's witness for providing a greater rate reduction to ABATE members is that the Commission did so in Case No. U-11588. However, the fact that the Commission may have provided ABATE members with a greater rate reduction once does not mean that the Commission is always required to give disproportionately high rate reductions to ABATE members. An equal percentage rate reduction for all customers is inherently fair because it treats all customers equally. There may be good reasons why some customers should get greater rate reductions than others, but those reasons must be presented in evidence. ABATE had the opportunity to, and did, present evidence on rate design, but failed to provide any convincing reason why ABATE members should receive a greater rate reduction than other customers.

Accordingly, ABATE's motion for rehearing on this issue is denied.

Revenue Requirement from Case No. U-10102

ABATE contends that the Commission erred in calculating the percentage rate reduction using the revenue requirement from Case No. U-10102, which was Detroit Edison's last general rate case. ABATE contends that Case No. U-10102 was decided five years ago and additional proceedings are needed to determine the appropriate revenue requirement to use in the calculation.

In reply, Detroit Edison indicates that it "is baffled that this calculation would be an area of contention for ABATE, since the use of 1994 revenue levels results in a greater percentage rate decrease to customers." Detroit Edison's January 26, 1999 response, p. 17.

ABATE's motion for rehearing must be rejected. ABATE is correct that Case No. U-10102 was decided five years ago. Nevertheless, it constitutes Detroit Edison's last general rate case, and

the rates approved in that case are still in effect. The Commission therefore concludes that it is appropriate for the percentage reduction authorized in this proceeding to be based on the revenue requirement associated with those rates.

Conditions

As noted earlier, the December 28 order made accelerated amortization contingent upon Detroit Edison agreeing to comply with six conditions. Both ABATE and the Attorney General seek rehearing concerning this aspect of the order.

ABATE requests rehearing because it claims that these conditions are inadequate. Specifically, ABATE argues that in 1985, the Commission imposed conditions upon Consumers Energy Company (Consumers) as a condition for financial stabilization and that the company subsequently failed to comply with those conditions. ABATE therefore proposes seven additional conditions that it believes should be imposed. Moreover, ABATE claims that it was:

unlawfully denied notice that the [Commission] was considering imposing conditions

are irrelevant and that the Commission has statutory authority to correct any malfeasance by Detroit Edison. With respect to ABATE's claim of a lack of notice, Detroit Edison responds:

ABATE specifically contends that the [Commission] erred in not providing it with notice that the Commission was considering imposing conditions on [Detroit] Edison. Implicit in ABATE's argument is that the Commission, after hearing evidentiary arguments, caught it by surprise in issuing a final order without entertaining further comments. ABATE's argument is flawed. MCL 460.1 et seq. provides the Commission with powers and jurisdiction over ratemaking matters. It is thus within the Commission's authority to place lawful and reasonable conditions on a party to one of its orders. The Commission does not possess a statutory duty to inform all parties prior to its decision to impose such a condition. In the present case, ABATE has not shown that the Commission had a statutory duty to provide it notice prior to the December 28, 1999 Order in Case No. U-11726.

Detroit Edison's January 26, 1999 response, p. 12.

In reply, ABATE claims that it had no notice that conditions were an issue in the proceeding. ABATE contends that there is no record supporting or discussing the conditions imposed upon Detroit Edison and that most of the conditions appear, in ABATE's opinion, to be patterned after proposed Senate Bill 1340, which was not part of the record.

The Commission finds ABATE's claims to be completely without merit. Most of the conditions adopted by the Commission were proposed on the record. Still others were adopted in direct response to concerns raised by the parties. ABATE had a full and fair opportunity to (1) cross-examine witnesses who requested certain conditions, (2) file its own testimony, including rebuttal testimony, concerning these and other conditions, and (3) file briefs and reply briefs addressing the issue.

For example, four of the six conditions in the December 28 order were proposed by Staff witness George R. Stojic. ABATE had the opportunity to file rebuttal testimony on any of those conditions, but it chose not to do so. Moreover, ABATE not only had the opportunity to cross-examine Mr. Stojic regarding his proposed conditions, it did so. One example would be ABATE's

cross-examination of Mr. Stojic regarding his proposal that when the Fermi 2 plant balance reaches zero, rates be reduced to reflect that situation (which became condition two in the December 28 order). 8 Tr. 570.

As for ABATE's argument that the existing conditions need to be more stringent and that additional conditions are required, ABATE fails to identify any newly discovered evidence, facts, or circumstances arising subsequent to the close of the record, or unintended consequences resulting from compliance with the December 28 order, that would justify rehearing on those issues.

The Attorney General argues that the six conditions do not identify any sanctions for violating them and that the Commission should make Detroit Edison subject to rate reductions for any such violations. The Attorney General also argues that condition six is inconsistent with the Commission's ruling in Case No. U-11454, which requires mitigation of stranded costs.

Although conditions were proposed on the record in this proceeding, no party proposed sanctions. Moreover, Detroit Edison has agreed to comply with the conditions. The Commission therefore finds that nothing additional is required at this time.

Finally, the Attorney General is incorrect in claiming that condition six violates the requirement for mitigation in the Commission's order in Case No. U-11454. Mitigation is one method used to reduce stranded cost. It is completely consistent with condition six, which is also designed to reduce stranded cost. The Commission is committed to using all available means to reduce stranded cost to the maximum extent feasible. The Attorney General's concern about the mitigation of stranded cost is more properly addressed in the annual stranded cost true-up proceeding.

Accordingly, the motions for rehearing filed by ABATE and the Attorney General are denied.

Case No. U-8789 Settlement Agreement, Section I-P

ABATE goes on to assert that the December 28 order violates Section I-P of the settlement agreement approved by the Commission in Case No. U-8789. That provision states:

If nuclear operations at the Fermi 2 plant permanently cease, the remaining net rate base investment amount for Fermi 2 shall be removed from rate base and amortized, without return, for retail ratemaking purposes over ten years with such amortization not to exceed \$290,000,000 per year.

The parties agree not to oppose such amortization formula. The \$290,000,000 amortization cap does not apply to the \$300,000,000 and \$513,000,000 amortizations referred to in Sections I-F. ADDITIONAL FERMI 2 INVESTMENT FOR RATEMAKING PURPOSES and III-A.

December 27, 1988 order in Case No. U-8789, Attachment, p. 19. According to ABATE, to “the extent that [Detroit] Edison is authorized to collect accelerated amortization of its investment in Fermi 2 and the plant subsequently shuts down, then Detroit Edison will have earned a greater return than what is permitted under the Settlement Agreement.” ABATE’s January 13, 1999 brief, p. 18. The Commission disagrees.

It is clear that Section I-P sets forth the method of determining rates after a permanent shutdown of Fermi 2. In this proceeding, the Commission has set rates for the period before a permanent shutdown, if any. There is nothing in the December 28 order that specifies how rates are to be determined after a permanent shutdown. The only thing in the December 28 order that is in any way related to the shutdown of Fermi 2 is the requirement that if Detroit Edison seeks to abandon Fermi 2, it must first initiate a contested case proceeding to evaluate the effect of the proposed abandonment on its customers as set forth in condition four. That requirement in no way modifies the ratemaking formula specified in Section I-P.

Accounting Rules

The December 28 order rejects a contention by the Attorney General that an accounting order issued by the Federal Energy Regulatory Commission (FERC) on August 4, 1998 (the FERC order) precludes the Commission from authorizing Detroit Edison to accelerate the amortization of its Fermi 2 assets. The Commission noted that Detroit Edison proposed to use Accounts 407.3 and 182.3, which the FERC order found to be the appropriate method of accounting.

The Attorney General filed a motion for rehearing based on a 13-page affidavit from William A. Peloquin, who had previously submitted testimony in this proceeding on behalf of the Attorney General. In his affidavit, Mr. Peloquin concedes that the FERC order authorized use of Accounts 407.3 and 182.3, but in his opinion, the analysis in the December 28 order misses the point of the text in the FERC order referring to those accounts.

In reply, Detroit Edison contends that the Attorney General simply rehashes arguments previously made and does not meet the standard for rehearing. Detroit Edison indicates that it intends to comply with both state and FERC accounting policy and that on February 15, 1999, it submitted a letter to FERC seeking appropriate accounting approval.

The Commission concludes that the Attorney General has not met the standard for rehearing. The FERC order was issued on August 4, 1998. The Attorney General filed Mr. Peloquin's testimony on September 15, 1998. Obviously, there was adequate time to incorporate Mr. Peloquin's opinion regarding the FERC order into that testimony. No sufficient reason has been shown for the failure to do so. Furthermore, Detroit Edison has submitted its proposed accounting to the FERC. If the FERC approves the accounting, then the Attorney General's argument is moot. If the FERC rejects the proposed accounting, the Commission will revisit the matter as appropriate at that time. Accordingly, the Attorney General's motion for rehearing is

denied.

Tariff R-10

ABATE requests that the Commission clarify the December 28 order to ensure that the percentage rate reduction applies to all revenues, including those arising from the energy and capacity charges of the R-10 tariff.

In reply, Detroit Edison contends that the request for clarification is moot because Detroit Edison is applying the percentage reduction “to the base rate components of [the] R-10 rate, including service charge, maximum demand charge, non-power supply cost charge, and the hourly power supply cost charge at the level set in Case No. U-10102.” Detroit Edison’s brief, p. 16.

ABATE responds that:

Nothing can be further from the truth because [Detroit] Edison’s response shows that clarification is essential. ABATE contends that what [Detroit] Edison has now proposed with respect to ratemaking treatment for R-10 is wrong and ABATE urges the Commission to make that clarification for the benefit of [Detroit] Edison so that it can properly credit the R-10 customers with the appropriate rate reduction.

ABATE’s February 11, 1999 reply brief, p. 12.

It is apparent that there is some underlying dispute between ABATE and Detroit Edison regarding the application of the rate reduction in the December 28 order to the R-10 customers.

Account 283

The Staff requests that the Commission clarify the December 28 order to make it clear that the amortization of the accumulated deferred income tax balance in Account 283 should be the amount related to Fermi 2. No party objects to this clarification. The Commission finds that the Staff's proposed clarification is consistent with the intent of the December 28 order and should be adopted.

Energy Michigan's Proposed Conditions

Energy Michigan argues that the Commission erred because it did not impose all of Energy Michigan's proposed conditions on Detroit Edison. Energy Michigan claims that Detroit Edison's statement accepting the conditions that the Commission did impose demonstrates that Detroit Edison intends to engage in a de facto refusal to implement the retail open access plans that the Commission approves. At a minimum, Energy Michigan argues that the Commission should issue an order on the implementation plan filed by Detroit Edison and require the utility to agree to implement that plan as a condition of accelerated amortization. Energy Michigan also contends that all revenues should be collected under bond and subject to refund unless there are 675 megawatts of open access capacity provided by non-affiliates of Detroit Edison within twelve months.

In reply, Detroit Edison indicates that it is committed to implement in good faith the Commission's retail open access program and that Energy Michigan has not provided a sound basis for rehearing.

Energy Michigan's motion for rehearing should be denied because it is based on the assumption that Detroit Edison will not implement the retail open access program in good faith. Detroit Edison has committed that it will do so and no newly discovered evidence to the contrary has been offered. Hence, there is no basis for rehearing on this issue.

Energy Michigan also asserts that Detroit Edison should be required to agree to the implementation plan approved by the Commission. Today, the Commission is issuing an order in Cases Nos. U-11290 et al., adopting implementation plans for Detroit Edison and Consumers Energy Company. Detroit Edison will have an opportunity to review that order prior to making the filing required by this order on March 18, 1999. Thus, Detroit Edison's commitment to implement the retail open access program in good faith will be made with full knowledge of the implementation plan that the Commission has approved.

IV.

ACCOUNTING LETTER

On January 28, 1999, Detroit Edison submitted a letter (accounting letter) to the Commission's Executive Secretary specifying the accounting entries that Detroit Edison would be making to reflect the accelerated amortization of Fermi 2.

The Attorney General filed a motion to reject the accounting letter. The Attorney General claims that because Detroit Edison's "proposed accounting rests upon a foundation which [Detroit Edison] failed, if not refused, to include in the evidentiary record, it is not lawful to approve [Detroit Edison's] proposed accounting entries at this stage of the case." Attorney General's February 8, 1999 motion, p. 9. The Attorney General argues that Detroit Edison's proposed accounting violates generally accepted accounting principles and the settlement agreement in Case No. U-8789.

In reply, Detroit Edison indicates that the utility and its independent accountants have determined that the Fermi 2 asset is impaired and that the proposed accounting is proper.

The accounting letter did not request Commission approval of the accounting entries contained therein. Hence, there is no dispute properly before the Commission.

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 AACR, R 460.17101 et seq.
- b. Detroit Edison's acceptance complies with the conditions set forth in the December 28, 1998 order in this case, with the understanding of condition three provided in this order. If Detroit Edison does not agree with that understanding, it should notify the Commission by March 18, 1999.
- c. By March 18, 1999, Detroit Edison should notify the Commission whether the Board of Directors has given its approval to the acceptance of the conditions.
- d. The Staff's proposed clarification regarding Account 283 should be approved.
- e. Detroit Edison's rates should be reduced by \$14.8 million on January 1, 2000.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company's acceptance complies with the conditions of the December 28, 1998 order in this proceeding, with the understanding of condition three provided in this order.

B. The Detroit Edison Company shall notify the Commission by March 18, 1999 if the company does not agree with the understanding of condition three set forth in this order.

C. The Detroit Edison Company shall notify the Commission by March 18, 1999 whether the Board of Directors has given its approval to the acceptance of the conditions.

D. The Commission Staff's proposed clarification regarding Account 283 is adopted.

E. The Detroit Edison Company's rates for electric service shall be reduced by \$14.8 million effective January 1, 2000.

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/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

By its action of March 8, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

C. The Detroit Edison Company shall notify the Commission by March 18, 1999 whether the Board of Directors has given its approval to the acceptance of the conditions.

D. The Commission Staff's proposed clarification regarding Account 283 is adopted.

E. The Detroit Edison Company's rates for electric service shall be reduced by \$14.8 million effective January 1, 2000.

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

Chairman

Commissioner

By its action of March 8, 1999.

Its Executive Secretary

In the matter of the application of)
THE DETROIT EDISON COMPANY)
for accounting authority related to the)
accelerated amortization of the Fermi 2)
Nuclear Generating Plant.)
_____)

Case No. U-11726

Suggested Minute:

“Adopt and issue order dated March 8, 1999 resolves the remaining issues concerning the request of The Detroit Edison Company to accelerate the amortization of the Fermi 2 plant, as set forth in the order.”