S T A T E O F M I C H I G A N

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **The Detroit Edison Company** for reconciliation of its power supply cost recovery plan for the 12-month period ending December 31, 2008.	)	Case No. U-15417-R
In the matter of the application of **The Detroit Edison Company** to reconcile its pension equalization mechanism for the 12-month period ending December 31, 2008.	)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 22, 2010.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before April 5, 2010, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 15, 2010. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will

become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Barbara A. Stump

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Barbara A. Stump
Administrative Law Judge

March 22, 2010
Lansing, Michigan
dmp

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

On March 31, 2009, The Detroit Edison Company (Detroit Edison or the Company) filed an application, with supporting testimony and exhibits, requesting reconciliation of its power supply cost recovery (PSCR) revenues and expenses for the 12-month period ending December 31, 2008, and to reconcile its pension equalization mechanism (PEM) for the same period. Detroit Edison filed its application pursuant to 1982 PA 304, MCL 460.6j(12) *et seq.* (Act 304). Detroit Edison states that it experienced an underrecovery of $18,616,169 including interest for 2008. (Exhibit A-5 Revised, p 2.) It also states that the total amount of the 2008 PEM overcollection, after calculating monthly interest, equals $49,865,636. (Exhibit A-7, p 2.)

A prehearing conference was held on May 6, 2009, at which time the Administrative Law Judge granted the petitions to intervene filed by the Residential Ratepayers Consortium (RRC) and Attorney General Michael A. Cox (Attorney General). The Commission Staff (Staff) also participated in the proceedings.

On December 9, 2009, the testimony of all witnesses was bound into the record and the parties waived cross-examination of all witnesses except for Detroit Edison witness Angela Wojtowicz.

On January 25, 2010, the Commission issued an order in Case No. U-15002-R, in which it determined that Detroit Edison's 2007 PSCR underrrecovery was $38,235,587 rather than the Company's filed amount of $40,818,309. Using the 2007 underrecovery of $38,235,587 results in a corrected 2008 underrecovery in this case of $15,635,232 rather than Detroit Edison's filed amount of $18,372,583.

Detroit Edison, the RRC, the Attorney General, and the Staff filed briefs on February 12, 2010. Detroit Edison, the RRC, and the Attorney General filed reply briefs on February 26, 2010.

The record consists of 180 pages of transcript and 30 exhibits that were admitted into evidence.

SUMMARY OF THE EVIDENCE

Kenneth D. Johnston, a Regulatory Consultant for Detroit Edison, reconciled the Company's 2008 PSCR revenues and expenses, and calculated the refund billing factors for the PEM.[1] Exhibit A-8 illustrates 12 possible sets of PEM reconciliation refund factor scenarios, depending on the month in which the Commission issues its

[1]Theresa M. Uzenski, Manager of Regulatory Accounting, supported the calculation of the Company's actual PEM for 2008. (2 Tr 107-108.)

order in this case and over which time period the refund factors are to be applied to customer rates as well as the customer class to which the PEM refund is credited. (2 Tr 60-61.) Mr. Johnston proposed that the refund factors be applied over a three-month period, because that method would provide a fairer distribution of the amount to be refunded and a greater ability to refund the proper amount. (2 Tr 63-64.)

Patrick D. Kauffman, a Manager in Detroit Edison's Financial Planning and Analysis group, supported the Company's booked cost of fuel consumed, NO_x emission allowances consumed, SO_2 emission allowances consumed, purchased power cost, cost of network transmission, and third party wholesale power sales revenue for the year ended December 31, 2008. (2 Tr 69.)

James B. Good, Supervisor of Detroit Edison's Business Development and Administration in the Fuel Supply Organization, reconciled the difference between the 2008 actual unit cost of fossil fuel and the corresponding costs from the 2008 PSCR plan. Mr. Good concluded that Detroit Edison's 2008 fossil fuel expenses were reasonable and the result of prudent procurement policies and practices. (2 Tr 34.)

John C. Dau, Plant Manager of the Belle River Power Plant and Detroit Edison's generation plant expert, presented the 2008 actual periodic maintenance at Detroit Edison's fossil generation power plants and discussed the differences from the 2008 planned maintenance schedule. Mr. Dau testified regarding the development and execution of the 2008 Detroit Edison periodic outage plan, as found in Exhibit A-1, and explained that, in general, the Company followed the plan. He stated that all work scheduled during the outages on Monroe Units 3 and 4, River Rouge Unit 2, St. Clair Units 3 and 4, Belle River Unit 1, and Trenton Channel High Side was completed,

assuring continued availability of these generating resources to serve Detroit Edison's customers. (2 Tr 23.) Mr. Dau concluded that Detroit Edison's actual and projected maintenance and repair activities for 2008 were reasonable and prudent. (2 Tr 25.)

Michael W. Shields, Manager of Wholesale Market Developments, explained Detroit Edison's 2008 expenses associated with being a network transmission customer in the International Transmission Company zone, and with being a market participant of the Midwest Independent Transmission System Operator (MISO). Mr. Shields explained that the expenses incurred were required in order for the Company to provide power supply service to its full service customers. (2 Tr 82.) He also explained that all of the expense items listed on Exhibits A-14 and A-15 were necessary and integral to the Company being able to provide power supply service to its retail customers. (2 Tr 102.)

Angela P. Wojtowicz, Supervisor of the Midterm Optimization Group, discussed the Company's 2008 electric system operations. This included Detroit Edison's system generation, purchases and third party wholesale sales of power, and emission allowance expenses. Ms. Wojtowicz explained that Detroit Edison generated 1,429 gigawatt hours (GWh) less than the forecast of 52,820 GWh. The Company's PSCR fuel and purchased power expense of $1,360,207,000 was $54,766,000 below the forecast. (2 Tr 126-27.)

Ms. Wojtowicz concluded that in 2008 the Company's electric system was operated in a reliable, reasonable, and prudent manner. She explained that:

> There were no interruptions of customer load due to generation supply or transmission limitations. The interruptible air conditioners were not utilized to reduce demand. The Company generation output was the highest of the past 9 years. The average generation unit fuel cost of the

> Company's resources was $17.50/MWh which was $34.62/MWh below the MISO day-ahead RTC market price of power at the Michigan Hub. The Company made almost 3,600 MWh of third party wholesale power sales with associated gross revenue of over $200 million which reduced PSCR customer's costs.
>
> During the summer of 2008, the industrial interruptible customers were not required to curtail their interruptible load. The Company reliably served its customers by acquiring and utilizing a summer purchase power portfolio at a reasonable cost. This is evidenced by the fact that no firm customers were interrupted in 2008 and the ultimate cost of the overall portfolio was well below the actual MISO market price. (2 Tr 137.)

Dr. Robert Loube, a consultant and Vice-President and one of the principal owners of Rolka Loube Saltzer, testified on behalf of the RRC. Dr. Loube's analysis focused on Detroit Edison's Interruptible Air Conditioning (IAC) rate. Exhibit RRC-2 is the Company's IAC tariff that was in effect in 2008.

Dr. Loube examined Detroit Edison's actions relative to interrupting air conditioners during 2008 and determined that the Company interrupted customers only to relieve a local distribution problem. It did not interrupt customers as part of a load management program that would have reduced energy sales or its system peak. (2 Tr 172-73.) Dr. Loube testified that in 2008, there were 282,082 customers participating in the IAC program. Of that number, 277,921 or 98.5 percent of program customers purchased electricity at a reduced rate and were never required to reduce their use of electricity in 2008. (2 Tr 173.)

Dr. Loube went on to examine how the IAC program relates to Detroit Edison's PSCR under- or overrecovery. He testified that:

> As illustrated in Exhibit RRC-3 (RL-3), under-recovery occurred only in four months during 2008, and the overwhelming majority of the under-recovery occurred during the three summer months. According to Exhibit A-5 (KDJ-2) Revised, the under-recovery in the three summer months was ($103,552,775) representing 92 percent of the total amount under-

> recovered during 2008. However, it is precisely in the three summer months when it would be most effective to use the interruptible program as a load management tool to reduce energy costs. Thus, implementing the interruptible program would offset the under-recoveries that occurred during the summer months and reduce the PSCR cumulative under-recovery. (2 Tr 173-74.)

Based on a discovery response from Detroit Edison, Dr. Loube concluded that because the Company paid approximately $14,700 per MWh to purchase summer capacity in 2008, the value of the interruptible service is approximately $2.6 million in terms of peak capacity. (2 Tr 174.) When asked if it is possible to estimate the impact on energy savings of implementing the interruptible program in the summer of 2008, Dr. Loube stated that it is difficult to determine a precise estimate. Nevertheless, relying on the fact that weather is a key variable in determining air conditioning load, he developed a summer estimate of a maximum load shed of 66,109 MWh. (2 Tr 175.) Dr. Loube explained how he developed his estimate.

> I began with Detroit Edison's estimate that on the peak day, implementing the air conditioning interruptible program would save 1,262 MWH. The peak day was July 16, 2008 (footnote omitted). On July 16 the number of cooling degree days was 13. (footnote omitted) Dividing 1262 MWH by 13 cooling degree days produces a ratio of 97.08 MWH per degree day. Next I multiplied the cooling degree days for each day in June, July and August by the ratio of MWH to cooling degree days to determine the MWH savings for each day. The monthly total savings were 18,250 MWH for June, 25,434 MWH for July and 22,424 MWH for August. These calculations are shown in Exhibit RRC-4 (RL-4). (2 Tr 175.)

In deciding how to translate load savings attributable to implementing the interruptible program, Dr. Loube did not use the maximum load savings to adjust the PSCR recovery, because it is based on using the eight-hour maximum time period that Detroit Edison may interrupt customers under the IAC tariff. Instead, he assumed that Detroit Edison would interrupt customers for only four hours and, therefore, he reduced

the estimated savings by 50 percent. As a result, he used 9,125 MWh for the June savings, 12,717 MWh for the July savings, and 11,212 MWh for the August savings. (2 Tr 175.)

Dr. Loube then estimated the fuel cost savings associated with the air conditioning interruptible energy savings by multiplying the energy savings by the MISO average monthly peak rates for June, July, and August. He stated that those rates were calculated by averaging the 2008 actual prices for the Detroit Edison and Michigan Hub for day-ahead and real-time on-peak prices shown in Exhibit A-21. The calculation of the average prices and PSCR expense savings is shown on Exhibit RRC-5. (2 Tr 176.)

Dr. Loube went on to testify that the impact of implementing the IAC program on the PSCR underrecovery is twofold. First, total system sales are reduced by 33,054,000 kilowatt hours. This reduction also decreases the PSCR allocation factor reported in line 46 of Exhibit RRC-6, the PSCR revenues reported in line 44, and total revenues reported on line 46, so that the total revenues are $1,352,650,286 compared to $1,353,591,402 in Exhibit A-5. Second, Dr. Loube stated that the total applicable PSCR expense is reduced from $1,330,183,291, shown on Exhibit A-5, to $1,327,349,549, because purchased and net interchange power costs are reduced for June, July, and August by the amounts shown in Exhibit RRC-5. According to Dr. Loube, when these two factors are combined, they reduce the underrecovery reported in Exhibit A-5 from $18,372,583 to $16,441,832 (Exhibit RRC-6, line 56), which represents a decrease in the underrecovery of $1,930,751 . (2 Tr 177.)

Based on his analysis, Dr. Loube recommended that the Commission find that Detroit Edison's failure to interrupt air conditioning customers in June, July, and August

2008 caused excessive PSCR expenses and, therefore, was unreasonable and imprudent. He further recommended that the Commission reduce the amount of PSCR underrecovery in this case by $1,930,571. (2 Tr 178.)

Detroit Edison presented the rebuttal testimony of Ms. Wojtowicz and Richard P. Pospiech, Jr., a Senior Financial Analyst – Load Research in the Regulatory Affairs organization, in response to the RRC's proposed disallowance. Mr. Pospiech prepared Exhibit A-24, entitled Realistic Hindsight Estimate of IAC Load Interruption. He testified that the purpose of this exhibit was to show a "more realistic hindsight estimate of the theoretical costs savings that hypothetically might have been achieved from interrupting the IAC load during the summer of 2008." (2 Tr 112.) Mr. Pospiech and Ms. Wojtowicz offered a number of criticisms regarding Dr. Loube's analysis.

First, Ms. Wojjtowicz testified that Dr. Loube made the unreasonable assumption that the IAC customers would remain on the IAC rate through 83 days of interruptions over the course of 91 days, i.e., June, July, and August 2008. She stated that when making the decision to interrupt IAC load, Detroit Edison considers the impact on the customer who will experience a warmer, more humid home as a result of the interruption. Because the savings to the typical IAC customer is estimated to be approximately $35.00 per year, interrupting those customers incessantly would likely cause them to switch to firm service to avoid the discomfort, thereby rendering the tariff useless as a load management tool. (2 Tr 141.)

Second, Mr. Pospiech criticized Dr. Loube's determination regarding the potential maximum load shed of 66,109 MWh, because it was based on only one

weather variable, cooling degree days (CDD).[2] Contrary to Dr. Loube's analysis, Mr. Pospiech stated that air conditioning load that would be available for interruption is dependent on other variables such as daily maximum temperature, daily average temperature, previous day's average temperature, heat buildup, day of the week, weekday, humidity, precipitation, etc. When factoring in these additional weather variables, a wide range of variance in the residential air conditioning load can be experienced for days having CDDs of equal value. (2 Tr 113-14.) For example, Mr. Pospiech explained that if Dr. Loube had based his ratio on one of the 13 days during the summer of 2008 on which the air conditioning loads ranged from 625 to 1130 MWh for an eight-hour potential interruption period, and the CDD for each one of those 13 days was equal to 12, then he would have calculated ratios that would have ranged from 52.1 to 94.2 MWh per CDD compared to the ratio of 97.08 MWh he actually calculated. According to Mr. Pospiech, the variance in the air conditioning loads ranging from 625 to 1130 MWh for those 13 days proves the point that air conditioning load is dependent upon a wide range of weather variables. As a result, he opined that it is inappropriate to use the ratio of 97.08 MWh per CDD, because it is based solely on one weather variable, CDD, to project residential air conditioning load. (2 Tr 114.)

Third, Mr. Pospiech testified that Dr. Loube failed to consider the extra cooling load that would come back onto the Company's electric system after the interruption cycle. He referred to this as the "rebound phenomenon" that occurs when IAC customers increase their air conditioning usage to compensate for the additional heat

[2]Mr. Pospiech explained that, "in layman's terms, CDD is nothing more than the average temperature in degrees Fahrenheit for a particular day minus the numeric value of 65° Fahrenheit. . . .Therefore, if the maximum daily temperature is 80° F and the minimum daily temperature is 60° F, then CDD would equal 5." (2 Tr 113.)

and humidity created by cycling their air conditioners through the eight-hour interruption period. Mr. Pospiech testified that analyzing all the different weather variables as well as the rebound phenomenon results in only five days during which interruption of the IAC load could have been viable during the summer of 2008 (July 16, 17, 18, and 30 and August 22), which would have resulted in an estimated load reduction of only 6,040 MWh. (2 Tr. 114-115.)

Fourth, Ms. Wojtowicz testified that the decision to make interruptions on the five days would have occurred in real-time, which would have actually resulted in an estimated additional cost of $50,240 due to the day-ahead and real-time market price differences. She stated that four out of the five days would have resulted in losses rather than savings. According to Ms. Wojtowicz, the real-time energy market prices have to be significantly higher than day-ahead energy market prices for an extended number of days in order to experience significant savings from the IAC interruption. (2 Tr 143.) She therefore stated that the most prudent use of the IAC load is as a flexible real-time operating tool for providing service to customers. (2 Tr 143.)

Fifth, and finally, Ms. Wojtowicz testified that the Company did not have to purchase summer seasonal capacity to serve the interruptible air conditioning load. She explained that, based on the 2008 average capacity price of $14,700 per MWh, this equates to a savings of over $3,500,000 in capacity costs that benefited all PSCR customers. (2 Tr 144.)

POSITIONS OF THE PARTIES

The sole issue in dispute in this case is whether Detroit Edison's decision not to interrupt customers participating in the IAC program in 2008 was reasonable and prudent.

Tariff M.P.S.C. Tariff No. 10, entitled "Interruptible Space-Conditioning Service Rate" provides, in pertinent part:

> AVAILABILITY OF SERVICE: Available on an optional basis to Residential and Commercial customers desiring separately metered interruptible service for central air conditioning and/or central heat pump use.
>
> HOURS OF INTERRUPTION: Central air-conditioning and/or heat pump units only will be turned off by the Company by remote control on selected days for intervals of no longer than thirty minutes in any hour for no more than eight hours in any one day. Company interruptions may include interruptions for, but not limited to maintaining system integrity, making an emergency purchase, economic reasons, or when available system generation is insufficient to meet anticipated system load. (Exhibit RRC-2.)

The RRC begins its discussion by observing that, as early as 1980, the Commission recognized that interruptible air conditioning rates for residential electric customers is a useful load or capacity management tool. The RRC relies on the Commission's June 15, 1989 order in Case No. U-8880, Detroit Edison's 1988 PSCR plan case. In that order, the Commission stated that:

> Interruptible rates give utilities the flexibility to reduce their fuel costs. During times of peak demand, utilities generally must begin operating their most expensive plants or purchasing additional power from high-cost sources. The availability of interruptible service allows utilities to avoid these higher costs.
>
> However, the number of interruptible rates offered by a utility tells only part of the story. To be of any benefit, these rates must be properly administered. Unfortunately, Detroit Edison's peak demand is directly p.

> 34-35dependent upon weather, making it impossible to accurately predict when service interruptions will be warranted. The savings expected from service interruptions are therefore difficult to project, rendering meaningless any attempt to determine whether a utility's predictions regarding these interruptions are accurate. Thus, the Commission finds it is preferable to review Detroit Edison's actual performance regarding interruptible service in the context of a PSCR reconciliation case. Only in such a proceeding will we be able to assess the reasonableness and prudence of the utility's decisions about whether or not to interrupt service to its customers. We therefore defer ruling on this factor until Detroit Edison's 1988 PSCR Reconciliation proceeding. (Order, pp. 34-35.)

The RRC argues that this decision is significant for two reasons. First, it points out that Ms. Wojtowicz responded to Dr. Loube's suggestion that Detroit Edison should be using its IAC program as a load management tool by stating that the Company had indicated in its 2008 PSCR plan that it did not intend to interrupt its IAC customers. The RRC asserts that the Commission clearly stated in Case No. U-8880 that such pronouncements in a plan case are meaningless, and that a utility's actual decisions in this regard must be evaluated for reasonableness and prudence in a PSCR reconciliation.

The RRC further states that the second reason the Commission's decision is significant is because it places the burden on the utility to show in a PSCR reconciliation whether service interruptions are warranted and whether they will generate savings for PSCR customers. The RRC submits that Ms. Wojtowicz's testimony makes it clear that Detroit Edison views its IAC tariff exclusively as a capacity management tool.

The RRC goes on to contend that Detroit Edison has failed to present any analysis to justify its wholesale, predetermined rejection of interrupting IAC customers as a load management tool under any circumstances in 2008. In the RRC's view, the Company's testimony and exhibits contain no explanation of why that decision was

reasonable and prudent under the actual circumstances that existed in 2008. It maintains that Detroit Edison's rebuttal testimony merely presents an analysis that describes why it disagrees with Dr. Loube's estimates of the potential PSCR cost savings from using the IAC as a load management tool. According to the RRC, that testimony does not disclose whether there were actual, genuine opportunities for doing so in 2008. The RRC therefore asserts that Detroit Edison has failed to present evidence showing that its policy of never using the IAC tariff to interrupt customers as a load management tool was reasonable and prudent under the circumstances that existed in 2008.

Detroit Edison argues that the proper standard of review in this case is reasonableness and prudence, which is measured by what the utility knew when it made its decision and not on the results of those decisions. The Company contends that the RRC's analysis is based on hindsight and makes assumptions that are neither reasonable nor prudent.

More specifically, Detroit Edison argues that the RRC's reliance on the Commission's order in Case No. U-8880 as legal authority for requiring the Company to repeatedly interrupt 282,082 customers' air conditioners through the summer to reduce PSCR costs is unreasonable and misplaced. To the contrary, the Company asserts that Ms. Wojtowicz's characterization of the IAC as a capacity management tool expresses the primary purpose of interruptible service more accurately than the RRC's narrow interpretation of the IAC program as a "draconian" cost saving tool to reduce PSCR costs. Ms. Wojtowicz explained that the Company uses the IAC load as a capacity management tool whereby "if capacity (distribution, transmission or generation)

would not have been available to serve the IAC load, then the IAC customers would have been interrupted." (2 Tr 141.) According to Detroit Edison, the evidentiary record in this case is devoid of any fact or circumstance indicating that the Company should have used its IAC program to avoid obtaining power from high-cost sources. To the contrary, the Company points out that the ultimate cost of its overall portfolio was well below the actual MISO market price. Therefore, there was no economic need to interrupt IAC customers.

Detroit Edison goes on to argue that its multi-factor weather analysis for determining the existence of air conditioning load capable of being remotely shut off is far more reasonable, reliable, and prudent than the RRC's single-factor analysis. The Company asserts that whether Dr. Loube's analysis for deriving a potential maximum load shed of 66,109 MWh is premised on an eight-hour interruption period, or a four-hour interruption period, or a three-hour interruption period overlooks the fact that such an analysis is still deficient because it relies solely on only one weather variable, the CDD, to project the actual existence of residential air conditioning load for the summer of 2008. Detroit Edison states that it cannot interrupt IAC load that is not online. In other words, it contends that there is no load reduction benefit from attempting to remotely shut off an air conditioner that is not operating.

Detroit Edison concludes that its decision to not interrupt IAC load for economic considerations was fully justified and, therefore, its decision was reasonable, prudent, and consistent with past practice.

The Attorney General supports the RRC's proposed disallowance. He specifically argues that Detroit Edison's hindsight argument is specious, because the

simple points are that Detroit Edison knew what day-ahead prices were, it could have excluded projected IAC load from its day-ahead purchases, and it knew that the savings from reducing consumption would far exceed PSCR expense. Nevertheless, the Attorney General states, Detroit Edison failed to curtail IAC load to minimize costs.

The Attorney General argues that Detroit Edison has not supported its claim that there would have been no savings if IAC customers were not actually using their air conditioners at the time the Company would have curtailed service with any facts demonstrating that IAC customers were not using their conditioners. First of all, the Attorney General contends that this argument implies that the discount is not worth the potential savings. Second, he asks that one assume that all 282,082 IAC customers would switch from the IAC tariff to firm service if the Company actually interrupted service as proposed by Dr. Loube. They would then pay additional charges totaling $9,872,870 (282,082 x $35.00), so the costs of service currently allocated to other PSCR customers would go down by the same amount. From the perspective of just and reasonable ratemaking, the Attorney General submits that other PSCR customers did not receive $1.9 million to $2.6 million in PSCR savings, which is a benefit they are supposed to receive in exchange for assuming the burden of the $9,872,870 discount.

Furthermore, the Attorney General argues that although Exhibit A-24 calculates corrected savings, it compares day-ahead and real-time prices, which compares apples to oranges. He states that there is no need to make IAC interruptions in the real-time market as Ms. Wojtowicz suggests. To the contrary, the Attorney General submits that Detroit Edison knows the quantity and capacity of available IAC interruptions for the next day and could have included such interruptions in its day-ahead commitments to

MISO to reduce PSCR costs at peak pricing times. He maintains that there is no dispute that Detroit Edison bought electricity at day-ahead prices instead of planning for IAC interruptions and, therefore, the savings correction presented in Exhibit A-24 is misleading. According to the Attorney General's view, all Exhibit A-24 actually shows is the difference in cost between paying day-ahead prices and real-time prices. It does not show savings from avoiding additional purchases in the day-ahead market by including plans for IAC interruptions. In other words, the Attorney General states, Detroit Edison would not have paid more by interrupting IAC service because paying real-time prices instead of day-ahead prices, which is the difference shown on Exhibit A-24, does not reflect the real dispute.

In its brief, the Staff supports Detroit Edison's 2008 PSCR and PEM reconciliations as reasonable and recommends that the Commission approve the Company's application subject to the $2,582,722 reduction in the Company's 2007 PSCR underrecovery. The Staff did not address the RRC's proposed disallowance.

DISCUSSION AND FINDINGS

Section 6j(14) of Act 304 provides, in pertinent part:

> In its order in a power supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. [MCL 460.6j(14).]

Thus, the proper standard of review in a PSCR reconciliation is reasonableness and prudence, which is measured by what the utility knew when it made its decision.

The Commission has repeatedly held that the Act 304 standard does not permit the Commission to use hindsight to second guess the utility's decisions. (*See, e.g.,* the July 25, 2006 order in Case No. U-13960-R.) Applying this standard to the facts of this case, the Administrative Law Judge finds that Detroit Edison's decision to forgo using the IAC to reduce PSCR costs was reasonable and prudent.

In reaching this conclusion, the Administrative Law Judge finds that the primary purpose of the IAC program is to help Detroit Edison to maintain system integrity, to make an emergency purchase, or when available system generation is insufficient to meet anticipated system load. Although the Company may also interrupt service for economic reasons, that is not the primary purpose of the program. In other words, the program does not exist simply to reduce PSCR expenses. Rather, the IAC tariff grants discretion to Detroit Edison for determining whether and when to interrupt air conditioning.

In this case, Detroit Edison exercised its discretion and used the IAC load as a capacity management tool whereby if distribution, transmission, or generation would not have been available to serve the IAC load, then the IAC customers would have been interrupted. This was consistent with the primary purpose of the IAC tariff. There is no evidence that Detroit Edison should have used the IAC program to avoid obtaining power from high-cost sources. In fact, as indicated earlier, Ms. Wojtowicz testified that "the average generation unit fuel cost of Detroit Edison's resources was $17.50 MWh which was $34.63/MWh below the MISO day-ahead RTC market price of power at the Michigan Hub." (2 Tr 137.) She further indicated that the ultimate cost of the Company's overall portfolio was well below the actual MISO market price. Thus, there

was no need to interrupt the IAC load for economic reasons and, consequently, the Company did not abuse its discretion in forgoing its option to interrupt air conditioning load.

The Administrative Law Judge rejects the analysis presented by the RRC and supported by the Attorney General for three reasons. First, that analysis is based on hindsight, which is not the test that the Commission applies in determining the reasonableness of a utility's decision. Second, the RRC's analysis inappropriately relies on only one weather variable, the CDD, to project the actual existence of residential air conditioning load for the summer of 2008. The fact that Dr. Loube did not advocate that IAC customers be interrupted for a full eight hours does not make his estimate of the potential maximum load shed more reasonable and reliable. Regardless of the number of hours used for the interruption period, the fact remains that Dr. Loube relied solely on one weather variable to project the actual existence of residential air conditioning load for the summer of 2008. This is not a reliable method for determining the air conditioning load that is actually operating and available for interruption. Third, Dr. Loube's analysis unreasonably assumes that customers would have remained on the IAC rate through incessant interruptions lasting four hours each over the course of the summer of 2008, especially since those customers have the ability to switch to firm service on three days notice. As the RRC acknowledges, the overuse of interruptions would only serve to undermine the load management benefits of the program.

In contrast, the Administrative Law Judge agrees with Detroit Edison that its multi-factor weather analysis for determining the actual existence of air conditioning

load capable of being remotely shut off is more reasonable and reliable than the RRC's single-factor weather analysis. Detroit Edison's analysis depends on several weather variables such as daily maximum temperature, daily average temperature, previous day's maximum temperature, previous day's average temperature, heat buildup, day of the week, a weekday, humidity, precipitation, etc. The Administrative Law Judge is persuaded that customers' air conditioning use is dependent upon a wide range of weather variables, and not just CDDs. The evidence shows that use of these additional weather variables results in a wide range of variance in the air conditioning load for days that have CDDs of equal value.

Despite Detroit Edison's analysis demonstrating that there were only five days during the summer of 2008 on which interrupting the IAC load could, in hindsight, have been practical, the RRC argues that the Company's rebuttal testimony does not disclose whether there were "actual, genuine opportunities for doing that in 2008." For example, the RRC states:

> . . . what was the reasonable amount to interrupt customers under the IAC tariff in 2008 without jeopardizing their participation in the program? Stated another way, what were reasonable limits on the number of customer interruptions per month, the length of each interruption per customer and the percentage of IAC customers that could be interrupted at any time that would have made the IAC a viable load management tool in 2008? What information could Detroit Edison have brought to bear based on its experience in the day ahead market and its knowledge of its customers to make the IAC tariff a viable load management tool in 2008. (Initial brief, p 8.)

The Administrative Law Judge agrees with Detroit Edison that the RRC appears to be suggesting that the Company test its customer's interruption limits in order to determine how long and how often they can tolerate interruption of their air conditioning before they leave the rate. If this is what the RRC is suggesting, even if Detroit Edison

could produce such information or data, it would be speculative and, again, it would still be subject to numerous weather variables. Moreover, contrary to the RRC's assertion, Detroit Edison did present evidence to explain why there were no opportunities for using the IAC tariff to reduce PSCR costs. Again, using its more reliable multi-factor weather analysis, the Company demonstrated that, under the circumstances that existed in 2008, there were only five days during the summer of 2008 that interrupting the IAC load would have been practical.

The Administrative Law Judge also rejects the Attorney General's argument that Detroit Edison knew what actual day-ahead prices were before it scheduled its day-ahead purchases and, therefore, it could have excluded projected IAC load from those purchases, thereby reducing consumption and saving PSCR expense. However, the evidence shows that Detroit Edison does not make the decision to interrupt the IAC load on a day-ahead basis, because it is simply not practical due to the uncertainty of the weather. Furthermore, because the decision to interrupt customers would have occurred in real-time, it would not have saved any money. Instead, it would have cost more money due to the differences between day-ahead and real-time prices, and four out of the five days identified by Mr. Pospiech would have actually resulted in losses. (2 Tr 143.) As a result, the Company does not make the decision to interrupt IAC load on economics alone. Ms. Wojtowicz stated that:

> Making the decision to interrupt the IAC load for economics on a real-time basis is not without uncertainty due to the volatile 5-minute price signals of the real-time market; therefore, *it is done only when real-time energy market prices were expected to be significantly higher than day-ahead energy market prices for an extended number of hours, which was not the case during the summer of 2008*. (2 Tr 142, *emphasis added*.)

The Attorney General's assertion that there is no need to make IAC interruptions in the real-time market is not supported by the evidence. On cross-examination, Ms. Wojtowicz explained why it is not appropriate to make IAC interruptions in the day-ahead market. She stated that:

> We intend to serve that load so we can have that tool available in real-time as a contingency. There could be – if you decided to use the tool in day-ahead and committed yourself to a certain set of hours and then you followed through with that interruption, and then in real-time you actually had a reliability issue and needed it in a different hour, you've exceed the use for the tariff constraints. So we don't intend to use it in day-ahead ever. We always save it for a real-time operating tool. Furthermore, ISO also, in order to get the capacity credit, we have to register that interruptible resource with MISO, and if MISO calls upon it in an emergency condition and it's not available, there's penalties with that. There's financial penalties associated with not responding. (2 Tr 159-60.)

Finally, the evidence shows that other PSCR customers did, in fact, benefit from Detroit Edison's not interrupting IAC load during the summer of 2008, because the Company did not have to purchase summer seasonal capacity to serve that load. Ms. Wojtowicz testified that:

> The forecasted interruptible air conditioning load during the peak for the summer of 2008 was 242 MW. Based on the 2008 average capacity price of $14,700/MW, this equates to a savings of over $3.5 Million in capacity costs which benefited all PSCR customers. Thus *the savings from not purchasing summer seasonal capacity is greater than the purported savings suggested by Witness Loube of interrupting IAC customers for almost every day during the Summer of 2008*. (2 Tr 144, *emphasis added*.)

The Administrative Law Judge concludes that Detroit Edison's decision not to interrupt the IAC load for economic reasons was justified. The Company used the IAC to serve its customers' loads reliably and, consequently, its utilization of the IAC program in 2008 as a flexible real-time operating tool was reasonable and prudent. The RRC's proposed disallowance should therefore be rejected. In all other respects,

Detroit Edison's application for reconciliation of its 2008 PSCR plan and reconciliation of its PEM for 2008 is also reasonable and prudent and should be approved.

CONCLUSION

The Administrative Law Judge recommends that the Commission issue an order granting Detroit Edison's application and finding that the company operated its system and incurred fuel and purchased and interchanged power costs in a reasonable and prudent manner. She further recommends that the Commission authorize Detroit Edison to collect an underrecovery of 2008 PSCR expenses of $18,372,583 reduced to $15,635,232 pursuant to the Commission's January 25, 2009 order in Case No. U-15002-R. Finally, the Administrative Law Judge recommends that the Commission authorize Detroit Edison to refund the PEM overrecovery of $49,865,636 using three-month credit factors in accordance with the method and allocations shown on Exhibit No. A-8.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS & RULES

Barbara A. Stump

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Barbara A. Stump
Administrative Law Judge

ISSUED AND SERVED: March 22, 2010