

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions,)
determinations, and/or approvals necessary for)
THE DETROIT EDISON COMPANY to fully comply)
with Public Act 295 of 2008.)
_____)

Case No. U-15806

At the November 10, 2011 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Orjiakor N. Isiogu, Commissioner
Hon. Greg R. White, Commissioner

OPINION AND ORDER

On October 6, 2008, Public Acts 286 and 295 of 2008 were signed into law, which amended MCL 460.1 *et seq.* and created MCL 460.1001 *et seq.* (Act 295), respectively. On October 21, 2008, the Commission commenced this case to facilitate The Detroit Edison Company's (Detroit Edison) obtaining the regulatory reviews determinations and approvals necessary to fully comply with the new acts.

The Commission's June 2, 2009 order in this case approved the construction of up to 15 megawatts (MW) of solar generating facilities as requested in Detroit Edison's renewable energy plan. The Commission's March 2, 2010 order in this case approved contracts of up to 3 MW of solar energy in the company's SolarCurrents program. On October 11, 2011, Detroit Edison filed an application under MCL 460.1033(3) for *ex parte* Commission review and approval

of three contracts under which Detroit Edison-owned solar powered generating facilities will be engineered, procured and constructed starting in 2011. Under these contracts, Detroit Edison plans to construct the remaining 12 MW of company-owned solar generating facilities for the SolarCurrents program. The first contract is an engineering, procurement, and construction (EPC) contract with Nova Consultants, Inc., and the other two contracts are for the procurement of photovoltaic (PV) modules with McNaughton-McKay Electric Company (McNaughton-McKay) and Inovateus Solar LLC.

Detroit Edison's October 11, 2011 application requests *ex parte* Commission review and approval of: 1) Solar EPC contracts for Detroit Edison-owned solar energy generating facilities to be constructed for the company-owned component of the SolarCurrents program starting in 2011; 2) associated solar generating facilities' renewable energy transfer price for recovery under the company's power supply cost recovery (PSCR) process under MCL 460.6j; 3) capacity charges set forth in Case No. U-15806, Exhibit No. A-8 (JHB-4), 2009 Forecasted Transfer price schedule, column (i) for the associated solar energy generating facilities for purposes of MCL 460.6j(13)(b); 4) recovery of the remainder of incremental costs associated with solar energy generating facilities which are engineered, procured and constructed under the three contracts through Detroit Edison's revenue recovery mechanism as an incremental cost of compliance with the renewable energy standards under the company's renewable energy plan (REP) pursuant to Act 295; 5) assurance that the full costs of the company-owned component of the SolarCurrents program will be recovered through the combined application of the transfer price mechanism for PSCR recovery, application of the revenue recovery mechanism surcharges under Act 295, and other mechanisms as determined by the Commission to recover these costs associated with MCL 460.1047(6); and 6) any additional approvals that the Commission may deem necessary under MCL 460.6j.

Detroit Edison filed copies of the three contracts with certain portions redacted to protect confidential information that might affect the competitive market. However, the company offered the Commission Staff (Staff) an opportunity to review unredacted versions of the contracts.

The Solar EPC contract with Nova Consultants is the result of competitive bidding accomplished through a request for proposal (RFP) that Detroit Edison developed in consultation with the Staff. Detroit Edison received 27 responses to the RFP, and the bids were evaluated based upon price, experience, safety and quality of programs, creditworthiness and financial viability, and technical acumen. The PV Module contracts are also the result of an RFP that the company developed in consultation with the Staff. Detroit Edison received 17 responses to the RFP, and the bids were evaluated based upon price, experience, quality programs, creditworthiness and financial viability and technical acumen. According to Detroit Edison, the contracts resulted from completed negotiations with the overall highest cumulative scoring respondents identified through the company's RFP processes.

The Staff audited Detroit Edison's RFP processes and responses received for the RFPs. In the Staff's opinion, Detroit Edison's use of the RFP and scoring procedures referred to above complies, in all material respects, with the procedures approved on August 25, 2009 in Case No. U-15806 and the guidelines issued on December 4, 2008 in Case No. U-15800. Detroit Edison's evaluation process provides assurances that the contracts have the most reasonable and prudent terms and conditions, and complies with the retail rate impacts of Act 295.

Under the EPC contract, Nova Consultants¹ will provide engineering services for a fixed cost, and bid the installation work for each location to three prequalified solar installation contractors. The best overall value bidder will partner with Nova Consultants to construct the solar powered

¹Detroit Edison also contracted with Nova Consultants for the EPC portion of the first 3 MW of the company-owned portion of the SolarCurrents program.

generating facility for a fixed price for each of the separate projects identified for completion in accordance with the Solar EPC contract. The total cost of all purchase orders issued under the Solar EPC contract shall not exceed \$48 million.

Detroit Edison has entered into contracts with McNaughton-McKay and Inovateus Solar for the procurement of photovoltaic (PV) modules. Detroit Edison is requesting approval of contracts with two separate companies for the procurement of PV modules so that Detroit Edison may competitively bid the modules at the time of procurement between the two companies and to select the best value product for the company-owned solar generating facilities. The best overall value bidder will be selected to provide PV modules on a project by project basis for a fixed price. The total cost of the combined purchases under the PV Module contracts shall not exceed \$24 million.

Detroit Edison states that the Solar EPC contract with a maximum contract cost of \$48 million, coupled with the market-competitive PV Module contracts with a combined maximum contract cost of \$24 million, and all remaining costs required to complete the remaining 12 MW of SolarCurrents projects, in total, will have a projected cost/kilowatt (kW) average of \$6,000 for the 2012 build plan. The projected cost/kW average would be no more than \$6,500 over the remaining term of Detroit Edison's REP, which is below the projected solar powered generating facility cost/kW in Detroit Edison's Commission-approved REP.²

Detroit Edison requests that the Commission approve the contracts and provide assurance that the full costs will be recoverable through the combined application of the transfer price mechanism and application of renewable energy surcharges. Detroit Edison states that the requested contract approvals will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in the cost of service to customers because the contracts are consistent with the

²Detroit Edison's Commission-approved REP estimated that company-owned solar generating facilities would cost \$6,829 per kW in 2009 with annual escalation occurring thereafter.

planning activities, expenses, and revenue recovery mechanisms and surcharges described in Detroit Edison's REP in Case No. U-15806, approved by the Commission on June 2, 2009.

Therefore, Detroit Edison's application may be authorized and approved without notice or hearing pursuant to MCL 460.6a(1).

Discussion

MCL 460.1033 provides in part:

(1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:

* * *

(a) At the electric provider's option, up to but no more than 50% of the renewable energy credits shall be from any of the following:

(i) Renewable energy systems that were developed by and are owned by the electric provider. ***An electric provider shall competitively bid any contract for engineering, procurement, or construction of any new renewable energy systems described in this subdivision.***

* * *

(3) An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan.

* * *

MCL 460.1047 provides in part:

(1) Subject to the retail rate impact limits under section 45, the commission shall consider all actual costs reasonably and prudently incurred in good faith to implement a commission-approved renewable energy plan by an electric provider whose rates are regulated by the commission to be a cost of service to be recovered by the electric provider. Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric

provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

(2) Incremental costs of compliance shall be calculated as follows:

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of the effective date of this act:

(i) Capital, operating, and maintenance costs of renewable energy systems or advanced cleaner energy systems, including property taxes, insurance, and return on equity associated with an electric provider's renewable energy systems or advanced cleaner energy systems, including the electric provider's renewable energy portfolio established to achieve compliance with the renewable energy standards and any additional renewable energy systems or advanced cleaner energy systems, that are built or acquired by the electric provider to maintain compliance with the renewable energy standards during the 20-year period beginning when the electric provider's plan is approved by the commission.

(ii) Financing costs attributable to capital, operating, and maintenance costs of capital facilities associated with renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(Emphasis added)

The Commission reviewed the contracts submitted by Detroit Edison pursuant to Act 295 and finds that the contracts should be approved. In accordance with MCL 460.1033(1)(a)(i), the company has demonstrated that it has competitively bid the contracts. The Commission finds that the projected cost per kW under the contracts is less than the amount approved in Detroit Edison's REP. The Commission agrees to provide assurance that the full costs of the contracts will be recoverable through the combined application of the transfer price mechanism and application of the renewable energy surcharges. The Commission notes, however, that it will review the company's actions and costs associated with these contracts in a contested case proceeding pursuant to MCL 460.1047 during Detroit Edison's corresponding REP reconciliation process.

The Commission finds that *ex parte* review and approval is appropriate, as the contracts will not affect rates or rate schedules resulting in an increase in the cost of service to customers.

As stated in the Commission's December 4, 2008 order in Case No. U-15800, the Commission intends to do a thorough, yet timely review of requests for contract approval in order to encourage development of the most cost-practical and highest-quality renewable energy resources. The Commission finds no prohibition against *ex parte* approval of a renewable energy purchase agreement in Act 295.

THEREFORE, IT IS ORDERED that:

A. The engineering, procurement and construction agreement with Nova Consultants, Inc., the photovoltaic supply agreement with McNaughton-McKay Electric Company, and the photovoltaic supply agreement with Inovateus Solar LLC are approved as in compliance with Public Act 295 of 2008.

B. The Commission provides assurance that the full costs of the contracts will be recoverable through the combined application of the transfer price schedule, attached as Exhibit A, and application of the renewable energy surcharges.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Orjiakor N. Isiogu, Commissioner

Greg R. White, Commissioner

By its action of November 10, 2011.

Mary Jo Kunkle, Executive Secretary

