

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) Case No. U-15806
THE DETROIT EDISON COMPANY to fully comply)
with Public Acts 286 and 295 of 2008.)
_____)

At the June 2, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

Procedural History

On March 4, 2009, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting approval of its renewable energy plan (REP) and energy optimization plan (EOP) pursuant to the provisions of 2008 PA 295, MCL 460.1001 *et seq.* (Act 295). Administrative Law Judge Barbara A. Stump (ALJ) held a prehearing conference on March 13, 2009, at which she granted petitions to intervene filed by Attorney General Michael A. Cox (Attorney General), New Covert Generating Company, Michigan Wholesale Power Association (MWPA), LS Power Associates LP, LaFarge Midwest Inc. (LaFarge), Michigan Environmental Council (MEC), the Environmental Law & Policy Center (ELPC), the Ecology

Center, Natural Resources Defense Council (NRDC),¹ Energy Michigan, RES North America LLC, Michigan Sustainable Energy Coalition (MSEC), the Michigan Community Action Agency Association, and the Association of Businesses Advocating Tariff Equity (ABATE). At a motion hearing held on April 2, 2009, the ALJ granted late intervention to NextEra Energy Resources, LLC (NextEra). The Commission Staff (Staff) also participated in the proceedings.

Evidentiary hearings were held on April 20-23, 2009. Detroit Edison, the Staff, LaFarge, MSEC, ABATE, MWPA, the Attorney General, NextEra, and the Environmental Coalition filed initial briefs on May 5, 2009. On May 12, 2009, except for LaFarge, the same parties filed reply briefs. The record in this case consists of 1,483 pages of transcript and 70 exhibits admitted into evidence.

RENEWABLE ENERGY PLAN

Positions of the Parties

Detroit Edison submitted an REP that shows that the company proposes to achieve its renewable energy credit (REC) portfolio requirements by: 1) obtaining RECs through generating electricity with its own renewable energy systems; 2) purchasing or acquiring RECs from third-party suppliers, with or without the associated energy; 3) purchasing advanced cleaner energy credits (ACECs), with Commission approval, and with or without the associated energy; and 4) generating ACECs. *See*, Exhibit A-1.

Detroit Edison proposes to own renewable generating assets that will provide up to 50% of the RECs and ACECs required in its REP. Detroit Edison posits that utility-owned projects will generally be more cost effective and beneficial to customers than those projects contracted for

¹MEC, ELPC, NRDC and the Ecology Center are collectively referred to as the Environmental Coalition in cases where joint filings were made.

under long-term renewable energy purchase power agreements (PPAs). Detroit Edison asserts that third-party developers will likely have higher rate-of-return requirements than the company, because the average third-party developer will likely have higher financing costs than Detroit Edison. Detroit Edison contends that its REP is balanced so that the costs and risks associated with renewable energy contracts are limited, while at the same time capturing the benefits of cost-effective third-party projects for Detroit Edison's customers.

Detroit Edison adds that the company is likely to incur additional costs for PPAs due to debt that is imputed by credit rating agencies. Detroit Edison claims that rating agencies will likely view long-term renewable energy contracts as debt obligations that are part of a utility's capital structure. According to Detroit Edison, if the rating agencies assess imputed debt on new PPAs, the company will then have to offset this imputed debt with new equity in order to maintain its capital structure, or risk a downgrade in its credit rating. Detroit Edison states that its estimated incremental cost of compliance includes \$310 million in additional net cost of equity, over the life of the program, because of increased equity requirements to offset the imputed debt. *See*, Exhibit A-14.

Detroit Edison states that it anticipates contracting with a variety of sources for RECs and ACECs, depending on the results of its Request for Proposal (RFP) process. According to the company, the primary selection criteria will be cost driven. Detroit Edison indicates that it will also consider other factors including the degree to which Michigan labor and equipment are used, reliability, creditworthiness and other relevant commercial terms, and portfolio diversity. Detroit Edison asserts that its RFPs will conform to the Commission's bidding guidelines and the company's Code of Conduct to ensure that affiliates are not afforded a competitive advantage. Detroit Edison notes that its affiliates may respond to RFPs, or they may submit unsolicited

proposals outside of a competitive bid process, as permitted under MCL 460.1033(1)(a)(ii), but that affiliate transactions will not be favored over third-party transactions.

In addition to wind development, Detroit Edison plans to utilize renewable fuels and advanced cleaner energy fuels in its existing generation fleet. In 2009, Detroit Edison projects that it will produce about 5,500 RECs and ACECs through co-firing renewable and advanced cleaner energy fuels in its existing conventional power plants. Detroit Edison also expects to utilize tall oil (a liquid rosin by-product of wood pulp industrial processes), biodiesel, biomass, and tire fractionation (vaporizing organics from whole tires) to generate these RECs. Detroit Edison notes that the electricity generated from its proposed tire fractionation project qualifies as renewable energy because scrap tires are “municipal solid waste” and municipal solid waste is a renewable energy resource under MCL 460.1011(i)(B)(iii).

In addition to the renewable resources listed above, Detroit Edison proposes a pilot company-owned solar program that, at its peak capacity of 15 megawatts (MW), would produce 53,637 RECs per year, including incentive RECs. Detroit Edison states that it believes that the solar program will provide benefits to its customers through portfolio diversity, matching generation with peak demand, distributed generation reliability benefits, and the creation of Michigan jobs.

Detroit Edison’s REP includes a plan to create a pilot solar program designed to provide incentives for the construction of up to 5 MW of customer-owned solar generating capacity. Detroit Edison states that it proposes to enter into long-term contracts to purchase RECs from residential or small commercial customers who install small solar generating systems on their rooftops in conjunction with the company’s net metering program. Detroit Edison proposes to recover the costs for purchasing these RECs as an incremental cost of compliance. The company requests that if the Commission approves this pilot program, and Detroit Edison prepays for RECs,

then those prepaid RECs will be certified as qualified RECs regardless of actual energy production by the customer-owned systems.

Detroit Edison states that it currently has a baseline portfolio of 566,819 RECs based on the company's Public Utility Regulatory Policy Act (PURPA) contracts and Michigan Incentive RECs from both on-peak and Ludington pumped storage generation, which were in existence on October 6, 2008. According to Detroit Edison, these existing renewable energy resources represent 1.3% of the company's 2014 forecasted retail sales, leaving a gap of 8.7% to reach the 10% target mandated by Act 295.

Based on the company's estimate of its baseline RECs, Detroit Edison claims that it will require an additional 764,415 RECs and ACECs in 2012; 1.3 million additional RECs and ACECs in 2013; 1.9 million additional RECs and ACECs in 2014; and 3.8 million additional RECs and ACECs in 2015. *See*, Exhibit A-23. Detroit Edison requests that the Commission reconsider its determination in the December 4, 2008 order in Case No. U-15800 (Temporary Order) that any RECs purchased on the spot market should apply to the company's self-build entitlement under MCL 460.1033(1)(a). *See*, Temporary Order, p. 24. Detroit Edison asserts that these spot market purchases, if not from an affiliate or a third-party planning to transfer a renewable facility to the company, should be considered as part of MCL 460.1033(1)(b).

Exhibit A-2, (2nd revised) summarizes the maximum and planned revenue recovery mechanism surcharge levels for Detroit Edison's REP. Detroit Edison asserts that its requested surcharge levels are reasonable and prudent, and necessary for compliance with Act 295. Detroit Edison further argues that the proposed surcharge levels are as fair as possible within the Act's requirements and limitations. Detroit Edison proposes to implement the revenue recovery mechanism surcharges beginning September 2009, on a bills-rendered basis. The company notes

that it will not implement the full surcharge for customers participating in its GreenCurrents program until at least October 6, 2009.

Detroit Edison states that significant inequities would be created if REP surcharges included only one per-meter charge across the entire commercial class. Detroit Edison indicates that its analysis demonstrated that a significant rate increase would result from applying the maximum surcharge to the average bills of lower consumption commercial secondary and primary customers. Detroit Edison therefore designed its revenue recovery surcharge levels for these customers within defined consumption ranges. *See*, Exhibit A-24. Detroit Edison contends that its proposal for recovery of REP costs mitigates potential rate anomalies that might otherwise result in unfairness to certain customers. Detroit Edison adds that it proposes to include uncollectibles costs as part of the revenue recovered for its incremental costs of compliance with its REP.

Detroit Edison argues that its plan meets the requirements of MCL 460.1021(6)(b) because the life-cycle cost of renewable energy acquired or generated under its REP is \$108 per megawatt hour (MWh). This \$108 per MWh, minus the \$55 per MWh projected life-cycle net savings associated with the company's proposed EOP, results in a net of \$53 per MWh, which is far less than the \$133 per MWh life-cycle cost of electricity generated by a new conventional coal-fired facility.

The Attorney General contends that the many uncertainties in Detroit Edison's REP, specifically that Detroit Edison may have significantly underestimated the incremental costs of compliance, may result in costs that exceed the rate caps established in MCL 460.1045. The Attorney General also asserts that the life-cycle tests presented in Exhibit A-3 of the REP inappropriately compare the 20-year present value costs of renewable energy with the present value of a 40-year life-cycle cost of a coal facility. According to the Attorney General, if the

calculation is done correctly (40-years for renewable energy compared to 40-years for coal), the costs of renewable generation would exceed the costs of a new coal facility and Detroit Edison's REP would fail the life-cycle test.

The Attorney General notes that Detroit Edison proposes a \$100 million minimum regulatory liability balance in its REP. The Attorney General claims that although maintaining a minimum balance in a regulatory liability account may be permitted under Act 295, it is unnecessary in light of the fact that REP surcharges can be adjusted periodically. The Attorney General also objects to Detroit Edison's proposal to include uncollectibles expenses as part of its revenue requirement for the REP, subject to reconciliation. The Attorney General asserts that Detroit Edison should only collect costs of the program through the REP surcharge and that uncollectibles, which are not an REP cost should be addressed in a general rate case.

The Attorney General argues that by establishing the transfer price as a floor, ratepayers will pay any increases but not receive any benefit if prices fall. According to the Attorney General, this makes Detroit Edison's REP unreasonable and in violation of MCL 460.1021(6)(a).

The MWPA, MSEC, the Environmental Coalition, and NextEra argue that the Commission should reject Detroit Edison's REP because the company failed to comply with Section 21(d)(2) of Act 295. Specifically, these parties contend that Detroit Edison's plan filing does not include two of the three required descriptions of the RFP and bidding process. The MWPA contends that the company's assertion that it will in the future comply with the Commission's guidelines for competitive bidding, and that it will apply its own Code of Conduct to any affiliate transaction, is insufficient to meet the requirements of Section 21(d)(2) of Act 295. The MWPA argues that the guidelines are sufficiently flexible that both reasonable and unreasonable bidding process could be supported. The Environmental Coalition points out that Detroit Edison's evidence is vague on the

procedures that the company will use to evaluate bids and adds that the company is opposed to using an independent third-party for bid evaluation. The MWPA and NextEra maintain that the Commission should only approve Detroit Edison's plan on the condition that a separate contested case will be conducted to address the proposed competitive bidding procedures that should have been included in the company's original plan filing.

LaFarge argues that the Commission should approve Detroit Edison's plan on the condition that the company agree to continue to purchase unbundled RECs and ACECs. LaFarge observes that unbundled assets may be significantly less costly than bundled purchases and that Detroit Edison should continue its efforts to purchase energy, capacity, and credits on an unbundled basis. LaFarge notes that Detroit Edison's RFP description is unclear regarding whether the company will continue purchasing unbundled RECs and ACECs.

The MSEC argues that Detroit Edison's assertion that the company may accept unsolicited bids from affiliates violates Section 33(1)(a)(ii) of Act 295, the guidelines contained in Attachment D to the Temporary Order, and the company's Code of Conduct. According to the MSEC, the intent of the Act is clear: affiliates may only bid as participants in an RFP process. Further, the MSEC contends that Detroit Edison cannot accept an unsolicited bid from an affiliate while at the same time complying with Section III.C of the Code of Conduct. The MSEC urges the Commission to require all bids from Detroit Edison affiliates be made in a competitive bidding process as provided in Act 295 and the Temporary Order.

The Environmental Coalition maintains that the Commission should disapprove Detroit Edison's proposed REP unless the company consents to certain conditions. The Environmental Coalition argues that Detroit Edison's proposal to build 50% of its required renewable capacity is unreasonable because the proposal subjects ratepayers to all of the risks of project cost overruns

and underperformance. The Environmental Coalition argues that although Detroit Edison has no experience as a wind developer, it is nevertheless seeking to build the statutory maximum of 50% of renewables facilities. The Environmental Coalition notes that Detroit Edison states that it intends to recover all costs of construction overruns from ratepayers even if these costs are higher than those proposed by experienced wind developers.

The Environmental Coalition claims that Detroit Edison's costs are inflated because the company has applied an unreasonable depreciation rate to its wind generation equipment. The Environmental Coalition notes that Detroit Edison's incremental cost of compliance is based on a 20-year average service life for the major components of the wind turbines. According to the Environmental Coalition, this depreciation schedule is unjustifiably accelerated, because the weight of the evidence in this case indicates that a service life of 25-30 years is more appropriate for wind generation facilities.

The Environmental Coalition, the MWPA, and the Staff argue that the Commission should address Detroit Edison's assumptions concerning imputed debt for PPAs. The Environmental Coalition asserts that the company's assumptions regarding imputed debt are not supported by the record and will have a significant effect on project costs that will ultimately be passed on to ratepayers. The Staff recommends that the Commission preclude Detroit Edison from including its proposed net equity costs due to imputed debt in its proposed revenue requirements in this initial plan. The Staff notes that sufficient evidence and expert testimony was presented in this case to raise doubt that such a reduction in credit rating due to imputed debt is likely. The Staff recommends that the Commission use the annual cost reconciliation process to determine if debt has been imputed on Detroit Edison's balance sheet by credit rating agencies and to what extent that imputed debt has affected the utility's credit rating and cost of service.

The Environmental Coalition contends that Detroit Edison's proposed surcharges will unreasonably burden residential customers. According to the Environmental Coalition, Detroit Edison proposes to collect the majority of its incremental costs of compliance from residential customers, despite the fact that residential customers only consume one third of jurisdictional load. The Environmental Coalition suggests that one way to address this disparity is for the Commission to use its discretion in determining the transfer price for costs that are included in the company's power supply cost recovery (PSCR) factor.

The Environmental Coalition, the MSEC, and the Staff contend that Detroit Edison's proposal to classify tire fractionation as a renewable resource is unreasonable. The Environmental Coalition argues that the hydrocarbons fractionated from tires do not meet the global definition of "renewable energy resource" under MCL 460.1011(k) and that they are not "municipal solid waste" under MCL 460.1011(k)(vi). The Staff argues that if all relevant criteria are met, conversion of waste tires to energy for use in electricity production might qualify for the production of ACECs, but not for the production of RECs.

Regarding the concerns raised by the intervenors involving Detroit Edison's bidding process, the Staff asserts it can effectively function as the independent monitor and evaluator of RFPs and the bid evaluation process. The Staff observes that fulfilling this role will necessitate the development of a comprehensive list of criteria for the contents of RFPs and bid evaluation. The Staff recommends that the final rulemaking under Section 191 of Act 295 should require a utility to submit its proposed RFP to the Commission prior to issuance. The Commission may then file the RFP in the appropriate docket and allow a 30-day public review process. Upon Commission approval, the utility shall issue the RFP. If the Commission determines that the proposed RFP

does not comply with the rules, the Commission may provide the utility with an opportunity to submit an amended RFP for approval.

The Staff asserts that Detroit Edison's proposed surcharges are fair because the surcharges and transfer prices will result in the same average rate effect on most customers and classes. In addition, the Staff points out that Exhibit A-2 shows that even after collecting nearly the maximum surcharge, Detroit Edison may not meet its REC requirements in all years.

The Staff recommends a minimum regulatory balance of \$22.5 million. The Staff notes that, as shown in Exhibit A-2, the fund is not forecasted to drop below \$82 million before 2026. The Staff posits that a minimum reserve balance of \$22.5 million, based on Detroit Edison's projection, should not negatively affect the REP. The Staff further asserts that if Detroit Edison's forecasts turn out to be inaccurate, the company may make use of its subsequent plan cases to amend the customer surcharges. The Staff notes that reducing the minimum balance will potentially save money by not incurring additional interest and may in the future reduce the surcharges paid by customers. The Staff agrees with Detroit Edison's proposal to begin collecting surcharges on September 1, 2009.

The Staff recommends that the Commission find Detroit Edison's proposed allocation of REP capacity ownership both reasonable and prudent for purposes of this initial plan. The Staff suggests, however, that the Commission consider recommending alteration of Detroit Edison's future ownership strategies based on its past experiences with both its own capacity development and that of independent developers.

The Staff recommends that the Commission revisit appropriate cost rates and depreciation rates and schedules through the rulemaking required under MCL 460.1191 and through the establishment of a depreciation case to specifically address service life and other depreciation

issues for renewable generation. The Staff also recommends that the Commission open a future docket for the purposes of better estimating the costs of wind generation for all utilities subject to the requirements of Act 295.

The Staff believes that Detroit Edison's proposal to build and operate 15 MW of service territory solar installations should be designed so that the company competes fairly against third-party developers. The Staff recommends that the Commission require that the company's solar distributed generation acquisition efforts meet the same criteria (i.e., no more than 50% self-build, no less than 50% third-party PPAs) set forth in MCL 460.1035.

The Staff also raises several concerns regarding the proposed solar pilot program. To address these concerns, the Staff proposes: 1) opening the program to other renewable technologies at different compensation rates; 2) eliminating the generation meter requirement; 3) allowing for energy generation beyond the net-metering limits; and 4) revising renewable energy prices to reflect actual costs, including a reasonable rate of return.

Findings of Fact and Conclusions of Law

Subpart A of Part 2 of Act 295, MCL 460.1021 through MCL 460.1053, requires that all electric providers in Michigan file proposed REPs with the Commission for review and approval. Act 295 requires that an REP: 1) explain how the electric provider intends to meet the renewable capacity and renewable energy targets specified in Act 295; 2) estimate the costs associated with meeting those targets; and 3) propose cost recovery mechanisms, including a transfer price mechanism to recover a portion of the total costs through the PSCR process, and a 20-year levelized surcharge to recover the incremental cost of compliance from customers.

The Legislature has prescribed the standard by which the Commission shall approve or reject an REP under MCL 460.1021(6):

The commission shall not approve an electric provider's plan unless the commission determines both of the following:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.

(b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider's energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

The Staff and intervenors have raised the following issues with regard to Detroit Edison's proposed REP:

- Detroit Edison's description of its RFP and bid evaluation process is vague, incomplete and does not comply with Act 295 and the Temporary Order;
- Detroit Edison's proposal to accept unsolicited bids from affiliates violates the intent of Act 295;
- Detroit Edison's estimate of its incremental cost of compliance is too high because the company favors self-build over PPAs, includes imputed debt costs, uses inappropriate depreciation rates, and includes uncollectibles costs as part of revenue requirements;
- Detroit Edison's request for a \$100 million regulatory liability balance in its REP is too high;
- Detroit Edison's proposal to include tire fractionation as a renewable energy resource violates Act 295;
- Detroit Edison's pilot solar programs should be revised; and
- Detroit Edison's proposed surcharges place an unfair burden on residential ratepayers.

The Commission will address these issues *seriatim*.

RFP and Bid Evaluation Procedures

The Commission agrees with the intervenors that Detroit Edison's description of its RFP and bid evaluation process is so deficient that it cannot be found to comply with Act 295 or Attachment D of the Temporary Order.

As part of a proposed REP, Section 21(2)(d) of Act 295 mandates:

For an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008, describe the bidding process to be used by the electric provider under section 33. The description shall include measures to be employed in the preparation of requests for proposals and the handling and evaluation of proposals received to ensure that any bidder that is an affiliate of the electric utility is not afforded a competitive advantage over any other bidder and that each bidder, including any bidder that is an affiliate of the electric provider, is treated in a fair and nondiscriminatory manner.

As pointed out by NextEra, MWPA, and others, the only detail on the bidding process that the company provided was an affirmation that proposals received in response to an RFP will comport with the Commission's guidelines for RFPs and will be handled in accordance with the company's Code of Conduct. Beyond that, there is a complete lack of information regarding how Detroit Edison proposes to conduct its RFPs or how it intends to evaluate proposals. Indeed, the company admitted that its RFP and bid evaluation processes are still under development. Detroit Edison is therefore directed to consult with the Staff and file, within 14 days of the date of this order, a complete description of its RFP and bidding process that complies with Section 21(2)(d) of Act 295 and the Temporary Order. The filing shall contain, at a minimum, a description of how Detroit Edison will implement a transparent bidding process that evaluates projects using criteria based on capacity and availability of transmission, a potential developer's required capital structure, developer experience, access to capital, and credit worthiness. In addition, the process

shall provide sufficient notice (e.g. 90-120 days) to potential bidders. The filing shall also describe a clear and reasonable ranking method that Detroit Edison proposes to use in evaluating bids and the means that Detroit Edison will employ to assure that any bidders who are company affiliates are not afforded a competitive advantage over independent developers. Because of the urgency of this matter, the Commission is establishing an accelerated schedule to complete this portion of the case. Therefore:

- June 16, 2009, Detroit Edison, after consulting with the Staff, shall complete its REP application by filing a complete description of its proposed bidding process;
- June 23, 2009, Staff and intervenor testimony and exhibits due;
- June 30, 2009, rebuttal testimony due;
- July 7, 2009, evidentiary hearing;
- July 20, 2009, initial briefs are due;
- July 31, 2009, reply briefs are due.
- At the completion of the process, the Commission will read the record and issue a decision as soon as possible.

Finally, the Commission agrees with the Staff's recommendation that the Commission's rules promulgated under Act 295 should contain specific guidance for the development of RFPs.

Unsolicited Bids from Affiliates

The Commission disagrees with the MSEC that Detroit Edison's proposition that it may accept unsolicited bids from affiliates violates Act 295. In relevant part, Section 33(1)(a)(ii) of Act 295 provides:

Renewable energy systems that were developed by 1 or more third parties pursuant to a contract with the electric provider under which the ownership of the renewable energy system may be transferred to the electric provider, but only after the renewable energy system begins commercial operation. Any such contract shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. An affiliate of the electric provider may submit a proposal in

response to a request for proposals, subject to the code of conduct under section 10a(4) of 1939 PA 3, MCL 460.10a, and the sanctions for violation of the code under section 100c of 1939 PA 3, MCL 460.10c.

While the Commission has concerns about the type of affiliate transaction that Detroit Edison proposes, the Commission finds that unsolicited proposals from affiliates are not proscribed by Act 295. The Commission will approve these contracts if it finds that the proposal, “provides opportunities that may not otherwise be available or commercially practical,” that there is no violation of the company’s Code of Conduct, and that the public interest is protected.

Incremental Cost of Compliance

The Staff and several intervenors argue that Detroit Edison’s proposal to include \$310 million for imputed debt is unreasonable. In essence, these parties argue that Detroit Edison failed to carry its burden to show that any imputed debt, and certainly not the \$310 million estimated by the company, should be included as an incremental cost of compliance for the REP.

The Commission agrees that Detroit Edison’s assumption is at best highly speculative and that the company’s evidence to support its assumption about the level of imputed debt is unconvincing. The Commission agrees with the Staff, the MWPA, and the Environmental Coalition that while Act 295 requires the Commission to consider potential issues of imputed debt, the time to consider these issues is when a contract is submitted to the Commission for approval.

The Environmental Coalition argues that Detroit Edison’s proposed depreciation rate for wind power generating facilities is insufficiently supported by the evidence and unreasonably increases costs. As discussed in the May 26, 2009 order in Case No. U-15805 *et al.*, pp. 13-14, “The Commission agrees that depreciation for wind generation must be treated in the same manner that depreciation issues are treated for other utility plant, with periodic review and updating of depreciation schedules for different plant components and corresponding adjustments to

depreciation rates.” In that case, the Commission determined that it will open a special purpose case to specifically address depreciation of renewable energy facilities, to be completed before Detroit Edison and the other providers submits their next REPs. Detroit Edison will then be able to adjust its depreciation estimates to conform to the results of the depreciation case.

The Attorney General asserts that setting a transfer price as a floor for the life-cycle of a project will harm ratepayers because ratepayers will be required to cover any increases but will not receive any benefit if costs fall. The Attorney General also contends that the Commission lacks specific statutory authority to set the transfer price as a floor. The Commission disagrees. Pursuant to Section 47(2)(b), the Commission is required to annually set a transfer price for renewables costs that will flow through the company’s PSCR. Moreover, the Commission is required to review and approve any PPAs entered into by a utility, and review and approve any costs for self-build projects. The reason for establishing transfer prices in vintages was explained in the Temporary Order, p. 25:

Section 49 requires the transfer price to be established in the context of an annual renewable cost reconciliation proceeding. Because the 2009 renewable energy plan proceeding will precede the first annual renewable energy reconciliation, the plan filings will need to estimate the transfer prices over the 20-year plan period. All renewable engineering, procurement, and construction contracts, or contracts for renewable energy systems that have been developed by third parties for transfer of ownership to an electric provider, that have been reviewed and approved by the Commission in a particular year will have the transfer price established as a floor for the lifecycle of the project. Provider-owned projects will have transfer prices set in vintages. Doing so ensures that the economic viability of projects that have been committed to will not be jeopardized by transfer prices that change in future years.

The Attorney General’s concern with the transfer price does not appear to be with the Commission’s establishment of the price, but rather with the use of the forecast transfer price in the contract approval process. Act 295, as discussed in the Temporary Order, p. 22, requires Commission approval of all contracts entered into by the provider and use of the transfer price as a

floor occurs in the contract process where Commission approval is based on a reasonable and prudent standard. The use of a cost recovery process for PPAs, which is very similar to the concept used for traditional utility-owned assets, does not require additional statutory authority.

Finally, the Attorney General argues that Detroit Edison's proposal to include uncollectibles as part of its incremental costs of compliance with the REP is unlawful. The Commission finds that uncollectibles are appropriately addressed in a general rate case and should not be included in the REP at this time. The Commission directs the Staff to monitor uncollectibles.

The Commission observes that in approving this plan, it is not approving any actual costs. All actual costs incurred for PPAs (including imputed debt) or for self-build renewable generation are subject to Commission review for reasonableness and prudence. Moreover, the Commission will have the advantage of knowing not only what Detroit Edison proposes to spend, but also what other Michigan utilities are proposing to pay for renewable generation equipment and PPAs.

As discussed in the May 26, 2009 order in Case No. U-15805, the Commission agrees with the Staff's recommendation that a future docket should be opened to track costs of various renewable energy systems and components, to provide information for determining reasonable and prudent expenditures. The Commission also directed the Staff to provide oversight and consultation during the RFP development and design process, including proposal evaluation, to ensure that the RFP process is competitive and fair and that the process generates optimal results.

Minimum Regulatory Liability Balance

Detroit Edison requests Commission authorization to accumulate reserve funds, in advance of expenditure, to create a regulatory liability. The company requests approval of a minimum balance of \$100 million through 2024 as provided under Sections 21(4) and 47(4) of Act 295.

The Attorney General argues that there is no need to maintain a regulatory liability balance if the REP surcharges can be adjusted periodically. ABATE argues that the regulatory liability funds can be used by Detroit Edison for any purpose and that ratepayers will be “loaning” these funds to the company over a very long period at a very low interest rate. The Staff recommends a minimum regulatory balance of \$22.5 million.

The Commission disagrees with the Staff’s analysis and approves a minimum regulatory liability balance of \$50 million. As the Staff observed, the fund is not forecasted to drop below \$82 million before 2026 and a minimum reserve balance of \$50 million should not negatively affect the plan. As noted previously, if Detroit Edison’s forecast for this or any other estimated cost is inaccurate, the company may use subsequent REP plan cases to revise customer surcharges.

Tire Fractionation

The Staff and the Environmental Coalition argue that Detroit Edison’s proposal to include a tire fractionation facility as part of its renewable generation portfolio does not comport with the definition of “renewable energy resource” under MCL 460.1011(i) and therefore cannot be used for the generation of RECs. The Commission agrees that the inclusion of municipal solid waste as an example of a renewable energy resource refers to a disaggregated waste stream from households and that the industrial or commercial collection of scrap tires is not considered household waste. The Commission further agrees that if Detroit Edison decides to move forward on the proposed tire fractionation project and if all qualifications are met, the company might request certification of ACECs for the energy produced.

Solar Programs

The Staff contends that Detroit Edison should make certain revisions to its proposed solar programs. The Staff recommends that the company issue an RFP for the proposed 15MW of solar

capacity and that the company should be limited to owning 50% of solar renewable generation and the remaining 50% should be acquired through a PPA. The Commission disagrees. Section 33 of Act 295 does not distinguish between different renewable technologies or limit the company to any particular source for RECs. This section only limits the percent of RECs that may be acquired from projects built or owned by the company. Nevertheless, the Commission recommends that Detroit Edison consider the Staff's suggestion for future expansion or additions to the program in future filings. To the Commission's knowledge, solar generation at the scale the company is proposing here has never been done in Michigan. The advantage of issuing an RFP for acquiring some of the solar capacity that Detroit Edison is proposing is the potential for attracting bids from experienced developers of large-scale solar generation.

The Staff raises several concerns about Detroit Edison's proposed pilot for the purchase of RECs from small distributed generators. The Staff recommends that the program allow for participation by other renewable technologies (not just solar), that the program should be designed so that the installation of a generator meter is not required, and that the size of the generator should not be restricted to the customer's load.

The Commission agrees that the Staff's recommendations are reasonable, but notes that the details of the program have not been fully established and, as a pilot program, the Commission expects some refinement in the future. The Commission notes that the purchase of RECs from distributed generation resources, especially small generators, would support the development of distributed generation in Michigan. Distributed generation could both improve electric system reliability and could meet a reasonable portion of future electricity demand in Michigan. In addition, the net metering program under Act 295 will create the opportunity for the creation of new distributed generation customers on Detroit Edison's system who will generate RECs that are

available for purchase. The Commission therefore directs Detroit Edison to work with the Staff to assure that RECs produced by small distributed generators be effectively tracked, certified, and used to meet the overall renewable goals of the company's REP. The Commission directs that the parties consider the workability of a simple system for the aggregation of all small generators on the company's system with a calculation of appropriate RECs for the aggregate.

Proposed Surcharges

The Environmental Coalition argues that Detroit Edison's proposed surcharge design requires residential ratepayers to pay 65% of the surcharge amount, even though residential customers only account for 35% of overall energy usage. Thus, the proposed surcharge design disproportionately burdens the residential class. ABATE also points out that the surcharge will generate a sizable surplus before Detroit Edison begins to pay for renewable energy and argues that because of the uncertainty about future costs, the surcharges should be reduced by 50%. The Commission disagrees.

As discussed in the May 26, 2009 order in Case No. U-15805, the parties assume that "all commercial and industrial class customers are *de facto* large energy users. They are not." As Detroit Edison noted, in designing the surcharge the company balanced its revenue requirement with the limits mandated in Act 295 and with the rate impacts for each customer class and subclass. While it is true that residential customers will be paying the majority of the total cost of the program, the rate impact is relatively modest for these customers. Some of the smaller commercial and industrial users will be paying less than the cap contained in MCL 460.1045(2), but will nevertheless see a more significant rate increase, on a percentage basis, than will residential customers. The Commission finds that the surcharges proposed by Detroit Edison in its initial REP plan case (regardless of modifications made in this order) should remain the same.

Summary

The Commission finds that Detroit Edison's filing was incomplete because the company failed to provide a reasonably detailed description of its RFP and bid evaluation process. The Commission directs the utility to consult with the Staff and to file testimony and exhibits to correct the REP deficiency within 14 days of the date of this order. The Commission finds that Detroit Edison's proposal to accept unsolicited bids from affiliates under MCL 460.1033(1)(ii) does not violate Act 295 provided that all statutory and Code of Conduct requirements are met and the public interest is protected. The Commission finds that imputed debt costs and uncollectibles costs are not reasonable program costs and should not be included as incremental costs of compliance. Imputed debt cost shall be considered at the time of PPA approval and uncollectibles costs are properly addressed in a general rate case at this time. The Commission approves a minimum regulatory liability balance of \$50 million, to be adjusted if necessary in future plan cases. The Commission finds that tire fractionation does not qualify as a "renewable energy resource" under Act 295. Energy produced by tire fractionation may qualify for ACECs if all requirements for an advanced cleaner energy system are met. Detroit Edison's solar self-build and distributed solar generation programs should be approved. Detroit Edison's proposed surcharges are reasonable and should be approved.

ENERGY OPTIMIZATION PLAN

Positions of the Parties

Detroit Edison's proposed EOP covers 2009 through 2011, in accordance with the requirements for EOPs set forth in the Temporary Order. Detroit Edison proposes to have its energy optimization programs jointly administered with those of Michigan Consolidated Gas Company by establishing a combined organization for program administration. According to

Detroit Edison, a consolidated administration will optimize the effective spending of energy optimization funds and provide administrative efficiency.

Detroit Edison states that it proposes to offer several residential programs that are based on combinations of measures that have proven to be cost effective in other states. Detroit Edison will also offer specialty programs to assist low income customers in reducing energy consumption and lowering their energy bills through local non-profit organizations that assist low income customers in home weatherization.

Detroit Edison will offer two basic types of programs to its commercial and industrial customers: 1) prescriptive and 2) non-prescriptive. Detroit Edison described the prescriptive program as one that provides fixed incentives based on proven technologies identified in the Michigan Energy Measures Database (MEMD). For custom applications in buildings and facilities, Detroit Edison proposes a non-prescriptive program to allow for the implementation of custom energy savings measures to be supported with a financial incentive that varies according to the amount of electric savings.

Detroit Edison's low income program plan component focuses on: 1) providing funding to organizations that specialize in weatherizing and refurbishing low income housing; and 2) supporting existing residential measures and programs in low income areas. Detroit Edison's EOP also includes programs for customer education, and pilots of new technologies and marketing approaches, in accordance with MCL 460.1071(4)(a) and the Temporary Order.

Detroit Edison claims that its EOP will satisfy the cost-reduction goal of Act 295 by producing an estimated 6.6 million MWh of energy savings over the 22-year lifetime of the measures installed during the plan. According to Detroit Edison, the estimated savings from the EOP have a market-based avoided present value of \$489 million. See, Exhibit A-10-EO.

Detroit Edison asserts that it has satisfied the requirements of Act 295 by creating a tracking system to ensure that revenues from a particular rate class will be spent on programs for that rate class. Any under or over collection of revenue by rate class will be subject to reconciliation with the EOP's actual results. Detroit Edison further contends that its EOP is designed to ensure that the applicable energy optimization standards set forth in MCL 460.1077(1) are met or exceeded.

Detroit Edison asserts that it has satisfied the EOP evaluation requirements under MCL 460.1071(3)(i) by contracting with an independent energy program evaluation provider, TecMarket Works. Detroit Edison adds that ongoing evaluation of the energy optimization programs will be performed by an independent third-party evaluation firm, which will evaluate energy savings realized and the effectiveness of measures installed by Detroit Edison's customers.

Detroit Edison notes that eligible commercial and industrial electric customers may choose to run self-directed EOPs. For these customers, Detroit Edison proposes to use the energy savings value provided by the customers in their self-direct applications, as provided in Act 295.

Detroit Edison notes that the Temporary Order, p. 34, states: "The Commission finds that it is reasonable that the providers began energy optimization plan and program development as soon as PA 295 was enacted. The Commission authorizes deferred accounting of actual costs incurred by a provider in implementing its energy optimization plan under Act 295, Subpart B." Accordingly, Detroit Edison states that it has deferred the incremental program development costs accrued since October 6, 2008, and has included them as part of the 2009 surcharge.

As provided in MCL 460.1089(4), Detroit Edison requests authorization to capitalize certain incentives and associated third-party costs, and proposes a five-year amortization period for recovery of these costs. Detroit Edison argues that capitalization under 2008 PA 295 means that a utility will be allowed to earn a return of and on all capitalized costs.

Detroit Edison requests approval to include a provision for uncollectible costs through the energy optimization surcharge. Detroit Edison claims that its request has precedent in Case No. U-12478, where a provision for uncollectibles was included in a surcharge. Detroit Edison observes that with declining sales and increasing uncollectibles, the company should not be forced to wait until a reconciliation process to collect this money.

Detroit Edison also requests a performance incentive, as provided in MCL 460.1075, for exceeding the energy savings targets mandated by Act 295. Under Detroit Edison's proposed mechanism, the performance incentive would be phased-in on a graduated scale, with the maximum incentive (15% of program spending) occurring if 105% or more of the target savings is achieved. Detroit Edison contends that it will achieve at least 105% of the energy optimization target each year of its plan. Detroit Edison also proposes to collect each year's performance incentive as it is being earned. Detroit Edison asserts that because the incentive is a cost of the program, it is appropriate to collect that cost as the program operates.

Detroit Edison contends that it developed and filed its EOP with the understanding that the Commission would approve its entire filing, without material modification, including the company's proposed incentive mechanism. Detroit Edison asserts that the alternative proposals regarding an incentive mechanism (as well as various other proposals to alter the company's proposed EOP) "ignore Act 295's directives and attempt to both distort the nature of this case and contravene the spirit and the intent of Act 295." Detroit Edison's initial brief, p. 6. Detroit Edison maintains that any changes to its proposed financial incentive mechanism must have the company's consent as provided under MCL 460.1021(5).

According to the Attorney General, in its EOP, Detroit Edison defines retail sales differently when it calculates sales targets than it defines retail sales when it calculates spending targets. In its

spending targets, electric choice customers are included, but in its sales targets, electric choice customers are excluded. According to the Attorney General, because Detroit Edison is not the energy provider for electric choice customers, electric choice customers should not be included in the spending target calculations. The Attorney General argues that the definitions of retail sales for both spending and sales targets should be consistent and should not include electric choice or wholesale sales.

The Attorney General argues that the Commission should disapprove Detroit Edison's financial incentive mechanism because it is not commensurate with performance and because the company proposes to begin collecting the incentive before it meets the savings targets. Likewise, ABATE argues that the Commission should reject Detroit Edison's proposed financial incentive. ABATE asserts that the proposed incentive will not lead to the cost-effective procurement of additional energy efficiency resources. Rather, the incentives will burden customers with unnecessary costs and result in an inefficient use of customer funds that could otherwise be directed toward voluntary conservation efforts by customers.

The Attorney General asserts that Detroit Edison should not include uncollectibles as part of its program costs. The Attorney General argues that uncollectibles are more appropriately recovered in a general rate case where the company's collection efforts can be reviewed for reasonableness and prudence.

The Environmental Coalition argues that the Commission should reject Detroit Edison's EOP unless the company agrees to certain amendments to the plan. Specifically, the Environmental Coalition asserts that Detroit Edison proposes to limit its energy optimization spending to 84% of the spending limits set forth in Act 295. The Environmental Coalition contends that the overall utility system resource cost test result was 4.6 – thus every \$1.00 spent on energy efficiency,

results in energy savings of \$4.60. The Environmental Coalition argues that, in light of the clear benefits of the program, it is unreasonable for the company to limit its spending. The Environmental Coalition maintains that the Commission should condition approval of Detroit Edison's EOP on a requirement that the company spend at least the limits provided in Act 295, with additional spending on those programs with the highest potential for savings and highest benefit-cost ratios, on programs targeted at new construction, and on emerging technologies that will be important to the next EOP.

The Environmental Coalition argues that Detroit Edison failed to propose a reasonable and prudent method for evaluation and verification of EOP savings. According to the Environmental Coalition, Detroit Edison's plan to estimate savings using the MEMD is unreasonable because the assumptions in the database have not been reviewed and verified. The Environmental Coalition recommends that the Commission require Detroit Edison to validate as soon as possible the assumptions underlying the MEMD and asserts that this validation must occur in a manner that allows stakeholders to review the savings assumptions in an informal collaborative or in a formal proceeding before the Commission.

The Environmental Coalition argues that Detroit Edison should not be permitted to include energy optimization savings from self-directed plans in its EOP until the energy optimization measures are determined to have been implemented and energy savings are verified. The Environmental Coalition claims that Detroit Edison's proposal to add these savings to its plan, without any verification, violates Section 93(6) of Act 295. The Environmental Coalition recommends that the Commission require Detroit Edison to take a series of steps to assure that implementation and savings from self-directed plans are properly measured and verified. If Detroit Edison cannot recover costs of this verification as part of its EOP, the Environmental

Coalition recommends that Detroit Edison should, with Commission approval, provide the necessary recovery under its general tariffs and charge the costs appropriately.

Finally, the Environmental Coalition argues that Detroit Edison should be required to adjust its financial incentive mechanism to provide a greater incentive to aggressively pursue energy efficiency savings. The Environmental Coalition recommends that the Commission approve the more graduated financial incentive mechanism proposed by the NRDC.

The Staff describes Detroit Edison's incentive mechanism as providing very high incentive payments for small energy savings reductions beyond minimum targets. The Staff further claims that the company's mechanism is not consistent with the requirements of Act 295 because it does not provide an incentive that is proportional to the company's performance. The Staff also argues that Detroit Edison's proposal to include financial incentive surcharges at the initiation of the program is inappropriate. Likewise, the Staff argues that uncollectibles should not be included in the EOP surcharges because uncollectibles are not a cost of the program as contemplated in Act 295.

The Staff recommends that the Commission approve Detroit Edison's EOP and proposed surcharges associated with program costs only. The Staff asserts that the plan meets the requirements of Act 295 and the Temporary Order and is reasonable and prudent with respect to its proposed spending levels and savings targets. The Staff further recommends that the Commission reject Detroit Edison's proposal to include estimated uncollectible energy optimization costs in the surcharge and reject the company's proposed financial incentive mechanism in favor of the Staff's proposed alternative mechanism.

Findings of Fact and Conclusions of Law

Subpart B of Part 2 of Act 295, MCL 460.1071 through MCL 460.1113, requires each electric provider and all rate-regulated natural gas distribution utilities to file proposed EOPs with the Commission for review and approval. Act 295 provides that, “The overall goal of an EOP is to reduce the future costs of providing electric and natural gas service to customers. In particular, an EO plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction.”

The EOP must: 1) propose a set of programs that will meet energy savings targets established by Act 295; 2) include offerings for each customer class, including low income residential; 3) specify necessary funding levels; 4) propose cost recovery mechanisms that will allow recovery of EOP costs; 5) demonstrate that the energy optimization programs, excluding program offerings to low income residential customers, will be cost effective; and 6) provide for the practical and effective administration of the proposed programs. Act 295 further provides that the Commission may authorize a financial incentive for exceeding the energy optimization performance standard.

Section 73(2) of Act 295 provides:

The commission shall not approve a proposed energy optimization plan unless the commission determines that the EO plan meets the utility system resource cost test and is reasonable and prudent. In determining whether the EO plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider’s customers. In addition, the commission shall consider at least all of the following:

- (a) The specific changes in customers’ consumption patterns that the proposed EO plan is attempting to influence.
- (b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed EO plan.
- (c) Whether the proposed EO plan is consistent with any long-range resource plan filed by the provider with the commission.
- (d) Whether the proposed EO plan will result in any unreasonable prejudice or disadvantage to any class of customers.
- (e) The extent to which the EO plan provides programs that are available, affordable, and useful to all customers.

The Commission agrees with the Staff's position that Detroit Edison's EOP, as proposed, meets the requirements for approval under Section 73 and that, although there are problems with Detroit Edison's EOP, these problems do not rise to the level where the plan should be found unreasonable. Further, the Commission agrees that many, if not all, of the issues raised by the Staff and intervenors regarding Detroit Edison's EOP can be addressed outside of this case.

The Environmental Coalition raised the following concerns regarding Detroit Edison's EOP:

- In light of the fact that Detroit Edison's evidence shows that the energy optimization programs have a high benefit cost ratio, it is unreasonable for the company to decline to increase its spending on energy optimization programs.
- Detroit Edison fails to propose a reasonable method for evaluation and verification of EOP savings by failing to propose a process for refining and updating the MEMD.
- Detroit Edison's EOP does not ensure that there will be verification of the installation of energy optimization measures by customers undertaking self-directed programs and provides no means for validation of the energy savings resulting from the self-directed programs.
- Detroit Edison should propose a collaborative process to refine and improve its EOP.

Section 77 of Act 295 sets out the energy savings targets and timelines for gas and electric utilities. According to Detroit Edison, its EOP will meet these targets within the necessary timeframes. Section 89(7) of Act 295 provides:

A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:

- (a) In 2009, 0.75% of total retail sales revenues for 2007.
- (b) In 2010, 1.0% of total retail sales revenues for 2008.
- (c) In 2011, 1.5% of total retail sales revenues for 2009.

In other words, a gas or electric provider is required to meet the energy optimization performance standards at some cost, and only if the statutory spending targets are exceeded is the provider required to have Commission approval. In this case, Detroit Edison plans to meet or

exceed the energy savings objectives at a lower cost than that provided for in Section 89(7). The fact that the company's evidence shows that Detroit Edison could attain additional cost-effective energy savings through a more aggressive program does not make the EOP, as proposed, unreasonable or imprudent for the purposes of this case. The argument by the Environmental Coalition, that Detroit Edison's EOP should be disapproved on the basis that its plan is not as expansive as it could be, is therefore rejected. Nevertheless, the Commission observes that once appropriate financial incentive mechanisms are in place, Detroit Edison should consider filing a supplemental EOP to take advantage of additional cost-effective energy savings opportunities as provided in Section 95(4) of Act 295.

The Commission agrees with the Environmental Coalition that accurate information about implementation of energy efficiency measures and energy savings is essential to successful implementation and verification of the EOP for Detroit Edison and the other electric and gas providers. For this reason, the Commission established a collaborative to provide program evaluation support in the May 26, 2009 order in Case No. U-15805 *et al.*, pp. 29-30. As outlined in the May 26 order:

The energy optimization evaluation collaborative should update and refine the MEMD on the basis of actual experience and consider the possibilities for conducting joint studies (such as the CFL market saturation study recommended by the Environmental Coalition), the results of which can be used by all providers. On the basis of information gained from the revisions to the MEMD and the results of any additional studies, the collaborative should also make recommendations for improving EOPs for all providers. The collaborative should include all electric and gas providers subject to the Commission's jurisdiction under Act 295. In addition, energy efficiency experts, equipment installers, and other interested stakeholders should be encouraged to participate in the collaborative.

In response to concerns regarding the verification of self-directed energy optimization plans, the Commission points to Section 93(8) of Act 295:

A customer implementing a self-directed energy optimization plan under this section shall submit to the customer's electric provider every 2 years a brief report documenting the energy efficiency measures taken under the self-directed plan during that 2-year period, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being achieved from self-directed plans. . . . A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief. If the customer has retained an independent energy optimization service company, the requirements of this subsection shall be met by the energy optimization service company.

Section 93(9) of Act 295 adds:

An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy optimization plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

In addition, Section 93(10) provides for a hearing and the imposition of penalties on self-directed companies that fail to comply with the requirements under Section 93.

As the Commission found in the May 26, 2009 order in Case No. U-15808, p. 31:

The Commission agrees with the Staff that concerns regarding independent verification of self-directed plans should be addressed outside the EOP cases. The Commission therefore directs the Staff to address these concerns under the rulemaking required under Act 295.

The Commission further observes that Section 87 of Act 295 provides that the Commission "shall establish an energy optimization credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding." The Staff is also directed to assure that the third party contractor for the energy optimization credit program verifies the implementation and energy savings of self-directed projects before issuing energy optimization credits for these projects.

The Commission also finds that approval of a financial incentive is at the Commission's discretion, and the incentive must be commensurate with the degree to which the provider's

program exceeds the energy optimization targets. The Commission agrees that Detroit Edison's proposed financial incentive mechanism is not proportionate with additional energy savings above the statutory targets. As the Staff points out, Detroit Edison's proposed incentive mechanism provides maximum rewards for achieving energy savings that fall within the margin of error for estimated savings at the statutory target. Detroit Edison therefore has little incentive to pursue cost effective energy efficiency programs that significantly exceed the statutory minimum. However, the Commission believes that the Staff's incentive mechanism would be more effective if it enhanced the incentive to invest more in cost-effective energy optimization programs. Therefore, the Commission directs that within 30 days, the parties to this case may file alternative proposals for financial incentive mechanisms. The parties may propose something new or may use the mechanisms proposed by Detroit Edison, the NRDC, or the Staff, with modifications to achieve the aforementioned objectives. The recovery of any authorized financial incentive through the EOP surcharge shall not commence until after Detroit Edison demonstrates that its energy optimization programs have exceeded the statutory targets.

Finally, the Commission agrees with the Staff, the Attorney General, and ABATE that uncollectibles should not be included in the EOP surcharge because uncollectibles are not costs of the energy optimization program under Act 295. These costs are more appropriately addressed in a general rate case where the reasonableness and prudence of collection efforts can be weighed.

THEREFORE, IT IS ORDERED that:

A. The renewable energy plan proposed by The Detroit Edison Company is approved subject to the company's agreement to consult with the Commission Staff and file, within 14 days of the date of this order, a complete description of its request for proposal and bidding process that

complies with Section 21(2)(d) of 2008 PA 295 and the December 4, 2008 order in Case No. U-15800.

B. The Detroit Edison Company has until June 8, 2009 to submit a letter from its Chief Executive Officer confirming the utility's agreement to make the directed filing and verifying that officer's authority to make such representations on behalf of the company.

C. The Commission Staff shall provide oversight and consultation during the request for proposal and bidding development and design process to ensure that the proposed procedures comport with 2008 PA 295 and the Commission's guidelines set forth in Appendix D of the December 4, 2008 order in Case No. U-15800.

D. The proposed surcharges for the renewable energy plan are approved to be effective September 1, 2009.

E. The energy optimization plan proposed by The Detroit Edison Company is approved.

F. The proposed surcharges for the energy optimization plan are approved for implementation for bills rendered on and after June 3, 2009, subject to the exclusion of the uncollectibles and financial incentive mechanism portions of the proposed surcharges, as set forth in this order.

G. Uncollectibles associated with the renewable energy plan and energy optimization plan shall be addressed in The Detroit Edison Company's next general rate case and will be monitored by the Commission Staff in the energy optimization and renewable energy plan reconciliation proceedings.

H. Within 30 days, interested parties shall file new proposals for a financial incentive mechanism. The parties may propose a new mechanism or may use one of the mechanisms proposed by The Detroit Edison Company, the Natural Resources Defense Council, or the Commission Staff, with modifications to achieve the objectives set forth in the order.

I. The Detroit Edison Company shall file its first reconciliation case for its renewable energy plan and energy optimization plan on or before March 31, 2010.

J. The Detroit Edison Company shall file with the Commission, within 30 days, tariff sheets that reflect the approvals set forth in this order.

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

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of June 2, 2009.

Mary Jo Kunkle, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-15806

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on June 2, 2009 A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Lisa Felice

Subscribed and sworn to before me
this 2nd day of June 2009

Sharron A. Allen
Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

Service List – Case No. U-15806

Christopher M. Bzdok
Olson Bzdok & Howard PC
420 East Front Street
Traverse City MI 49686

Jon P. Christinidis
The Detroit Edison Company
One Energy Plaza
Detroit MI 48226-1279

John M. Dempsey
Dickinson Wright, PLLC
301 E. Liberty Street, Suite 500
Ann Arbor MI 48104

Sandra K. Ennis
DTE Energy
One Energy Plaza
Detroit MI 48226-1279

Bruce Goodman
Varnum LLP
333 Bridge Street NW
P.O. Box 352
Grand Rapids MI 49501

Rodger A. Kershner
Howard & Howard Attorneys P.C.
450 West Fourth Street
Royal Oak MI 48067-2557

Don L. Keskey
Clark Hill PLC
212 E. Grand River Avenue
Lansing MI 48906-4328

Jon D. Kreucher
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak MI 48067-2557

John R. Liskey
Michigan Dept. of Attorney General
525 W. Ottawa Street, 7th Floor
P.O. Box 30212
Lansing MI 48909

Robert B. Nelson
Fraser Trebilcock Davis & Dunlap, P.C.
124 W. Allegan Street, Suite 1000
Lansing MI 48933

Service List – Case No. U-15806

Eric J Schneidewind
Varnum, Riddering, Schmidt & Howlett, LLP
The Victor Center
210 N. Washington Square, Suite 810
Lansing MI 48933

Barbara A. Stump
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
Lansing MI 48911

Robert A.W. Strong
Clark Hill PLC
151 S. Old Woodward Avenue, Suite 200
Birmingham MI 48009