

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
FIRSTENERGY SOLUTIONS CORP. against THE)	Case No. U-15081
DETROIT EDISON COMPANY.)	
_____)	

At the July 5, 2007 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Monica Martinez, Commissioner

ORDER

On November 8, 2006, FirstEnergy Solutions Corp. (FirstEnergy) filed a formal complaint against The Detroit Edison Company (Detroit Edison) regarding alleged violations of the Commission's code of conduct provisions established in Case No. U-12134. On December 21, 2006, Detroit Edison filed its response denying liability and asserting affirmative defenses. The Commission Staff (the Staff) also participated in these proceedings.

Pursuant to due notice, a prehearing conference was held on January 10, 2007, and a hearing was held on May 15, 2007, before Administrative Law Judge Sharon L. Feldman. Subsequently, the parties filed a stipulation and settlement agreement, attached as Exhibit A.

According to the terms of the stipulation and settlement agreement, the parties agree, *inter alia*, that: (i) Detroit Edison will not use Alternative Electric Supplier (AES) data that it receives in the course of doing business with an AES without the written approval of the AES; (ii) Detroit Edison will not use historical usage data or prices from customers taking service from

an AES for the purpose of comparing its regulated rates to AES pricing unless the customer requests and provides written authorization to make such a comparison; (iii) Detroit Edison will not perform rate comparisons using estimated AES pricing; (iv) Detroit Edison will submit for the Staff's review and approval, communications regarding electric generation service that it sends to customers; and (v) FirstEnergy has agreed to withdraw the complaint.

The Commission finds that the settlement agreement is reasonable and in the public interest, and should be approved.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. The settlement agreement is reasonable and is in the public interest, and should be approved.
- c. The complaint should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. The complaint of FirstEnergy Solutions Corp. against The Detroit Edison Company is dismissed with prejudice.

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

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Monica Martinez
Commissioner

By its action of July 5, 2007.

/s/ Mary Jo Kunkle
Its Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

By its action of July 5, 2007.

Its Executive Secretary

6/28/07

STIPULATION AND SETTLEMENT AGREEMENT

THIS STIPULATION AND SETTLEMENT AGREEMENT (the "Settlement Agreement") between **THE DETROIT EDISON COMPANY** ("Detroit Edison"), **FIRSTENERGY SOLUTIONS CORP.** ("FES") and the **MICHIGAN PUBLIC SERVICE COMMISSION STAFF**, ("Staff"), (collectively, the "Parties") and effective as of June 28, 2007 is intended by the Parties as a final settlement and satisfaction of all issues and claims, either currently before the MPSC or before any court of competent jurisdiction in the future, that exist as of the date of this Settlement Agreement and that were the subject matter of MPSC Case No. U-15081.

RECITALS

WHEREAS, FES commenced an action before the MPSC (Case No. U-15081), alleging violations of the Code of Conduct by Detroit Edison.

WHEREAS, the Parties have now agreed to settle all issues and claims that exist as of the date of this Settlement Agreement and that are the subject matter of MPSC Case No. U-15081.

WHEREAS, neither FES nor the Staff will bring an action in the future at the MPSC or in any court of competent jurisdiction related to any issue or claim in existence as of the date of this Settlement Agreement and that is the subject of MPSC Case No. U-15081.

NOW, THEREFORE IN CONSIDERATION of the foregoing promises and the mutual promises and covenants contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged conclusively, the Parties agree to stipulate to the following matters:

STIPULATION

1. Payment – Upon approval of, or final action upon, this Settlement Agreement by the MPSC, Detroit Edison will pay FES a lump sum payment, the terms and conditions of which are addressed in a separate agreement between FES and Detroit Edison. The parties agree that such payment, along with the other terms and conditions set forth herein, constitutes a full satisfaction and accord of all claims existing as of the date of this Stipulation arising under MPSC Case No. U-15081. Accordingly, the Parties agree that no future action shall be brought before the Commission or a court of competent jurisdiction related to the same.

2. Fine – Within five (5) business days of the MPSC's approval or other action upon this Stipulation, Detroit Edison shall pay to the State of Michigan the Sum of Fifty Thousand Dollars (\$50,000), with such payment being mailed via First Class U.S. Mail, to the Executive Secretary of the Michigan Public Service Commission., which, together with the other terms and conditions contained herein, FES and the Staff agree constitutes a full satisfaction of all claims associated with MPSC Case No. U-15081 before the MPSC or any other Court of competent jurisdiction.

3. Supplier Pricing Data - Detroit Edison agrees that it will not use Alternate Electric Supplier data that it receives in the course of doing business with such Alternate Electric Supplier without the written approval of the Alternate Electric Supplier.

4. Historical Usage Data - Detroit Edison agrees that it will not use historical usage data or prices from customers taking service from an Alternate Electric Supplier for the

purpose of comparing its regulated rates to Alternate Electric Supplier pricing, unless the customer requests and provides written authorization to make such a comparison.

Detroit Edison may not perform rate comparisons using estimated AES pricing;

5. Staff Review - Detroit Edison agrees that it will submit for the Staff's review and approval communications regarding electric generation service that it sends to customers.

6. Withdrawal – FES will withdraw, with prejudice, the Complaint filed with the MPSC in Case No. U-15081, and will refrain from filing any similar claims in any Court of competent jurisdiction. FES represents that no such claims are currently filed in any such court.

7. No Adverse Participation - The Parties expect that the withdrawals indicated above will be effective 15 days after filing of the above-described Notices in the above-described proceedings ("Anticipated Effective Dates"). However, should the withdrawals not be effective within 15 days, FES and the Staff hereby state that they will not participate in the proceedings after the Anticipated Effective Dates, except as required by Detroit Edison (e.g., to support withdrawal of the Complaint and termination of the proceeding). If, at the conclusion of proceedings undertaken after the Anticipated Effective Dates, relief afforded to FES is shown to be more advantageous than that provided by this Settlement Agreement FES agrees to accept, as resolution of the proceeding the terms and conditions of this Stipulation as full satisfaction.

8. Releases - FES hereby releases, acquits, and discharges Detroit Edison from any and all claims of any nature whatsoever that it has, ever had, and may hereafter have against Detroit Edison regarding the subject matter of the Complaint proceeding in

MPSC Case No. U-15081 or any claims set forth in that proceeding that exist as of the date of this Settlement Agreement. Detroit Edison hereby releases, acquits, and discharges FES from any and all claims of any nature whatsoever that it has, ever had, or may hereafter have against FES related to the proceeding identified above and that exist as of the date of this Settlement Agreement. FES shall not bring or pursue any other action or claim against Detroit Edison arising from any claims set forth in this proceeding or orders related to the issues raised in this proceeding.

9. No Admissions - Neither the provision of consideration in the form of mutual covenants contained herein, nor the performance of any such covenants contained herein, nor anything contained or incorporated herein shall be deemed, nor shall the negotiations, execution and performance of this Settlement Agreement constitute, any admission or concession of liability or wrongdoing on the part of any Party; or any other form of admission with respect to any matter, thing or dispute whatsoever.

10. Confidentiality - This Settlement Agreement and the discussions between the parties that have produced this Settlement Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall be privileged and confidential, shall be without prejudice to the position of any party presenting such offer or participating in such discussions, and are not to be used in any manner in connection with the aforementioned proceedings, any other proceeding, or otherwise, except to the extent necessary to enforce the terms of this Settlement Agreement or to comply with corporate reporting requirements.

11. General Provisions -

11.1. In entering and making this Settlement Agreement, the Parties assume the

risk of any mistake of fact or law. If the Parties should later discover that any fact they relied upon in entering into this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, the Parties shall not be entitled to seek rescission of this Settlement Agreement by reason thereof. This Settlement Agreement is intended to be final and binding upon the Parties regardless of any mistake of fact or law.

11.2. This Settlement Agreement shall be binding upon and for the benefit of any of the Parties, or their successors and assigns. Nothing in this Settlement Agreement shall be construed or interpreted to impart any rights or obligations to any third party (other than a permitted successor or assignee bound to this Settlement Agreement).

11.3. Each Party represents and warrants to the other Parties that: (1) it has the full power and authority to enter into this Settlement Agreement and to perform all transactions, duties and obligations herein set forth, (2) it has taken all necessary actions duly and validly to authorize the execution and delivery of this Settlement Agreement and the other documents and agreements provided for herein to be executed and delivered by such Party in accordance with applicable law, (3) it has duly and validly executed and delivered this Settlement Agreement and the other documents and agreements provided for herein to be executed and delivered by such Party, and (4) this Settlement Agreement and the other documents and agreements provided for herein to be executed and delivered by such Party constitute the legal, valid and binding obligations of such Party, enforceable against such Party in accordance with their respective terms.

11.4. Each Party warrants the following: (1) it is represented by competent

counsel with respect to this Settlement Agreement and all matters covered by it; (2) it has been fully advised by said counsel with respect to its rights and obligations and with respect to the execution of this Settlement Agreement; and (3) it authorizes and directs its respective attorneys to have such papers executed and to take such other action as is necessary and appropriate to effectuate the terms of this Settlement Agreement.

11.5. Each Party warrants that except as referenced in Section 1 - Payment, no promise, inducement or agreement not expressed herein has been made in connection with this Settlement Agreement. To the extent that it was deemed necessary and desirable by a Party, each such Party warrants that it has received appropriate, adequate and competent technical and economic advice. Each Party warrants that it has not relied on any other Party for advice or guidance concerning the technical or economic implications or consequences of this Settlement Agreement. This Settlement Agreement constitutes the entire agreement between the Parties and supersedes and replaces all prior negotiations or proposed agreements, written or oral, with respect to the subject matter thereof.

11.6. This Settlement Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by an authorized representative of each of the Parties.

11.7. The language of this Settlement Agreement shall be construed as a whole, according to its fair meaning and intendment, and not strictly for or against any Party, regardless of who drafted or was principally responsible for drafting the Settlement Agreement or any specific terms or conditions hereof. This Settlement Agreement shall be deemed to have been drafted by all Parties, and no Party shall urge otherwise.

11.8. The headings in this Settlement Agreement are for convenience only. They in no way limit, alter, or affect the meaning of this Settlement Agreement.

11.9. This Settlement Agreement shall be construed and enforced pursuant to the laws of the State of Michigan.

11.10. Should any provision of this Settlement Agreement be held illegal, such illegality shall not invalidate the whole of this Settlement Agreement; instead, the Parties shall use their best efforts to reform the Settlement Agreement in order to give effect to the original intention of the Parties in all material respects.

11.11. This Settlement Agreement may be executed in multiple original and/or facsimile counterparts, each of which is equally admissible in evidence and shall be deemed to be one and the same instrument. This Settlement Agreement shall not take effect until each Party has signed a counterpart.

11.12. Each signatory to this Settlement Agreement who signs on behalf of a Party represents and warrants that he or she has the authority to sign on behalf of that Party.

11.13 This Settlement Agreement is reasonable and in the public interest, and will reduce the time and expense of the Commission, its Staff, Detroit Edison and the other parties to this proceeding. The Parties waive any rights under Section 81 of 1969 PA 306, as amended and agree not to appeal or otherwise contest a Commission order dismissing case No. U-15081 with prejudice provided that this Settlement Agreement is approved by the Commission without material modification.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be duly executed by their respective duly authorized officers as of the date first above written.

FIRST ENERGY SOLUTIONS

By: _____

Its: _____

Date: June 28, 2007

THE DETROIT EDISON COMPANY

By: _____

Its: Attorney _____

Date: June 28, 2007

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

By: _____

Its: _____

Date: June 28, 2007

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-15081

|

County of Ingham)

E. David Lechler being duly sworn, deposes and says that on July 5, 2007, A.D. he served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

E. David Lechler

Subscribed and sworn to before me
this 5th day of July 2007

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

SERVICE LIST FOR DOCKET # U - 15081- CASE #
DATE OF PREPARATION: 07/05/2007

FIRSTENERGY SOLUTIONS CORP.
395 GHENT ROAD
ROOM GHE 408
AKRON OH 44333

MS. SANDRA ENNIS
THE DETROIT EDISON COMPANY
2000 SECOND AVENUE
DETROIT MI 48226

MR. MICHAEL J. ORRIS
ASSISTANT ATTORNEY GENERAL
6545 MERCANTILE WAY, 2ND FLOOR
LANSING MI 48910
ID MAIL

MS. SHARON L. FELDMAN
PSC-ALJ DIVISION
6545 MERCANTILE WAY, 2ND FLOOR
LANSING MI 48911
ID MAIL

MR. MICHAEL J. SOLO
THE DETROIT EDISON COMPANY
2000 SECOND AVENUE
DETROIT MI 48226

MR. ERIC J. SCHNEIDEWIND
VARNUM, RIDDERING, SCHMIDT & HOWLETT
THE VICTOR CENTER
201 N. WASHINGTON SQUARE, SUITE 810
LANSING MI 48933

**SUBSCRIPTION LIST
ALL ELECTRIC ORDERS**

MR. LARRY LEWIS
GENERAL SERVICES ADMINISTRATION
670 MORRISON ROAD, ROOM 209
COLUMBUS OH 43230

MR. MICHAEL BYRNE
SENATE DEMOCRATIC STAFF
ROMNEY BUILDING
LANSING MI **ID MAIL**

MR. JOHN PESTLE
VARNUM, RIDDERING, SCHMIDT & HOWLETT
BRIDGEWATER PLACE
P.O. BOX 352
GRAND RAPIDS MI 49501 0352