STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of CONSUMERS ENERGY COMPANY for authority to recover implementation costs, for Case No. U-11955 approval of stranded cost true-up methodology, and other relief,	**Case No. U-11955**
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In the matter of the Application of THE DETROIT EDISON COMPANY for authority to recover retail access program implementation costs and for approval of a true-up mechanism in connection with the recovery of stranded costs	**Case No: U-11956**
______________________________________/	

REPLY BRIEF OF THE DETROIT EDISON COMPANY

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INTRODUCTION

On January 28, 2000, initial briefs were filed by The Detroit Edison Company ("Edison" or the "Company"), the Association of Businesses Advocating Tariff Equity ("ABATE"), the Attorney General, the Commission Staff, the Michigan Petroleum Association/Michigan Association of Convenience Stores, Energy Michigan, and the Michigan Independent Power Producers Association ("MIPPA"). In its initial brief, Edison set forth a summary of proceedings, as well as arguments that anticipated and addressed many of the arguments made by the other parties. Therefore, this reply brief will focus on new matters raised by those parties, and attempt to clarify the parties' positions. Edison's reliance on its initial brief and avoidance of repetition should not be deemed to constitute an acceptance of the other parties' arguments in any way. For purposes of organization and clarity, Edison will generally address the issues in this brief in the same order that Edison's initial brief addressed those issues.

ARGUMENT

I. EDISON MUST RECOVER ITS ACTUAL IMPLEMENTATION COSTS, AND THE COMMISSION SHOULD APPROVE THE LEVEL AND AREA OF EDISON'S PLANNED EXPENDITURES.

A. Edison Should Recover All Of Its Actual Implementation Costs For 1998 And The First Quarter Of 1999.

Mr. McCormick testified that Edison seeks to recover implementation costs of $7,534,389 for 1998, and $4,083,923 for the first quarter of 1999 (Edison's initial brief, pp 31-34; 5T 782-87; Exhibits ADE-45 and ADE-46). The Staff recommends

disallowing $860,353 of Edison's labor expense based on Mr. Geml's testimony that an Edison internal audit reflected that some of the Electric Choice Implementation Team ("ECIT") employees were not "incremental," but instead were transferred from other areas of the Company (Staff's initial brief, pp 10-11; 5T 828-29; Exhibit S-47). The Attorney General concurs with the Staff (Attorney General's initial brief, pp 39-40).

Edison should be allowed to recover all of its labor costs. The fact that some of its ECIT employees formerly worked elsewhere in the Company lacks relevance. The dispositive fact is that they all are now working to implement Electric Choice. Further, any disallowance of labor costs for transferred employees would have to include non-record assumptions about whether they were replaced in their former positions, whether those positions continue to exist, etc. There is no dispute about the actual costs of labor to implement Electric Choice, so Edison should recover all of those implementation costs.

ABATE claims that the Staff should perform a "full audit" (ABATE's initial brief, pp 13-14). ABATE's claim should be rejected because the Staff has already performed an audit. ABATE does not even allege that there is anything wrong with that audit. The record is closed. ABATE is simply pursuing its agenda of attempting to obstruct the implementation of open access in Michigan.

The Staff recommends disallowing $150,396 of Edison's implementation costs to reflect a return on investment rate of 7% instead of the 10.1% rate that Edison

used. Mr. Geml testified that the 7% rate has been used in other cases, and that Edison's rate should be consistent with the 7% rate that Consumers Energy Company ("Consumers") used in these proceedings (Staff's initial brief, p 11; 5T 830; Exhibit S-47). The Staff's recommendation is inappropriate. Edison's 10.1% rate is already consistent with Consumers' 7% rate because Edison's rate is before tax and Consumers' rate is after tax. A pre-tax rate is appropriate because this matter concerns a regulatory asset and Edison has to pay taxes on revenue.

The Staff asserts that the Commission should review implementation costs on a calendar year basis. The Staff therefore recommends that the Commission not consider Edison's costs for the first quarter of 1999 in these proceedings, but instead consider those costs in the year 2000 true-up proceedings (Staff's initial brief, p 12). Edison disagrees because the record has already been developed in this case regarding Edison's expenditures during the first quarter of 1999. Edison's recovery of these costs should not be delayed. It would also be burdensome for Edison (and other parties) to duplicate the evidentiary presentations and arguments on this matter in a future proceeding. If the Commission wishes to proceed on a calendar-year basis, then the better procedure would be to decide this case on the present record, and limit Edison's year 2000 implementation cost true-up to the last three quarters of 1999.

Energy Michigan asserts that the Commission should offset Edison's recovery of implementation costs with alleged excess Company earnings through 2001

(Energy Michigan's initial brief, pp 2,10). The Staff similarly asserts that such an offset would be permissible with respect to any determination of excess earnings that may result from Case No. U-11495 (Staff's initial brief, p 12; 5T 833). Curiously, neither party suggests that the Company should receive credit for any revenue deficiency demonstrated in that case. Even a slight deficiency would quickly eradicate the Staff's "incremental labor expense" disallowance proposal. The record in U-11495 suggests the possibility of over a $30 million deficiency.

In any event, these excess revenue assertions should be rejected for two primary reasons. First, ABATE's complaint should be dismissed for lack of merit, as explained in Edison's January 14, 2000 initial brief, and January 28, 2000 reply brief in Case No. U-11495, which Edison incorporates by reference. Second, Edison already agreed to a profit-sharing mechanism in Case No. U-11726, and that mechanism should not be changed (see Edison's U-11495 initial brief, pp 58-61; reply brief, p 16). Moreover, Energy Michigan's reliance on Mr. Kuhn's testimony (initial brief, p 10, citing 4T 96-97) is misplaced because Mr. Kuhn admitted his limited knowledge on this matter (4T 114-15).

Edison objects to Energy Michigan's attempt to supplement the record with hearsay consisting of a <u>Gongwer</u> article referencing alleged actions by the Michigan Tax Tribunal. Since the record is closed, Edison has no ability to test the validity and relevance of this purported evidence through cross examination, or to submit rebuttal evidence. These rights are guaranteed by Rule 325(3) of the Commission's Rules of

Practice and Procedure, R 460.17325(3) ("A party shall have the right of cross-examination and shall have the right to submit rebuttal evidence"). Energy Michigan's presentation of non-record materials and arguments is completely unjustified and should be stricken for these reasons, and as more fully explained in Edison's accompanying motion to strike. Moreover, Energy Michigan's contention that Edison's costs will be reduced is completely erroneous. Edison's property taxes in 2000 are estimated to be at least as great, or greater than, its property taxes for 1998, the test year used by ABATE in its complaint case U-11495.

ABATE (initial brief, p 13) and the Attorney General (initial brief, p 42) disagree with the Energy Michigan and Staff on this point. ABATE later essentially takes the opposition position, however, asserting that Edison's stranded costs should be reduced by all earnings above Edison's authorized rate of return (initial brief, pp 25-26). ABATE cites nothing in support of this contention, which should be rejected for the reasons explained above.

Mr. Padgett explained that electric choice implementation costs should be recovered from all customers through the application of a surcharge beginning on January 1, 2000 (Edison's initial brief, pp 37, 41; 5T 862, 868-69). Energy Michigan agrees (initial brief, pp 10-11). ABATE (initial brief, pp 14-16), the Attorney General (initial brief, pp 41-42) and the Staff (initial brief, pp 12-13) disagree, claiming that implementation costs must be recovered only from open access customers, in order to reflect "cost causation." These arguments should be rejected because Edison is

incurring implementation costs to establish an Electric Choice program that will be available to <u>all customers</u> in 2002. All customers will have the opportunity to benefit from the availability of this option, as well as the lower prices that are anticipated in the new competitive market. Further, spreading the cost reduces it, so it is affordable and does not deter customers from participating in Electric Choice (5T 868-69).

B. The Commission Should Approve Edison's Planned Implementation Costs For the Second Quarter Of 1999 Through 2001.

Mr. Gessner testified that Edison's planned implementation costs for the second quarter of 1999 through 2001 are $108.9 million (Edison's initial brief, pp 28-30; 5T 618-22; Exhibit ADE-37). Mr. Gessner provided detailed testimony regarding Edison's extensive efforts in undertaking a new and complex line of business (Edison's initial brief, pp 5-28, 30-31; 5T 591-617, 620-21). Despite Edison's massive evidentiary presentation, the Attorney General asserts that Edison should have provided even greater detail regarding its planned expenditures (Attorney General's initial brief, pp 40-41). The Attorney General's position lacks merit, and is disingenuous at best. She had the ability to cross examine Edison's witnesses and to present her own witnesses if she disagreed with Edison. The Attorney General cites nothing in support of her unfounded contentions. She should not be heard to complain that Edison should have burdened this Commission by piling on even more evidence in support of uncontested positions, particularly when she admits that Edison presented "detailed" testimony (Attorney General's initial brief, p 41).

The Attorney General also seems to misunderstand the nature of Edison's request, by characterizing it as a "blank check for any actual amounts totaling less than the budgets proposed by" Edison (Attorney General's initial brief, p 41). Mr. Gessner explained that Edison does not seek to recover its planned expenditures at this time, but instead seeks approval of the level and areas of expenditures for the continued implementation of Electric Choice (Edison's initial brief, p 6; 5T 591-92), an uncertain and evolving process.

II. OVERVIEW OF FACTORS THAT SHOULD BE CONSIDERED IN DEVELOPING A TRUE-UP MECHANISM FOR STRANDED COSTS.

A. "Average Slice" Method For Identifying Resale Mitigation Resources.

Mr. Padgett explained Edison's proposal to mitigate the sales and revenues lost as a result of Electric Choice. During the year 2000, Edison would sell, for up to a two-year period, an "average slice" (pro-rata average) of Edison's generation resources to retail marketers who wish to participate in Electric Choice (Edison's initial brief, pp 46-59; 5T 875-79; Exhibits ADE-49, ADE-50). The Attorney General challenges this proposal, asserting a variety of inaccurate and unpersuasive contentions (Attorney General's initial brief, p 47).[1]

The Attorney General first asserts that the Commission should not determine the merits of Edison's proposal. This assertion should be rejected because the record

[1]MIPPA also opposes Edison's average slice proposal, but the basis, if any, for MIPPA's opposition is so unclear that Edison cannot respond (MIPPA's initial brief, pp 4, 8-10). MIPPA's challenge fails for lack of substance, as well as merit and foundation. Edison objects to any attempt by MIPPA to later raise new issues based on the vague assertions contained in its initial brief.

has been developed and the time is ripe for a decision on Edison's proposal. This is one of many decisions that the Commission should make in this proceeding, so that Edison will know how to proceed with the implementation of direct access. Moreover, it is disingenuous for the Attorney General to suggest that the Commission should defer a decision on Edison's proposal until after Edison implements it, since the Attorney General can be expected to challenge that implementation in any later proceeding(s).

The Attorney General further contends that Edison's proposal eliminates benefits for direct access customers and prejudices PSCR customers. These contentions are inaccurate and unrealistic. The Attorney General's position is based on the premise that Edison's PSCR costs are inflated because they include the cost of unneeded capacity and energy. This premise denies the reality of Edison's obligation to serve its customers' load in a reliable and economic manner. Mr. Padgett explained that due to the uncertainty associated with the degree and timing of customer participation in Electric Choice during the year 2000, the Company believes that it is prudent to plan to serve all of its load (Edison's initial brief, p 44-46; 5T 873-75). To the extent that Edison loses its forecasted load to Electric Choice, the output of Edison's generation resources could be sold to alternative providers, a process that already occurs on the basis of existing load and temperature variations (Edison's initial brief, p 47; 5T 876; Exhibit ADE-49). Direct access customers will benefit from the power sale, which would jump start the Electric

Choice program during the start-up phase by ensuring that sufficient in-state generation resources would be available for bid to retail marketers in the program (Edison's initial brief, pp 46-47; 5T 876). Customers subject to the PSCR will be unaffected by the "average slice" approach (Edison's initial brief, p 48-49; 5T 878-79; Exhibit ADE-50).

B. Information Regarding Edison's Available Transmission Capacity Is Already Available.

ABATE (initial brief, p 27) and the Attorney General (initial brief, p 48) recommend that the Commission should require Edison to file its Available Transmission Capacity ("ATC") as part of its annual true-ups, so that the Commission can monitor it. This recommendation is moot, because the information is already available. Under FERC rules, Edison is required to post the ATC on OASIS.

III. CALCULATION OF STRANDED COSTS.

A. The Commission Should Not Revisit Its Prior Decisions Regarding Stranded Costs.

The Attorney General (initial brief, p 43) and ABATE (initial brief, pp 23-25) contend that "stranded benefits" should be used to reduce stranded costs. These contentions should be rejected because they just rehash previously-rejected contentions, and the existing sharing mechanism includes the benefits of selling at market prices above full cost, so the appropriate netting is already being included (4T 342-43). The Attorney General and ABATE essentially contend that Fermi 2 has a positive value, contrary to the Commission's authorization of Edison to accelerate the

remaining net book balance of the Fermi assets in Case No. U-11726. The Attorney General and ABATE are appealing the Commission's December 28, 1998 and March 8, 1999 Orders in Case No. U-11726 (Court of Appeals Nos. 218663, 218736). This is their legal remedy, and there is no basis for them to collaterally attack the Commission's decision here and waste the Commission's and the parties' limited resources (See Edison's January 14, 2000 initial brief in Case No. U-11495, pp 13-18). Moreover, the record in Case No. U-11495 reconfirms that Fermi 2 is an impaired asset (<u>Id</u>., pp 18-25).

There is also no basis in the record for the Commission to alter its prior decisions on stranded costs. The Attorney General's reliance on Mr. King's testimony (5T 701-704; Exhibits I-40, I-41, I-42) is misplaced due to the numerous defects and limitations of Mr. King's analysis, as explained by Consumers' witness Mr. Leja (5T 844-48). Mr. King also admitted on cross examination that his purchase prices for plant sales included items in addition to the plants, and that he lacked knowledge regarding essential elements of the purchases (5T 742-43, 753-56). He further admitted that press releases were the source for much of his information (5T 753). Therefore, his whole analysis should be rejected as merely a compilation of inaccurate and unreliable hearsay that does not form a proper basis for a decision by the Commission.

Energy Michigan makes a similar argument that Edison will not have any stranded costs until at least 2002, because Edison's retail load might grow faster

than the phase-in amount of direct access load (Energy Michigan's initial brief, pp 2, 11-13). This argument lacks substance because it ignores the Commission's decisions regarding Fermi 2, which should not be revisited. Moreover, Edison's plans to purchase capacity are based on Edison's obligation to serve its customers' load in a reliable and economic manner. To the extent that Edison loses its forecasted load to Electric Choice, Edison proposes to sell an "average slice" of its generation resources to retail marketers in a PSCR neutral manner, as explained above.

Edison also objects to Energy Michigan's reliance on non-record materials consisting of Edison filings in other cases. Edison, of course, does not contest the accuracy of its filings in those cases, but instead objects to its inability to put those filings in context in this case. Therefore, the Commission should disregard Energy Michigan's non-record materials and arguments for the reasons explained above and in Edison's motion to strike.

Energy Michigan goes on to present a speculative argument regarding wholesale and inter-utility transactions, in an attempt to persuade this Commission to take such transactions into account with respect to the recovery of stranded costs (Energy Michigan's initial brief, pp 29-30). This argument is unpersuasive because it lacks either relevance or foundation. Briefly, wholesale transactions are within the FERC's jurisdiction (4T 238), and Energy Michigan relies only on a potential inter-utility agreement that might exist in some form beginning in 2001 (Energy Michigan's initial brief, p 29). Energy Michigan presents no sound basis for its proposal, which should be rejected.

Energy Michigan asserts that there should be a mechanism that caps stranded cost recovery and prevents over recovery (Energy Michigan's initial brief, pp 30-31). Energy Michigan imagines problems that do not exist under existing mechanisms. Stranded cost recovery is already capped by the Commission's determination of the amount of stranded costs. Energy Michigan (initial brief, p 31) makes the statement that "A basic flaw in the presentations of Consumers Energy and Detroit Edison is that no matter how much power is sold, open access customers always pay stranded costs." On the contrary, this is not a flaw, but rather it is an essential feature of the program that bundled customers should not subsidize choice customers. No matter how large or small, if the departing customers do not pay a pro-rata share, then bundled customers will pay the share that choice customers do not pay. Energy Michigan attempts to flippantly dismiss the true explanation of this situation by claiming "This method of collecting costs stands logic on its head." In fact, there is no problem with any misallocation or potential over recovery of stranded costs. Energy Michigan erroneously ignores that bundled customers can receive a rate reduction or earlier cessation of stranded costs if the choice customers pay their pro-rata share.

Energy Michigan proposes a new way to calculate stranded costs based on speculative and inaccurate allegations that the Commission's mechanism will not work as intended, so a new mechanism should be used (Energy Michigan's initial

brief, pp 13-22, 36-38). Energy Michigan admits that the Commission's 2.9¢/kWh market clearing price assumption was "fairly accurate" (Id., p 15), but Energy Michigan wants to decrease that base price to 2.4¢/kWh, and then further "assume a rate of cost reduction thereafter of 1% per year" (Id., p 17). Energy Michigan's radical proposal is insufficiently supported by the inaccurate and unfounded testimony of Mr. Kuhn. Energy Michigan's attempts to characterize Mr. Kuhn's admitted errors as irrelevant only highlights their existence and significance. Energy Michigan contends that the true-up mechanism does not work based on the testimony of Mr. Kuhn (4T 105). Mr. Kuhn states that Edison will be able to undercut competitors' prices since Edison's generation costs have declined from 1995 to 1998 based on data taken from the FERC Form 1's. However, the data examined by Mr. Kuhn was incomplete and misrepresented in the testimony that he presented. On Exhibit I-2, Mr. Kuhn failed to adjust the ratebase for the Nuclear Decommissioning included in the Accumulated Depreciation reserve for Edison. He also failed to include Fermi 2 in the ratebase for 1998 after it was moved to a regulatory asset (4T 140-41). If Mr. Kuhn would make these adjustments, the cost per kWh would be constant for Edison from 1995 to 1998.

Further, Edison objects to Energy Michigan's attempted reliance on exhibits that are not in the record, for the reasons explained above. Energy Michigan should not be heard to complain about cross examination confusing the issues, when in fact it clarified the unreasonableness of Energy Michigan's proposal. Energy Michigan

essentially wants to use one formula to produce a low estimate of stranded costs and a new formula to produce a high estimate of reductions in stranded costs. Energy Michigan tries to give its proposal the illusion of credibility and precision through mathematical formulas, but the bottom line would be compression of Edison's stranded cost recovery down to a negligible amount, contrary to the Commission's prior decisions. Energy Michigan's proposal is illogical, unreasonable and lacks support by competent, material and substantial evidence. Therefore, the proposal should be rejected.

Finally, as Mr. Padgett explained, by adjusting stranded costs for changes in market clearing price, the Commission is accomplishing "netting" of the market effects of the remaining fossil generating facilities against the five basic categories of stranded costs. It would be unreasonable to net the benefit or additional strandedness of the Company's entire generation fleet against the five basic categories, since (1) Edison continues to have the obligation to serve customers who chose to retain fully bundled, regulated service, and (2) Edison cannot market its supply resources, which remain regulated (Edison's initial brief, pp 43-44; 5T 871-73).

B. Determination And Use Of Actual Market Clearing Price.

The Attorney General (initial brief, p 44), ABATE (initial brief, pp 19-21), and Energy Michigan (initial brief, pp 34-36) argue that the market clearing price should be determined from actual retail access contracts. These arguments are consistent

with the Commission's initial consideration of this issue, but the implementation of direct access has revealed problems in applying this methodology. Edison is not alone in this realization. For example, the Staff sponsored testimony by Mr. Stanton, who recognized several limitations in using actual contracts, and Mr. Carlson, who addressed the pros and cons of alternative market price indicators (Staff's initial brief, pp 13-16). MIPPA also recognizes the inherent difficulties in trying to estimate the market clearing price by using actual diverse, and complex transactions (MIPPA's initial brief, pp 3, 7-8). Mr. La Vere testified that "the price that Detroit Edison can obtain for the actual power released due to ROA is the appropriate value to utilize" (4 T 337). He explained: "The revenue Edison receives for power sold may be significantly different from the ultimate customers' price" (4T 340). Therefore, although the MCP at the retail level is useful in determining the impact of ROA on <u>the customer</u>, the generation level MCP is the only appropriate price to use when determining the impact <u>on Edison</u>.

Mr. Padgett explained Edison's proposal that a pro-rata share of average system resources no longer needed to serve bundled customers be sold to participants in the Electric Choice program. The proceeds from the sale would help provide an indicator of market clearing price in Michigan, and would also more accurately identify the value of resale mitigation (Edison's initial brief, p 54; 5T 885-86; see also Edison's initial brief, p 50; 5T 880-81).

Mr. Padgett further explained that Edison does not support the use of a market

clearing price formula for the 2002-2007 transition period, due to the existence of too many unresolved policy issues (Edison's initial brief, pp 51-55; 5T 881-87). Instead, Edison proposes an alternative net loss market true-up procedure, as explained by Mr. Falletich (Edison's initial brief, pp 80-82; 4T 373-76).

C. Calculation Of Stranded Costs For Fermi 2 Capital Additions.

Mr. VanHaerents explained that with the entire Fermi asset determined to be stranded by the Commission, investment additions are also stranded. In Case No. U-11726, all parties used $20 million annually as Fermi additions. He used this same amount as a placeholder (estimate) for future Fermi additions in this case. He went on to explain the amortization of the Fermi investment additions (Edison's initial brief, p 57); 4T 174; Exhibit ADE-5, lines 3 and 4).

The Attorney General (initial brief, pp 45-46) and Energy Michigan (initial brief, p 27) oppose Edison's position with arguments that lack relevance. They do not contest the fact that Edison will make the planned expenditures in Fermi 2, which is clearly stranded. Edison has a continuing obligation to serve, so the incremental capital is not imprudent. Edison must be able to recover these investments in some way. Even ABATE recognizes this fact, arguing only that the additions should be amortized over the life of the Fermi 2 plant instead of through the year 2007 (ABATE's initial brief, pp 21-22). As explained above, the record fully supports Edison's proposal to amortize the Fermi 2 additions in accordance with the Commission's decision in Case No. U-11726.

D. Calculation Of Stranded Costs For Other Generation Related Regulatory Assets.

Mr. VanHaerents explained that Edison seeks recovery of stranded costs for other generation related regulatory assets that include:

(1) Unamortized loss on reacquired debt;

(2) Recoverable income taxes (FAS 109); and

(3) Other postretirement benefits transition obligations (FAS 106)

(Edison's initial brief, pp 57-62; 4T 175-82; Exhibits ADE-5 and ADE-6, lines 8, 10 and 12). The Attorney General asserts that a further explanation is needed (Attorney General's initial brief, p 45). This assertion lacks merit, because Edison's proposal is fully supported by detailed explanation on the record, as explained above.

Energy Michigan contends that the unamortized loss on reacquired debt should not be included in stranded costs (Energy Michigan's initial brief, pp 27-28). Energy Michigan's contention lacks relevance and Edison's objects to Energy Michigan's mischaracterization of Mr. VanHaerents' testimony in an attempt to support that contention. There is no dispute regarding the existence and amount of the debt, which Edison is entitled to recover. Mr. VanHaerents explained that pursuant to its present amortization, there will be an unrecovered balance of $41.4 million on December 31, 2007. This unrecovered balance represents a generation-related regulatory asset that should be recovered on an accelerated basis similar to the Commission's treatment of Fermi 2 (Edison's initial brief, pp 58-59; 4T 175-77; Exhibits ADE-5 and ADE-6, line 8).

Energy Michigan contends that the accelerated and non-nuclear costs of FAS 106 and FAS 109 should not be included in stranded costs (Energy Michigan's initial brief, p 28). Energy Michigan's contention is based only on a mischaracterization of the testimony of Mr. VanHaerents, who provided a detailed explanation of Edison's proposal, which should be approved (Edison's initial brief, pp 59-63; 4T177-82; Exhibits ADE-5 and ADE-6, lines 10 and 12).

IV. CALCULATION OF TRANSITION AND IMPLEMENTATION CHARGES.

A. Edison's Revenue Requirements For The Stranded Costs Of PURPA Purchased Power Contracts.

MIPPA invites the Commission to insert $350 to $400 million in stranded cost recovery for PURPA purchased power contracts after 2007 (MIPPA's initial brief, pp 3-7). MIPPA's invitation should be declined as speculative and unnecessary.

Mr. Loeher explained that nothing needs to be done now with the above-market capacity costs forecasted after 2007 (the last year to collect stranded costs), even though the contract terms extend beyond 2007. The payments to PURPA projects beyond 2007 are not in jeopardy if the Commission does not take action now. The Commission can deal with the recovery of these costs as 2007 approaches and their amount becomes more certain (Edison's initial brief, pp 65-67; 4T 223-26). The Attorney General essentially agrees (initial brief, p 48), recognizing that (1) MIPPA's attempted analogy to Fermi 2 stranded costs is inaccurate; (2) the future is uncertain; and (3) there is no current basis for including such stranded costs in the true-up process.

V. THE APPLICATION AND DETERMINATION OF CUSTOMER CLASS SPECIFIC TRANSITION CHARGES FOR THE PERIOD 2002-2007, AND THE MECHANISM TO RECOGNIZE THE RECOVERY OF LOST MARGINS THAT MAY OCCUR AS A RESULT OF CUSTOMERS ELECTING DIRECT ACCESS ARE REQUIRED.

A. It Is Appropriate To Develop Transition Charges On A Customer Class Specific Basis.

Mr. Falletich explained that it is appropriate to develop transition charges on a customer class specific basis (Edison's initial brief, pp 73-79; 4T 362-73). ABATE essentially agrees (initial brief, pp 13-18). Only the Attorney General disagrees, asserting "that unless more accurate information is presented to support class specific surcharges, it is better to use a uniform surcharge" (Attorney General's initial brief, p 45). However, the Attorney General does not even allege that any of the information in the record supporting Edison's proposal is not "accurate." The Attorney General also does not offer any support for her contrary position. The Attorney General further asserts that "class specific surcharges may extend or expand erroneous cost allocations in base rates", yet she does not claim that any such misallocation actually exists, and she admits that she has no basis to know of any (Attorney General's initial brief, p 45). Therefore, the Attorney General's arguments constitute unsupported speculation that should be disregarded.

B. Edison Should Recover Its Lost Margins From Its Direct Access Customers.

Mr. Falletich illustrated Edison's lost margin exposure, which will have to be recovered. The lost margins are appropriately recoverable from Edison's direct

access customers, since the Commission has determined that a direct access program should have no impact on bundled tariff customers. Therefore, Mr. Falletich proposed a true-up for lost margins during the 1999-2001 phase-in and the 2002-2007 transition period (Edison's initial brief, pp 78-82; 4T 372-76).

The Attorney General (initial brief, p 46) and ABATE (initial brief, pp 22-23) assert that Edison's position is anti-competitive and will essentially stop all retail competition. These inflammatory and exaggerated contentions are unpersuasive. The Attorney General and ABATE mischaracterize Edison as attempting to obtain additional profits through the establishment of an uneven playing field. In fact, the playing field is already tilted against Edison, because Edison will remain a regulated utility that is obligated to provide electricity to customers who choose to continue receiving bundled service. Edison's customers will have an economic incentive to choose direct access, depending on the differences between their bundled rates and the generation rates that power marketers offer through various competitive scenarios. Edison does not agree with the assertion that the inclusion of lost margins removes all savings. This assumption is based on average class numbers, not on analysis of individual customer savings. Individual customers, because of size, load characteristics, access to market, development of new product services, ability to aggregate, and bundle services differently, will clearly see savings under direct access.

VI. THE STAFF'S TRUE-UP PROPOSAL SHOULD BE REJECTED.

The Staff supports an alternative true-up methodology that was presented by Mr. Celio (Staff's initial brief, pp 16-17; 5T 924-27; Exhibit S-53). Although Mr. La Vere testified to numerous flaws in the Staff approach, the Staff proposal for recognizing the Impact of Resold Capacity alone demonstrates why the approach should be rejected. As Mr. La Vere testified, Edison would not be allowed to recover any fixed or variable costs for capacity displaced by ROA losses above growth (4T 341). If, as the Commission ordered, only above market costs can be stranded, then only above cost revenue should be considered potentially available to offset the above market costs (4T 342). The existing sharing mechanism includes the benefits of selling at market prices above full cost. Therefore, the appropriate netting is already being included. (4T 342). It is unreasonable to suggest as the Staff's proposal does, that Edison should be required to use any funds from a sale that does not cover full fixed and variable costs to reduce stranded costs (4T 347).

Edison previously recounted Mr. La Vere's testimony that the Staff's proposal is defective so it should not be used. Mr. La Vere also made several corrections to that methodology, which would be appropriate if the methodology were used. He concluded, however, that even with these corrections, Edison's methodology is still superior so it should be used (Edison's initial brief, pp 82-96; 4T 335-50A; Exhibits ADE-12, ADE-13, ADE-14, ADE-15).

VII. EDISON SHOULD CONTINUE TO PROVIDE METERING AND BILLING SERVICES.

ABATE recommends that the Commission investigate whether it would be economically advantageous to have metering and billing services competitively bid (ABATE's initial brief, p 27). This shallow recommendation ignores the record. Mr. Gessner provided detailed testimony supporting Edison's recommendation to continue providing these services, at least until the transition to competitive bidding is successfully completed. The complexity, risks, costs and regulatory oversight associated with implementing third-party metering and billing outweigh any purported benefits (Edison's initial brief, pp 96-110; 5T 624-39). Mr. Gessner went on to explain that competitive metering offers no guarantee of savings to Electric Choice customers, and would probably raise the overall costs of implementing Electric Choice by reducing economies of scale (Edison's initial brief, p 110; 5T 642).

VIII. THERE IS NO MERIT IN ENERGY MICHIGAN'S PROPOSAL TO MAKE METERING AND BILLING COMPETITIVE SERVICES FOR MICHIGAN ELECTRIC CUSTOMERS.

Energy Michigan contends that customers should be able to choose their own meter providers, or that metering systems installed by utilities should provide unrestricted access to free data. Energy Michigan attempts to support its contentions by mischaracterizing Mr. Gessner's testimony, and inaccurately alleging that Edison (1) restricts access to customers, and (2) has a cost advantage over competitors because only Edison can obtain real time meter data for free (Energy Michigan's initial brief, pp 2, 8-10).

Mr. Gessner explained that Edison uses industry standard equipment and software. Real time data, in the form of meter pulses, is currently available to customers or their suppliers at no additional charge. Other options are also available and being considered. Edison has no competitive advantage, since Edison is not a competitor under Electric Choice. Edison is justifiably concerned about the problems involved in using foreign meters. If customers desire certain additional services, then Edison should be able to charge for the value of those services. There is no reasonable basis to disassemble the stable, reliable infrastructure that is essential to introduce competition to the generation market (Edison's initial brief, pp 110-13; 5T 624, 643-47).

IX. THE COMMISSION HAS AUTHORITY TO APPROVE THE RATES, TERMS AND CONDITIONS OF A VOLUNTARY OPEN ACCESS PROGRAM.

ABATE reasserts its ongoing challenge to the Commission's jurisdiction and authority to regulate a voluntary open access program (ABATE's initial brief, pp 7-12). The MPA/MACS questions the Commission's jurisdiction, but does not directly challenge it (MPA/MACS initial brief, pp 1-3).[2] The Commission rejected ABATE's position in its August 17, 1999 Opinion and Order in Case Nos. U-11290; U-11449; U-11451-54; and U-11456. The Commission's decision is in accordance with

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[2]The remainder of the MPA/MACS initial brief essentially challenges the entire nature of these proceedings and all of the Commission's decisions leading up to this point. The MPA/MACS asserts inaccurate, inflammatory and speculative statements that are unsupported by any proof or legal authority. These statements are not even within the realm of reasoned discussion of the relevant issues, and certainly do not provide any basis for the Commission to deviate from the ongoing process of implementing direct access in Michigan.

Consumers Power Co v Public Service Comm, 460 Mich 148; 596 NW2d 126 (1999) (distinguishing between the Commission's lack of authority to mandate a private utility to provide a new service of retail wheeling, and the Commission's traditional ratemaking authority to regulate such a service if a utility voluntarily offers it), and Detroit Edison Co v Public Service Comm, 221 Mich App 370; 562 NW2d 224 (1997), lv den 458 Mich 864 (1998) (upholding the Commission's approval of rates for Edison's demand side management program). Moreover, as the Staff recognizes (initial brief, pp 9-10), the Court of Appeals recently affirmed the Commission's approval of Consumers' application to provide a voluntary gas customer choice program (Residential Ratepayer Consortium v Public Service Comm, __ Mich App ___; ___ NW2d ___ (1999)).

ABATE's collateral attack on the Commission's August 17, 1999 Opinion and Order should be rejected. ABATE's remedy for its dissatisfaction with the Commission's decision is an appeal to the Court of Appeals, which ABATE is pursuing together with the Attorney General (Case Nos. 222199 and 222200). ABATE's arguments are beyond the scope of this proceeding and fully addressed elsewhere (for example, in Edison's brief on appeal in Court of Appeals Nos. 222119, 222200); however, Edison feels compelled to briefly respond on the merits.

ABATE (initial brief, pp 8-9) contends that the Commission has no authority to regulate or approve voluntary retail wheeling service. This contention lacks merit. In Consumers Power Co, the Supreme Court explained that, although retail wheeling

has a ratemaking component, the challenged portion of the Commission's order was not within the Commission's ratemaking power, because "the PSC attempts to compel utilities to provide a new service-the transmission of electricity from a third-party provider's system to an end user who is not directly connected to that system ... Absent a statute clearly conferring on the PSC the power to order such service, <u>the decision to provide the service lies within the province of the utility's management</u>, not the PSC." 460 Mich at 159 (emphasis added).

ABATE attempts to confuse the issues by framing them in terms of "subject matter jurisdiction," and arguing that a party cannot confer jurisdiction by consent (ABATE's initial brief, pp 9-11). The "subject matter" of retail wheeling regulation plainly belongs before the Commission, if the utility's management decides to offer this service. Any doubt on this point was removed by the Supreme Court's above-quoted discussion. Edison's management has now decided to provide voluntary retail wheeling service, and the Commission may therefore exercise its authority to approve the rates, terms and conditions for that service.

ABATE further contends that additional legislation is needed and quotes the Supreme Court out of context in an attempt to support its contention (ABATE's initial brief, p 11). The Court's analysis concerned the absence of any statute that empowered the MPSC to <u>order</u> retail wheeling. The Court explained that without such a statute, only a utility's management may decide whether to offer the new service. 460 Mich 159. The Court's decision is in accord with the controlling

principle that a utility owns its property and retains the ability to manage it. See, e.g. 460 Mich at 158. Thus, there is no merit in ABATE's contention that even voluntary retail wheeling cannot occur without additional legislation. Edison did not need a new statute to offer retail wheeling service, since it has always possessed the power to make that management decision.

ABATE's final argument (initial brief, p 12) is that a truly voluntary service cannot be irrevocable. This argument misconstrues the Supreme Court's decision and the Commission's Order. The Commission explained that after a utility voluntarily offers retail wheeling service, the Commission can regulate the existing service that is being provided to customers (August 17, 1999 Opinion and Order, pp 29-30).

RELIEF

The Detroit Edison Company respectfully requests that the Commission:

A. Approve recovery of prudently-incurred implementation costs as described in the testimony and exhibits of Edison's witnesses;

B. Approve the authorization of a .023¢/kWh surcharge to be collected from all customers for the recovery of implementation costs;

C. Approve Edison's plan for future implementation spending;

D. Establish a methodology to recover post first quarter 1999 prudently-incurred implementation costs;

E. Approve Edison's current stranded cost balances and components and transition charge level as described in the testimony and exhibits of Edison's witnesses;

F. Approve Edison's ability to recover prudently-incurred stranded nuclear investment additions, during the Commission approved transition period, in the true-up methodology;

G. Approve the true-up methodology proposed in the testimony and exhibits of Edison's witnesses;

H. Enter an order authorizing Edison's reasonable and prudent proposals resolving policy issues raised by the Commission such as, but not limited to, determination of Edison's billing and metering rights and obligations in a restructured electric utility industry; and

I. Approve any further or additional relief requested in the Company's Application, testimony or exhibits.

Respectfully submitted,

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