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February 11, 2000

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Wideman:

Re: <u>MPSC Case No. U-11955/56</u>

I am enclosing for filing an original and 4 copies of the Attorney General's Reply Brief along with a proof of service. A copy of this brief is also being electronically filed.

Sincerely,

Donald E. Erickson

Donald E. Erickson
Assistant Attorney General

c All Parties
sld/cases/U-11955/56

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 approval of stranded cost true-up methodology, and for other relief _______________________________________/	Case No. U-11955
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

Attorney General's Reply Brief

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Dated: February 11, 2000

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I. <u>Introduction</u>

In the Attorney General's Initial Brief, she has presented her positions on the disputed issues in this case. In this reply brief, the Attorney General will present responses to various arguments presented in the briefs submitted by the other parties, but will not respond to each and every argument.

In addition, the Michigan Supreme Court's opinion in *Consumers Power Co v PSC*, 460 Mich 148; 596 NW2d 126 (1999), effectively overrules the Michigan Public Service Commission's (MPSC or Commission) orders in U-11290, et al. dated June 5, 1997, October 29, 1997, January 14, 1998, February 11, 1998, and March 8, 1999. Therefore, the arguments in the Attorney General's briefs in the captioned cases implicitly assume only for the sake of argument that the combination of the Commission's order dated August 17, 1999, and the acceptance letters filed by Consumers Energy Company (CECo) and The Detroit Edison Company (DECo) have lawfully revived the terms and conditions of the earlier MPSC orders.

II. <u>Replies to CECo's Brief</u>

The CECo's brief requests the MPSC to adopt CECo's positions and concludes with the following requests:

> The Company requests the Commission enter an Order in this case (i) granting the Company authority to begin recovering implementation costs of $19.9 million, (ii) confirming that the Company should proceed to develop systems which will allow provision of retail open access service to all customers by January 1, 2002, or if the Commission no longer believes such expenditures are appropriate so indicating, (iii) concurring that areas of projected implementation expenditures and projected cost levels, provided prudently incurred [sic], will be recoverable, (iv) approving the stranded cost true-up methodology proposed by the Company, (v) finding that metering and billing functions should be limited to utilities, and (vi) providing for such additional relief as is just and reasonable.

The Attorney General opposes aspects of CECo's proposals for the recovery of implementation costs, opposes CECo's request for approval of a specified budget level for future implementation costs, and opposes aspects of CECo's proposals for a stranded cost true-up methodology.

A. <u>Replies Concerning CECo's Recovery of Implementation Costs</u>

Pages 2-24 of CECo's brief describe CECo's proposed recovery of implementation costs, and the Attorney General responds to CECo's various implementation cost arguments as follows.

1. <u>CECo's Reliance Claim</u>

Throughout its implementation cost arguments CECo suggests that the Commission must allow recovery of implementation costs which CECo incurred through 1998 because CECo incurred those costs in reliance upon the MPSC's prior orders. These arguments seem to imply that some sort of sub rosa agreement exists allowing CECo to recover all expenditures it has made to date. Even if CECo does not claim, as its arguments imply, that the MPSC has agreed to recovery and even though CECo's brief stops short of presenting an explicit description of specific legal theories, CECo's brief presents a *sub silentio* argument that the MPSC must allow full recovery of the costs identified by CECo because some sort of detrimental reliance has created an implied contract or an equitable estoppel. The Attorney General contends that there is no valid legal basis for CECo's implied arguments.

The Michigan Supreme Court said in *Harsha v Detroit*, 261 Mich 586, 594; 246 NW 849 (1933) (citations omitted):

> There can, in the nature of things, be no vested right in an existing law which precludes its change or repeal, nor vested right in the omission to legislate upon a particular subject which exempts a contract from the effect of subsequent legislation upon its subject-matter by competent legislative authority.

Accord, Lahti v Fosterling, 357 Mich 578, 589; 99 NW2d 490 (1959). *See also, Stott v Stott Realty Co,* 288 Mich 35, 44-45; 284 NW 635 (1939)(holding that there can be no vested right in statutory privileges and exemptions). "Courts usually have concluded that a state contractual obligation arises from legislation only if the legislature has unambiguously expressed an intention to create the obligation." *In re Certified Question,* 447 Mich 765, 777-778; 527 NW2d 468 (1994). Furthermore, ratemaking decisions by the MPSC must be construed as a statute of like character would be construed. *Michigan Bell Telephone Co v PSC,* 315 Mich 533, 547; 24 NW2d 200 (1946). In light of these legal authorities and in the context of the MPSC's prior electric restructuring orders, CECo has no vested right to recover the historical costs which it has identified in testimony and exhibits and now claims as recoverable implementation costs.

On the other hand, the State as well as individuals may be subject to estoppel, *Oliphant v Frazho,* 381 Mich 630, 638; 167 NW2d 280 (1969), but a party claiming an estoppel must prove three elements:

1. The party must prove that the other party by representations, admissions, or silence, intentionally or negligently, induced the party to believe certain facts.

2. The party must prove that he, she, or it justifiably relied upon this belief.

3. The party must prove the he, she, or it will be prejudiced if the other party is permitted to deny the existence of the facts believed.

> *Van v Zahorik,* 460 Mich 320, 335; 597 NW2d 15 (1999), and In *re Yeager Bridge Co,* 150 Mich App 386, 394; 389 NW2d 99 (1986).

CECo has not proved these elements of estoppel. CECo has not shown any representation, admission, or silence by the MPSC which would have justifiably led CECo to believe either (1) that the MPSC had found the costs identified in this case would not have been incurred absent CECo's implementation of direct access service or (2) that these costs were prudently incurred. The mere fact that the MPSC did not previously reject CECo's claims for recovery of implementation costs does not create any justifiable reliance for purposes of this case. *Tomlin v Dep't of Social Services,* 154 Mich App 675, 692; 398 NW2d 490 (1986).

CECo's witnesses may say that CECo would not have incurred the identified costs in the absence of direct access service and that those costs were reasonably and prudently incurred, but the MPSC made it clear that approval for recovery would be based upon a future review in true-up proceedings like the captioned cases. Therefore, no estoppel was created. In any event, the MPSC's prior orders addressed future recovery of implementation costs and did not make any representation about existing facts, so there is no valid estoppel. *Lumber Village Inc v Siegler,* 135 Mich App 685, 697-698; 355 NW2d 654 (1984), and *Attorney General v Ankersen,* 148 Mich App 524, 544-545; 385 NW2d 658 (1986).

2. <u>Recoverable Amount of Implementation Costs</u>

Mr. King testified on behalf of the Attorney General, and he addressed recovery of implementation costs (5 T 708-715). He said that implementation cost recovery charges should include only:

- Costs that are incremental specifically to the direct access program
- Costs that would not also be incurred in equal or greater amounts by the utilities' generating competitors
- Costs that do not inure to the competitive benefit of the utility as a provider of generated power, and
- Start up costs that are incurred only once and will not continue (5 T 708).

He said that costs should not be included if the utility would for some other reason probably have adopted the program anyway; for example, DECo is including costs to install Automatic Meter Reading (AMR), and many utilities are adopting AMR for reasons wholly unrelated to retail direct access (5 T 709-710). CECo's labor costs for ISO and RTO planning represent costs for employees already on the payroll, and even though some of those people's work was reassigned, CECo's testimony does not say that any net new employees were added (5 T 710). With regard to costs of contracting with marketers, suppliers, or retail customer for direct access service, the competitors or their customers will incur similar costs for their side of the transaction; therefore, it is not reasonable to impose surcharges upon the other side for DECo's costs (5 T 711). The nature of education costs should also be carefully examined before recovery is allowed (5 T 712). With regard to implementation costs, ongoing costs should not be treated as recoverable implementation costs because utilities will need to incur those costs to provide service after the transition period, and such costs should not be treated as a transition cost (5 T 712-713). Finally, to the extent that implementation costs are to be recovered, they should be charged only to direct access customers because only those customers who actually benefit from the new system should pay the costs of implementing it (5 T 714).

Mr. King's analysis is consistent with the fundamental conditions for implementation cost recovery which were established by the MPSC's prior orders. Page 11 of the Commission's June 5, 1997, Opinion and Order in U-11290 concluded that stranded cost recovery needs to be clarified and supplemented with a true-up process. Page 12 said that the Commission is committed to ensuring that customers who choose to remain sales customers of the existing utility are not harmed by the change. Pages 12-13 concluded that imprudent costs will not be included in determining stranded costs. Specifically, with regard to costs which would not be incurred absent a direct access program, pages 12-13 concluded (1) that it would be inappropriate to disallow recovery of prudently incurred costs, (2) that it would be inappropriate to require customers who do not wish to participate in direct access to bear these costs, and (3) that such costs should be included in the transition charge if they are prudently incurred.

Page 18 of the MPSC's "Rehearing on Restructuring" dated January 14, 1998, concluded:

> If a utility incurs any implementation costs for restructuring, those costs should be reviewed for prudence in the annual true-up proceeding and stranded costs adjusted appropriately.

In conclusion, there are two basic conditions for recovery of so-called implementation costs. First, a utility must prove that that implementation costs would not have been incurred absent a direct access program. Second, even if costs would not have been incurred absent a direct access program, those costs must have been prudently incurred, i.e., recovery rates must be just and reasonable.

There is conflicting testimony regarding the recoverability of the costs identified by CECo as implementation costs. But, even if there was no conflicting testimony, uncontradicted testimony may be disbelieved. *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881), and *S C Gray Inc v Ford Motor Co*, 92 Mich App 789, 804 (1979). In other words, the ultimate burden of persuasion remains on CECo. *In re Detroit Edison Co,* MPSC Case No. U-8020-R, Opinion & Order dated July 9, 1987 [sic July 16, 1987], pp 16-17. The Attorney General contends that CECo has not met its burden of persuasion regarding recovery of all of the $19.9 million identified by CECo.

Pages 4-19 of CECo's brief argue that CECo prudently incurred $19.9 million in 1997-1998 implementation costs, including $516,000 of carrying costs, that the prudence of these costs was not challenged by any witness, and that the disallowances recommended by Staff witness Gerald Geml would constitute retroactive ratemaking. The Attorney General disagrees.

Taking CECo's arguments in reverse order, lines 12, 13, 14, and 15 of Exhibit S-48 identify three Staff disallowances to CECo's reported 1997-98 implementation costs. Those disallowances total $4,529,000 and result in recoverable costs totaling $15,376,000 instead of $19,905,000 (5 T 831-832). Mr. Geml proposed a disallowance for labor costs because CECo's actual O&M expense and number of employees were less than the levels in CECo's last rate case, so the resulting costs are being recovered already and are not incremental (5 T 831). In addition, he proposed disallowing severance pay for downsizing staffing at the Karn, Weadock, and Campbell plants because some of the costs preceded the June 5 order and because those costs were incurred to increase efficiency which CECo had a duty to achieve independent from implementation of open access service (5 T 832). Mr. Geml's points are simple. Either the disallowances recommended by him represent costs which are not implementation costs, or the treatment of those costs as implementation costs would create a double recovery of costs. The universal test of utility rates is that they must be just and reasonable. *Northern Mich Water Co v PSC*, 381 Mich 340, 351; 161 NW2d 584 (1968). Therefore, the Attorney General contends that the MPSC should adopt Mr. Geml's disallowances at a minimum.

Mr. Gilzow filed rebuttal testimony responding to the labor disallowances recommended by Mr. Geml (4 T 523-526). He testified that the work described by his direct testimony would not have been performed if not for the ROA implementation program and that the expense reflects in-house expertise to develop the programs (4 T 523). He also testified that CECo used existing employees and backfilled their positions or a chargeback procedure to perform implementation services (4 T 524-526).

CECo's rebuttal does not truly refute Mr. Geml. Mr. Gilzow did not deny that CECo's actual 1997-98 O&M expenses and number of employees were below the levels used in the last rate case; therefore, CECo has not demonstrated that the amounts identified by Mr. Geml have not been already recovered and are not incremental costs. Mr. Gilzow did not deny that some of the costs were incurred before June 5, 1997, that the severance pay costs were incurred to improve efficiency at the Karn, Weadock, and Campbell plants, or that CECo has an ongoing duty to minimize its costs by making efficiency improvements. In other words, the Staff's disallowances represent costs which do not actually fall within the type of implementation costs defined by the MPSC's prior orders.

Turning to CECo's argument that no witness challenged the prudence of the costs identified by CECo's witnesses, that argument begs the question. Mr. Waits (4 T 150-160) and Mr. Gilzow (4 T 469-504) described the nature of the activities which the $19.9 million funded and said those costs were prudently incurred, but those witnesses did not offer any testimony indicating how CECo minimized the costs of its activities or how those costs were lower than alternative means of performing those activities. Presumably, the Commission intended to allow recovery of costs CECo will incur to provide direct access service only to the extent incurring those costs would place CECo at a disadvantage relative to alternative suppliers of generation but not to the extent that recovery would inure to the competitive benefit of CECo (see 5 T 708). Furthermore, the Commission must be careful in allowing recovery of so-called implementation costs because recovery of those costs increases the total cost of competitors' services and creates a barrier to competition. In conclusion, CECo has at best justified the goals of its activities without demonstrating why the level of cost recovery identified will result in just and reasonable rates. The MPSC should not allow recovery of more than $19.5 million minus the $4.5 million Staff disallowances.

Turning to CECo's retroactive ratemaking argument (Brief, pp 17-18), that is a red herring. Mr. Geml is not proposing a retroactive reduction in base rates, he has simply stated that allowing CECo to recover costs which it is already recovering would represent a double recovery. CECo is proposing the rate change, i.e., an implementation cost surcharge. If there is any unlawful retroactive ratemaking, it comes from allowing CECo to defer so-called implementation costs on its books and to recover them via a prospective surcharge.

3. Recovery of Implementation Costs from All Customers

Pages 19-22 of CECo's brief argue that the MPSC should authorize recovery of CECo's 1997-1998 implementation costs through a uniform surcharge of $0.000580 per kWh applied to all customers. Paragraph 8 of CECo's application proposed an implementation charge of $0.000606 per kWh allocated to all customers, or in the alternative, Paragraph 9 of CECo's application proposed an implementation surcharge of $0.00128 per kWh only to the bills of ROA customers.

As Mr. Geml noted, the recovery of implementation costs must come from open access customers pursuant to the MPSC's prior orders (5 T 833). Page 12 of the June 5, 1997, Opinion and Order in U-11290 said that the Commission is committed to ensuring that customers who choose to remain sales customers of the existing utility are not harmed by the change and that it would not be equitable to increase rates for remaining customers to pay for costs associated with customers who choose direct access. Page 11 of the October 29, 1997, Opinion and Order in U-11454 concluded that implementation costs related to restructuring should be reviewed in the annual true-up. Page 18 of the January 14, 1998, Rehearing on Restructuring confirmed in relevant part:

> If a utility incurs any implementation costs for restructuring, those costs should be reviewed for prudence in the annual true-up proceeding and stranded costs adjusted appropriately.

The Attorney General contends that the Commission cannot now reverse its prior rulings.

CECo argues that imposing a charge only upon direct access customers will greatly increase the impact upon them. That may be true, but the alternative is to force captive sales customers to subsidize these transition costs for the customers who reap savings from direct access service. CECo argues that all customers will be eligible for direct access service. At best, this is an insincere argument. CECo does not argue that there is enough alternative capacity available to serve all customers and save them money, so all customers cannot benefit from direct access service. The Commission should not adopt CECo's "let-them-eat-cake" analysis as the basis for reversing its prior rulings and charging implementation costs to all customers.

4. CECo's Future Implementation Costs

CECo expects to incur implementation costs totaling $178.3 million from 1999 through 2002 (Exhibit ACE-34). CECo is not seeking recovery of those estimates in this case, but CECo is seeking the MPSC's concurrence that those levels are appropriate (4 T 498). Pages 22-25 of CECo's brief affirm these positions. However, CECo's arguments reflect contradictory positions. If the MPSC approves the future cost levels identified in this case, then when CECo proposes specific surcharges in future annual true-up cases, CECo will argue that recovery of any amounts up to those levels has been in fact already approved and that the only future issue concerns the mechanics of how CECo will recover the approved costs. The specifics of CECo's estimated implementation costs are unclear. Mr. Gilzow has not indicated what if any existing costs could be avoided in the future because of the replacement systems and labor identified as creating direct access implementation costs. CECo's estimates have not been fully explained, except in general terms describing the nature of the related activities. Labor and outside services are the dominant factors. How many hours will $170 million buy in four years? Why is it this amount needed? Have projected materials and equipment been competitively bid? These are questions for the MPSC to verify via future Staff audits and true-up cases without writing a blank check for the projected amounts in the captioned cases. The MPSC has provided for annual true-up reviews to consider implementation costs, and the Attorney General contends that approval of future implementation cost should be deferred to future annual true-up cases.

B. **Replies Concerning CECo's True-up Proposals**

Pages 25-30 of CECo's brief summarize CECo's true-up proposals. Since CECo implemented no direct access service in 1998 and since CECo will be filing a 1999 true-up case later this year, the issues concerning CECo's proposals relate to policy matters, not actual implementation.

As Mr. Celio has testified, the Commission has indicated that it intended the annual true-up of stranded costs would take into account: "(1) variations in sales volume . . . (2) the amount of stranded cost bids prior to 2002, (3) a review of prudence, and (4) the market price of power determined by the actual prices paid by open access customers," and in addition the Commission has indicated that it does not intend to restrict or eliminate any issues such as mitigation (5 T 923). Furthermore, Mr. King responded to the evidence presented by CECo and DECo regarding the true-up mechanism and transition charges (5 T 685). Mr. King concluded that the adjustments to transition charges proposed by CECo and DECo will negate any potential savings from retail direct access service and virtually guarantee the total failure of the Commission's efforts to develop a vibrant competitive market (5 T 685). To correct these problems, the first thing which must be done is to net positive financial benefits to the utilities from moving to competition against the negative stranded costs (5 T 686).

Most of what needs to be done should be addressed in the context of actual implementation information in subsequent true-up cases. However, with regard to the policies proposed by CECo, the Attorney General disagrees with portions of CECo's arguments.

Page 26 of CECo's brief argues that the MPSC's orders in U-11941 and U-11180-R directly affect the operation of the stranded cost true-up mechanism. That is wrong. The orders in U-11941 were issued without any opportunity for hearings; therefore, as the MPSC admitted in those orders, they cannot result in any increase in the costs of service for CECo's customers. Although U-11180-R was a contested case, the extension of the frozen rates in that case was not based upon the evidentiary proceedings. Furthermore, the action in that case should not affect the true-up process. The MPSC concluded that the frozen rates will enable CECo to collect via base rates no more than the amounts being collected via existing rates. The MPSC did not decide that the level of stranded costs, or adjustments to stranded cost recovery via the MPSC-approved true-up mechanism, would be affected. Therefore, CECo's argument (Brief, p 27) that the true-up mechanism in Exhibit ACE-21 should be limited to nuclear plant and regulatory assets is not valid. If a ratio method is appropriate, then it is equally appropriate for recovery of stranded costs associated with stranded costs from the MCV purchased power agreement.[1]

Pages 27-29 of CECo's brief argue that adjustments for the actual market clearing price should be based upon CECo's actual wholesale revenues. The Attorney General contends that this conflicts with the MPSC's previous orders adopting retail prices as the benchmark. Also, the underlying basis for using retail market clearing prices is that if CECo's costs were equal to or less than those prices, then CECo would not lose any load to competition and would not incur any stranded costs. Compensating CECo based upon wholesale revenues recovers more than costs stranded by losing load to competition.

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[1] Of course, as the Commission has acknowledged, stranded costs are being recovered two ways: (1) via base rates charged to captive customers and (2) via transition charges to direct access customers. Therefore, ultimately the Commission will need to address the potential for over recovery of stranded costs from captive customers as well as via transition charges.

Page 29 of CECo's brief argues that the MPSC should make an adjustment for stranded costs not recovered via the bidding process. The Commission has already decided that some such adjustment should be made, but it is premature to approve a specific mechanism in this case. There are no known lost loads or prices to measure in this case, and any bid adjustment mechanism should also take into account sales variations.

Page 29 of CECo's brief argues that savings from the difference between estimated MCV costs and actual PECO costs should be credited as a stranded cost reduction as shown in Exhibit ACE-27. There are two errors in this analysis. First, this analysis treats the residual PECO costs as the equivalent of the MCV costs, but that is not true. After CECo makes residual cost payments to PECO, CECo will need to acquire replacement capacity and energy; thus, a net increase in costs is likely to result, not a savings. Second, even if replacement power costs do not result in a net cost increase, the calculation in Exhibit ACE-27 flows only to direct access customers even though a majority of the MCV costs will be probably be recovered from captive sales customers, not direct access customers. Therefore, CECo's mechanism fails to provide a means to credit sales customers, i.e., CECo keeps the majority of the savings. Thus, CECo's method is flawed and the issue should be deferred.

Finally, CECo's proposed mechanisms ignore so-called stranded cost benefits. In this case, the MPSC should not foreclose inclusion of future benefits as offsets in future annual true-up cases.

C. <u>Replies Concerning Metering and Billing Services</u>

Pages 30-33 of CECo's brief present CECo's arguments concerning why the MPSC should authorize continuation of CECo as the exclusive metering and billing service provider. Various witnesses have taken conflicting positions regarding who can provide metering and billing services (See 5 T 624-640, 4 T 278-279, 4 T 306, 5 T

794-800, and 5 T 642-647). The Attorney General takes no position with regard to this issue.

III. Replies to DECo's Brief

Pages 113-114 of DECo's brief request the following relief:

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 transition charges;

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.

As explained below, the Attorney General opposes the implementation cost recovery proposed by DECo as well as DECo's proposal to charge implementation costs to all customers. The Attorney General contends that DECo's proposals regarding recovery of estimated future implementation costs are premature and inconsistent with the MPSC's prior orders. The Attorney General contends DECo's proposals for approval of stranded cost balances above those approved by the MPSC in its January 14, 1998, Rehearing on Restructuring violates principles of res judicata or law of the case and so fundamentally modify the terms and conditions of electric restructuring agreed to by DECo in Case No. U-11726 and in its September 1, 1999, letter in Case Nos. U-11290, et al. that approval of increased and new stranded cost balances proposed by DECo would destroy competition and would be unreasonable and unlawful. The Attorney General also opposes DECo's true-up proposals as discussed below.

A. <u>Replies Concerning DECo's Proposed Implementation Costs</u>

Pages 5-36 of DECo's brief address DECo's implementation cost proposals. Pages 67-68 of DECo's brief mention surcharging in 2000, while page 114 identifies the related amount which DECo is proposing for 2000. The Attorney General responds below to various DECo arguments concerning implementation costs.

1. <u>Recoverable Amount of Implementation Costs</u>

DECo identified implementation costs of $7,534,389 for 1998 and $4,083,923 for the first quarter of 1999 (5 T 787 and Exhibits ADE-45 & ADE-46). This totals $11,618,312, and DECo is proposing to recover this amount in the year 2000 via a $0.023¢/kWh surcharge (Exhibits ADE-10, line 18 and ADE-8, line 5).

Pages 5-36 of DECo's brief and the related portions of testimony from Mr. Gessner and Mr. McCormick are long on the description of DECo's past and future implementation activities, but they are short on meaningful explanations of why the level of costs identified are incremental, why the costs would not have been incurred absent direct access service, and why the costs have been and will be prudently incurred.

Pages 4-9 of this reply brief discuss general principles related to recovery of so-called implementation costs in the context of CECo's recovery requests, so the Attorney General will attempt to minimize repetition of those principles in this section by incorporating by reference that discussion for purposes of this section. DECo has not truly demonstrated that the level of implementation costs proposed by it for recovery qualify under the MPSC's definition of implementation costs, even if the described activities are transition activities. Furthermore, unanswered questions concerning how costs were minimized, what the costs have actually bought or will actually buy, and how they compare with available alternative means of implementing the transition to direct access service mean that DECo has not truly performed its burden of proof for recovery.

First, the Attorney General agrees with Mr. Geml's testimony that it would be appropriate to defer consideration of the $4,083,923 identified by DECo as costs for the first quarter of 1999 until the true-up case scheduled to begin in 2000 (5 T 833).

Second, even though Mr. Geml supported the principle of deferring 1999 amounts, his Exhibit S-47 mirrors DECo's 1998-1999 proposal. If the MPSC does not defer consideration of the amounts for the first quarter of 1999, the Attorney General supports both the 1998 and 1999 disallowances proposed by Mr. Geml. Line 8 on Exhibit S-47 presents Staff-recommended disallowances for 1998 and 1999 labor costs reported by DECo. These disallowances are based upon Mr. Geml's conclusion that those costs were not incremental costs (5 T 828-830). Lines 9 and 10 on Exhibit S-47 present Staff-recommended corrections to adjust the interest rate of 10.1% proposed by DECo to a 7% short-term rate similar to that used for PSCR process (5 T 830). The result is implementation costs totaling $6,921,040 for 1998 instead of

$7,534,389 for 1998 proposed by DECo and $3,658,792 for 1999 instead of $4,083,923 for 1999 proposed by DECo (5 T 830 and Exhibit S-47).

In conclusion, the Attorney General supports recovery of implementation costs totaling no more than $6,921,040 for 1998. Inserting that amount on line 21 of Exhibit ADE-9 in place of $11,618,000 would result in a surcharge of 0.0134¢/kWh on line 22 of Exhibit ADE-9 instead of 0.023¢/kWh. However, that surcharge assumes DECo's implementation costs should be imposed on all customers, not only on DECo's direct access customers, but as discussed below, the MPSC should impose implementation cost recovery only upon direct access customers.

2. <u>Recovery of Implementation Costs from All Customers</u>

DECo proposes recovery of implementation costs from all customers (4 T 221 and Brief, pp 67-68). However, as Mr. Geml noted, the recovery of implementation costs must come from open access customers pursuant to the MPSC's prior orders (5 T 833). Page 12 of the June 5, 1997, Opinion and Order in U-11290 said that the Commission is committed to ensuring that customers who choose to remain sales customers of the existing utility are not harmed by the change and that it would not be equitable to increase rates for remaining customers to pay for costs associated with customers who choose direct access. Page 11 of the Opinion and Order in U-11454 concluded that implementation costs related to restructuring should be reviewed in the annual true-up. Page 18 of the January 14, 1998, Rehearing on Restructuring confirmed in relevant part:

> If a utility incurs any implementation costs for restructuring, those costs should be reviewed for prudence in the annual true-up proceeding and stranded costs adjusted appropriately.

The Attorney General contends that the Commission cannot now reverse its prior rulings. If the Commission does so, it will be forcing sales customers to subsidize transition costs incurred to create savings for direct access customers.

3. DECo's Future Implementation Costs

Pages 28-29 of DECo's brief and Mr. Gessner identify future implementation cost for the last nine months of 1999 and for 2000 and 2001 totaling $108,857,000 (Exhibit ADE-37). Those estimates include indirect charges plus cost of capital charges. Although Mr. Gessner described DECo's implementation projects in detailed albeit broad terms, he did not truly explain how the estimated amounts are reasonable or what specifically in terms of hours of work or contract service and in terms of materials and equipment those dollars will buy. The MPSC has provided for annual true-up reviews to consider implementation costs, and the Attorney General contends that future implementation cost approvals should be deferred to future annual true-up cases. DECo's estimates have not been fully explained, except in general terms concerning the nature of the related activities. Labor and outside services are the dominant factors. How many hours will $108 million buy in four years? Why is it this amount needed? Have projected materials and equipment been competitively bid? These are questions for the MPSC to verify via future Staff audits and true-up cases without writing a blank check for the projected amounts in the captioned cases.

B. Replies to DECo's Overview Approach to Stranded Cost Recovery

Pages 36-37 of DECo's brief describe DECo's overview approach to stranded cost recovery and the true-up mechanism, and those arguments are based upon testimony and exhibits presented by Mr. Padgett. Essentially, Mr. Padgett and DECo are not proposing merely to implement the MPSC's prior orders, they are proposing to amend the rulings in the MPSC's prior orders. The MPSC should reject DECo's proposals as being in conflict with the prior rulings which DECo agreed to implement in Case No. U-11726 and again on September 1, 1999.

First, DECo is proposing recovery of the stranded costs previously identified and approved by the MPSC (5 T 862). Second, DECo does not want to offset market clearing prices against most of the categories of stranded costs identified by the Commission (5 T 862).[2] Third, DECo wants authority to include all customer load during the summer of 2000 in its power supply plans without any adjustment for load losses due to implementation of electric choice (5 T 863). Fourth, DECo does not agree with the market price true-up process developed by the Commission in its January 14, 1998, order (5 T 863). Indeed, DECo proposes to include costs beyond those identified by the Commission for the five basic categories (5 T 867). On the other hand, DECO is not requesting a true-up of stranded costs in this case (5 T 864).

With regard to mitigation credits to customers for the year 2000, DECo proposes to include potential electric choice load in its 2000 PSCR plan at incremental dispatch prices (5 T 874). Then, if DECo loses summer load to the electric choice program, DECo will sell the capacity on a wholesale basis (5 T 875 & 884-885) and credit PSCR customers, not for the actual revenues, but for the average cost of the PSCR capacity and energy which results from including all of the load in the PSCR dispatch process, i.e., what Mr. Padgett calls the "average slice" approach (5 T 875-876 and Exhibit ADE-49). By providing a credit to PSCR costs equal to the average PSCR costs, Mr. Padgett said the resulting average cost would remain the same (5 T 878 and Exhibit ADE-50). In addition, DECo would keep the difference between the actual revenue and the average-slice credit as a recovery of DECo's potential lost margin (5 T 880 and Exhibit ADE-51).

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[2] More specifically, DECo believes its recovery of the Fermi 2 regulatory asset ($2.8 billion + a $1.36 billion revenue requirement - Exhibit ADE-10, lines 3 & 7), other generation regulatory assets ($309,526 million - Exhibit ADE-9, line 10), and implementation costs ($118.418 million + a $27.693 million revenue requirement - Exhibit ADE-10, lines 17 & 22) should be recovered irrespective of market clearing price (5 T 871).

Finally, DECo does not support the use of the market clearing price adjustment formula during the 2002-2007 transition period because of uncertainties, does not agree with use of retail contracts as the sole basis for the market clearing price, supports inclusion of the Fermi 2 sharing mechanism in the true-up process, and supports a return-on-equity floor in the true-up process (5 T 881-887).

All of DECo's positions will turn the MPSC-approved implementation of direct access service (customer choice) into a far different program from what the MPSC previously adopted, but let's turn to the specifics of DECo's arguments.

1. Replies Concerning Market Clearing Price

Pages 43-46 of DECo's brief discuss DECo's proposed new approach to market clearing prices. DECo believes that market clearing price adjustments and offsets should apply only to recover of PURPA-related stranded costs and not to recovery of its stranded costs for Fermi 2, for Fermi 2 capital additions, and for other generation regulatory assets (5 T 862 & 872). DECo opposes the use of retail contracts as the determinant of the market clearing price (5 T 881).

DECo's positions conflict with the MPSC's fundamental definition of stranded costs as existing costs which were reasonably and prudently incurred, but are at levels above the retail market clearing price. Page 14 of the June 5, 1997, opinion in Case No. U-11290 addressed concerns regarding estimates of the market price of power, the potential for stranded benefits, and the need to encourage utility mitigation measures. Then, page 14 stated:

> The Commission concludes that an annual true-up mechanism is necessary to assure that electric restructuring is carried out in a manner that protects the public interest. With this order, the Commission directs Consumers and Detroit Edison to file proposals for establishing a true-up mechanism. The Commission envisions that such a mechanism would provide for annual adjustments up or down to stranded costs to reflect changes in the actual market price of power from a base point and other relevant factors. Proposals should incorporate a method of measuring the price of power actually paid by

> customers in the market, an appropriate base point, and a method for adjusting from that base point.

However, in the June 5 opinion no stranded cost charge or mechanism was actually established.

Subsequently, the MPSC conducted hearings regarding the recovery of stranded costs and a true-up mechanism in Case No. U-11454. Pages 12-15 of the October 29, 1997, Opinion and Order in U-11454 addressed the market price of power. Specifically, pages 13-15 rejected proposals by CECo and DECo to use proxies rather than actual market prices, concluding:

> Accordingly, the Commission finds that the market price of power should be determined based upon the actual prices being paid by direct access customers determined from contracts filed with the Commission. The actual market price will then be compared annually with the price used to derive the stranded cost estimates and revised actual stranded costs will be determined.

Various parties sought rehearing in U-11290 and U-11454, and on January 14, 1998, the Commission issued its Rehearing on Restructuring. Pages 15-19 of the January 14 order addressed rehearing of the true-up mechanism. Page 16 concluded that CECo and DECo should file their true-up proposals by March 31 of each year for the preceding calendar year. Pages 16-17 confirmed the Commission's decision to use the actual market price paid by open access customers to determine the market price of power.

Subsequently, the MPSC issued a clarification order on February 11, 1998. With regard to the true-up mechanism, page 6 of the February 11 order states:

> The January 14 order provided a more detailed description of some but not all of the issues to be considered in the annual stranded cost true-up proceeding than was contained in the October 29 orders. ABATE's motion seeks clarification that the Commission's discussion of the stranded cost true-up proceeding in the January 14 order was not intended to restrict or eliminate issues that the Commission had previously found to be relevant in the October 29 orders, such as mitigation and netting. The Attorney General also seeks clarification regarding the issues that may be addressed in the true-up proceedings.

> Detroit Edison and Consumers also indicate that additional clarification is needed and, in its answer to the motions for clarification, Consumers proposes a formula that it says is consistent with the methodology set forth by the Commission.
>
> <u>The Commission's discussion in the January 14 order was in response to requests for a more detailed description of the true-up methodology. The discussion was not intended to restrict or eliminate any issues, such as mitigation, that the Commission had previously found to be relevant. Rather, the intent was to provide additional details on specific issues to the extent that such details can be provided at this time.</u> (emphasis added)

Since the Commission has specifically ruled that retail clearing prices would be used, the clarification order does not authorize future modifications to what constitutes the market clearing price. The MPSC must reject DECo's clearing price proposal because it conflicts with the previous rulings.

2. <u>Replies Concerning DECo's "Average Slice" Proposal</u>

Based upon Mr. Padgett's testimony and exhibits, pages 46-49 of DECo's brief request the MPSC to approve implementation of the so-called average slice proposal for calculating PSCR costs in 2000 and for crediting mitigating revenues related to any customer loads lost to customers choice. This proposal should be deferred and reviewed in the context of DECo's 2000 PSCR plan case (MPSC Case No. U-12121) because its impact is primarily related to PSCR cost recovery, not to the truing-up of stranded cost recovery. In the alternative, the MPSC should reject the merits of Mr. Padgett's proposal in this case.

DECo's average slice proposal would eliminate any possibility that direct access customers could benefit from load reductions by making DECo's low cost capacity available (5 T 698). DECo's plan is to sell off any excess capacity using this proposal, but the plan is not just and reasonable. Essentially, Mr. Padgett's exhibits are circular and they ignore what will really happen.

DECo will purchase incremental capacity and energy to serve load which it may lose to the direct access program (customer choice). That capacity and energy will be added to DECo's PSCR costs at marginal costs via the dispatch process. The result of including this additional capacity and energy in DECo's 2000 PSCR plan will increase the total PSCR costs and the average PSCR costs. In fact, the average cost of additional "call options" to serve the additional load is projected by DECo in U-12121 to cost an average of $296.95 per MWh. If all of that capacity and energy was not included in PSCR costs in the first place, then DECo's average PSCR cost would be lower. In other words, including capacity and energy in PSCR costs at incremental prices and removing any unused portion at the resulting average cost (projected to be $17.38 per MWh in U-12121) will increase PSCR costs for PSCR customers. The just and reasonable approach to unneeded capacity and energy would be to redispatch DECo's system model and remove the related incremental costs. Of course, if DECo creates total and average PSCR costs by including unneeded capacity and energy in its dispatch, calculates a resulting average cost, and then removes the unneeded capacity and energy at the resulting average cost, the average will remain the same. But, that fails to demonstrate a lack of prejudice to PSCR customers because the process began by raising total and average PSCR costs.

In conclusion, the MPSC should either defer this issue to U-12121 or should reject DECo's proposal in this case for the reasons explained above.

3. <u>Replies Concerning DECo's Proposed Resale Adjustment</u>

Pages 49-50 of DECo's brief describes DECo's proposal to adjust PSCR calculations for resale revenues to reduce the revenue credits to the level of DECo's average slice fuel cost. This is to reflect DECo's lost margin proposal.

Mr. Falletich proposed a true-up adjustment for lost margins in addition to the true-up described by the MPSC's prior orders (4 T 373-376). Lost margin adjustments would be addressed and recovered in future true-up cases but would be recognized now on DECo's books (4 T 376).

DECo's approach to lost margins means that DECo is not even willing to assume the risks of a level competitive playing field (5 T 693), and this proposal will essentially stop all retail competition (4 T 265-267). As Mr. Celio said, this proposal represents residual pricing (5 T 929-930). DECo's proposed adjustment is not included in any of the previously identified, MPSC-approved adjustments, and this adjustment conflicts with the basic concept of stranded cost recovery which is to allow DECo to recover previously incurred prudent costs to the extent that they are above the market clearing price and will, for that reason, not be recovered due to losses of load to competition. For these reasons, the Attorney General urges the MPSC to reject DECo's lost margin proposal.

C. <u>Replies Concerning DECo's Calculation of Stranded Costs</u>

Pages 56-67 of DECo's brief discuss DECo's recalculated stranded costs and argue that the MPSC should approve recovery of these recalculated amounts. This is a classic example of a moving target and a lack of mutuality. No hearings were conducted in Case No. U-11290, but on rehearing in that case, DECo persuaded the MPSC to adopt its calculation of stranded costs, adjusted for a market clearing price estimate. "Rehearing on Restructuring dated January 14, 1998, pages 11-14. Now, DECo proposes to increase its stranded costs by hundreds of millions of dollars.

In Exhibits ADE-5 and ADE-6, Mr. VanHaerents has developed a new accelerated amortization of $309,526,000 for regulatory assets which he has allocated to generation assets. This total compares with the total $424 million included in nuclear and non-nuclear regulatory assets identified on page 14 of the Commission's January 14, 1998 rehearing order, and in Case No. U-11726, the MPSC included almost $400 million dollars for nuclear regulatory assets (Exhibit ADE-4).

Mr. VanHaerents said that all parties in U-11726 used $20 million per year as capital additions for Fermi 2 during the 9-year amortization, so he proposed to amortize that sum from 1999 through 2007 (4 T 174-175 and Exhibit ADE-5, lines 3 and 4). Mr. VanHaerents testimony is misleading at best. Somewhere in the U-11726 record the figure of $20 million per year may have been included, but no witness testified concerning the nature of or the reasonableness and prudence of such capital additions. Furthermore, those sums were not included in the accelerated amortization proposal approved in U-11726, and they were excluded from the amortization and depreciation calculation present by DECo's witness, Mr. Viinikainen. Such capital additions are not currently reflected in DECo's base rates; therefore, they cannot be correctly characterized as stranded costs (4 T 279-280). If DECo makes this level of capital additions, such costs must be justified despite any loss of load, and in that situation they will not be stranded. If they are not justified despite any loss of load, then they will be imprudently incurred. Therefore, they should not be treated as stranded costs in this case.

In the January 14, 1998, Rehearing on Restructuring, the Commission identified $109 million as stranded costs for qualifying facility contracts. In Exhibit ADE-10, line 18, Mr. Loeher has identified costs totaling $118.4 million. This difference has not been clearly explained in this case, but the Commission need not approve any specific amount in this case because DECo did not implement direct access service in 1998 or in any significant amount in 1999. The specifics of this cost recovery should, therefore, be deferred.

In conclusion, the MPSC should not approve in this case DECo's proposed increases in its stranded cost recovery.

D. Replies Concerning Class Specific Surcharges

Pages 67-72 of DECo's brief discuss the proposed average transition charges developed by Mr. Loeher. Pages 72-82 of DECo's brief discuss Mr. Falletich's proposals for 2002-2007 class specific surcharges. Mr. Falletich's proposals are merely hypothetical in nature; furthermore, his methodology is a means driven by the desired end which is to create equal, though hypothetical, savings for all classes (4 T 369). This proposal is also likely to reduce the likelihood of load switching to direct access service (5 T 695-696).

In light of the very general nature of DECo's proposal and of the fact that no stranded costs are actually at issue in this case, the MPSC should defer its determination of how to design surcharges beyond the initial surcharge approved in the January 14, 1998, order.

The Attorney General will offer no explicit replies to the remaining arguments presented in pages 82-113 of DECo's brief; however, the Attorney General does not admit the validity of those arguments.

IV. Replies to MIPPA's Brief

The brief filed by the Michigan Independent Power Producers Association (MIPPA) presents four issues. The most significant issue concerns MIPPA's argument that the MPSC should specify in this case how costs associated with PURPA power purchase agreements above the market clearing price will be recovered for years past 2007.

The first error in MIPPA's argument is that there is no evidence showing that there will be any costs associated with PURPA power purchase agreements in years past 2007 which will exceed anticipated market clearing prices for those years. When the Commission considers the tendency for market prices to rise over time and the fact that under PURPA and implementing federal regulations avoided capacity costs have been fixed at the avoided cost level at the time the contracts were executed, the MPSC has an insufficient basis for concluding that any PURPA contract costs will exceed market clearing prices in years after 2007.

The second error in MIPPA's argument arises from MIPPA's false analogy between the fixed costs of utility generating plants which may be above projected market clearing prices and the capacity costs of PURPA capacity charges. Utilities are entitled to recover their costs from customers, but there are fundamental differences between the fixed costs of a generating plant and capacity costs under a PURPA contract. The fixed costs of a generating plant are recovered via depreciation expense and the rate of return on ratebase which are in turn built into base rates, and they are neither contingent nor estimated costs. Capacity costs under a PURPA contract are annual expenses of a utility contingent upon the qualifying facility's performance in each year of the contract, and they are recovered as annual PSCR expenses. There is always the possibility that any specific capacity will not be available in the future, but the PURPA contracts do not provide CECo and DECo the same assurance the associated capacity will be available as does the ownership and existence of a physical power plant. Capacity costs are not a sunk utility cost like the investment in a generating plant is. Since capacity costs for years after 2007 may not be incurred by CECo or DECo if qualifying facilities do not perform, it would be inappropriate for the MPSC to attempt to estimate such future capacity costs and future market prices to determine a present value for any above market component of those distant future costs. Treating PSCR costs after 2007 as a stranded cost for the period from 1999 through 2007 would simply be illogical; furthermore, there is no evidence showing that CECo and DECo will be unable to recover their anticipated annual PSCR costs related to PURPA contracts after the year 2007 assuming such costs are actually incurred by the utilities.

The second and third issues raised by MIPPA concern market clearing price determination in the true-up process. MIPPA is concerned that this will be difficult and that the MPSC should exclude from its calculation of a market clearing price any efforts by retailers to game the system or gain an advantage in the deregulated market. However, MIPPA has provided no objective examples of problems to be addressed at this time, and the true-up process is going to be an annual one in which any such problems can be addressed in an objective context.

MIPPA's fourth issue concerns giving CECo or DECo any unfair competitive advantage. MIPPA, therefore, opposes any sales by CECo or DECo to the direct access market. It must be kept in mind that CECo and DECo are effectively entitled to compete in the direct access market via bundled sales of electricity even though the Commission has barred them from making separate sales under their direct access tariffs. The Attorney General would also oppose discriminatory or anti competitive actions, but such proposed actions have not been identified in the record in this case. So, the MPSC does not need to address this concern at this time.

V. Replies to Energy Michigan's Brief

The brief filed on behalf of Energy Michigan presents four broad issues. Pages 8-10 argue that customers should be allowed to supply their own metering services. The Attorney General has already addressed this issue in response to CECo and DECo, and the Attorney General has taken no position on the merits of this dispute.

Pages 10-11 of Energy Michigan's brief argue that implementation costs recovered by CECo and DECo should be recovered from all customers. In response to arguments to the same effect which have been presented by CECo and DECo, this brief already demonstrates why recovery from all customers conflicts with prior orders and why such an allocation would be unreasonable.

Pages 11-13 of Energy Michigan's brief argue that CECo and DECo will not incur any stranded costs through 2001 and, therefore, that the MPSC should allow no stranded cost recovery through 2001. This may well be true, but the MPSC should keep in mind that its previous orders provide for two types of recovery for the costs which have been classified as stranded costs. Such costs are being recovered via existing base rates and part of them may be recovered via transition charges to direct access customers. Thus, if there are no stranded costs, eliminating transition charges would address less than half of the recovery. Thus, recovery must still be addressed in future true-up proceedings and/or rate cases.

Pages 13-38 of Energy Michigan's brief as well as the attachments address Energy Michigan's specific proposals to calculate and mitigate stranded cost recovery. The Attorney General will offer no direct response to these arguments, but the Attorney General's initial and reply briefs provide analysis of stranded cost recovery and true-up issues raised by CECo and DECo.

VI. Replies to the Staff's Brief

Pages 3-10 of the Staff's brief argue that the MPSC has jurisdiction over new services voluntarily offered. The Attorney General disagrees, but that issue should not be decided in the context of the captioned cases. As page 1 of this reply brief indicates, for purposes of the captioned cases, the Attorney General is assuming only for the sake of argument that the MPSC has jurisdiction. The jurisdictional issue was raised in the context of the Commission's August 17, 1999, Opinion and Order in Case Nos. U-11290, et al., and that issue is now pending before the Michigan Court of Appeals. That is where the issue must be decided.

Pages 10-13 of the Staff's brief argue that the recovery of historical implementation costs proposed by CECo and DECo should be adjusted. In her initial brief as well as in responses to CECo and DECo in this reply brief, the Attorney General has supported the disallowances proposed by the Staff.

Pages 13-16 of the Staff's brief argue that the MPSC should adopt a method for determining the market price of power. The Attorney General was under the impression that the prior orders have already done so. Page 14 of the June 5, 1997, Opinion and Order ruled that the true-up process would provide for annual adjustments up or down to stranded costs to reflect changes in the actual market price of power from a base point. Pages 12-15 of the October 29, 1997, Opinion and Order in Case No. U-11454 addressed the market price of power. Specifically, pages 13-15 rejected proposals by CECo and DECo to use proxies rather than actual market prices, concluding:

> Accordingly, the Commission finds that the market price of power should be determined based upon the actual prices being paid by direct access customers determined from contracts filed with the Commission. The actual market price will then be compared annually with the price used to derive the stranded cost estimates and revised actual stranded costs will be determined.

Mr. Carlson acknowledged that this was the Commission's decision (5 T 818-819), and Mr. Stanton has presented a current, albeit hypothetical, analysis based on this method (4 T 393-413). Nevertheless, Mr. Carlson offered additional alternative methods (5 T 810-819).

The Attorney General contends that the MPSC should not revise its previous rulings concerning the calculation of the market clearing price in the context of the captioned cases. The alternatives identified by Mr. Carlson may provide relevant evidence bearing upon the credibility and appropriateness of the monetary results of an analysis like the one described by Mr. Stanton when it arises in future true-up cases. But, since there is no true-up proposed by CECo or DECo for purposes of the captioned cases, the MPSC should defer its analysis until future annual true-up cases.

Pages 16-17 of the Staff's brief acknowledge that the method proposed by Mr. Celio for the annual true-up mechanism differs from the original method used by the MPSC in determining the magnitude of stranded plant for CECo and DECo, but those arguments argue that a different approach should be adopted. The Attorney General contends that the MPSC should not be changing the rules in the middle of the electric restructuring "game." However, since there is no concrete level of stranded costs in this case and insufficient concrete evidence concerning market clearing prices and mitigation factors to be applied, the Attorney General contends that the MPSC should simply stay the course and not modify its prior rulings describing the factors to be included in the true-up process. How the previously described factors will be applied should be deferred until the first real true-up reconciliation for CECo and DECo according to the previously adopted schedule.

VII. Replies the the Briefs Filed by ABATE and MPA/MACS

The Association of Businesses Advocating Tariff Equity (ABATE) filed an initial brief, and the Michigan Petroleum Association (MPA) and the Michigan Association of Convenience Stores (MACS) jointly filed an initial brief. The issues raised in those briefs are adequately addressed in the Attorney General's Initial Brief and / or the earlier sections of this reply brief; therefore, the Attorney General will offer no express replies to those two briefs.

VIII. Relief Requested

For the reasons stated above and in her initial brief, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to disallow the new levels of stranded costs proposed by DECo, to disallow and/or defer portions of the implementation costs identified by CECo and DECo, to allocate implementation costs only to direct access customers, to approve presentation of stranded benefits calculations in future annual true-up proceedings, to clarify the market clearing price adjustment, to defer or reject DECo's Summer 2000 pricing (average slice) proposal, and to reject MIPPA's proposal to extend PURPA stranded costs beyond the year 2007.

Respectfully submitted,

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PROOF OF SERVICE

The ***Detroit Edison Company***
Consumers Energy Company
MPSC Case Nos. U-11955, U-11956

The undersigned certified that a copy of the **Attorney General's Reply Brief** was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepared thereon, or by State Interdepartmental mail as indicated, on the 11th day of February, 2000.

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