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

ENERGY MICHIGAN MOTION FOR ACCELERATED JUDGMENT ON METERING ISSUES

Energy Michigan, Inc. (Energy Michigan) hereby requests, pursuant to Rule 335 of the Michigan Public Service Commission (Commission) Rules of Practice and Procedure that the Commission issue an accelerated decision on that portion of Case U-11955 and U-11956 (the true-up case) which would determine whether billing and metering services are a utility monopoly or whether marketers should have the option to provide these services and more particularly whether Detroit Edison must utilize metering technology which allows the customer to access real time meter demand data on a dial in or Internet basis at no additional charge.

I. INTRODUCTION AND SUMMARY OF REQUEST

In Case U-11290 the Commission ordered that the true-up proceeding Cases U-11955 and U-11956 include consideration of whether metering and billing services should be provided as a utility monopoly or whether marketers should have the option to provide these services. *U-11290, March*

8, 1999, p. 44.

The parties to the true-up case closed the record with the filing of Reply Briefs on February 14, 2000. Since the Commission indicated that it would read the record, no further filings by the parties are contemplated and thus the matter is ripe for a decision. The presentation of Consumers Energy Company (Consumers) and Detroit Edison Company (Edison) urged that utilities retain their monopoly on meters used for billing purposes. Energy Michigan argued that either customers should be able to provide their own meters which would be used by utilities for billing purposes or that Detroit Edison should adopt the practice currently used by Consumers Energy of utilizing meter technology which allows customers to obtain no cost dial in or Internet access to the demand data produced by those meters.

The Detroit Edison metering requirements for the first Detroit Edison open access customer (North Star Steel Case U-12153) have demonstrated that Detroit Edison is installing meters of a type which will not allow direct customer access to real time demand data and will continue to do so unless ordered to do otherwise. Energy Michigan believes that in the next few months Detroit Edison will install numerous meters which might have to be replaced if the Commission adopts the position on metering advocated by Energy Michigan. Energy Michigan therefore requests, pursuant to Rule 335, that the Commission accelerate a decision on the metering aspect of the true-up case so that it and Detroit Edison will know at the earliest possible date if the meters being installed by Detroit Edison are not in conformance with the Commission decision in Cases U-11955 and U-11956 relating to metering. An early decision will not prejudice any party and will avoid the potential waste which will occur if the Commission orders Detroit Edison to utilize and install metering technology different from that being currently installed.

II. DETAILED DISCUSSION

A. Factual Issues

In Case U-11290, the Commission ordered that the true-up proceeding include consideration of whether metering and billing services should be provided as a utility monopoly or whether marketers should have the option to provide these services. *U-11290, March 8, 1999, p. 44*.

In the true-up case, Detroit Edison and Consumers Energy urged that utilities continue to be monopoly providers of metering equipment used for billing purposes. *Consumers Brief, p. 30-33 and Detroit Edison Brief, p. 96-113*.

Energy Michigan witness Richard Polich proposed two alternatives: that customers should be allowed to choose the provider of their metering service through a bid process <u>or</u> in the alternative, that customers and their agents have unrestricted access to utility owned meter data at all times at no additional cost, including billing determinants needed by and acceptable to the customer or their agent. *5 T 796*.

Since the Commission has decided to read the record in the true-up case and Reply Briefs were filed February 14, 2000, the true-up case is now ready for final decision of the Commission.

Nordic Electric, L.L.C. (Nordic) is the third party provider for the first Detroit Edison customer to receive service under the Detroit Edison Retail Open Access Program. *North Star Steel, Case U-12153, November 1999.*

As demonstrated by Mr. Polich's attached affidavit as supplier to the first Edison customer on open access service and others who have won bids in the first three rounds of the Detroit Edison Electric Choice Program, it is apparent to Nordic that Detroit Edison has adopted a practice of installing metering devices which are configured so that the meter demand data may only be accessed by Detroit Edison on a remote basis. If the customer or the customer's third party supplier wishes to obtain real time meter data up to $1,000 of equipment must be installed on each Edison meter and telemetry or phone line access must be arranged and paid for by the customer. If, however, Detroit Edison were ordered to allow customer access to meter demand data on a real time basis pursuant to the Energy Michigan recommendation in the true-up case, the Edison meters currently being installed would not be suitable and would have to be replaced with alternative equipment at a significant expense. *See attached Affidavit of Richard Polich*.

The impact of the current Detroit Edison metering installation practices for open access is that the current Detroit Edison metering equipment being installed will have to be replaced if the Commission adopts the position on electric metering advocated by Energy Michigan in the true-up case. The financial impact of installing current Detroit Edison metering technology will increase substantially as increasing numbers of open access customers are approved and connected for service. *Id.*

Given the completion of the record in the true-up case and the potential for substantial financial loss or waste due to the type of metering technology currently being installed by Detroit Edison for open access customers, Energy Michigan requests that the Commission accelerate its decision on the metering issues contained in the true-up case.

Energy Michigan believes that an accelerated decision on metering issues in the true-up case would not prejudice either utilities, customers or third party suppliers since the relief requested only pertains to the timing of the decision on this issue rather than the specific outcome on the merits of the case. However, as stated by Richard Polich in the attached affidavit, an early decision by the Commission could avoid the potential waste which would occur if Detroit Edison installed numerous demand recording meters with technology that did not allow customer direct access and then was forced to remove these meters and install new devices pursuant to an order of the Commission that direct customer access to meter data be provided.

B. Legal Analysis

There is no question that the Commission has the authority to conduct an expedited review of a matter pending before it. *See, e.g., CMS Energy v Attorney General,* 190 Mich App 220, 226

(1991). The real issue becomes what criteria should be used by the Commission to decide when such an expedited review is necessary. The potential harm of not expeditiously rendering a decision in this matter lies in the delay. This is not unlike the harm that is avoided by a temporary restraining order or a preliminary injunction. While the burden that a party bears to obtain a temporary restraining order is rather high and not applicable here, some of the factors that a court considers are similar to those the Commission should consider in determining whether an expedited review is necessary in this case.

The purpose of a temporary restraining order is to maintain the status quo before a final hearing on the parties' rights is conducted. *AMI v Community Health Dep't*, 231 Mich App 647, 655-656 (1998). Similarly, the delay in portion of the decision by the Commission will cause the status quo in this matter to change and may cause irreparable injury to the parties and to the public despite the result of any later decision.

Furthermore, the criteria utilized by the courts for temporary restraining orders weigh in favor of an expedited decision. The four factors that a court balances in making this determination are as follows: "1) the likelihood that the party seeking the injunction will prevail on the merits; 2) the danger that the party seeking the injunction will suffer irreparable injury if the injunction is not issued; 3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be harmed by the granting of the relief; and 4) the harm to the public interest if the injunction is issued." *Fancy v Egrin*, 177 Mich App 714, 719 (1989).

In the instant matter, the first factor is irrelevant because the relief requested is a decision in part on the merits. As to the remaining factors, the results of any delay in decision may cause irreparable harm to the parties, the public, and the goals of the Commission. In contrast, no harm results to the utility if the decision is expedited in part. This is so because a decision will indeed be made on the merits, the only question is when. In addition, the record is complete in this matter. Each party has had a full and fair opportunity to present evidence and legal arguments on all the issues presented. A dely in this portion of the decision may defeat the very purpose of the

Commission's decision in this matter. Therefore, an expedited determination is necessary to protect the interests that this decision is intended to regulate.

III. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan requests that the Commission issue an accelerated decision in the true-up case regarding whether metering and billing services should be provided as a utility monopoly or whether Detroit Edison should be required to install meters which are configured so that customers or their third party suppliers may obtain real time meter data on a dial in basis at no additional cost.

Respectfully submitted,

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March 2, 2000

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AFFIDAVIT OF RICHARD POLICH
STATE OF MICHIGAN
IN THE COUNTY OF WASHTENAW

Richard Polich, being duly sworn, deposes and says:

1. I am Vice President for Nordic Electric, L.L.C. (Nordic).

2. Nordic and Nordic clients have been selected for participation in the Detroit Edison experimental open access program and were successful bidders in the first three rounds of the Detroit Edison Electric Choice Program, allowing them to potentially select alternate electric suppliers to Detroit Edison Company (Detroit Edison).

3. Nordic has commenced service to North Star Steel in November under the Detroit Edison Experimental Retail Open Access program. Nordic would like to commence service under the Retail Open Access program to several clients in the Detroit Edison territory pursuant to recent Commission approvals of power sales agreements and Act 69 Certificates, as soon as possible.

4. As the customers described in No. 3 above request service, Detroit Edison will be installing metering devices which are configured so the metered electric consumption data will only be provided directly to Detroit Edison. Should the customer or its third party supplier desire to obtain the detailed meter data, they are required to purchase the data from Detroit Edison. In addition, third party suppliers are required by Detroit Edison to balance electric supply and electric load on an hourly basis. This coupled with the volatility of customer consumption patterns, requires suppliers, such as Nordic, to have access to electric consumption data on frequent basis, sometimes hourly. Under Detroit Edison's proposed metering, Nordic must install up to $1,000 of additional equipment on each customer site and additional phone line access must be arranged. The costs of this additional equipment and telephone services are paid for by the customer or third party supplier.

5. Nordic would like to avoid causing Detroit Edison to install metering systems on customers

participating in the Retail Open Access program which could be made obsolete should the Commission Order in Case U-11956 require metering systems similar to those proposed by Consumers Energy Company. If Detroit Edison is ordered pursuant to Case U-11956 to install meters which will allow customer access to meter demand data on a real time basis, the Edison meters currently being installed would not be suitable and would have to be replaced with alternate equipment at a significant expense. Thus, Nordic has avoided enrolling customers in the Detroit Edison Retail Open Access Program to avoid imposing additional costs on Detroit Edison which could be latter charged to the customers as implementation costs.

6. In Case No. U-11290 the Commission ordered that the true-up proceeding, Case No. U-11956, include consideration of whether metering and billing services should be provided as a utility monopoly or whether marketers should have the option to provide these services. *U-11290, March 8, 1999, page 44.* In Case U-11956 Energy Michigan advocated that customers install meters which would be provided by third parties or <u>in the alternative</u> that Detroit Edison be required to adopt the same practice as currently used by Consumers Energy, namely that installed meters are configured so that customers or their third party supplies may obtain meter data on a dial in basis at no cost.

7. The impact of the current Detroit Edison metering installation practices for open access is that the current Detroit Edison metering equipment being installed will have to be replaced if the Commission adopts the position on electric metering advocated by Energy Michigan in Case U-11956, namely that customers be able to install their own meters or that the meters installed by Detroit Edison be configured so that customers may access meter demand data on a dial in or Internet basis at no additional cost. As the number and pace of Retail Open Access installations accelerates as a result of completed bid proceedings, the number of Detroit Edison meters which would have to be replaced or reconfigured in the event of a Commission decision as advocated by Energy Michigan is increased correspondingly. Thus, there is a significant and growing potential for wasteful or unrecoverable expenses on the part of Detroit Edison prior to a decision in Case No. U-11956 regarding metering.

8. Accelerated consideration by the Commission of the issue of whether customers or their third party suppliers may install metering used for billing purposes or if the utility installed metering must be configured to provide demand data at no additional cost will avoid further installation of meters which may require reconfiguration and thus waste assets. Also, a decision on this issue will enable third party suppliers to accurately price quotations for open access equipment installations and charge customers the minimum amount consistent with the need to obtain real time demand data.

9. This affidavit is offered in support of the Motion to which it is attached which I have read and with which I am familiar. I can testify competently to the matters presented in this affidavit.

Richard Polich, Vice President
Nordic Electric, L.L.C.

Subscribed to and sworn before me
this 29 day of February, 2000.

Notary Public

Washtenaw County, Michigan
My Commission Expires: 4-14-01

DEBRA R. PATRICK
NOTARY PUBLIC - WASHTENAW COUNTY, MI
MY COMMISSION EXP 04/14/2001