STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the approval 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

PETITION TO INTERVENE AND ANSWER TO APPLICATION

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill P.L.C., hereby:

I. Petitions the Michigan Public Service Commission ("Commission") for leave to intervene in and become a party to the above-entitled proceedings, setting forth below its rights and interests, the grounds of its proposed intervention, and its positions in the proceeding; and

II. Answers the allegations and requests for relief set forth in The Detroit Edison Company's ("Edison") Application for True-Up of Stranded Costs.

I.

PETITION TO INTERVENE

A. ABATE is an association of industrial companies doing business in Michigan. ABATE members include: ABTco Inc.; BASF Corporation; The Budd Company; DaimlerChrysler Corporation; Eaton Corporation; Edward C. Levy Company; Elf Atochem North America, Inc.; Ervin Industries, Inc.; Escanaba Paper, a Mead Company; Ford Motor Company; General Motors

Corporation; Holnam, Inc.; Martin Marietta Magnesia Specialties, Inc.; Masco Corporation; MascoTech, Inc.; National Steel Corporation - Great Lakes Steel Division; Pharmacia & Upjohn; Quanex Corporation; Rouge Steel Company; Solutia, Inc.; Steelcase, Inc.; Total Petroleum, Inc; and Warner-Lambert-Parke-Davis.

B. In the production of a wide variety of products, raw materials and services, the individual members of ABATE consume vast quantities of electricity at a cost of many millions of dollars, a significant portion of which is purchased from Edison.

C. ABATE has intervened or otherwise actively participated in all prior proceedings relating to the development of Edison's Retail Open Access ("ROA") Program. This case is a direct outgrowth of such prior proceedings and it will have a direct and material impact on the rates which ABATE's members pay for electricity purchased from and/or delivered by Edison.

D. An examination of Edison's Application indicates that it contains numerous erroneous and/or incomplete allegations and/or conclusions, and ABATE opposes the relief requested by Edison for the reasons more particularly set forth in the Answer to Edison's Application, immediately below.

II.

ANSWER TO APPLICATION

A. IMPLEMENTATION COST ISSUES.

ABATE answers Edison's allegations and conclusions with respect implementation cost issues as follows:

1. Edison's Application alleges that it has incurred and booked approximately $10 million for implementation costs during 1998 and $4 million during the first quarter of 1999. Edison further alleges that it will file testimony in support of the recovery of an

additional $100 million of implementation costs to be incurred in the future. In its request for relief, Edison asks that it be permitted to recover its previously incurred implementation costs, and that its plan for the incurrence of future implementation costs be approved as well as a mechanism or methodology for the recovery of future costs.

2. It is ABATE's position that Edison's requested relief with respect to implementation costs should be denied for the following reasons:

a. Prior to approval of any implementation costs and the recovery of same in customer rates, not only must they be examined for prudence, ***they must be audited and verified***. In the Commission's Opinion and Order in Case Nos. U-11451 and U-11452, at page 14, the Commission stated:

> ". . . the Commission previously held that although implementation costs may be recovered from open access customers at some point in the future, ***they must be audited, verified***, and examined for prudence 'prior to including them in rates.' June 5 order, pg. 14." (emphasis added)

While the Commission did not identify who would perform such an audit and verification, clearly that is an appropriate function of the MPSC Staff. Accordingly, the Commission should immediately direct its Staff to perform an audit and verification of all implementation costs allegedly incurred and booked by Edison. ABATE has, simultaneous with this filing of this Answer, filed a Motion ***to the Commission*** requesting such relief.

b. In any event, whatever the amount Edison's verified implementation costs may turn out to be, their recovery should be denied simply on the basis that

Edison's ROA Program, as presently structured, ***will not work*** and therefore the procedures and systems those costs paid for will not end up benefitting anybody! Participation in Edison's ROA Program by customers and potential third party providers of power has been so burdened by excessive and inappropriate charges, as well as procedural and operational impediments, that there is little chance any meaningful number of customers will opt for ROA service. Accordingly, Edison should not be permitted to recover ***any*** implementation costs in connection with its ROA Program unless and until it has a workable plan in place, and active participants in the Program.

c. Even if Edison's ROA Program were otherwise workable insofar as its charges, terms and conditions of service are concerned, the level of potential customer participation is minimal, notwithstanding, because there is little or no firm year around competitive power available for delivery to the Michigan Electric Coordinated System, and thus to Edison's service territory. Accordingly, Edison should not be permitted to recover ***any*** implementation costs unless and until it has committed to and/or taken concrete steps to increase its firm transmission capacity in order to accommodate a meaningful competitive market for electricity within its service territory.

d. Edison's current rates for electric service were last established by Order dated January 21, 1994, in Case U-10102, using a 1994 test year. Edison's operating expenses during such test year included those related to billing systems, energy scheduling, employee training, customer information, regulatory affairs, etc.

It is unknown to what extent the so-called implementation costs alleged in Edison's Application were ***incremental*** to the allowances for such expenses included in Edison's base rates, but clearly Edison should not be allowed to recover twice for any such expenses. ABATE is also concerned that the label by which Edison has characterized such costs on its books might be determinative of Edison's ability to double-recover same. Accordingly, it is essential that when the MPSC Staff performs its audit of Edison's implementation costs it determine the extent to which, if at all, such costs have exceeded the allowances for the categories of such costs reflected in Edison's base rates at the time such costs were incurred.

e. Irrespective of whether Edison's previously incurred implementation costs were, in whole or in part, covered by allowances in base rates, during the period of time that they were incurred Edison earned (and it continues to earn) a return on its investment which is substantially in excess of that allowed by the Commission in Case U-10102. ABATE believes that during 1998 and the first quarter of 1999, such excess earnings have been vastly in excess of the ROA implementation costs which Edison alleges that it incurred and booked during such period of time. Furthermore, at least until appropriate action is taken by the Commission in connection with the rate reduction complaint which was filed by ABATE against Edison over a year and a half ago in Case U-11495, such excess earnings will continue to be substantially greater than any of the so-called implementation costs currently and in the future being incurred by Edison with respect to its ROA Program. Accordingly, no such implementation costs should be recovered from Edison's Customers who have already paid to Edison, during 1998 and the first quarter of 1999, excess earnings substantially greater than the alleged implementation costs.

f. With respect to Edison's request that its plan for the incurrence of future implementation costs be approved, until such plan is filed its reasonableness obviously cannot be evaluated. ABATE would preliminarily observe, however, that there is no provision in any of the Commission's ROA Orders which even implies that advance approval of spending plans is appropriate. In any event, the approval of any such plan for the incurrence of future implementation costs must take into consideration the allowances for such costs already reflected in Edison's base rates as well as the extent to which Edison is earning in excess of its authorized return.

3. It is further ABATE's position that if any past or future implementation costs are permitted to be recovered by Edison, a determination must be made as to the appropriate allocation of such costs among the various customer classes on a cost-causation basis.

B. STRANDED COSTS AND OTHER ISSUES.

ABATE answers Edison's allegations and conclusions with respect to the stranded cost and other issues as follows:

1. Edison's Application, paragraph 11, states that, in addition to the implementation cost issues, this proceeding should address the appropriate stranded cost balances, the appropriate level of the transition charge, the establishment of the mechanics of the true-up and stranded cost recovery process, and the policy issues raised by the Commission in its March 8, 1999 Order in Case U-11290, et al. The policy issues specifically referred to in the Commission's March 8th Order included how quickly billing and other direct

access systems should be phased in, whether billing and metering functions should be limited to utilities or should other providers have the option, and how implementation costs should be allocated among and recovered from customers.

2. With respect to the mechanics of the true-up mechanism, Edison's application, at paragraph 2, states that the true-up mechanism issues involve sales volumes, the market price of power and bid amounts to apply against stranded costs.

3. While ABATE agrees that all of the above issues are appropriate and necessary for consideration in this true-up proceeding, ABATE does not agree with the implication inherent in the framing of those issues by Edison that such list of issues is all-inclusive.

4. Among the other important issues which may appropriately and necessarily be dealt with in this proceeding are the mitigation of stranded costs and the netting of "stranded benefits" against stranded costs. These issues have previously been expressly recognized by the Commission as appropriate for consideration in ultimately determining the amount of stranded costs to be recovered by the utilities. For example, in its February 11, 1998 Order in Case Nos. U-11290 et al, responding to Petitions for Clarification, the Commission in pertinent part, stated:

> "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.***

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> 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." Page 6. (emphasis added)

C. *EXPEDITED TWO PHASE HEARINGS*.

ABATE answers Edison's proposals regarding expedited hearing procedures as follows:

1. Edison's application proposes that this proceeding be divided into two phases. Phase 1 would deal only with implementation cost issues and Phase 2 would deal with all of the remaining issues.

2. Edison also proposes with respect to both phases that they would be conducted on an expedited basis, and that the Commission would read the record of the hearings in each phase in order to eliminate the need for a Proposal for Decision; although in Phase 2 ". . . the parties should be permitted more time to prepare their positions."

3. It is ABATE's position that Edison's proposals to divide these proceedings into two phases and to expedite them should be denied.

4. While clearly there is a distinction between implementation cost issues on the one hand and stranded cost and policy issues on the other hand, that is not a reason for, and there is really nothing to be gained by, separating them into different hearings. Indeed, the result of establishing separate hearing schedules would be to divide and further tax the limited resources of the various intervening customer representatives in this case. Limiting the

effectiveness of such representation by artificially increasing the expense of participation is clearly not in the public interest.

5. ***In the alternative***, if the Commission deems it appropriate to separate consideration of the implementation cost recovery issues from the stranded cost and policy issues, ABATE would recommend that hearing with respect to the implementation cost issues be consolidated with the hearings in Case U-11495 in connection with ABATE's rate reduction complaint against Edison. Because of the likelihood that a 1998 historical test year will be used in the rate reduction case, and because of the common need for a Staff audit of Edison's books for 1998 with respect to both the rate reduction case and the implementation cost issues, consolidation of those hearings would appear particularly appropriate.

6. With respect to Edison's claim that the implementation cost phase must be expedited in order to "insure timely recovery of prudently incurred costs by the Company," there is nothing inherent in a "normal" hearing schedule which would in any way interfere with the ultimate recovery by Edison from its customers of whatever implementation costs are finally approved by the Commission. Edison's unsupported assertions regarding "timely recovery" ring particularly hollow in light of the fact that it continues to earn substantially in excess of its authorized return on investment.

7. There is similarly no need to expedite any hearings with respect to the resolution of the remaining stranded cost and other policy issues. As ABATE has previously noted, it believes that the level of actual participation in Edison's ROA Program will be nil in any event because customers and third party providers of electric generation will find the program uneconomic and unworkable for a number of reasons. At this point, the best thing

that the Commission could do to rejuvenate Edison's ROA Program would be to allow the parties the opportunity to address, in a careful, reasoned and deliberative fashion, all issues which are relevant this proceeding.

8. Edison's argument that these hearings should be expedited in order to help test the efficiency of the Commission's "Electronic Filings Pilot Program" is astonishingly specious. The Commission's pilot program is designed to explore how the submission of documents in electronic form could provide for a more efficient flow of case documents. It has absolutely nothing to do with the scheduling of hearing days or the Commission reading the record in order to obviate the need for a Proposal for Decision.

WHEREFORE, ABATE requests that:

A. This Petition to Intervene be granted and that ABATE be placed upon the Commission's record in this case as a full party; and

B. Edison's requested relief be denied in its entirety; and

C. ABATE be granted such other relief as may be appropriate.

Respectfully submitted,

CLARK HILL P.L.C

By: ______________________

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