

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the petition of Detroit Edison	)	
Company to establish a revised procedure	)	
for future capacity solicitations	)	No. U-12177
	)	

**ENERGY MICHIGAN’S RESPONSE TO THE PETITION OF
DETROIT EDISON COMPANY TO VACATE CASE U-8869-DE/U-9798 AND
ESTABLISH REVISED CAPACITY SOLICITATION PROCEDURES**

This response is filed by Varnum, Riddering, Schmidt & Howlett^{LLP} on behalf of Energy Michigan, Inc. (Energy Michigan), which was a party to the Case U-9798 proceedings.

I. INTRODUCTION AND SUMMARY OF POSITION

A. Summary of Detroit Edison Company (Detroit Edison or Edison) Proposed Revisions of U-9798 Capacity Solicitation Procedures

In 1992 the Michigan Public Service Commission (Commission) issued an Opinion and Order in Case U-9798 specifying detailed procedures to be followed when Detroit Edison solicited or entered into long term power purchase agreements.

On October 25, 1999 Edison filed a Petition requesting the Commission to rescind its July 22, 1992 Opinion and Order and to approve an alternative capacity solicitation process (the Petition).

Following is a summary of the process proposed by Edison which would govern future capacity solicitations:

1. Edison would annually file a report outlining its expected Summer generating needs and the manner in which it expects to meet those needs. This report would not be filed when Edison

did not need summer power. Edison asserts that the report would take the form of filings made in Case U-11889 for 1999. There would be no hearings on these filings but interested persons would be given the opportunity to comment. Edison does not provide the date it would make the filings or if that date would be timely for potential suppliers to propose Summer supply options. *Edison Petition, p. 4.*

2. Edison would utilize a standard Request for Proposal (RFP) document to solicit power purchases to the extent that purchases in excess of one year are required. Purchases of less than one year would not be subject to solicitation.
 - a. Note that under current law, power purchase costs which are passed through a power supply clause must be publically submitted and reviewed for all contracts longer than six months. *MCL 460.6j.*
 - b. A solicitation document format is attached to the Edison Petition outlining details of the proposed long term solicitations.
3. Offers received in response to long term RFPs would be made available to MPSC Staff as would the contracts entered into but these materials would not be made public.
4. Edison states that it has already used the RFP format to solicit power (1000MW) for the Summer of 2000 and 2001. *Petition, p. 4.*
5. Edison proposes that its new solicitation process be subject to Commission procedures which would allow interested parties to comment and for responses to these comments. The proposed procedure for approval of the Petition does not appear to allow for submission and consideration of alternate acquisition procedures.
6. The PSCR process would be used to review the reasonableness of the cost of power

purchased, but would not necessarily reveal the source and price of losing bids.

B. Energy Michigan Position

Energy Michigan recommends two basic steps:

1. The Edison solicitation process should require public posting of all Edison power supply requirements, posting of bids to satisfy those requirements and posting of winning bidders.
2. The Commission should not approve purchases from Edison affiliates under any circumstances. The history of Case U-11954 is ample proof that the contemplated transaction between Consumers Energy and its EWG affiliates could not stand public scrutiny. The record also revealed that Consumers used its market power to force non-affiliated suppliers to commit to grant Consumers or its parent an ownership interest in the offered supply. *Order U-11954, June 10, 1999, p. 5.* Edison should not be allowed to repeat the mistakes of Consumers Energy.

II. DETAILED DISCUSSION OF THE DEFECTS IN THE DETROIT EDISON PROPOSAL WHICH NECESSITATE CONTESTED CASE REVIEW

Following is a partial, but by no means complete, list of the defects of Edison's proposed solicitation process.

A. The Proposed Annual Report Lacks Needed Detail

Although Edison proposes to annually file a report with the Commission regarding its Summer generating capacity needs, it does not commit to the time frame for submission and review. The Commission has ample experience with power supply reports which are submitted in such a late

time frame that meaningful review is impossible before critical Summer power needs must be met. At the very least, Edison must specify a filing deadline which will allow meaningful review, comment and modification. Energy Michigan believes that meaningful review cannot occur unless the proposed annual report is filed late in the third quarter or early in the fourth quarter of the year preceding the Summer peak season.

B. Exclusion of Power Purchase Agreements of Less Than One Year from the Solicitation Process Would Defeat the Commission's Intent

Edison proposes that its solicitation procedures only be utilized for purchases in excess of one year. *Filing*, p. 4, ¶ 6 (B). *Petition*, p. 6. Given its need for Summer capacity, the company is likely to utilize short term purchase agreements for its power requirements and thus the solicitation procedures contained in this case will be useless unless they encompass short term purchases. Under PA 304 of 1982, only power purchase agreements greater than six months are subject to Commission review.

In summary, Edison has given notice that it will tend to favor short term power purchase agreements for its future requirements. Any solicitation or process which excludes such purchases will be rendered meaningless.

C. The Proposed Solicitation Framework May Allow Approval for Use of Edison Affiliates as Suppliers

At page 4, paragraph 6 (B) of the Petition, Edison states its intention to use the attached RFP format which would be sent to an attached list of potential suppliers. Edison does not exclude use of affiliates as suppliers.

Commission approval of the RFP document could be construed by Edison as an approval to utilize its own affiliate or other entities with whom it has financial arrangements. The Commission

must forcefully address the issue of procurement of power from affiliates by either an outright prohibition or a level of public disclosure and scrutiny which can leave no doubt that bids will be won by economic attributes rather than by affiliations.

To the extent replacement power costs are excessive due to transactions with affiliates, it may be impossible to correct these abuses after power has already been purchased and used.

D. The Edison Fall Solicitation Is a Warning Regarding the Need for Public Disclosure

Edison states that it has already used the RFP format attached to its Petition. If so, the results should be filed publicly. Without public disclosure of relevant data there is no self-policing mechanism whereby unsuccessful bidders can confirm the fairness of the bid process. Without the involvement of bidders in the enforcement mechanism, it is unfair to expect that the Commission Staff would be able to police a bid process on a timely or effective basis. Public disclosure of all relevant details is a far more effective measure because it allows economically interested parties a role in the enforcement process.

E. The Commission May Not Revise Case U-8869-DE/U-9798 Procedures Without a Contested Case Without Parties Waive Such Procedural Guarantees

Case U-9798 was adopted as a result of contested case procedures. Edison's requested modification would involve a process outlined in paragraph 8, page 5 through 6 which merely contains comment and no opportunity to submit alternate proposals or engage in discovery or cross examination. Unless parties waive contested case procedures, the Edison's proposal does not supply an adequate basis to modify an Order adopted pursuant to Administrative Procedures Act contested case process.

III. PROPOSED RELIEF

Energy Michigan proposes that the Commission address the defects in the Edison Petition with the following actions:

1. Require full contested case procedures to review Edison's request for alternate solicitation procedures. The scope of these procedures should cover all power purchases.
2. As a second best alternative the Commission should require total disclosure of Edison solicitations for power, responses to those solicitations and the winning bids so that all participants may "self-police" the process by ensuring that the lowest bid for Edison requirements was in fact successful.
3. The time frames for any solicitations and/or reports must be approved to ensure that Edison does not continue its repeated pattern of delaying requested approvals until the Commission has no legitimate option to the proposal of the utility.

IV. PRAYER FOR RELIEF

WHEREFORE Energy Michigan requests that the Commission

1. Schedule this matter for contested case proceedings;
2. Order that such proceedings shall not consider or approve purchases from Edison affiliates;
and
3. Such other relief as the Commission deems appropriate.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
Attorneys for Energy Michigan

November 5, 1999

By: 
Eric J. Schneidewind (P20037)
The Victor Center, Suite 810
201 N. Washington Square
Lansing, Michigan 48933
(5 17) 482-6237