STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the motion of the ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY for the Commission to issue an order to initiate proceedings to show cause why public utilities should not establish comprehensive procedures to implement the provisions of the Public Utility Regulatory Policies Act of 1978 or, in the alternative, to reopen Case No. U-6798	)	Case No. U-8869-DE
In the matter, on the Commission's own motion, to commence a proceeding to establish a framework for future capacity solicitations by THE DETROIT EDISON COMPANY fro qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978	)	Case No. U-9798
In the matter of the petition of THE DETROIT EDISON COMPANY to establish a revised procedure for future capacity solicitations	)	Case No. U-12177

COMMENTS OF ENERGY MICHIGAN ON DETROIT EDISON PROPOSAL TO REVISE CAPACITY SOLICITATION PROCESS

I. BACKGROUND AND SUMMARY OF POSITION

A. Background

On December 16, 1999 the Michigan Public Service Commission issued an Order in response to a filing by Detroit Edison Company in this matter (the Petition or Detroit Edison Proposal) requesting approval of an alternative capacity solicitation process. The Commission ordered that interested parties file, by January 18, 2000, comments regarding the Detroit Edison proposal which requested recission of the July 22, 1992 Opinion and Order of the Commission in Cases U-8869 and U-9798 specifying detailed procedures to be followed when Detroit Edison solicited or entered into long term power purchase agreements as well as adoption of a revised capacity solicitation process. These comments are submitted in response to the Commission Order.

B. Summary of Energy Michigan Position

At a minimum the following revisions to the Edison Proposal are required:

1. The annual power supply requirement plan should be filed in late summer or very early fall of the year preceding the year of need. The actual RFP for power should be filed by the September before the summer in which the power will be required. Bidders should be allowed at least one month to prepare bids.

2. Power supply requirements in excess of six months should be subject to the solicitation process with a prohibition against rolling over contracts with the same supplier as a means of avoiding the solicitation requirement.

3. Power purchases from an affiliate should be prohibited or, at the very least, the Commission should refuse to provide any approvals needed to legitimize such purchases for federal purposes such as are contained in Section 32(k)(2) of the Public Utility Holding Company Act of 1935 unless and until any utility assets, including generating plants which are used by the affiliate have been obtained as a result of making the highest bid at a public auction.

4. The content of all RFP documents should be subject to review and approval by the Public Service Commission.

5. Full public disclosure of all bids for power, the name and price offered by the winning bidder and any non-price terms of the winning bid must be made to ensure that parties to the bid process can help police the process.

6. Where utilities improperly manage the bid process, the winner should be redetermined and losing bidders should be compensated for the time and effort expended to prepare bids.

II. DETAILED DISCUSSION OF DEFECTS IN THE DETROIT EDISON PROPOSAL

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

A. The Proposed Annual Reports 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 of the report. The Commission has had 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 in the third quarter preceding the summer peak season. Issuance of an RFP must occur no later than the September preceding the year of need.

Some RFP drafts have allowed as little as two weeks to prepare bids. Bidders need a minimum of one month to prepare bids.

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

Edison proposes that its solicitation procedures only be utilzed for power purchases in excess of one year. *Petition, p. 6*. Given its need for summer capacity, the company is likely to utilize short term purchase agreements for its power requirements. Thus, the solicitation procedures contained in this case will be useless unless they encompass short term purchases. Under PA 304 of 1982, all power purchase agreements greater than six months are subject to Commission review. *MCL 460.6j*.

In summary, Edison may 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 Allows Approval for Use of Edison Affiliates as Suppliers

In its 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 or power suppliers. 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..

In no case should the Commission give approvals which would allow Edison to satisfy federal requirements which would otherwise prohibit the purchase of power from affiliates such as Sec. 32(k)(2) of the Public Utilities Holding Company Act of 1935.

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 Detroit Edison U-12266 Filing Requesting EWG Status for a Converted River Rouge 1 Plant is a Warning Regarding the Need to Exclude Affiliates

On January 11, 2000 Detroit Edison requested that the Commission approve transfer of the Edison River Rouge 1 coal fired plant to an Edison affiliate DTE River Rouge No. 1, L.L.C. (River Rouge) without a bid or solicitation process (the Application). River Rouge would then convert the plant to natural gas and operate it as a summer peaker. *Application, p. 1.* Edison claims that River Rouge power would be sold to electric retailers offering open access service. *Id., p. 2.*

It is crystal clear that Edison will also be able to sell River Rouge power back to itself at a deregulated price through the proposed solicitation process.

If Edison or Consumers uses their market power and control of the transmission system to exclude non-utility power imports, utility affiliate such as River Rouge would be the only bidders in solicitations and would charge literally any price they wish.

The only way to stop this scam is to refuse to grant what amount to waivers from federal PUACA restrictions and to refuse to allow participation by utility affiliates.

Utility affiliates should not be allowed to use former utility assets such as generating plants unless and until those plants are won as a result of making the highest bid in a public auction.

E. The Edison Fall 1999 Solicitation is a Warning Regarding the Need for Public Disclosure

Edison states that it used the RFP format attached to its Petition in the Fall of 1999. If so, the results of that solicitation should be filed publicly. Without public disclosure of relevant data there is no self-policing mechanism whereby unsuccessful bidders can assist the Commission to 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, including all bidders names and prices, winning bid price and name, an effective policing measure because it allows economically interested parties a role in the enforcement process.

III. CONCLUSION AND PRAYER FOR RELIEF

A. Conclusion

Energy Michigan proposes that the Commission address the defects in Edison's proposed solicitation process with the following actions:

1. Adopt, as a policy, the outright prohibition against purchases from affiliates or refuse to grant Edison needed Public Utility Holding Company Act approvals. As a second best alternative, require that utility assets not be transferred to an affiliate unless there has been a public auction and the affiliate has made the highest bid.

2. Require full disclosure of Edison's 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's requirements was in fact selected. Also, require that any bid by an Edison affiliate to supply power to Edison, such as River Rough, which uses former rate based assets be at rates based on cost of service plus the authorized return of Edison, not market rates.

3. Require that public solicitations be used for all purchases in excess of six months and prohibit use of evergreen or rollover contract clauses.

4. The time frames for any solicitations and/or reports must be revised as detailed above to ensure that Edison does not continue its repeated pattern of delaying requests for approvals until the Commission has no legitimate alternative to the proposal of the utility. Also,

bidders must be allowed at least one month to prepare bids.

IV. PRAYER FOR RELIEF

WHEREFORE Energy Michigan requests that the Commission

1. Adopt the recommendations summarized above; or
2. Grant such other relief as the Commission deems appropriate.

Respectfully submitted,

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