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February 1, 2000

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909-7721

Re: MPSC Case No: U-12177

Dear Ms. Wideman:

Enclosed please find the original and four copies of The Detroit Edison Company's Reply to Comments on its Capacity Solicitation Proposal along with Proof of Service regarding the above captioned matter.

Very truly yours,

Jon P. Christinidis

JPC/sb
Enc.

cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Petition of THE DETROIT) EDISON COMPANY to establish a revised) procedure for future capacity solicitations)	Case No: U-12177

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

SUSAN BADDER, being duly sworn, deposes and says that on the 1st day of February, **2000** a copy of **THE DETROIT EDISON COMPANY'S REPLY TO COMMENTS ON ITS CAPACITY SOLICITATION PROPOSAL** upon those persons identified on the attached service list by electronic mailing and depositing same in the United States mail bearing postage fully prepaid,

Susan Badder

Susan Badder

Subscribed and sworn to before
me this 1ST day of February, 2000

Sandra Lee Kussavage

Notary Public

SANDRA LEE KUSSAVAGE
Notary Public, Macomb County, MI
My Commission Expires Oct. 22, 2000
Acting in Wayne County, MI

<u>SERVICE LIST</u>

MPSC Case No: U-12177

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the petition of THE DETROIT EDISON COMPANY to establish a revised procedure for future capacity solicitations.	)))))	Case No. U-12177

THE DETROIT EDISON COMPANY'S REPLY TO COMMENTS ON ITS CAPACITY SOLICITATION PROPOSAL

I.

INTRODUCTION

The Detroit Edison Company has received comments on its capacity solicitation proposal from three perennial participants in electric utility cases before this Commission. The Michigan Attorney General, ABATE and Energy Michigan have each submitted brief statements of their policy preferences which demonstrate their unwillingness to accept or acknowledge the fundamental structural changes that have already occurred and are continuing to impact Detroit Edison's ability to provide electric power on demand and at reasonable prices while satisfying consumer expectations of reliability. These participants continue to demand access to market-based electric products, while insisting on *increased regulatory control of Detroit Edison's acquisition activities.* Clearly, it is impossible to respond effectively in a volatile power market if each decision is subject to months of contested case proceedings and other regulatory mechanisms. The result of the commenters' proposals will be fewer power supply choices for Michigan electric consumers and, more than likely, increased costs for tariff customers who will be provided power supply market "leftovers." As the Company continues to have the obligation to serve all electric customers, ultimately, it will be those tariff customers that suffer the economic and reliability reductions associated with these parties' recommendations. For ABATE and Energy Michigan, these concerns are of little consequence as their constituents are typically well-financed and technically sophisticated enough to address their own power supply needs, if necessary. In other words, ABATE's and Energy Michigan's dubious policy preferences are unlikely to harm their constituents and are calculated to impair Detroit Edison's ability to procure reasonably reliable and economic capacity to their competitive advantage. The Attorney General's comments are simply based on outdated and unworkable methods of electric utility regulation.

The Company responds to each of these participants comments individually below. Detroit Edison is confident that this discussion will demonstrate that its proposed capacity solicitation process is most reasonable in light of the rapid pace of change and competition in the power supply markets.

II.

DETROIT EDISON RESPONSE TO COMMENTS OF ABATE

A number of ABATE's assertions in this proceeding are disingenuous at best. By way of example and not limitation, ABATE asserts as a basis for capacity solicitation micromanagement that "Edison's past practices have lead to stranded costs and extremely high PSCR costs for customers." (Comments of ABATE p. 2) This self-serving, revisionist assertion, that is clearly a veiled reference to the Company's Fermi 2 facility, represents a fairly typical, contrived response that ignores the pressure placed on electric utilities by industrial leaders from the automobile, steel and chemical industries to construct nuclear generation facilities in the 1970's. The era in which nuclear facilities like Fermi 2 were developed also experienced oil embargoes, the Federal Fuel Use Act which *banned* the construction of gas-fired generation and the increasing influence of the environmental movement. Nuclear power was championed by several U.S. Presidents and major corporations like Ford Motor Company and Dow Chemical. *Now large industrial consumers represented by ABATE charge that utilities like Detroit Edison made poor management decisions.* The irony of this reversal was captured very succinctly in a recent discussion of the issue:

> When major industries, policy groups and analysts reverse field, after utilities have spent billions of dollars at their urgings, the least they can do is own up to their responsibility. What will these intellectual chameleons say during the next oil embargo, coal strike, drought or fuel shortage? In two decades will they tell us we should have listened to them and never deregulated? “Rewriting History?” Public Utilities Fortnightly, August, 1997 p. 54

Likewise, ABATE asserts that “there is no competitive market.” (Comments of ABATE p. 2) This type of hyperbole provides no reasonable basis to reach this conclusion. Clearly, there is no serious dispute that Detroit Edison must obtain and supply capacity and energy in a volatile wholesale power market. The Company’s 1997, 1998, 1999 and 2000 PSCR proceedings have provided numerous examples of the competitive, market-based pressures involved in obtaining and supplying electric power, especially during times of peak demand. (See MPSC Case Nos.U-11175, U-11175-R, U-11528, U-11528-R, U-11800, U-12121) What participants like ABATE want is the ability to search for lower prices, while maintaining the price certainty associated with Detroit Edison remaining obligated to serve their needs if their new supply proves to be unreliable or more expensive than predicted. Clearly, this position is inequitable and can only be accomplished at the expense of Detroit Edison and other less powerful and less technically sophisticated electric consumers.

ABATE introduces four specific policy requests in its comments. As a general matter, ABATE requests that the Commission determine that Detroit Edison bear all risk that any future capacity acquisitions become stranded. Again, this generalized request ignores the Company's obligation to serve all electric demand, and really represents an inequitable request that Detroit Edison be positioned to lose from less economic decisions without the opportunity to benefit from those decisions that prove to be advantageous. Certainly, ABATE's members would not voluntarily accept such a proposition in their respective businesses.

In addition, ABATE requests that all purchase power contracts be time limited to five years and then be reviewed in a contested case. Although it currently appears unlikely that the Company would be presented with many opportunities to execute an economic purchase power contract in excess of five years, such a prohibition unnecessarily limits the Company's market flexibility. Equity would require that if ABATE's proposal is adopted, its members absorb the opportunity costs associated with Detroit Edison's mandated refusal of an economic purchase power contract in excess of five years. Further, ABATE's recommendation that purchase power contracts of between two and five years be reviewed in PSCR proceedings requires no action by the Commission, except that the details of such contracts be afforded the protections from disclosure proposed by Detroit Edison in this proceeding. Contested case proceedings outside of the PSCR process are not necessary or advisable because, without a PSCR clause, Detroit Edison customers do not pay the variable cost of power supplies. Such proceedings would impair the operation of wholesale power markets, unnecessarily limit Detroit Edison's flexibility and will quickly degenerate into a means for technically sophisticated market participants, such as ABATE and Energy Michigan, to secure competitive information.

ABATE's discussion of NYMEX future price disclosures in relation to Detroit Edison's capacity solicitation proposal is inapposite. The future price of electricity in a region or geographic market, as represented on a commodities exchange like NYMEX, is the result of analysis and an aggregation of bid and ask prices for a standard unit of that commodity. It does not necessarily represent actual transactions or the activities of every potential market participant. It does not reflect the unique circumstances of *one market participant*.[1] Further, it does not disclose competitively sensitive company-specific commercial and proprietary information. ABATE's proposal to require "full price disclosure" conveniently ignores these distinctions and subjects Detroit Edison to levels of disclosure not required of other providers.[2] ABATE's concern that the Staff review encompassed in the Company's proposal will prevent a reasonable remedy is not well

[1] Assuming for the sake of discussion that Consumers Energy is prepared to disclose responses to its purchase power RFP's (ABATE never actually confirms that such disclosures have been made or are volunteered by Consumers Energy), there has been no demonstration by ABATE that Consumers Energy's market position or purchase power activities are a relevant comparison to Detroit Edison's purchase power activities. In fact, the Commission is fully aware that the two Companies' purchase power needs and activities are markedly different.

[2] The Commission determined in MPSC Case No. U-11130 that executed wholesale power purchase agreements contain confidential information. As a result, the Commission limited disclosure of the confidential portions to the MPSC Staff only in order to "strike a proper balance between the public interest in disclosure and the protection of commercially sensitive information in a competitive environment." MPSC Case No. U-11130, Order dated October 20, 1997 p. 13; Accord, MPSC Case No. U-11631, Order dated April 14, 1998; MPSC Case No. U-11804 Order dated December 21, 1998; MPSC Case No. U-11688 Order dated June 26, 1998; MPSC Case No. U-11661 Order dated June 26, 1998. The Commission has further determined in a recent Detroit Edison PSCR case that "Orders issued by the Commission and the Federal Energy Regulatory Commission have opened the doors to competition in the electric power market. Accordingly, the contention that a utility will be irreparably compromised by disclosure of commercially sensitive information and confidential cost data is much more compelling than it was a dozen years ago." MPSC Case No. U-11175, Order dated February 11, 1997 p. 6.

developed and is dubious at best. Existing Commission authority and procedures are surely adequate and the Company's proposal further empowers the Staff and facilitates review of these matters. The same reasoning applies to ABATE's concerns regarding power purchases from affiliates.

III.

DETROIT EDISON RESPONSE TO COMMENTS OF ENERGY MICHIGAN

Energy Michigan asserts that Detroit Edison's capacity solicitation proposal has a handful of defects. Energy Michigan complains that it needs eight or nine months advance notice of Detroit Edison's summer capacity needs. Energy Michigan also complains that it needs a full month to prepare a bid in response to a Request for Proposal (RFP). Unfortunately, market conditions and supply opportunities do not conform to Energy Michigan's lengthy lead times. Obviously, other suppliers have been able to at least minimally satisfy the Company's basic power supply needs in a timely manner. Detroit Edison must have the ability to issue an RFP on its time schedule. Especially in this time of transition to Electric Choice, the Company's supply needs are subject to significant shifts. An RFP, or response thereto, issued seven or eight months in advance may become stale by the following summer. In any event, the issuance and timing of any RFP, and any contract for power supply or services, is a matter of Detroit Edison management discretion. See Union Carbide v. PSC, 431 Mich 135 (1988); Accord Consumers Power v. PSC, 460 Mich 148 (1999)

Energy Michigan also complains that the capacity solicitation process should include short-term purchases and then cites the PSCR statute in a misguided attempt to support its position. The bottom line is that *all* purchases relevant to any given PSCR

Plan year are subject to appropriate review in the Company's annual PSCR cases.[3] The process established by MCL 460.6(j) is more than adequate to review and remedy annual power supply issues. No duplicative proceedings are necessary. Neither is there any *reasonable* argument that the offers elicited and the results of an RFP be disclosed to market competitors like Energy Michigan. Energy Michigan's argument that the MPSC Staff is incapable of determining the fairness of the bidding process is a thinly-veiled attempt to obtain the type of market information that is maintained as confidential in the electric business and all other types of businesses. Further, the Commission should be on guard so that power supply competitors not be permitted to abuse the Commission's regulatory authority and utilize Detroit Edison PSCR proceedings as a means to acquire competitively sensitive information and, therefore, competitive advantage.

IV.

DETROIT EDISON RESPONSE TO COMMENTS OF THE ATTORNEY GENERAL

To the extent that the Commission entertains the Attorney General's untimely self-styled Petition for Rehearing, the response that follows constitutes Detroit Edison's reply.[4] In addition to the untimeliness of the Attorney General's filing, she also fails to cite any proper legal or factual basis to grant rehearing pursuant to R 460.17403. It appears that the Attorney General's only argument is that the Commission must act in

[3] Obviously, this would include any purchases from Detroit Edison affiliates as well. Hyperbole asserting scams and self-dealing notwithstanding, no new, special procedure is required for such review and appropriate codes of conduct already establish acceptable behaviors.

[4] The Attorney General's purported petition for rehearing is untimely and therefore may not be considered and must be denied. As she states, the Commission's order in this proceeding was issued on December 16, 1999 and the Attorney General's Petition was filed and served 32 days later on January 18, 2000. Thus, the 30 day period within which a party is permitted to request rehearing has expired. [R 460.17403 (1)]

accordance with two arcane rate complaint provisions of the Railroad Act P.A. 1909, No. 300 which is described as:

> *An Act to define and regulate common carriers and the receiving, transportation, and delivery of persons and property...*

Obviously, MCL 460.6a which specifically addresses rate changes for gas, telephone and electric utilities is the legal authority that governs the Commission's rate proceedings for The Detroit Edison Company. That provision states:

> When any finding or order is sought by any gas, telephone or electric utility to increase its rates and charges or to alter, change or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, notice shall be given within the service area to be affected. When such utility shall have placed in evidence facts relied upon to support its petition or application to so increase its rates and charges, or to so alter, change or amend any rate or rate schedules, the commission, pending the submission of all proofs by any interested parties, may in its discretion and upon written motion by such utility make a finding and enter an order granting partial and immediate relief, after first having given notice to the interested parties within the service area to be affected in the manner ordered by the commission, and after having afforded to such interested parties reasonable opportunity for a full and complete hearing:...*And provided further, That any alteration or amendment in rates or rate schedules applied for by any public utility which will result in no increase in the cost of service to its customers may be authorized and approved without any notice or hearing.* (emphasis added) MCL 460.6a(1)

It is clearly a matter of black letter statutory interpretation that specific statutes like MCL 460.6a applying to a topic (e.g. electric utility rates) supercede more general statutes like the Railroad Act cited by the Attorney General. Crane v. Reeder, 22 Mich 322 (1871); Township of Huron v. City Disposal Systems, 448 Mich 362 (1995); Accord Consumers Power, supra. Thus, the Attorney General's Petition for Rehearing is largely irrelevant to the matter at issue in this proceeding.

Further, pursuant to tne governing legal authority, and despite reaching the conclusion that Detroit Edison's Petition would not increase rates, the Commission granted interested parties like the Attorney General the opportunity to comment, which is more than what is legally required

The remainder of the Attorney General's concerns are adequately addressed in the PSCR process, as described above, or through other Commission authority and proceedings. In any event, the Attorney General's limited comments are essentially unsupported, incorrect or dubious conclusions that are addressed in the Company responses to ABATE or Energy Michigan.

V.

RELIEF REQUESTED

For the reasons described in the Company's October 25, 1999 Petition in this proceeding and in this Reply to Comments, The Detroit Edison Company respectfully requests that the Commission grant the relief set forth in its October 25, 1999 Petition and deny the requested relief of ABATE, Energy Michigan and the Attorney General in its entirety.

Respectfully submitted,

THE DETROIT EDISON OMPANY

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Dated: February 1. 2000