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 from qualifying facilities as defined by the Public Utility Regulatory Policies Act of 1978.	)	Case No. U-9898
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 THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EOUITY ON CAPACITY SOLICITATION PROPOSAL

The Association of Businesses Advocating Tariff Equity ("ABATE") by its attorneys, Clark Hill P.L.C., pursuant to the Michigan Public Service Commission's ("MPSC") December 16, 1999 Opinion and Order hereby files these Comments on The Detroit Edison Company's ("Edison") capacity solicitation proposal.

I

INTRODUCTION

As can be seen in the combined captions of these proceedings, ABATE has been intimately involved in an attempt to craft a solicitation process whereby Edison acquires additional capacity to serve its loads. Intervention by the MPSC is vital in order to protect the public interest because of a number of factors. First, Edison's past practices have lead to stranded costs and extremely high PSCR costs for customers. This comes at a time when it is already recognized that Michigan's electric costs are the highest in the Midwest and Edison's costs are even higher than the Michigan average.

Second, Edison may be pursuing a strategy whereby it is both selling capacity to affiliates and purchasing power from affiliates. See Edison's Application in Case No. U- 12266. If there were a fully functioning competitive market for generation, this may not be a concern, but there is no competitive market. Instead, we have a market under the monopolized control of Edison which dictates that regulators step in to protect customers from the monopoly interests of Edison.

Third, there are no proofs or data to suggest that open access, under the current terms and conditions, will, in fact, work. This is true now, even under the regime that allows competitive bidding to allocate available capacity and it is certainly true in 2002 when all customers supposedly have the right to choose but Edison wishes to impose the equivalent of 1.25¢ per kWh for stranded and implementation costs.

Fourth, despite the onset of open access, Edison's sales continue to grow which necessitates further capacity acquisitions.

Finally, Edison simply does not have enough capacity to serve its summer peak demands and relies upon purchases from other sources. Those purchases are becoming more problematical as sellers are reluctant to commit now for capacity for the summer at reasonable terms and there is also a shortage of firm transmission capacity available to serve loads in Michigan which will hamper would be competitors.

All of these factors make it imperative for the MPSC to develop a reasonable capacity solicitation process with a number of goals. It must be flexible, it must lead to more competition, not less, and it simply cannot result in any stranded costs now or in the future.

II

ARGUMENT

A. The MPSC Must Adopt the Principle That Any Future Capacity Acquisitions Cannot Give Rise to Future Stranded Costs.

ABATE requests that in any order adopting, or otherwise approving a capacity acquisition methodology for Edison, the MPSC specifically find that Edison and its shareholders bear all risks associated with the capacity becoming "stranded". Edison should be sophisticated enough to make reasonable purchases and protect its interests once it knows the MPSC's policy. As matter of policy and public interest, shareholders must bear the risk of any of new capacity becoming stranded.

B. All Purchase Power Contracts Should Be Time Limited.

ABATE recommends that the MPSC adopt a policy that purchase power contracts be limited to a maximum term of five years. In addition, if a purchase power contract is for a term of between two and five years, then it should be reviewed in a contested case. As long as Edison's PSCR plan cases are filed then these would be adequate proceedings in which to review the contracts. This enhanced review is necessary to determine whether the price is reasonable.

C. <u>There Must Be Full Price Disclosure.</u>

Price transparency is the hallmark of a competitive market. The New York Mercantile Exchange ("NYMEX ") publishes its futures prices and Edison should likewise publish the prices it has agreed to pay for power. This can simply be done by publishing them on Edison's web site. If Edison has concerns regarding disclosure then it should be required to post at least an average weighted cost plus the range from the lowest to the highest,

Edison has proposed that the Staff review "under reasonable confidentiality arrangements all offers received and responses to the RFP and all contracts executed as a result thereof" Petition, ¶ C. The implication of this request is that the parties to the PSCR cases will not have access to this data. ABATE requests that the MPSC specifically find that any of the rights of the parties to PSCR proceedings are not and cannot be modified as a result of a final order in this proceeding and that this data will be made available to parties under the conditions determined by the Administrative Law Judge ("ALJ") conducting the PSCR proceedings and the MPSC. Even Consumers Energy Company ("Consumers") recognizes the importance of the proposals received by a utility in showing what the market conditions were at the time a specific proposal was selected. Consumers puts potential sellers on notice that their offers could be disclosed as follows:

> **"<u>Disclosure of Proposals Received</u>.**
> Consumers reserves the right to use the proposals received to demonstrate the market conditions that prevailed at the time for this request for proposal. Such demonstrations may result in the disclosure of the terms of the proposals received. In the event the terms required to be disclosed can reasonable be used to identify the

> Seller, Consumers shall advise the Seller prior to making such disclosure". Sample RFP, Section 3.3, p. 4.

To the extent that this data is reviewed by the Staff prior to the PSCR proceedings, procedures should be developed to address a situation where the MPSC Staff objects to a particular transaction. Does the MPSC Staff note its objection, file a complaint against Edison or simply wait until the PSCR proceeding to voice its concerns? A review without a remedy is meaningless.

D. Transactions Between Edison and Affiliates Should Either Be Banned or Be Subject to Contested Case Proceedings.

One of ABATE's major concerns is with the potential for self-dealing. Self-dealing occurs when a transaction takes place between Edison and an affiliate, the costs of which are paid for by customers. The simple solution is to ban all purchase power contracts between Edison and one of its affiliates.

If, on the other hand, the MPSC allows transactions between Edison and its affiliates, then they should be approved in a contested case proceeding before being consummated. This can either be a single issue proceeding that would take place on a fast track or the PSCR plan case. In addition, the MPSC should adopt a firm policy that if, as a result of any subsequent review, the MPSC finds that the contract entered into with an affiliate is at above market rates, the difference between the market and the rates contained in the contract should be imputed to the utility as revenues for ratemaking purposes. The MPSC has already adopted this policy once in its Order, Case No. U-11954, dated June 10, 1999.

III

RELIEF

WHEREFORE, ABATE requests the MPSC to issue a final order which is consistent with these Comments and grant such further relief as is just and reasonable.

Respectfully submitted,

CLARK HILL P.L.C.

By: ______________________________

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