

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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-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 THE
MICHIGAN PUBLIC SERVICE COMMISSION STAFF**

General Comments

Under direct access, assuming all customers have meaningful opportunities to choose among several suppliers, a Commission approved capacity solicitation process should not be needed to protect customers from excessive rates. If a customer believes one supplier's rates are too high, the customer will change suppliers. In this way, competition presumably will result in the lowest possible cost for rate payers.

At the present time, however, direct access is not a reality for the vast majority of customers. In addition, the Commission has stated that existing market power and affiliate relationships have prevented the development of a competitive generation market in Michigan. (ORDER, Case No. U-1 1954, June 10, 1999, p. 9.) Therefore, at least during a transition period,

it will be necessary for the Commission to continue its oversight of the rates and conditions of service of the fully bundled customers, including review of capacity acquisition costs.

Comments on the “Three Steps”

The “Three Steps” constitute the alternative capacity solicitation process recommended by Detroit Edison as a replacement for the Commission’s process which was approved in its Opinion and Order in Case No. U-9586, dated June 12, 1992.

Comment on Step (1)

Step (1):

“[Company Name] would submit an annual report to the Commission outlining the utility’s expected summer generating capacity need and describing the manner in which [Company Name] expects to meet those needs. Interested persons would then be given an opportunity to review the report and submit comments concerning its reasonableness. However, no contested case hearings would be scheduled.”

An annual report outlining summer capacity plans would be useful in informing the Commission regarding the basis for a company’s capacity acquisition decisions. The report should have adequate detail and be filed in a timely fashion. Review by interested parties could add useful information to Commission files. Such a report could also be used by potential suppliers to plan their proposals to provide capacity. This would help meet the Commission’s goal of promoting the development of competitive generation market. A contested case would not be desirable because it is not clear what issue the Commission would be asked to decide since the Commission generally cannot tell a company how much capacity to acquire before the fact. (However, an electric utility must request an exemption from the Commission from a Federal prohibition from entering into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the utility.) Under traditional regulation, if a company purchased excess or high-cost capacity, a disallowance could

be made in the context of a rate case or a power supply cost recovery proceeding, and in such a proceeding the annual capacity plans could provide useful data and evidence.

Comment on Step (2)

Step (2):

“[Company Name] would utilize a standardized Request for Proposal (RFP) in soliciting offers to supply any needed capacity for terms exceeding one year in duration. [Company Name] would retain the authority, and bear the full responsibility, for reviewing and accepting any of the capacity offers submitted under that RFP.”

Under Michigan law a company must take responsibility for its capacity acquisition decisions, so this step is essentially a statement of long standing policy. However, as noted above, the Commission must grant an exemption from the prohibition against an electric utility from entering into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the utility. Thus a company does not and cannot have total authority to review and accept capacity offers if it intends to accept an offer from an affiliated Electric Wholesale Generator (EWG).

If a company wishes to acquire capacity from an affiliated EWG, one of the determinations the Commission must make is whether the transaction would provide the EWG any unfair competitive advantage by virtue of its **affiliate** relationship. Such a determination is not easy to make and there will often be parties who will wish to contest this issue. In fact, the Commission itself questioned whether Detroit Edison’s proposed transaction with CMS Generation Michigan Power did not confer just such an unfair advantage. (See ORDER, Case No. U-1 1954, June 10, 1999, p. 9.) It would appear, therefore, that a contested case should be required if a capacity purchase involved an affiliated EWG.

Comment on Step (3)

Step (3):

“[Company Name] would make available for review by the Commission staff all offers received in response to the RFP and all capacity-related contracts ultimately entered into as a result of the RFP process. Nevertheless, there would be no public disclosure of those documents.”

It would be useful for this information to be available to the Commission staff as a resource material for maintaining familiarity with power markets. However, prohibiting public disclosure could be achieved through a number of means, e.g., protective orders, non-disclosure agreements or availability of material to review rather than filing with Staff or the Commission.

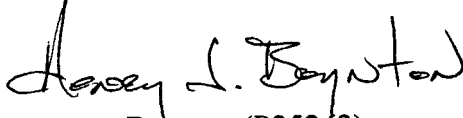
Concluding Proposal

Finally, Staff proposes that if a capacity solicitation process is to be used for purchased capacity, the same process should also be used when a company wishes to build or otherwise add to its owned capacity as well. Whenever any business considers the acquisition of the services of any capital good - a vehicle, a building, or a machine, for example - the decision of whether to buy or lease or rent must be made. An electric utility is no different. It can build a new plant, modify an existing one, or enter into a purchased power agreement of some kind. Thus, the decision regarding which purchaser to choose must always be preceded by a decision to purchase rather than to build. Conversely, the decision regarding which plant to build must always be preceded by a decision to build rather than to purchase. Thus, all capacity acquisition and expansion decisions are interrelated.

Therefore, Staff believes it would be appropriate to follow the three steps outlined above for all capacity additions whether owned or purchased.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in black ink, appearing to read "Henry J. Boynton". The signature is written in a cursive, flowing style.

Henry J. Boynton (P25242)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

DATED: February 8, 2000
8869DE-9798-12177/Comments

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OF BUSINESSES ADVOCATING TARIFF
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MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
MOTION FOR LEAVE TO FILE COMMENTS
OUT-OF-TIME

NOW COMES the Michigan Public Service Commission Staff ("Staff") and moves to
file the attached comments out-of-time, as follows:

1. On December 16, 1999, the Commission issued an order that established a
schedule for the submission of comments, reply comments, and responses to the proposal of the
Detroit Edison Company ("DECo") to adopt a revised procedure for future capacity solicitations.
The Commission ordered that initial comments be filed by January 18, 2000, reply comments by
February 1, 2000 and responses to replies by February 8, 2000.

2. DECo's proposal called for a "three-step" capacity solicitation process. The first
step would be the submission of an annual report to the Commission outlining projected capacity

needs and how the utility would address that need. The second step concerned the use of a standardized Request For Proposal in soliciting capacity. The third step would make available to the Staff all capacity offers received by the utility and all capacity-related contracts entered into by the utility, however, there would be no public disclosure of this information.

3. On January 18, 2000, initial comments were tiled by the Attorney General, ABATE, and Energy Michigan. The comments opposed various aspects of either the DECo's proposal or the Commission's procedure.

4. On February 1, 2000, DECo filed reply comments that rebutted arguments raised in the comments filed January 18, 2000.

5. The Staff had believed that the Commission's December 16, 1999 Opinion and Order would engender widespread interest and comment, thus obviating any need for the Staffs participation. However, the Staff was surprised by the fact that only three parties filed comments and only one party, the Company, filed rebuttal. Additionally, the Staff was struck by the fact that certain significant aspects and effects of the proposal were neither highlighted for the Commission's attention nor otherwise commented upon.

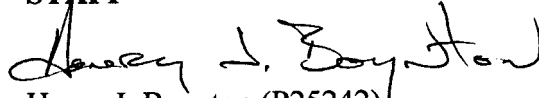
6. In order to provide the Commission with a more complete basis on which to make its determination, the Staff moves to tile the attached Comments out-of-time.

7. In light of the fact that no party has had the opportunity to reply to the attached Comments, the Staff requests, in addition to accepting said comments for filing, that the Commission permit the filing of replies to the Staffs Comments.

WHEREFORE, the Staff respectfully requests the Commission to grant its Motion to File Comments Out-of-Time and further permit the filing of replies thereto.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in dark ink, appearing to read "Henry J. Boynton", is written over the printed name.

Henry J. Boynton (P25242)

Assistant Attorney General

Public Service Division

6545 Mercantile Way, Suite 15

Lansing, MI 48911

Telephone: (517) 241-6680

DATED: February 8, 2000

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

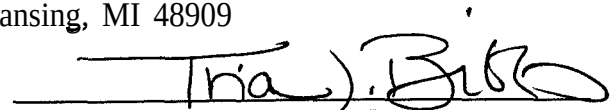
TINA L. BIBBS, being first duly sworn, deposes and says that on February **8, 2000**, she served a true copy of MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S MOTION FOR LEAVE TO FILE COMMENTS OUT-OF-TIME and COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, **plainly** addressed as follows:

BRUCE R. MATERS
JON P. CHRISTINIDIS
The Detroit Edison Company
2000 Second Avenue, 688 WCB
Detroit, MI 48226

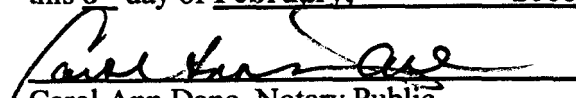
ERIC J. SCI-INEIDEWIND
Vamum, Riddering, Schmidt & Howlett
The Victor Center, Suite 810
201 N. Washington Square
Lansing, MI 48933

ROBERT A.W. STRONG
THOMAS E. MAIER
Clark, Hill P.L.C.
255 South Old Woodward Avenue
Third Floor
Birmingham, MI 48009

DONALD E. ERICKSON
Assistant Attorney General
Special Litigation Division
6520 Mercantile Way, Suite 2
P.O. Box 30218
Lansing, MI 48909


TINA L. BIBBS

Subscribed and sworn to before me
this **8th** day of **February**, **2000**.


Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 7-23-2000