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

THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY REPLY TO THE DETROIT EDISON COMPANY'S REPLY TO COMMENTS ON ITS CAPACITY SOLICITATION PROPOSAL

The Association of Businesses Advocating Tariff Equity ("ABATE") by its attorneys, Clark Hill P.L.C., submits this Reply to The Detroit Edison Company's Reply to Comments on its Capacity Solicitation Proposal in accordance with the schedule set forth in the Commission's December 16, 1999 Opinion and Order.

I

REPLY TO REPLY COMMENTS

A. Introduction.

ABATE will not spend much time replying to The Detroit Edison Company's ("Edison") petulant remarks regarding the motives of the parties in this case. Suffice it to say that ABATE and the other parties' true interest is to try to reduce rates, whereas, Edison's interest is to maintain the existing excessive rate levels for bundled customers and establish uneconomic stranded cost charges for those few customers that can leave the system, despite the transmission capacity constraints.

B. Stranded Costs.

It is reasonable to put Edison on notice that it will not be able to claim any stranded costs associated with future actions it takes to supply power to customers. Edison's protection lies in the requirement that the Commission must grant prior approval to any transactions that have capacity costs in contracts six months or longer. In addition, Edison is in the best position to gage what additional resources it will need to serve its load. To date, the amount of capacity actually utilizing alternative suppliers is minuscule when compared to one year's growth in load. Unless additional firm ATC is made available, the prospects for increased amounts of open access transmission usage are very small. Accordingly, ABATE renews its request to have the Commission put Edison on notice that no stranded costs are going to be recognized as a result of power purchases Edison makes.

Edison also mischaracterizes the market that ABATE was claiming was not competitive. That is the <u>retail</u> market for electricity, not the wholesale market, which Edison describes. Edison's activities in the wholesale market do effect the retail market because Edison can tie up all of the available firm transmission capacity. For example, Edison and Consumers Energy Company

("Consumers") control all but 190 MW of the available firm AEP transmission capacity to the Michigan Electric Coordinated System boarder from points outside of MECS within the East Central Area Reliability Region. Affidavit of Alexander J. Zakem in Case No. U-12266.

ABATE believes that now is finally the time to wean Edison from the belief that regardless of its mistakes, Edison's future customers are always there as the ultimate insurance policy. Edison should be placed on notice that it is responsible for the financial consequences of its actions just like its customers and that there will be no further stranded cost liability recognized if it is related to the future actions of Edison.

C. Term Limit for Power Purchase Contracts.

Edison objects to a five year maximum term limit on future purchase power contracts. In today's market, a five year power purchase contract is considered long term. Consequently, it is reasonable to limit Edison to a maximum five year contract term. As Edison acknowledges in its Comments, its strategy to meet summer demand has been to rely upon short term power contracts less than the six month period which requires Commission approval.

It further appears from Edison's Reply Comments, that Edison is using this proceeding in an effort to modify the procedures that would otherwise be followed in a PSCR case. Specifically, Edison states: "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 <u>proposed by Detroit Edison in this proceeding</u>". Reply to Comments, p. 4. (emphasis added) Such a proposal is patently a violation of the due process rights of any party which participates in future PSCR proceedings. The Commission should reject, out of hand, Edison's proposals to develop protections for contracts in this proceeding which would impact future PSCR proceedings.

D. Disclosure of Bids and Ultimate Prices.

Edison objects to disclosure and the concept that the bid prices must be reviewed in order to determine whether the actual prices agreed upon by the utility to purchase power are reasonable. Edison states that it is not the same as Consumers, but the two entities purchase power jointly in the sense that if a transaction is arranged by one entity, 50% of the transaction has to be offered to the other entity which has the right of first refusal. Both Consumers and Edison operate a tight pool and, as such, they are essentially one in the same. Consequently, Edison's argument that it should not be forced to disclose information because it is unlike Consumers should be rejected.

E. Staff Review.

According to Edison, the Staff review of the proposals without any remedies is acceptable. From Edison's perspective, the lack of remedies is probably a positive aspect of the proposal. From the perspective of customers, if the Commission approves the Staff review then the Staff review must provide a reasonable remedy if the Staff does not agree with the utility's actions. Presently, we have an incomplete proposal that does not protect the public interest. The Commission must modify the Staff review proposed to include remedies.

Edison also alleges that appropriate codes of conduct exist in a footnote on page 7. ABATE would like to point out that subject of the appropriateness of the existing codes of conduct is the subject of Case No. U-11234. Based upon the Staff's initial filing in that case, it is clear that the Staff

Staff does not believe that the current code of conduct is appropriate. ABATE will be filing its testimony later this month which will also point out the inadequacies of Edison's current code of conduct.

II

RELIEF

WHEREFORE, ABATE requests the Commission to issue an order that is consistent with ABATE's Initial Comments and Reply to Comments.

Respectfully submitted,

CLARK HILL P.L.C.

By: ______________________

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