STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION
****

In the Matter of the Application of The Detroit Edison Company for certain determinations pursuant to Sections 32(c) and (d) of the Public Utility Holding Company Act of 1935 and for accounting approval for the transfer of certain assets	)))))))	Case No. U-12266

ANSWER OF ENERGY MICHIGAN AND REQUEST FOR HEARING

Energy Michigan, Inc. (Energy Michigan) by its attorneys, Varnum, Riddering, Schmidt & HowlettLLP submits this Answer to the Application for certain determinations filed by the Detroit Edison Company (Detroit Edison or Edison) dated January 11, 2000 (the Application) in the above captioned matter.

I. INTRODUCTION

1. Detroit Edison has filed an Application requesting that the Commission make determinations which would enable the former River Rouge Unit No. 1 power plant to become an "eligible facility" under the Public Utility Holding Company Act (PUHCA) by finding that this approval will benefit customers, be in the public interest and not violate State law. *Application, p.2*. Edison has also requested that the Commission approve the transfer of the Edison River Rouge No. 1 power plant to DTE River Rouge No. 1, L.L.C, an unregulated affiliate of DTE and, approve an operation and maintenance agreement between Edison and River Rouge No. 1, L.L.C. *Application, p. 5, ¶ 12.* Finally, the Commission is requested to grant the foregoing approvals on an ex parte basis. *Application , p. 6.*

2. The position of Energy Michigan is that the Edison Application is yet another example of an electric utility claiming that it must engage in self-dealing transactions in order to satisfy future

power needs without recourse to the competitive market place. Energy Michigan suggests that the best course of action is for the Commission to reject Edison's proposal as bad precedent which will only encourage more examples of self-dealing, such as proposed by Consumers Energy in U-11954. In the alternative, the Commission should impose a set of measures which will mitigate the obvious increase in Detroit Edison market power on the one hand and deprive Edison of excess earnings due to this obvious example of self-dealing.

3. Edison can be deprived of its above market returns from this project by imputing all above market revenue from the sale of power during the summer of 2000 to Edison customers.

4. Edison should complete the project without transfer and, upon completion of operation during the summer of 2000, Detroit Edison should be required to auction the completed River Rouge No. 1 plant to the public at large. Edison affiliates should not be allowed to participate in the auction unless there are no other bidders. This procedure would give Edison customers fair value for the property and give non-affiliates an opportunity to obtain and operate generating assets in the Detroit Edison service territory which are not under the control of Detroit Edison, thus mitigating Detroit Edison's obvious market power.

II. DISCUSSION

5. As Detroit Edison has pointed out, "An electric utility company may not enter into a contract to purchase electric energy at wholesale from an Exempt Wholesale Generator if the Exempt Wholesale Generator is an affiliate or an associate company of the electric utility company." *15 USC, Sec. 79z through 5a(k)(1).*

6. State Commissions may exempt utilities from this overall prohibition if they find that allowing the proposed facility to be an EWG will benefit consumers, is in the public interest and does not violate State law. *PUHCA, Sec. 32(c) and 32(d)(2).*

7. Implicit in this Application is the unstated fact that Detroit Edison has not demonstrated that the River Rouge Unit No. 1 power plant was offered to non-affiliated entities for development or, if it was offered, the terms of the responses have not been disclosed. Thus, neither the Commission nor its customers have any idea of the true market value of the River Rouge No. 1 facility. All the Commission and its customers know is that Detroit Edison's affiliate will be able to purchase River Rouge No. 1 for twice book value. Thus, the Commission has no basis whatsoever to determine if the proposed transfer price is in the public interest because it is fair or reasonable.

8. It is clear, however, that operation of the River Rouge No. 1 225 MW of generating capacity will remain under the control of Detroit Edison and thus increase Detroit Edison's already commanding market power in the Lower Peninsula of Michigan. It must be obvious to the Commission that the advent of open access service makes the increase of Edison market power more dangerous since the Application indicates that the River Rouge No. 1 capacity will be offered for sale to electric retailers but that there is a shortage of power in the market to be served. *Application, p. 2*. Increasing Edison's share and thus dominance of the power short Michigan market threatens significant price increases that the Commission hoped to avoid by encouraging a more competitive environment. Surely this development cannot be in the public interest.

9. <u>Also, the Commission should question why Edison needs PUHCA exemptions relating to purchases of power from affiliates, if the affiliate intends to sell power only to marketers of electricity</u>. *Application, ¶ 2, p. 2.*

10. Detroit Edison and River Rouge may enter into an Operation and Maintenance Agreement whereby Edison the utility will operate the facility on behalf of DTE River Rouge No. 1, the deregulated entity. *Application p.5, ¶ 12.* River Rouge No. 1 will be selling power into a deregulated market yet will be obtaining its facilities, fuel and staffing from a regulated entity. How will regulators prevent cross-subsidization under such conditions?

11. Finally, Detroit Edison requests that its Application be granted on an ex parte basis without

the opportunity to examine the implications or even comment. Thus, there would be no basis to determine if this arrangement served the public interest prior to approval of the Application. *Application p.6, ¶ 14C.*

12. The Edison - DTE River Rouge arrangement is structured so it will be difficult or even impossible for the Commission to protect against self-dealing abuses. In such circumstances it would be impossible for the Commission to make another required PUHCA finding that the Commission has "sufficient regulatory authority to exercise its duties under the subparagraph". *15 USC Sec. 79z-5a(k)(2)(A)(i).*

13. Energy Michigan has reason to believe that Detroit Edison and/or its affiliates have purchased all available firm transmission import capacity into Michigan. If this is the case, River Rouge No. 1, L.L.C. would be able to benefit from the anti-competitive conduct of its parent and affiliates. How can these facts be determine without a hearing?

III. PROPOSED REMEDY

14. Yet again the Commission is faced with an Application requesting action to avert a threatened summer power shortage which is made in a time frame that other alternatives may no longer be available. The Commission should refuse to approve the proposed transfer which has numerous anti-competitive and anti-customer aspects described above.

15. The Commission should adopt a package of remedies which will increase power supplies while avoiding above market costs and decreasing Detroit Edison's market power. This desirable outcome can be achieved by allowing other market participants to purchase the converted River Rouge facility after conversion and operation as a gas fired peaker during the summer of 2000.

16. Since Detroit Edison has not allowed other developers to bid for the current River Rouge No. 1 plant and has structured the transaction so that an above market or above cost profit may be

captured by its own affiliate potentially as a result of other affiliates locking up all available firm transmission into Michigan, the Commission simply cannot approve the transfer without increasing Detroit Edison's market power.

17. If Edison truly requires the peaking power from the River Rouge facility, it can proceed with conversion to natural gas, operate the River Rouge facility during the summer of 2000 as a utility plant and then place the converted River Rouge No. 1 facility on the market for bid with the minimum bid price being book value plus cost of conversion. If the market values the River Rouge No. 1 facility at a level above book cost and cost of conversion, the excess paid by a purchaser should be returned to Detroit Edison customers or be used to reduce so-called stranded cost. Detroit Edison affiliates should not be allowed to bid or should be allowed to bid only if bids at or above cost are not received. The new operator should not be required to use Detroit Edison for O&M services.

18. The bid process to purchase River Rouge No. 1 after conversion to natural gas should occur as soon as possible, potentially after the summer of 2000 but possibly before the summer. The bid process could include operation and dedication of power supplies to the Edison customer base as a condition of the bid.

V. CONCLUSION AND PRAYER FOR RELIEF

Energy Michigan continues to recommend that the Commission deny Detroit Edison the sought after approvals necessary to avoid PUHCA prohibitions against the very type of activity contemplated in the transfer of River Rouge plant to an affiliate. Detroit Edison's brinkmanship tactics should force the Commission to "think outside the box." A utility company will continue to engage in generating plant brinkmanship only if it believes it can obtain a deregulated profit from such an activity through the type of transfer contemplated by Edison or that it can increase its market power by continuing to convert and maintain control over all active and mothballed power plants and thus capture an increasing, not a decreasing, share of a constrained market. The chief objections to this approach, that of gaining market power and above market prices flowed to deregulated entities, can be stopped while assuring adequate power supply by requiring that the converted River Rouge No. 1 facilities be auctioned to the public prior to conversion or, if conversion is absolutely necessary on a short time frame, that the converted plant be auctioned to the public.

To ensure that this approach is adopted the Commission should order a contested case hearing on this matter.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
Attorneys for Energy Michigan

January 18, 2000

By: Eric J. Schneidewind

Eric J. Schneidewind (P20037)
The Victor Center, Suite 810
201 N. Washington Square
Lansing, Michigan 48933
(5 17) 482-6237