STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the mater of the Application of THE DETROIT EDISON COMPANY to recover implementation costs for the period ended December 3 1, 1999	))))	Case No. U-12359

INITIAL BRIEF OF
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill P.L.C., files its Initial Brief with the Michigan Public Service Commission ("MPSC" or "Commission") in accordance with the schedule established by the presiding Administrative Law Judge ("ALJ") in these proceedings.

I

INTRODUCTION

The scope of these proceedings is confusing to say the least. The Detroit Edison Company's ("Edison") 1998 implementation costs were deferred to Case No. U-12639 by an Opinion and Order in Case No. U-l 1956, dated October 24, 2000. Accordingly, the first issue is whether a similar deferral should be made in this proceeding. ABATE supports such a deferral of the disposition of the 1999 implementation costs because both the 1998 and 1999 costs should be addressed simultaneously and be accorded similar treatment.

To the extent that the merits of cost recovery are to be decided in this proceeding, then ABATE supports the disallowance of the entire amount pending a showing by Edison that it has

created a workable retail open access program. Currently, retail open access is foundering. In the alternative, to the extent that costs are approved and a cost recovery mechanism is adopted then rate class specific surcharges should be developed recognizing that 44% of the customer costs are residential, 11% are small commercial, 29% are large commercial and 16% are primary. Under no circumstances should the implementation costs be recovered from customers through the use of a uniform per kWh surcharge.

II

REQUEST FOR OFFICIAL NOTICE OF FACTS

Subsequent to the close of the evidentiary record in this proceeding, the Michigan Public Service Commission Staff ("MPSC Staff') conducted an audit of Edison's enrollment procedures during October and November, 2000. The results of this audit were compiled and reported in a study entitled "MPSC Staff Report on Investigation of Detroit Edison Company Retail Open Access Program Customer Enrollment and Supplier Support Systems and Processes" dated December, 2000 ("December 2000 Staff Report"). Among the principal findings of that study, are concerns about the ability of a current and future enrollment systems and processes to handle customers desiring to participate in the retail open access program. The MPSC Staff stated:

> "6. Edison believes its process is only in a startup and transition phase, but it does not appear to be capable of efficient and effective handling of even the modest volume of customers migrating to ROA during the initial phase-in period.
>
> 7. At this time, Staff does not believe Edison's enrollment process is prepared to handle full open access, commencing on January 1, 2002." December 2000 Staff Report, p. 1.

The December 2000 Staff Report is posted to the MPSC's web site and ABATE, pursuant to Rule 327 of the Rules of Practice and Procedure before the Commission (1992 AACS R 460.17327) requests the Commission take official notice of December 2000 Staff Report so it can be used as justification for the disallowance of the implementation costs requested by Edison in this proceeding. The disallowance shouldnot be with prejudice but contingent upon a showing by Edison that it has successfully implemented a retail open access program. To date, no such showing can be made because there is not a functioning competitive market due to a number of reasons not the least of which is that Edison has control of substantial amount of out-of-state transmission capacity without which alternative electric suppliers are unable to function.

III

ARGUMENT ON MERITS

If the method to collect the 1999 implementation costs is determined in this proceeding then it should not be through a uniform cents per kWh surcharge. Such a surcharge would violate Section 10d(1)(5) of 2000 PA 141 because it would reallocate cost responsibility among the different customer classes. 3 TR 36. Instead, class specific surcharges should be calculated based upon the following allocations of cost responsibility:

Residential	44%
Small Commercial	11%
Large Commercial	29%
Primary	16%

Id.

The above allocation to specific customer classes is based upon the only empirical evidence in the record regarding cost causation. 3 TR 35-36. It is obvious from the above data that the use of a uniform cents per kWh surcharge would over allocate costs to the primary class which makes up approximately one-third of Edison's total sales.

IV

RELIEF'

WHEREFORE, ABATE respectfully requests the Commission to defer a decision on cost recovery with respect to the 1999 implementation costs or, in the alternative, take official notice of the December 2000 Staff Report and disallow without prejudice all 1999 implementation costs until such time as Edison can demonstrate that there is in fact a fully functioning retail open access program and, to the extent addressed in these proceedings, allocate the costs based upon the percentages discussed above and adopt class specific and not a uniform cents per kWh surcharges for collection and grant such other and further relief as is just and reasonable under the circumstances.

Respectfully submitted,

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