

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the rates, terms, and conditions
for retail customers of THE DETROIT EDISON
COMPANY to choose an alternative electric supplier.

Case No. U-12489

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
EXCEPTIONS TO PROPOSAL FOR DECISION**

The Staff files the following exceptions to the Proposal for Decision issued by the Administrative Law Judge (ALJ) on September 11, 2001. Staff refers the Commission to Staff's testimony and briefs filed in this case for the discussion of the issues addressed in these exceptions. Staff will attempt to refrain from repeating, unnecessarily, the arguments previously advanced in testimony or briefs.

Exception I

On the issue of defining the marketer, the PFD states:

1. Defining the Marketer/Detroit Edison Relationship in the RAST

Detroit Edison has included in the RAST at Sections 23 to 31 rules governing its relationship to Marketers. Detroit Edison notes that its relationship with Marketers is governed through appropriate jurisdiction by the Federal Energy Regulatory Commission (FERC) and not governed by the Commission. Detroit Edison further indicates those copies of the Marketer Agreements and Notices will be included in a comprehensive Supplier Handbook for uniform reference. Detroit Edison indicates that while it included these sections in the RAST to simplify the electric choice process it has no objections to having these sections withdrawn from the RAST based on objections from intervenors. (PFD pg. 3)

The ALJ believes that it is more appropriate to include these provisions and terms in the comprehensive Supplier Handbook as suggested by Detroit Edison. The ALJ recommends that these provisions be removed from the RAST based on objections from EM in particular. (PFD pg. 2-3).

Staff takes exception to this determination and recommends the Commission reconsider the matter of the inclusion of the Marketer's section in the proposed RAST. Staff believes that, at least in the initial phase of customer choice, the RAST should provide participants with a comprehensive set of the requirements, responsibilities, rules and prices governing customer choice. Customers' the ability to participate in the marketplace necessitates the availability of information. Many customers may not have the fortitude or desire, that AESs or Marketer's exhibit, to study and review the voluminous suppliers handbook. A comprehensive set of tariffs will be better suited to such customers needs and should be adopted.

Exception II

On the issue of curtailment, the PFD states:

13. Curtailment

The ALJ finds that EM's curtailment procedures provide a reasonable and measured response to curtailment. The ALJ finds Detroit Edison's proposed curtailment too subjective and fraught with possible discriminatory treatment of EC customers. The ALJ recommends adoption of EM's proposal for curtailment. (PFD pg. 26-27).

Energy Michigan's (EM's) proposal reads as follows:

10. Other Provisions

10.1 Retail Access Customers will be subject to the relevant curtailment procedure contained in Detroit Edison's Electrical Procedures, Rule B-3. 7. Insufficient supply by the Alternative Electric Supplier shall not change a Customer's curtailment status. Insufficient supply problems are addressed in Section 31. Retail Access Customers whose supply is sufficient will not be curtailed.

Detroit Edison's proposal in Exhibit A-2 reads:

10. Other Provisions

10.1 To the extent a Retail Access Customer's supply or alternate supply is insufficient or can not be delivered, the Customer will be subject to curtailment before non-retail access firm and Interruptible Customers in order to maintain system integrity and not for economic reasons. Customers who fail to curtail in order to maintain system integrity will be either; (i) terminated from service under this tariff, or; (ii) be required to permit the installation and pay for any equipment installed by Detroit Edison necessary to permit interruption of the Customer's load being served under this tariff. The relevant curtailment procedures are based on the Detroit Edison Emergency Electrical Procedures in rule B-3.7.

Retail access Customers whose supply is sufficient will have the same curtailment status as Detroit Edison's firm Full Service Customers.

Staff recommends that the Commission review the ALJ's determination on this matter. The language in EM's proposal states "*Insufficient supply by the Alternative Electric Supplier shall not change a Customer's curtailment status*" Care must be exercised that this type of broad language, or other such language, does not produce negative consequences. Such language could lead to situations that unfairly harm other customers. A lack of the ability to curtail those choice customers without sufficient supply should not become the seed that results in other choice or bundled customers being curtailed and harmed. Failure to secure sufficient supply must remain a basis for curtailment.

Exception III

On the issue of multiple meters, the PFD states:

20. Multiple Meters at Residential Locations

EM proposes language at Section 2.7 of the RAST which would exempt multi-family residential locations. Detroit Edison's opposition is based on the application of Section 2.7 to individual households in a multi-family setting but it doesn't apply to common uses in a multi-family setting. Mr. Newbold recognizes

that the Section does not apply to the common use in multi-family which are not residential customers anyway.

The ALJ finds EM's concern regarding combining all multi-family residential customers into a single metered load warranted. EM's proposal continues the practice of maintaining separate metering and avoiding unnecessary rewiring costs. (PFD pg. 20)

Detroit Edison's proposed in Exhibit A-2:

2.7 Multiple Meters at Residential Locations

All metered loads belonging to a single Residential Customer must be combined into a single metered load or account unless the Customer chooses to re-wire all loads through the principal meter at the residence, Detroit Edison will combine usage from all meters at the Customers residence during the billing process. A monthly meter charge shall apply for the second and any additional meters. Interruptible rates are not available under retail access service.

EM proposed the following:

2.7 Multiple Meters at Residential Locations

All metered loads must be combined into a single metered load or account unless the Customer chooses to re-wire all loads through the principal meter at the residence, Detroit Edison will combine usage from all meters at the residence during the billing process. ~~A monthly meter charge shall apply for the second and any additional meters.~~ Interruptible rates are not available under Retail Access Service. This does not apply to multi-family residential locations.

Staff recommends that the Commission review the PFD's finding relative to the above two proposals. Staff believes the proposals are really attempts to address two different situations (i.e. (1) single residence – multiple meters and (2) multiple-residences – multiple meters). A combination of the DE language with the EM proposal relating to multi-family residential locations would appear to better cover both situations.

Exception IV

On the issues of meter error liability and exclusions, the PFD states:

21. Liability for Meter Errors and 25. Liability and Exclusions

Detroit Edison proposes language at Section 2.10.4 which would absolve itself of liability as the result of malfunctioning meters. EM opposes such shield of liability and proposes that Detroit Edison be liable to any customer and any AES, to the extent of any penalties incurred, as a result of either a malfunctioning meter or a misread.

Detroit Edison opposes EM's proposal as an unreasonable burden and that the amount of the liability is not determinable. The ALJ rejects Detroit Edison's arguments. There has been no showing of an unreasonable burden. EM's proposal limits Detroit Edison's liability to the amount the parties incur for power supply costs as a result of such errors or malfunctions. The ALJ finds this measure of liability reasonable and recommends EM's proposed language at Section 2.10.4. (PFD pp. 21-22)

In Section 25, the PFD states:

EM objects to the broad shield against liability at Sections 9.1 and 9.3 as proposed by Detroit Edison. EM argues that the language excludes Detroit Edison's liability for imbalance penalties, faulty meters and administrative practices. EM claims that Section 10c(1)(c) of Act 141 prohibits the exclusions sought by Detroit Edison.

Section 10c(1)(c) of Act 141 provides that the Commission may make whole a person harmed by violations of Sections 10 through 10bb of Act 141. The ALJ agrees with EM. Detroit Edison's attempt to exclude itself from liability through language at Sections 9.1 and 9.3 conflicts with Act 141. In addition, the language conflicts with findings regarding Detroit Edison's responsibilities in various parts of this Proposal for Decision particularly at Section 21. (PFD pg. 37)

The above referenced sections of the PDF address liabilities. In Section 21 of the PFD, potential liability is placed on the electric utility for meter failures. Utility proposed liability protections are removed in Section 25 of the PFD. Staff would note that Sec. 10c(1) applies to both alternative electric suppliers and electric utilities. As written, this section would appear to contemplate and require a formal complaint proceeding with a Commission's determination of

liability or fault and issuance of an order with appropriate remedies as permitted in the section. In its determinations with regards to the liability issues, staff would urge the Commission to give consideration to the adoption of equivalent liabilities or liability protections consistent with the process as defined in this section of PA 141. In addition to the language contained in electric utility retail open access tariffs this may also entail consideration of the permissible liability protection contained in AES contracts or service agreements with its customers. It should also be noted that “R 460.3403 Metering inaccuracies; billing adjustments” is the Commission approved rules relating to remedies for meter inaccuracies and failures.

Exception V

On the issue of notice, the PFD states:

26. Failure to Pay Detroit Edison

EM requests more specific language at Section 11.4 of Detroit Edison’s proposed RAST which would mandate use of first class mail and 10 days’ notice before discontinuance of service. However, the actual language in its proposed Section 11.4 provides for 15 days written notice and does not specifically provide for notice by first class mail.

However, regardless of the language in EM’s proposed RAST, the ALJ finds EM’s request for 10 days’ written notice and notice by first class mail reasonable. The ALJ recommends the revision of Section 11.4 to conform with this finding. (PFD pg. 38).

Staff takes exception to the finding of the ALJ. Staff would point out that the issue has become a confusion of “termination of retail access service” and “disconnection of electric service.” In Section 11.4, termination relates to changes in AES provider or electric utility provider (i.e. switching or termination of AES services). Regarding this issue, it is staff understanding that rules relating to notification of such supplier changes are currently under development pursuant to the slamming and cramming requirements of PA 141. Discontinuance of or disconnection of

service is the physical shut-off of electric service to the customer by the electric utility. Disconnection of the retail open access customer is covered in RAST "Section 6.4 – Disconnection for Non-Payment" and the billing rules and procedures previously adopted by the Commission. The staff believes the language adopted by the PFD should be rejected at this time. When the slamming and cramming rules are approved by the Commission they can be incorporated into the RAST tariff.

Respectfully Submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

A handwritten signature in black ink, appearing to read "Dm Gadaleta", with a long horizontal stroke extending to the right.

David M. Gadaleta (P30163)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

DATED: October 2, 2001

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Mishelle R. Pagels, being first duly sworn, deposes and says that on October 2, 2001, she served a copy of Michigan Public Service Commission Staff's Exceptions to Proposal for Decision upon the following parties by email and depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

Bruce R. Maters (P28080)
Jon P. Christinidis (P47352)
Attorneys for The Detroit Edison Company
2000 Second Avenue, 688 WCB
Detroit, MI 48226

Eric J. Schneidewind (P20037)
Attorney for Energy Michigan
The Victor Center, Suite 810
201 N. Washington Square
Lansing, MI 48933

Robert A.W. Strong (P27724)
Attorneys for the Association of Business
Advocating Tariff Equity
255 South Old Woodward Avenue, Third Floor
Birmingham, MI 48009

John M. Dempsey (P30987)
Michael P. Calabrese (P60199)
Attorney for Unicom Energy, Inc.
215 South Washington Square, Suite 200
Lansing, MI 48933

Robert A. LeFevre (P59094)
Attorney for the Association of Businesses
Advocating Tariff Equity
2455 Woodlake Circle
Okemos, MI 48864

Julio C. Mazzoli (P58383)
Attorney for CMS Enterprises
330 Town Center Drive, Suite 1100
Dearborn, MI 48126

Joseph H. Fields (P37899)
Attorney for Metro Bureau Group Services,
Inc., Electricity Consortium
4700 South Hagadorn, Suite 195
East Lansing, MI 48823

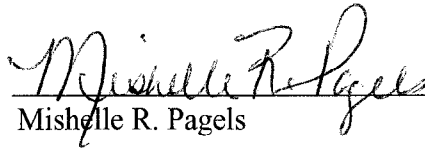
Brian W. Coyer (P40908)
Don L. Keskey (P23003)
Attorneys for Michigan Municipal Risk
Management Authority
1375 South Washington Avenue, Ste. 300
Lansing, MI 48910

ID MAIL

Larry W. Bailey
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909-7721

ID MAIL

Honorable Daniel E. Nickerson
Administrative Law Judge
6545 Mercantile Way, Ste. 14
Lansing, MI 48911


Michelle R. Pagels

Subscribed and sworn to before me
this 2nd day of October, 2001.


Tina L. Bibbs, Notary Public
Ingham County, Michigan
My Commission Expires: 11/13/03