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October 2, 2001

VIA ELECTRONIC MAIL and HAND DELIVERY

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909-7721

Re: 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

Dear Ms. Wideman:

Enclosed for filing in the above-referenced case are an original and four (4) copies of the Exceptions of CMS MS&T Michigan L.L.C. and CMS Marketing, Services and Trading Company on behalf of CMS Marketing, Services and Trading Company and CMS MS&T Michigan L.L.C., together with an original Proof of Service. This filing is also being sent electronically.

Thank you for your attention to this matter.

Very truly yours,

Julio C. Mazzoli

JCM/sw
Enclosures
cc: Parties of Record (w/Enclosures)

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

EXCEPTIONS OF CMS MS&T MICHIGAN L.L.C. AND
CMS MARKETING, SERVICES AND TRADING COMPANY

CMS MS&T Michigan L.L.C. ("MS&T Michigan") and CMS Marketing, Services and Trading Company ("MS&T") hereby submits the following Exceptions to the Proposal for Decision ("PFD") issued by Administrative Law Judge Daniel E. Nicherson, Jr. on September 11, 2001 in this case. Failure to except to additional rulings of the Administrative Law Judge ("ALJ") or statements in the PFD should not be construed as agreement or acceptance of those rulings or statements.

EXCEPTIONS

1. Loading Profile (PFD Issue 6, pages 10 - 13)

For customers with 300 kW Customer Service Capacity or less, the ALJ recommended adoption of The Detroit Edison Company's ("Edison") "proposed Load Profile Management Service," with Edison to be compensated for the service "at Staff's proposed $.0046 per kWh as a proxy until such time as the actual costs are determined, at which time an adjustment may be made for any under or overrecovery." PFD at 12. However, it is unclear whether this "Load Profile Management Service" refers to the original load profiling methodology using proxy curves described by Edison witness Edigio Basso (2 Tr. 184-189), or whether it refers to the alternative “Profile Management Service” referenced by Mr. Basso in his rebuttal testimony (2 TR. 193-195).

If the ALJ is recommending the adoption of Edison’s original load profiling methodology using proxy curves, MS&T and MS&T Michigan oppose such service being made mandatory, particularly if Staff’s proposed load management service charge is grafted onto this “service.” As alluded to on page 11 of the PDF, the use of such proxy curves is of absolutely no assistance in managing retail energy imbalances on a real time basis. Retail energy imbalances are virtually guaranteed - and, if the Commission adopts the ALJ’s recommendation regarding energy imbalances, they will be subject to the punitive $100/MWh charge for energy imbalance exacted under the International Transmission Company’s FERC wholesale Energy Imbalance Service. 2 TR. 392-394.

On the other hand, if the ALJ is recommending adoption of Edison’s alternative “Profile Management Service,” MS&T and MS&T Michigan are not opposed to a mandatory service, using Staff’s proposed charge as a temporary proxy charge for such service. Presumably, such service would be based upon the provisions proposed in Consumers Energy Company’s (“Consumers”) Retail Open Access case in Case No. U-12488. However, the Commission should confirm, consistent with the language of the Staff’s Optional Load Profile Management Service (Exhibit S-19), which is based upon the Consumers proposal, that no energy imbalance charges will apply if power is scheduled according to the load leading profiles.

2. Energy Imbalances (PFD Issue 7, pages 13 - 14)

MS&T and MS&T Michigan, ABATE, and Energy Michigan, Inc. all presented testimony setting forth the reasons why the use of a wholesale Energy Imbalance Service for Edison’s Electric Choice Program is inappropriate. 2 Tr. 270-272, 346-354, 392-396. The ALJ, however, only addressed ABATE's proposal, rejecting it on the grounds that the FERC has asserted jurisdiction. In point of fact, as noted in MS&T and MS&T Michigan's Reply Brief, the FERC has recognized that the energy imbalance service provided for in a transmission tariff may in fact be inappropriate for use in a retail access program:

> We have, in several prior cases, recognized that the energy imbalance provisions applicable to wholesale service may not be just and reasonable for a retail access program. As the Commission stated in Duquesne Light Company, "the pro forma tariff's energy imbalance service was designed with the expectation that transmission customers would have a reasonable ability to minimize deviations between scheduled deliveries and actual loads." In recent similar cases where utility companies have amended their OATTs to accommodate retail open access in their states, the Commission has recognized the inherent difficulty in minimizing energy imbalances for retail loads. Specifically, retail loads generally do not utilize hourly metering, telecommunications and associated telemetry to monitor their loads. Without these devices, the necessary data to allow retail suppliers to timely respond and minimize energy imbalances is lacking.

Entergy Services, Inc., 93 FERC ¶61,156 (2000) (footnotes omitted). In the *Duquesne Light Company* case quoted by the FERC in the *Entergy Services, Inc.* case, the FERC directed Duquesne "to consult with the Pennsylvania Commission and obtain the Pennsylvania' Commission's recommendations on what changes, if any, need to be made to the pro forma tariff to accommodate the retail program concerning the issues raised by MAPSA." *Duquesne Light Company, 86 FERC ¶61,189 (1999)* (footnote omitted). The existence of an energy imbalance service in a FERC transmission tariff therefore does not mean these provisions are appropriate for use in a retail access program, nor does it mean there is no role for this Commission to determine appropriate energy imbalance provisions for Edison's Electric Choice Program.

There are retail programs in other states that utilize retail energy imbalance schedules. 2 TR. 395-396; Exhibits I-11, I-13 - I-16. Edison itself acknowledges that some utilities have special retail energy imbalance provisions under their respective OATTs. Exhibit I-11. Indeed, the Alliance Regional Transmission Organization, which includes Edison and Consumers, recently tendered for filing proposed wholesale electric transmission rates at the FERC that include changes made to related Open Access Transmission Tariffs by several Alliance members to reflect specific terms applicable to retail service in the various pricing zones. *See* 66 Fed. Reg. 48,034 (Sept. 17, 2001) and Appendix Q to FERC Docket No. RT01-88-006 on FERC RIMS.

The FERC is obviously interested in each State Commission's views regarding retail energy imbalance services. It is up to this Commission to initiate action for the establishment of such services. In order for Electric Choice to be a meaningful program, it is imperative that this Commission play an active role in the establishment of energy imbalance provisions specifically crafted for Edison's Electric Choice Program.

3. Continuing Commission Authority (PFD Issue 15, pages 28-29)

Edison's Electric Choice Program is subject to Edison's RAST, its Supplier Handbook (and related website), and the various agreements Edison requires Electric Choice participants to enter into. Yet in this proceeding, Edison has only submitted its proposed RAST for Commission approval. MS&T and MS&T Michigan recommended that Edison be required to incorporate all agreements/documentation and defined rates as part of the RAST to be authorized by the Commission, and that any future changes be subject to Commission approval.[1] Indeed, MS&T and MS&T Michigan understood the Commission's Order in Case No. U-12272 to require Edison to submit new contract provisions for Commission approval absent authorization by a state statute that dispenses with the need for Commission approval. Opinion and Order, Case No. U-12272 (Feb. 22, 2000) at 5.

[1] MS&T and MS&T Michigan are not suggesting the Commission assert jurisdiction over purely FERC jurisdictional matters. However, the Commission requires a comprehensive understanding of all elements of the Electric Choice Program in order to develop a meaningful retail open access program.

The ALJ obviously disagreed, rejecting MS&T and MS&T Michigan's recommendation. In the ALJ's view, the complaint procedure followed by MS&T in the very case alluded to by MS&T, Case No. U-12272, presents an adequate remedy. In fact, that case demonstrated precisely how terms and conditions unilaterally insisted upon by Edison can act as barriers to competition. Moreover, to this day, there remain unresolved issues in Case No. U-12272 regarding the scope of the Commission's decision, as requests for rehearing remain pending. Accordingly, there should be more comprehensive Commission review of all aspects of Edison's Electric Choice Program, not just those terms and conditions that Edison chooses to incorporate into its RAST. Absent such review, additional complaint cases are likely to occur.

4. Meter Costs (PFD Issue 22, page 34)

In the PFD, the ALJ "recommends that the Commission order a revision to the metering section which clearly delineates when meter costs are the responsibility of Detroit Edison and when the costs are the responsibility of the customer." There should not be any issue here. Certainly, Energy Michigan and Edison disputed the appropriate Service Charge to be levied by Edison under the RAST. However, there should be no question that Edison's proposed Service Charge in both Sections 8.6 and 8.7 of the RAST incorporates the cost of meters, and no separate meter costs should therefore be levied in addition to the Service Charge.

5. Allocation of Enrollment Capacity Under Existing Electric Choice Program

MS&T and MS&T Michigan raised an issue with Edison's current Electric Choice Program as it relates to Edison's Transition Bid Price/Capacity allocation for customer enrollment purposes. The ALJ failed to address this issue in the PFD, even though it falls squarely within the scope of this case. Both Edison's proposed RAST and its Supplier Handbook continue, as they must, to contain provisions relating to the open bid procedure that remains in effect until December 31, 2001.[2] Unless this issue is resolved by the Commission in this case, it will continue to be a source of contention with Edison involving real dollars and real customers, and MS&T Michigan or Edison may be obligated to file a complaint with the Commission to have the matter decided once and for all.

This issue was fully briefed by MS&T and MS&T Michigan, so the matter will only be summarized here. With respect to the bid process, the Commission determined that "winning bids should be associated with capacity and should not be pre-assigned to any specific customer or retailer" and directed that "[a]s the holder of capacity through multiple bids begins to enroll and serve customers, it shall proceed from the highest to lowest priced bid." Opinion and Order, Case No. U-11290 (March 14, 2000) at 4. MS&T and MS&T Michigan believe that if a customer's enrollment capacity (i.e., distribution contract capacity) is split between two differently priced bids because not enough capacity is available in the higher priced bid, then the customer's enrollment capacity must be recorded at the weighted average bid price. 2 Tr. 390-391. Edison disagrees, taking the position that if this occurs, the entire enrollment capacity will be recorded at the higher priced bid. 2 Tr. 119. Under Edison's procedure, a customer, AES, and/or Marketer with multiple bid awards at varying bid prices will be deprived of its lower bid prices, and Edison will collect more in transition charges than what was originally bid for a specific block of capacity. By contrast, if what MS&T and MS&T Michigan believe to be the correct procedure is followed, bidders will pay, beginning with the highest priced bid and proceeding down, the exact bid price corresponding to the exact amount of capacity used, no more and no less. This is precisely the result the Commission ordered, and the Commission should confirm that MS&T and MS&T Michigan's interpretation is correct.

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[2] The matter at issue is not addressed anywhere in Edison's currently effective RAST.

CONCLUSION

WHEREFORE, MS&T and MS&T Michigan respectfully request that the Commission enter an Order consistent with its Initial Brief, Reply Brief, and these Exceptions.

Respectfully submitted,

CMS MS&T MICHIGAN L.L.C. and
CMS MARKETING, SERVICES AND TRADING COMPANY

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Dated: October 2, 2001

MPSC Case No. U-12489

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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

PROOF OF SERVICE

STATE OF MICHIGAN COUNTY OF WAYNE	)))

Jane M. Wagatha, being first duly sworn deposes and says that she filed electronically copy of the Exceptions of CMS MS&T Michigan L.L.C. and CMS Marketing, Services and Trading Company on behalf of CMS Marketing, Services and Trading Company and CMS MS&T Michigan L.L.C. in the above docket on the persons identified on the attached service via U.S. Mail and Electronic Mail on October 2, 2001.

Jane M. Wagatha

Jane M. Wagatha

Sherry Ann White

Notary Public

SHERRY ANN WHITE
NOTARY PUBLIC STATE OF MICHIGAN
WAYNE COUNTY
MY COMMISSION EXP. MAR. 7,2002