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Detroit Edison

A DTE Energy Company

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October 16, 2001

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

Re: **MPSC Case No. U-12489**

Dear Ms. Wideman:

Enclosed please find the original and four copies of The Detroit Edison Company's Reply to Exceptions along with Proof of Service regarding the above referenced matter.

Very truly yours,

Bruce R Maters

Bruce R. Maters

BRM/dj
Enclosures

cc: Service List

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

<u>THE DETROIT EDISON COMPANY'S REPLY TO EXCEPTIONS</u>

The Detroit Edison Company ("Edison" or "Company") hereby files these Replies to the Exceptions of other parties to this case. Most, if not all of the arguments presented by various parties have been comprehensively addressed by Edison in its briefs and the Company will not reiterate those arguments here. Edison relies on and incorporates by reference herein its brief and reply brief filed in this case. Failure by Edison to address a particular issue raised by a party should not be construed as assent to such issue or waiver of its positions taken in this case.

I

<u>Reply to ABATE</u>

A. <u>ABATE Exception No. 1 - Return to Bundled Service</u>

Edison also excepted to the ALJ's recommendations with respect to return to bundled electric service, but for different reasons. As stated in its Exceptions, Edison will accept the "10 day" criterion proposed by ABATE on the condition that its Option 1 and 2 Return to Service proposal is clearly adopted.

ABATE now seeks to have no notice of return to service if a supplier defaults. From a practical business standpoint, there must be a reasonable notice period in order to deal with the administrative and capacity planning activities, especially if supplier default occurs in a high-peak period. ABATE continues to unrealistically oppose any risks of supply for its members – most of which are large, high-load customers. That position is simply unreasonable.

B. <u>Exception No. 2 – Loss Factors</u>

This issue was correctly decided by the ALJ, ample support for which is set forth at page 11 of Edison's Brief and page 8 of its Reply Brief. Further, ABATE's illustrative formula is "new" evidence not contained in the evidentiary record and should, as a procedural matter, be ignored.

C. <u>Exception No. 3 – Bid Deposits</u>

As stated in its Exceptions at page 2, Edison will accept Staff's proposal concerning return of supplier bid deposits. This issue should be settled.

D. <u>Exception No. 4 – Energy Imbalance</u>

This issue was fully briefed and the ALJ's recommendation is based on ample record evidence. (See Edison rebuttal witnesses Reid and Bensky testimony at 2T 157; 2T 173, Edison Brief at page 12.)

E. <u>Exception No. 5 – Metering and System Use Charges</u>

ABATE asserts that the Company's proposal to increase customer usage requirements for interval demand metering to 300kW and above "would simply make this program uneconomic for a large number of Edison customers. Making the program go away for a large block of customers…"(ABATE-Exceptions p11). There is nothing in the record to support such an assertion. ABATE recommends the Commission not adopt the ¢/kWh System Use charge asserting

"The economic penalties associated with Edison's proposal will kill competition for a substantial number of customers." Again unsupported by the record. To the contrary, the Company supported its position stating:

1)"The ¢/kWh System Use charge supported by the Company provides savings opportunities to a greater cross-section of customers in the class, not just a select few."(2T 230),

2)"The change simplifies the customer education process and should increase participation by eliminating the need to introduce the concept of demand rates."(2T 209)

3) "The change to an energy based rate reduces metering, billing and administrative costs which translates into a lower service charge."(2T 209)

ABATE asserts "Edison's proposal flies in the face of increasing customer choice and increasing competition" Again, unsupported by the record. The Company's proposal increases choice and competition by providing economic benefit to more customers. As stated above, "The ¢/kWh System Use charge supported by the Company provides savings opportunities to a greater cross-section of customers in the class, not just a select few."(2T 230).

Finally ABATE asserts the $36 and $48 monthly service charges which include metering costs are excessive. ABATE argues these charges are excessive because they support a cost of $1,128 for a three-phase meter and $528 for a single-phase meter arguing that First Energy can acquire a meter and modem for $672. ABATE's argument is flawed and deficient in that it compares the cost of a meter and modem to the total installed cost of metering. A valid comparison should include not only the cost of the meter and modem but also other required hardware such as datapulses, enclosures, switches and base adapters. In addition, set-up costs and installation costs must also be included. (see Exhibit A-4 (TAB-2). Further, ABATE does not even identify whether the $672 is for a three-phase or single-phase meter let alone any of the other installation related costs.

F. <u>Exception No. 6 – Minimum Contract Term</u>

In its Reply Brief at pages 6-7, Edison offered a compromise provision for a minimum contract term in Section 5.1.1 of its RAST which corresponds to that contained in its D6 unbundled industrial supply rate.

Edison believes it is important to have a minimum term for large customers to ensure that the Company recovers the cost of serving those customers. It is not the Company's intention to apply arbitrarily long contract terms to lock a customer into retail access service. Edison believes that minimum contract terms are required regardless of the fact that under the RAST, a customer returning to bundled service must remain on the system for 12 months. Adoption of the Company's proposed Option 2 to "the Return to Service" provision tends to mitigate concerns associated with recovery of costs of a returning large industrial customer. Therefore, Edison proposed the compromise language to RAST Section 5.1.1 (see Reply Brief at page 7).

II

Reply to CMS MS&T

A. Exception No. 1 – Load Profiling

Edison has gone on record that it is willing to offer a load-leading (or forecasting) service to provide more predictability for customers without interval meters. Doing so, however, is not a trivial exercise. It involves load research, analysis, and modeling, all performed on a continuous and timely basis. Edison is willing to work with interested parties to design a reasonable service offering, but is deeply concerned about the potential for costs to grow exponentially as additional, specialized load shapes are requested. The scope and breadth of such a service depends, in part, on the outcome of the proposed change in meter threshold. Once that is known, detailed design can be undertaken.

B. Exception No. 2 – Energy Imbalance

This issue was discussed above in response to ABATE, and will not be repeated here.

C. Exception No. 3 – Continuing Commission Authority

Several parties recommended that all contractual terms governing every retail electric choice relationship be set forth in the RAST to ensure that Edison does not have the ability to unilaterally change essential contract terms. As stated in its Brief, while Edison agrees that Staff should have oversight of the contract prototypes, it would be a complicated and unwieldy process to incorporate all commercial aspects of the retail choice process into the RAST.

Furthermore, many terms of the RAST agreements are commercial business terms that do not relate to essential "rate" elements and therefore, should not necessarily be the subject of Commission regulation. Again, there has been no showing that these terms of the RAST contracts need to be embodied in the RAST. The ALJ correctly rejected the CMS MS&T proposal.

D. Exception No. 4 – Meter Costs

Edison addressed this concern at page 4 of its Exceptions, stating that it agreed that responsibility should be clearly assigned to the respective parties in the retail access transaction so that each party understands its meter costs.

E. Exception No. 5 – Allocation of Enrollment Capacity

Edison's procedure of using the highest bid price when two or more blocks of capacity are needed to serve a given load was clearly articulated and published before the bidding for capacity occurred. Bidders should have taken this procedure into account in formulating their bidding strategy. The intent of the bidding was to allocate the limited phase-in capacity by its true economic value to potential bidders as expressed by their voluntary offers to purchase it. A secondary goal was to maximize the impact of these voluntary offers to reduce the potential transition costs for later customers who would not have the opportunity to set the charges through bidding. CMS's discussion demonstrates they clearly understand the bidding procedure and that they are simply trying to change it after the fact. CMS had adequate opportunity to control this cost at the time they placed their bids.

III

Reply to Energy Michigan

Many of the issues raised by Energy Michigan ("EM") have been addressed in response to other parties. However, all of the issues raised by EM in its Exceptions have been thoroughly briefed by Edison. Therefore, Edison will respond only to some of the more contentious arguments raised by EM.

A. Exception To Issue No. 8 – System Use and Power Factor Charges

While this issue is discussed earlier in this Reply, EM reiterates an argument made on brief that requires a response, namely, whether changes in the RAST pricing violate 2000 PA 141 (Act 141).

Section 10a(1) of Act 141 requires that the Commission "issue orders establishing the rates, terms and conditions of service" to enable customers to receive by January 1, 2002, service from an alternative electric supplier. EM's interpretation of Section 10d(2), imposing a freeze on all electric prices charged by a utility with 1 million or more customers, would render the Legislative directive that the Commission approve rates and tariffs for retail access service meaningless. It would effectively freeze those retail access pricing provisions in tariffs in existence prior to the enactment of Act 141, thereby precluding the Commission from making changes necessary to fairly and economically develop electric competition in Michigan. This result was never intended by the Legislature, nor can it be tolerated under the law.

The intent of the Legislature is clear: the Commission is empowered to authorize rates for retail electric access service (see Section 10(a)(1)); and such intent must be preserved according to its clear meaning. Lorencz v Ford Motor Company, 439 Mich 370, 376; 483 NW2d 844 (1992). Conversely, if EM's interpretation is correct, the Commission will be severely limited in its ability to fashion competitive electric rates in Michigan which, in and of itself, would violate the Legislative intent described in Section 10(2)(a)(b). A statute cannot be interpreted in a manner to frustrate its intent. McAuley v General Motors Corp., 457 Mich 513; 578 NW2d 282 (1998) [reversed in part on other grounds] Rafferty v Markovitz, 461 Mich 265; 602 MW2d 367 (1999).

The only logical interpretation of the rate freeze imposed by Section 10(d)(2) is that it applies to existing bundled electric service rates (not new retail access service rates). Any other interpretation would fail to give effect to the Legislature's intent. In re MCI Telecommunications Complaint, 460 Mich 396, 411; 596 NW2d 164 (1999).

Developing the RAST pricing is different from changing rates through the unbundling of retail electric tariffs and then charging customers new rates for service, something which Act 141 prohibits. EM's attempt to confuse this fact of unbundling with the establishment of retail access tariff pricing is disingenuous.

EM also asserts in its Exception No. 8 that Edison's proposed rate changes are bad public policy because they "will frustrate or destroy competition for high load factor customers of less than 300kW who are most likely to use competitive service."(EM Exceptions, p12) Edison contends that there is nothing on the record to support EM's claim. No party in this case provided any testimony demonstrating that this group of customers would not economically benefit under choice. The Company's position for changing to the ¢/kWh System Use charge was previously addressed in its reply to ABATE Exception No. 5.

B. <u>Exception To Issue No. 10 – Penalties and Performance Standards</u>

Edison's position taken in its initial brief (page 20; Reply Brief, page 10) is that any performance standard, in order to be fair, must provide Edison reasonable time to implement retail access enrollments and not penalize the Company for events outside its control (2T 49-50; 126).

Providing for a realistic "switch" date coinciding with the date when a customer's meter is read will help clarify performance expectations. As noted by EM, the reduced reliance on telemetry data will also remove significant obstacles. But Edison still must be given access to meters and supplied complete and accurate customer enrollment information in order to process retail access service requests in a timely manner. Consequently, Edison has taken the straightforward position that in fashioning any performance standard it should not be held accountable for events and circumstances outside of its control. Therefore, EM's proposal for a strict liability "15 day" performance standard was correctly rejected by the ALJ as unfair and unreasonable.

C. Exception To Issue No. 29 – RAST Section 15.3

In the amended RAST attached to its initial Brief, Edison proposed striking the reference to compliance with all local and state regulations. The revised section only requires compliance with the RAST tariff as condition precedent for service thereunder. EM did not recognize this change in its Exceptions at page 18. In any event, Edison agrees that it does not want to be a policeman of state and local franchises and regulations.

D. Exception to ALJ not addressing Late Payment Charges and Discontinuation of Service.

On page 27 of its Exceptions, EM excepts to the ALJ's failure to address the issue whether a retail access customer can be disconnected for failure to pay disputed distribution charges (RAST Section 6.2 and 6.4). As a point of clarification, it is neither Edison's intention, nor its practice to disconnect customers with billing disputes pending before the Commission.

In this regard there should be no disparate treatment between bundled and retail access customers under Edison's Rules Governing Electric Service.

IV

CONCLUSION

For the reasons set forth above, The Detroit Edison Company respectfully requests that the Commission adopt the Proposal for Decision issued on September 11, 2001 in this case as modified by Edison's exceptions.

Respectfully submitted,

THE DETROIT EDISON COMPANY

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Dated: October 16, 2001

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

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

DORIS J. HILL-SHAVERS, being first duly sworn, deposes and says that on the 16th day of October, 2001, a copy of the **THE DETROIT EDISON COMPANY'S REPLY TO EXCEPTIONS** was served upon the parties listed on the attached Service List, a copy of which is attached, by electronic mail and by depositing properly addressed sealed and stamped envelopes into the Unites States mail by first class.

Doris J. Hill-Shavers
DORIS J. HILL-SHAVERS

Subscribed and sworn to before
me this 16th day of October, 2001

Maryann Neal

MARYANN NEAL
Notary Public, Oakland County, MI
My Commission Expires Nov. 3, 2002
Acting in Wayne

MPSC Case No: U-12489

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