

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the rates, terms, and conditions)	
for retail customers of THE DETROIT EDISON)	Case No. U-12489
COMPANY to choose an alternative electric supplier.)	
_____)	

At the December 20, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On June 5, 2000, the Customer Choice and Electricity Reliability Act, 2000 PA 141 and 142, MCL 460.10 et seq. (Acts 141 and 142), took effect. Among other things, Act 141 authorizes the Commission to establish the rates, terms, and conditions under which all retail customers of an electric utility will be permitted to choose an alternative electric supplier (AES).

On June 19, 2000, the Commission initiated this contested case proceeding to approve a retail access service tariff (RAST) for The Detroit Edison Company (Detroit Edison). The Commission noted that it had previously approved retail open access tariffs for Detroit Edison, under which some customers were permitted to choose another supplier of generation services as part of an experimental open access program, and a wider-scale customer choice program. The June 19,

2000 order required Detroit Edison to file a proposed RAST based on its existing open access tariffs, including all changes necessary to comply with Acts 141 and 142 and to remedy any problems that its open access customers had experienced with the existing tariffs. On September 20, 2000, Detroit Edison filed an application for approval of its proposed revised RAST.

Pursuant to due notice, a prehearing conference was held on October 24, 2000 before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). Intervenor status was granted to the following parties: the Association of Businesses Advocating Tariff Equity (ABATE); Exelon Energy Company, f/k/a Unicom Energy, Inc. (Exelon); Energy Michigan; CMS Marketing, Services and Trading Company and CMS MS&T Michigan, L.L.C. (collectively, CMS MS&T); the Metro Bureau Group Services, Inc.; and the Michigan Municipal Risk Management Authority. The Commission Staff (Staff) also participated in the case.

On March 27, 2001, the parties stipulated to bind into the record, without cross-examination, the direct and rebuttal testimony of 16 witnesses. The parties further agreed to receive into evidence all exhibits sponsored by those witnesses, as well as select portions of discovery responses prepared and submitted in this case. The record consists of 428 pages of transcript and 26 exhibits.

On May 4, 2001, Detroit Edison, ABATE, Exelon, Energy Michigan, CMS MS&T, and the Staff filed briefs. On May 25, 2001, Detroit Edison, ABATE, Energy Michigan, CMS MS&T, and the Staff filed reply briefs.

The ALJ issued his Proposal for Decision (PFD) on September 13, 2001. Detroit Edison, ABATE, Energy Michigan, and the Staff filed exceptions to the PFD on October 2, 2001. CMS

MS&T filed its exceptions one day late. Finally, on October 16, 2001, Detroit Edison, Energy Michigan, and the Staff filed replies to exceptions.

II.

DISCUSSION

Detroit Edison, Energy Michigan, and the Staff each submitted their own proposed RAST, set forth as Exhibits A-2, I-6, and S-18, respectively. In subsequent filings, these and other parties ultimately resolved several of the issues arising from those submissions.

Except as discussed below, the Commission adopts, as did the ALJ, the tariff provisions on which the parties have now reached agreement. The Commission likewise adopts the recommendations of the ALJ to which no party excepted. In addition, some of the parties raised issues that they did not pursue. Except as specifically noted in this order, the Commission views those issues as abandoned. The discussion that follows retains the numbers that the ALJ assigned to issues addressed in the PFD. As for the final six issues resolved in this order, which were raised by the parties but not specifically addressed by the ALJ, no numbers have been assigned.

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

Detroit Edison initially proposed including, in Sections 23 through 31 of its RAST, rules governing its relationship with marketers. However, Energy Michigan and other intervenors objected to that proposal on the grounds that marketers' activities are generally regulated by the Federal Energy Regulatory Commission (FERC), rather than the Commission. As a result, these intervenors asserted, confusion and inter-agency conflicts might best be avoided by deleting all mention of marketers from the RAST.

Although noting that it had included these provisions in an effort to simplify the electric choice process, Detroit Edison ultimately expressed its willingness to remove this language from the RAST and insert it into its Supplier Handbook instead. The ALJ recommended adopting Detroit Edison's compromise position.

The Staff excepts to that recommendation and asserts that, at least during the initial phase of customer choice, information describing the utility/marketer relationship is best included as part of the RAST.

The Commission agrees with the Staff and finds that it should approve Detroit Edison's initial proposal to include information concerning the utility/marketer relationship as Sections 23 through 31 of the RAST. Act 141's implementation should produce a dramatic increase in the number of customers for which open access is an attractive option. Particularly at the outset, these potential participants in Detroit Edison's customer choice program require easy access to a comprehensive description of the requirements, responsibilities, rules, and prices governing customer choice in Michigan. Because the development of a comprehensive tariff best satisfies that need, the Commission concludes that it should reject the ALJ's recommendation and require Detroit Edison to reinsert in its RAST rules governing its relationship with marketers.

2. Credit Requirements

Detroit Edison expressed its belief that Act 141 reduced the significance of an AES's creditworthiness. According to the utility, this is because Act 141 placed responsibility for the recovery of transition costs squarely on the end-use customer. The utility therefore asserted that there was no need for continuing to include, either as part of its RAST or its Supplier Handbook, previously approved tariff language establishing specific credit requirements for an AES. In contrast, Detroit Edison claimed that a business need still exists for imposing some type of

creditworthiness requirements on marketers. Although conceding that they need not be made part of the RAST, Detroit Edison proposed including credit requirements for marketers as part of its Supplier Handbook.

The ALJ agreed with Detroit Edison's assessment of this issue. He thus recommended adopting the utility's proposal to delete all language concerning the creditworthiness of an AES and to move, from Detroit Edison's previously approved open access tariff to its updated Supplier Handbook, language addressing marketers' credit requirements.

Energy Michigan expresses concern with the ALJ's recommendation. Specifically, it argues that including rules regarding the creditworthiness of marketers in the Supplier Handbook could serve to shield those rules from review by either the Commission or the FERC.

The Commission finds that all creditworthiness requirements, regardless of whether they apply to AESs or marketers, should be included in the RAST. To do otherwise would allow the utility to frustrate entry into the open access market by repeatedly revising those requirements without any opportunity for prior Commission review. The Commission thus concludes that the ALJ's recommendation should be rejected and that all language concerning the creditworthiness of an AES should be retained as part of the RAST.

3. Return to Full Service

Detroit Edison proposed implementing a policy covering the return to full service¹ that, in its opinion, simultaneously recognizes that the utility could neither refuse service to customers nor offer services priced on an ad hoc basis. In developing this policy, Detroit Edison claimed to have relied on several basic principles, including the need to (1) accommodate a customer's potential

¹"Full service" will be used in this order to mean the provision of distribution and supply service by Detroit Edison.

need to return to full service on a temporary basis, (2) ensure that the customer's return would not unduly affect system reliability, (3) avoid opportunities for "gaming the system," i.e., switching back and forth between the utility and an AES depending on which had the higher or lower tariff rate at a particular point in time, and (4) assign, on an equitable basis, all costs imposed by the utility's obligation to make the system available for use by returning customers.

Detroit Edison's return to service proposal, set forth in Section 5.4 of Exhibit A-2, consisted of two options. Under Option 1, a customer returning from open access service could take service under any applicable sales tariff in return for its commitment to remain a full-service customer of Detroit Edison for at least 12 months. In contrast, Option 2 provided only a short-term solution. Specifically, it allowed a customer to return to full service for up to three months, after which the customer would be required to either resume taking service from an AES or commit to take full service from Detroit Edison for a minimum of 12 months. While taking service under Option 2, however, the customer would pay both the rate set forth in the applicable sales tariff and a market-based fee called the Market Priced Power (MPP) charge. Under either of these options, Detroit Edison proposed requiring (pursuant to Section 5.1 of its suggested RAST) that the customer provide 30-days' advance notice of its intent to return to full service on Detroit Edison's system. See, Exhibit A-2, p. 10.

Energy Michigan argued that Detroit Edison's proposal was unduly burdensome based on the current lack of firm transmission capacity into the region controlled by Detroit Edison and Consumers Energy Company (Consumers). It therefore asserted that, until after the 2,000 megawatt (MW) increase in transmission capacity required by Section 10v of Act 141 has been made operational within the Detroit Edison/Consumers control area, open access customers should

be permitted to return to full service on no more than 15 days' notice and required to remain on that service for only 3 months.

ABATE also proposed significant changes to Detroit Edison's two-part proposal. First, it recommended removing all minimum contract terms. Second, ABATE generally suggested reducing the notice period for a customer's return to bundled sales service to 10 days. However, ABATE continued, that 10-day notice requirement should be waived and the open access customer should be allowed to return immediately in situations where its AES has defaulted on its contract.

The ALJ recommended adopting Detroit Edison's proposal to allow open access customers to return to full service, on either a long- or short-term basis, respectively, under Options 1 and 2. In doing so, he specifically concluded that the record did not support Energy Michigan's claims regarding the lack of adequate transmission capacity. Nevertheless, he recommended revising Detroit Edison's proposal by reducing the 30-day notice requirement to 10 days, as requested by ABATE.

Detroit Edison excepts to the ALJ's recommendations on the grounds that the reduced notice period provides dangerously little protection to both the utility and its customers. According to it, the 10-day notice adopted in the PFD offers "insufficient protection against gaming by customers" and places the utility "in an unreasonably difficult position to both plan capacity to serve its bundled customers and administer electric service." Detroit Edison's exceptions, p. 5. The only way for such a short notice period to work, Detroit Edison continues, would be to combine it with the requirement that "individual customer service changes . . . will only occur on scheduled monthly meter-read dates." *Id.*

ABATE also excepts to the ALJ's recommendations, albeit for a significantly different reason. Specifically, it claims that the ALJ erred by failing to specifically address and approve its proposal

to abolish the notice requirement whenever an AES defaults on its commitment to provide power to the end-use customer. Because any such default would likely occur with little advance warning, ABATE asserts, imposing the notice requirement could leave the customer without electricity for an extended period of time.

The Commission does not find any of the parties' suggested return to service proposals to be entirely satisfactory. However, it is possible to fashion a reasonable provision by combining, with some degree of modification, the best aspects of the parties' suggested structures. For example, the Commission is not persuaded (at least on the record assembled in this case) that a need exists for limiting a returning customer's use of Option 2 to three months, as proposed by Detroit Edison. Therefore, the Commission finds that the utility's recommended time limit for Option 2 should be deleted. The Commission further concludes that it makes more sense to charge customers selecting Option 2 the higher of the applicable tariff or market-based rate, and thus finds that the RAST should be adjusted accordingly. Nevertheless, it finds Detroit Edison's two-option proposal reasonable in most other respects.

Under this revised structure, a returning customer may pay any tariff rate for which it qualifies, if it agrees to remain on full service for 12 months. A returning customer that does not commit to remain on full service for 12 months must pay the higher of the tariff rate or market-based rate. However, any returning customer that does not initially commit to remain on Detroit Edison's full service for 12 months may later agree to do so and will pay any tariff rate for which it qualifies starting with the date of its commitment. Finally, any returning customer that commits to remain on full service for the subsequent 12 months and then fails to do so will be back billed for the higher of the tariff rate or market-based rate.

Turning to the issue of notice, the Commission finds that it would be both unfair and unwise to allow all open access customers to unilaterally elect to return to full service with little or no advance warning to the utility, as would be allowed under the proposals offered by Energy Michigan and ABATE. The Commission therefore concludes that, for now, customers should be required to provide 30 days' notice of their intent to return to full service. However, when more than 10% of the customer load in kilowatt-hours (kWh) for any of the three basic rate classes--residential, commercial, and industrial--is taking open access service, customers in that class must provide 60 days' notice. The Commission will consider further modifications of the return-to-service provisions as necessary to allow Detroit Edison to provide reliable service while maintaining its financial health.

When customers return to full service because of a default by their AESs or marketers and do not provide 30 days' notice, the customers must pay the higher of the tariff rate or the market-based rate until Detroit Edison has had the benefit of 30 days' notice. At that time, the customers have the option to pay the tariff rate by agreeing to remain on full service for 12 months. If the customers do not agree to remain on full service for 12 months, they must pay the higher of the tariff rate or the market-based rate. When customers return to full service for a reason other than a default by their AESs or marketers and do not provide 30 days' notice, Detroit Edison's obligation to serve those customers until it has received 30 days' notice is subject to its ability to supply the customers' requirements.

Finally, as an alternative to returning to full service, customers may choose to take service from another AES or marketer and, unless they have committed to take full service for 12 months, may choose another AES or marketer at any time after having returned to full service.

4. Loss Factor

As explained by Detroit Edison's Director of Power Sourcing and Reliability, Alexander Zakem, the MPP charge proposed for use by returning customers selecting Option 2 was designed to be "a realistic, reasonable, visible, and easily understandable quantification of [Detroit Edison's] exposure to market prices created by the return of Electric Choice customers to Detroit Edison service for short periods of time." 2 Tr. 77. Detroit Edison computed that charge by taking its average market price of power, adding the cost of transmission, and adjusting the total by the utility's average loss factor of 7.8%. See, Exhibit A-1.

ABATE objected to Detroit Edison's computation of the MPP charge on the grounds that using a loss factor of 7.8% would be unfair to high load factor customers. According to ABATE, this was due to the fact that those customers' actual power loss factors would generally be less than the utility's average. It therefore demanded application of the actual, class-specific loss factors identified in Section 19 of Detroit Edison's proposed RAST.

The ALJ disagreed with ABATE, and recommended that the Commission approve the MPP charge as computed by Detroit Edison.

ABATE excepts to that recommendation. Based on calculations set forth in its exceptions, ABATE asserts that use of the average loss factor would make it significantly more expensive for a hypothetical customer having a 50 MW load and a 75% load factor to take temporary service under Option 2 than if the class-specific loss factor was applied instead. According to it, this "unfairly tilts the return to service decision in favor of choosing Option 1," thus enticing the customer to commit to taking bundled sales service from Detroit Edison for at least 12 months. ABATE's exceptions, p. 3.

In response, Detroit Edison notes that ABATE's proposed loss factor would also have to be applied to any power supply cost recovery (PSCR) credit being backed out of the RAST charges because the computation of a utility's PSCR factor uses the average loss factor. This would, according to Detroit Edison, have the questionable effect of benefiting larger industrial customers at the expense of smaller ones. Detroit Edison goes on to assert that ABATE's proposal, which requires adjustments to loss factors "by quarter and by voltage level," would create needless complexity in both understanding and applying the MPP, while providing "only a very small increase in precision." 2 Tr. 77. Finally, the utility notes that the "illustrative formula" set forth for the first time in ABATE's exceptions represents "new" evidence not contained in the record that should, as a procedural matter, be ignored. Detroit Edison's replies to exceptions, p. 2. For all of these reasons, the utility argues that the Commission should adopt the ALJ's recommendation regarding use of the average loss factor.

The Commission agrees with Detroit Edison, and finds that the ALJ's recommendation should be adopted. From a regulatory standpoint, it makes sense to use the same loss factor (in this case, the average loss factor) to compute the MPP for customers returning to full service that was also used to compute those customers' corresponding PSCR credit.

5. Return of Bid Deposits

Having been the successful bidders for capacity made available under Detroit Edison's earlier versions of retail open access, numerous customers and AESs submitted bid deposits ranging from \$1,000 to \$2,000 per MW. For each bidder who has yet to receive open access service, Detroit Edison has continued to hold that bidder's respective deposit. As a result, the Staff proposed adding the following two sentences as Section 32.13 of Detroit Edison's RAST: "Bid deposits for successful bids which remain unused by December 31, 2001 shall be returned to the bidder by

March 31, 2002. No interest shall be paid on the returned deposits.” Exhibit S-18, p. 37. Detroit Edison supported the Staff’s proposal.

Although Energy Michigan agreed with the Staff that the bid deposits should be returned, it further asserted that repayment should occur upon the effective date of this order, instead of waiting until March 31, 2002. Moreover, Energy Michigan asserted that interest should be awarded on each returned deposit.

The ALJ was not persuaded by Energy Michigan’s assertions. Instead, he found that the Staff’s proposal to require the return of bid deposits by March 31, 2002, without interest, was reasonable and should be adopted.

Energy Michigan excepts to the ALJ’s failure to recommend that interest be added to the returned deposits. According to Energy Michigan, this is necessary to prevent a windfall to Detroit Edison because some deposits may have been received as early as the fall of 1999.

The Commission agrees that Detroit Edison should return the deposits associated with unused bid capacity. Nevertheless, it does not agree that the return should be delayed to as late as March 31, 2002. The Commission therefore finds that if Detroit Edison returns the deposits by February 1, 2002, it may do so without including interest. If the return is delayed beyond that date, however, Detroit Edison shall include interest from the respective date upon which each deposit was received. Any interest shall be at 7%, the rate most recently approved for carrying costs on open access implementation costs.

6. Load Profiling

Load profiling is a method of estimating the monthly demand for a class of customers (generally residential and small commercial customers) whose electrical usage is measured through the use of energy-only meters rather than interval demand meters. This is accomplished

by installing interval demand meters for a statistically significant number of these customers, using the data supplied by those sample meters to compute a proxy demand per kWh of energy use, and then applying that proxy to all members of the relevant customer classes. In this way, the actual demand from the sample can be used to estimate the amount of power that should be or should have been delivered--on an hourly basis--to the incumbent utility by a marketer or an AES, as well as to determine the demand-based system use charge to be paid by each retail open access customer taking service through use of an energy-only meter.

Detroit Edison initially proposed to include in the RAST a load profiling methodology that would develop proxy curves for application to all residential and commercial customers that lacked interval demand meters. Under this rather basic plan, Detroit Edison anticipated profiling customer usage only once each billing cycle and establishing only three classifications of energy-metered customers. As an additional component of that proposal, and one that is addressed later in this order, Detroit Edison proposed expanding the range of customers covered by load profiling from those with less than 20 kW of load to those with a demand level of less than 300 kW.

Energy Michigan urged rejection of Detroit Edison's proposal. According to it, the biggest problem with Detroit Edison's proposal was one of timing. Specifically, Energy Michigan noted, Detroit Edison's plan would not make actual load data available to an AES or marketer until long after actual energy consumption by its customers had occurred (a process generally referred to as load following). According to Energy Michigan, this would perpetuate a system under which an AES or marketer must estimate the amount of power that will be used by its customers so far in advance that large energy imbalances (as well as the penalties arising from them) are all but guaranteed. Energy Michigan therefore suggested replacing Detroit Edison's load following proposal with a comprehensive load leading program. Under this proposal, the utility would be

required to (1) develop hour-by-hour load profiles for each of its customer classes, (2) provide a prospective hourly load profile for each AES, and (3) include, as part of those profiles, all transmission and distribution line losses. Although Detroit Edison would be allowed to adjust the prospective load profiles, Energy Michigan continued, those adjustments would have to be announced by 1:00 p.m. on the day prior to their effective date.

The Staff also found Detroit Edison's proposed load profiling program to be lacking. However, it did not demand the elimination of the utility's load following system. Instead, it recommended ordering the utility to offer an optional load profile management service. This proposal, which was based on a similar optional service program that Consumers provides to its own retail open access customers, included pricing provisions identical to those suggested in Case No. U-12488 (Consumers' open access tariff proceeding). Namely, it would provide load leading profiles (which, if adhered to by a marketer or AES, would protect that entity from the imposition of imbalance penalties) in return for a charge of \$0.0046 per kWh for all kWh consumed.

The ALJ recommended rejecting Energy Michigan's proposal to replace Detroit Edison's basic load following system with a comprehensive load leading system. According to him, this was because Energy Michigan failed to provide any cost data in support of its suggested program. Specifically, he noted that although "the benefits to be derived from [Energy Michigan's] proposal may outweigh the costs, there is no substantive basis" to support such a finding. PFD, p. 12. The PFD also recommended rejecting the Staff's proposal as well, on the grounds that it was based on discussions among the parties that never produced a formal agreement. Nevertheless, the ALJ suggested authorizing Detroit Edison to charge the Staff's proposed fee of \$0.0046 per kWh, at least on a temporary basis, should the utility subsequently decide to provide an optional load forecasting service.

Both Energy Michigan and CMS MS&T except to the ALJ's proposed handling of this issue. According to them, retaining Detroit Edison's load following methodology will make it impossible to manage retail energy imbalances on a real time basis and will result in huge imbalance penalties. In turn, they contend, those penalties will make open access unacceptably risky for nearly all potential participants. Energy Michigan thus asserts that the Commission should reject the ALJ's recommendation and order Detroit Edison to offer a load leading profile management service on an optional basis. CMS MS&T agrees with that assertion, but goes on to contend that the Commission should (1) authorize using the Staff's proposed charge (\$0.0046 per kWh) as a proxy price only until a cost-based price can be established and (2) expressly state that no imbalance penalties will be assessed if power deliveries to Detroit Edison are scheduled and delivered according to the utility's load leading profiles.

The Commission finds these exceptions well taken. Establishing an optional service under which customers with energy-only meters may obtain load-leading profiles will help make retail open access less risky for, and thus more attractive to, residential and small commercial customers. At the same time, it should help ensure a more accurate match between the power provided to Detroit Edison by AESs and marketers, on the one hand, and that used by those suppliers' customers, on the other. Moreover, the Commission finds that the \$0.0046 per kWh charge suggested by the Staff (and which matches the price that Consumers intends to charge for a nearly identical service) constitutes a reasonable proxy for use until a cost-based price can be established. Finally, the Commission agrees with CMS MS&T that, as specifically noted on Exhibit S-19 (the Staff's proposed "Optional Load Profile Management Service"), no energy imbalance penalties should be imposed when power is scheduled and delivered in accordance with the load leading profiles provided by the utility.

The Commission therefore concludes that the ALJ's recommendations on this issue should be rejected in pertinent part, an optional load profile management program like that set forth by the Staff on Exhibit S-19 should be made available for use by customers with energy-only meters, and a proxy price of \$0.0046 should be assessed for that service until a cost-based charge is approved by the Commission. The Commission will review this matter in six months, and directs the Staff to evaluate the effect of this program on the success of retail open access service (particularly as it pertains to small customers). The Commission further finds that, if requested by petition of the Staff or any other party to this case, a proceeding should be commenced at that time to true-up all revenues generated pursuant to the program's \$0.0046 proxy price.

7. Energy Imbalances

CMS MS&T, ABATE, and Energy Michigan asserted that retail energy imbalances should be settled not at the wholesale level, as proposed by Detroit Edison, but rather at the distribution level. In support of this assertion, these intervenors noted that retail customer loads are less predictable than wholesale customer loads. As a result, they continued, application of the load balancing provisions set forth in International Transmission Company's (ITC)² open access transmission tariff (OATT) would be inappropriate for retail customers and would discourage participation by customers with relatively unpredictable loads, while effectively providing for the overcollection of imbalance penalty charges. The three parties thus recommended that Detroit Edison be required to cash out retail energy imbalances with AESs or marketers in each hour based on the utility's incremental or decremental cost in that hour. They further proposed

²Earlier this year, Detroit Edison transferred its transmission facilities to ITC, which is a wholly-owned subsidiary of Detroit Edison's parent company, DTE Energy.

establishing a 50,000 kWh threshold below which no penalties would apply, with the initial retail bandwidth set at 20% and nonconforming customers permitted to purchase bandwidth up to 80%.

In response, Detroit Edison asserted that the intervenors' proposal would constitute a major change in the way that imbalance charges are settled with retail customers, bringing with it significant administrative burdens and implementation costs. The utility went on to say that implementation of that proposal would require the Commission to either assert jurisdiction over a service that the FERC currently regulates or order ITC, a non-jurisdictional company, to file with the FERC an application to modify the current balancing provisions. It further stated that FERC was already in the process of resolving this issue as part of an ongoing proceeding to establish a real time balancing market. Detroit Edison therefore argued that it would be extremely complex, costly, and wasteful to adopt the intervenors' proposal as an interim measure, only to have it superseded by a more desirable alternative in the next year or two.

The ALJ agreed with Detroit Edison primarily on the grounds that the FERC has asserted jurisdiction over this and several related issues. Moreover, he noted, many of these issues were already addressed as part of the OATT. He therefore recommended that the Commission reject the intervenors' proposal to require balancing to be conducted at the distribution level.

The intervenors except to that recommendation on several grounds. First, CMS MS&T points out that recent FERC orders indicate that it has not preempted this issue, as incorrectly assumed by the ALJ. Second, ABATE asserts that without netting energy imbalances at the distribution level, and instead allowing ITC to impose the wholesale penalties set forth in Schedule 4 of its OATT, customers with unpredictable loads will be effectively banned from participating in retail open access. Finally, they argue that imposing the system advocated by the utility and recommended by the ALJ will provide Detroit Edison with a windfall, all at the expense of open access customers.

The Commission agrees with CMS MS&T, ABATE, and Energy Michigan that several factors support netting energy imbalances at the distribution level. Nevertheless, practical issues exist concerning the feasibility of such an imbalance program.

Thus, the Commission directs the Staff to convene, no later than January 15, 2002, a meeting of the parties in this case and other interested persons to develop concepts and tariffs necessary to implement a distribution imbalance service. The parties should give consideration to the issues surrounding distribution imbalance service such as the interaction between OATT transmission and retail distribution imbalance mechanisms, the design of a distribution imbalance service and appropriate charges, the steps to implement the service, and other relevant matters. The parties should attempt to resolve the issues surrounding this service and reach agreement on its implementation. The Staff shall report to the Commission on the progress of these discussions to ensure that they are consistent with the Commission's desire to implement this service. Further, the Staff is directed to file a report by April 1, 2002 with specific recommendations and proposed tariffs related to a distribution imbalance service. If the Staff believes as a result of its activities in this matter that a distribution imbalance service is either impractical or unnecessary, it should report its justifications for such a conclusion.

From the date of this order until the Commission issues an order on the Staff recommendations, no imbalance charges or penalties shall be incurred by participants in Michigan's retail open access program for actions within the jurisdiction of this Commission related to supply imbalances.

8. Metering and System Use Charges

Detroit Edison proposed numerous changes to its existing metering and system use rate structure. First, it suggested increasing the level at which a customer would be required to begin

using an interval demand meter from 20 kW to 300 kW. Second, the utility asked for authority to impose on all demand-metered customers a new monthly meter charge of either \$36 for single-phase service or \$48 for three-phase service. Third, Detroit Edison sought to apply a system use charge of 3.01¢ per kWh to all retail open access customers using energy-only meters. According to it, reducing the number of customers needing interval demand meters would make it easier for small customers to participate in the program. Moreover, Detroit Edison asserted, its proposed metering and system use charges would better reflect the costs of serving various-sized customers.

The Staff acknowledged the appeal of allowing customers with relatively small loads to switch to retail open access without having to await installation of an interval demand meter. Nevertheless, the Staff noted that Detroit Edison's proposals could raise the cost of open access for many high load factor customers. Finally, it asserted that if the Commission elected to approve Detroit Edison's requests in this regard, it should reduce the system use charge to 2.88¢ per kWh. According to the Staff, this was necessary to remedy Detroit Edison's mistaken use of weather-adjusted data.

For their part, both ABATE and Energy Michigan opposed Detroit Edison's requested changes in the metering threshold, monthly metering charge, and system use charge.

The ALJ disagreed with the intervenors and recommended implementing the utility's proposals, but with one change. Specifically, the ALJ stated that the Staff's lower system use charge should be substituted for Detroit Edison's weather-adjusted figure.

ABATE and Energy Michigan except to the ALJ's recommendation for three reasons. First, they argue that Detroit Edison's new structure will dramatically increase the cost of retail open access service for any customers having a load factor of over 15 to 17%. This, they claim, would violate the rate freeze imposed by Section 10d(1) of Act 141. Second, they contend that the

utility's plan would likely make retail open access uneconomical for many potential customers.

Third, they assert that Detroit Edison greatly overestimated the cost of obtaining interval demand meters and, as a result, proposed an excessive monthly metering charge.

Based on its analysis of Act 141, the Staff also expresses concern that the ALJ's recommendation would, if adopted in its entirety, violate the rate freeze. However, it went on to note that the potential benefits of Detroit Edison's proposed structure could be obtained, at least in part, by making it available on an optional, as opposed to a mandatory, basis. Should the Commission elect to pursue this alternative, the Staff continued, it would still be necessary to adopt a system use charge for the optional service that is not based on weather-adjusted data.

The Commission finds the intervenors' exceptions well taken. As shown on Exhibit I-7, Detroit Edison's proposed changes could (based on actual billing data from the September-October 2000 billing cycle) increase distribution charges anywhere from 2.7% to 82.1% for open access customers with loads of 300 kW or less. Thus, requiring a customer to adhere to Detroit Edison's proposed pricing structure prior to the expiration of the price freeze would likely violate Act 141. Moreover, the Commission agrees with the Staff that the more appropriate solution would be to retain the existing metering requirements and price structure while also providing for the implementation of Detroit Edison's proposal as an optional service. This would allow retail open access customers with loads of less than 300 kW to select the metering option (and subject themselves to the corresponding fee structure) that best suits their respective needs.

The Commission therefore concludes that the ALJ's recommendation should be rejected, at least in part. In reaching this conclusion, the Commission finds as follows. First, Detroit Edison's existing price structure and terms of service for its metering and system use charges should be retained as part of its RAST. Any customers seeking to take service under that pre-existing

structure would necessitate the installation of interval demand meters. Second, the RAST should be revised to provide optional service along the lines proposed by the utility. Specifically, any open access customer having a load of less than 300 kW could elect to take service without the installation of an interval demand meter and under the terms and conditions proposed by the utility, except that the Staff's 2.88¢ per kWh system use charge would be substituted for the weather-adjusted version suggested by Detroit Edison.

10. Enrollment Performance Standards and Penalties

Several parties advocated incorporating performance standards as part of the RAST in an effort to improve the retail open access enrollment and implementation process. Among other things, Energy Michigan proposed requiring Detroit Edison to switch customers to open access service within 15 days after submission of the enrollment request. It also recommended that customers be allowed to waive the requirement of telemetry on meters serving less than 1,000 kW as a way of addressing Detroit Edison's claim that many past delays arose from problems with having telephone lines installed. Energy Michigan maintained that the Commission must provide some definitive deadline for the implementation of a customer's open access service or the utility would be left to complete that work at its own pace. For its part, the Staff suggested that Detroit Edison's performance could be improved by revising Section 2.9.4 of the proposed RAST to penalize the utility for any failure to perform its pre-implementation meter reads in a timely fashion.

Detroit Edison objected to a majority of the parties' proposals to incorporate performance standards and penalties. Although indicating that it did not categorically oppose setting some performance criteria, Detroit Edison wanted to make certain that all standards were tied to work that it controls and that it would not be penalized for delays within the control of others, such as a

customer, an AES, or a telecommunications service provider. Detroit Edison went on to assert that the effective date for any supplier switch should be the scheduled meter read date coinciding with the close of the customer's normal billing cycle. According to Detroit Edison, that would facilitate a clean final bill instead of a confusing array of partial month and prorated bills.

The ALJ found that Detroit Edison presented no compelling reason to maintain the mandatory telephone link with customers under 1,000 kW. In contrast, he concluded that Energy Michigan and the Staff provided a strong showing of delay, confusion, and finger pointing regarding the failure to establish those telephone links in a timely manner. The ALJ therefore recommended eliminating mandatory telemetry for customers with loads of less than 1,000 kW.

The ALJ agreed with Detroit Edison's claim that it should only be held responsible for work under its responsibility and control. However, the ALJ went on to conclude that without some sort of penalty provision, Detroit Edison would not be properly motivated to make important tasks, like timely reading meters, a properly ranked priority. He thus supported a hybrid of the penalty-based proposals offered in this case. Specifically, he recommended adopting the Staff's proposed penalty provision with the proviso that Detroit Edison not be held accountable for actions outside the scope of its control. The ALJ further recommended that provisions be incorporated for a grace period of three days. Moreover, he concluded that the RAST should include language that would make allowances for storms and other events or occurrences that render the reading of meters physically impossible. Nevertheless, he rejected the firm 15-day processing deadline requested by Energy Michigan.

Energy Michigan excepts, in part, and argues that there cannot be any doubt that Detroit Edison is having serious problems completing enrollments on a timely basis. It therefore asserts

that its proposed 15-day deadline, with sanctions provided under Act 141, would supply the incentive needed for the timely completion of customer enrollments.

Detroit Edison excepts to what it perceives as the ALJ's failure to explain whether the threshold adopted for elimination of the telemetry requirement is based on 1,000 kW of measured demand or 1,000 kW of customer service capacity. According to the utility, this difference is significant because 1,000 kW of customer service capacity equates to actual demand in the range of 300 to 700 kW. Detroit Edison further asserts that the ALJ should have better defined the recommended performance standards by (1) including an exclusion for force majeure, (2) adding a statement to the effect that time frames must be measured from Detroit Edison's receipt of an enrollment request to site-ready status, minus customer controlled activities like telemetry installation, and (3) specifying that the effective date of a customer's switch to retail open access service is the customer's next scheduled meter read.

The Commission concludes that although a completion deadline is appropriate to provide a standard against which to judge the enrollment process, the 15-day maximum suggested by Energy Michigan is too short. Accordingly, the Commission finds that Detroit Edison should be required to complete all open access enrollments within 45 days, which should provide adequate time to account for billing cycles and other requirements of the process. This requirement is therefore neither arbitrary nor capricious. Moreover, this deadline does not require that customers actually commence service within 45 days, only that Detroit Edison has completed all activities required of it to place the customer in site-ready status. Such a deadline is warranted in this case due to Detroit Edison's documented history of problems with timely customer enrollments. Nevertheless, the Commission rejects all other exceptions regarding this issue, including the utility's

request for a force majeure exclusion and its proposal to define the optional 1,000 kW telemetry threshold in terms of customer service capacity instead of measured demand.

Before moving on, the Commission also finds that Detroit Edison should provide the Staff with weekly reports concerning the time it takes to complete the enrollment process. Finally, the Commission reminds Detroit Edison that the recovery of its implementation costs depends on developing systems that work. As such, it should not view compliance with the 45-day standard as sufficient to demonstrate the reasonableness and prudence of its expenditures on enrollment systems. Rather, it is an interim standard against which to judge the utility's performance. Recovery of the millions of dollars spent on implementation processes requires the delivery of systems that are capable of routinely completing enrollments in a prompt manner.

11. Minimum Term for Open Access Service

Detroit Edison proposed a five-year minimum term for large commercial and industrial customers that elect to take retail open access service. It also proposed a one-year minimum for customers with no more than 1,000 kW of load. Detroit Edison stated that the purpose of these minimum contract terms is to enable the utility to collect minimum charges from customers that elect to discontinue service prior to completing their initial contract terms. According to Detroit Edison, minimum charges like these have long been used to provide some contribution toward the utility's cost of providing the distribution system improvements, modifications, and installations necessary to initiate service. In response to concerns expressed by ABATE, Detroit Edison proposed revised language more clearly indicating that, rather than forcing customers to remain on open access, its proposals merely require payment of the appropriate minimum charge.

The ALJ recommended adopting Detroit Edison's proposal regarding the imposition of minimum terms for the receipt of open access service. This was based on the ALJ's belief that the

utility must be allowed to recoup the cost of making that service available to its customers. This was, he continued, necessary to prevent shifting those costs onto other customers.

Although not opposing the proposed treatment of large commercial and industrial customers, ABATE excepts to the ALJ's recommendation as it relates to customers with loads less than or equal to 1,000 kW. According to ABATE, "there is no reason to impose a requirement on customers at existing locations to take retail open access service for a minimum of one year, particularly when this industry is [in] its infancy." ABATE's exceptions, p. 13.

The Commission finds that ABATE's exception is based on a misunderstanding of the revised language that the ALJ recommended for adoption. Rather than applying to existing customers, as ABATE mistakenly assumes, that language specifically imposes the minimum term provisions only on "new primary installations." 2 Tr. 229. As a result, neither the five-year nor the one-year minimum term will apply to customer locations where open access service is already being provided. The Commission thus finds that it should reject ABATE's exception and adopt the ALJ's recommendation with regard to this issue.

12. Treatment of Customers With Multiple Feeds

Many industrial customers have had more than one service line installed to serve their normal electric load (referred to as multiple feeds), thus enhancing service reliability. Detroit Edison noted that, under its current tariffs, customers requesting multiple feeds are generally charged the additional costs through Standard Rider No. 2 (Rider 2). The utility went on to note that when multiple feeds are installed for its own convenience or system needs, or when company policy prescribes two-line service, the customer is not charged the additional costs. Moreover, Detroit Edison pointed out, the utility suspended the imposition of Rider 2 charges for some multiple feeds

as part of the special manufacturing contracts (SMC) signed with a few of its larger industrial customers.

Detroit Edison indicated that situations could arise in which customers that are not currently paying for multiple feeds may become responsible for Rider 2 charges. One example provided by the utility was when multiple feeds were installed at no charge as part of a company policy (e.g., supplying power to hospitals) and that policy subsequently changed. Although the utility will continue to “grandfather” receipt of that free service to the extent of the customer’s original capacity, Rider 2 charges would be assessed for any additional capacity required to satisfy the customer’s load growth. A second example given by the utility was when an existing SMC customer ceases taking service under a special contract. In that case, Detroit Edison stated, any suspended Rider 2 charges would be reinstated and multiple feeds installed during the term of the contract would become subject to those charges.

ABATE expressed concern with Detroit Edison’s position. Specifically, it asked the Commission to find that the utility may not impose Rider 2 charges under the RAST if the customer had been receiving free multiple-feed service pursuant to a SMC. Otherwise, ABATE asserted, the utility would be able to use the potential implementation of Rider 2 charges as a means of keeping SMC customers from switching from full service to open access.

The ALJ agreed with ABATE, and held that Detroit Edison’s proposed practice would be discriminatory, anti-competitive, and contrary to Act 141. He therefore recommended that the Commission prohibit the utility from reinstating charges for multiple feeds when SMC customers seek to switch to retail open access service.

Detroit Edison excepts to that recommendation on the grounds that it would provide an unjustifiable benefit to former SMC customers at the expense of other ratepayers. Detroit Edison

points out that for these customers, multiple feeds were installed and Rider 2 charges were being paid prior to signing the SMCs. Once the contracts were signed, the utility continues, the Rider 2 charges were suspended as a separate fee and the costs for these multiple feeds were simply included as part of the SMC charge. Detroit Edison therefore contends that when customers cease taking service under their respective SMCs, Rider 2 charges must be reinstated for two reasons. First, reinstatement is a condition of the SMC contracts. Second, the cost of building and maintaining the redundant feeds would otherwise be passed through the ratemaking process to customers that receive no benefit from the existence of multiple feeds.

The Commission finds Detroit Edison's arguments persuasive. Thus, to ensure that it does not abrogate any terms of the SMCs and to avoid shifting the cost of these multiple feeds to other ratepayers, the Commission concludes that the ALJ's recommendation should be rejected. Nevertheless, whenever an SMC customer seeks to negotiate the termination of its contract, the Commission expects the utility to conduct those negotiations in a manner that does not vary based on whether the customer is expected to begin taking open access service, as opposed to returning to full service. The Commission may revisit this issue if it appears that the utility is using the potential reinstatement of Rider 2 charges to unreasonably discriminate against customers' selection of open access service.

13. Curtailment

Detroit Edison proposed specifying in Section 10.1 of the RAST that, to the extent that an open access customer's supply or alternate supply proves insufficient or cannot be delivered, the customer will be subject to curtailment before non-open access firm and interruptible customers in order to maintain system integrity. The utility's proposal went on to indicate what would happen to customers that refuse to curtail their use after being directed to do so. Furthermore, it stated that

open access customers whose supply is sufficient would have the same curtailment status as Detroit Edison's firm full service customers. See, Exhibit A-2, p. 16. Finally, in response to a suggestion by the Staff, Detroit Edison revised its proposed language to expressly state that the curtailment of open access customers who lack adequate supply cannot be done merely for economic reasons.

Energy Michigan objected to Detroit Edison's proposed version of Section 10.1. According to it, the utility's curtailment proposal was inconsistent both with the imbalance penalty provisions set forth in the applicable OATT and Detroit Edison's emergency electrical procedures. Unless significantly revised or replaced with some other curtailment provision, Energy Michigan continued, Section 10.1 would be punitive in nature and provide too much discretion to Detroit Edison. It therefore offered its own proposal, as set forth on page 14 of Exhibit I-5.

The ALJ concluded that Energy Michigan's curtailment proposal, which relied on the concurrent application of Detroit Edison's emergency electrical procedures and the usual energy imbalance penalties, provided "a reasonable and measured response to curtailment." PFD, p. 26. In contrast, he viewed Detroit Edison's proposed curtailment plan as being too subjective and fraught with possible discriminatory treatment against open access customers. The ALJ thus recommended adopting Energy Michigan's proposal for Section 10.1 of the RAST.

Detroit Edison and the Staff except to the ALJ's recommendation and urge the Commission to reject Energy Michigan's proposal. According to Detroit Edison, energy imbalance provisions should not be viewed as a safety net for resource deficiencies. Rather, the utility continues, AESs, marketers, and open access customers should be made responsible for their business decisions. As for the Staff, it warns that Energy Michigan's proposal (which directly states that insufficient

supply by the AES shall not change a customer's curtailment status) could ultimately result in "other choice or bundled customers being curtailed or harmed." Staff's exceptions, p. 3.

The Commission concludes that Detroit Edison should, through the application of the emergency electrical procedures set forth in Rule B-3.7 of its electric service tariffs, give retail open access customers the same priorities as it gives full service customers. These curtailment provisions are designed to address situations in which the electric grid is jeopardized. In such situations, the responsibility to maintain the integrity of the system is one shared by all customers, regardless of whether they are full service or retail open access customers. Conversely, situations in which an AES or a marketer fails to deliver the appropriate amount of power are addressed through tariff provisions, such as imbalance charges.

14. Self-Service Power

Notwithstanding the broader definition provided in Section 10a(6) of Act 141, self-service power has typically been viewed as any electricity generated and consumed without the use of a utility's transmission and distribution system (otherwise referred to as on-site generation). Detroit Edison addressed self-service power in Section 7.2 of its proposed RAST, which stated that "the distribution contract capacity for [open access customers] with on-site generation shall be set at an amount sufficient to meet the maximum requirements for that location without on-site generation operating." Exhibit A-2, p. 13.

Exelon objected to that proposed language on the grounds that it was contrary to the legislative intent of Act 141, which sought to provide favored status to self-service arrangements. This was based on the fact that "customers operating self-service facilities that eliminate their need for utility-provided distribution services except on a stand-by basis would nonetheless be forced to pay for such distribution services as if the self-service facilities did not exist." Exelon's initial

brief, p. 3. Moreover, Exelon asserted, the proposed language conflicted with that developed by the FERC to cover the analogous issue of what rates are appropriate for the provision of back-up or maintenance power to qualifying facilities under the Public Utility Regulatory Policies Act, 16 USC § 2601 et seq. Specifically, it cited the requirement that:

The rates for sales for back-up power or maintenance power . . . [s]hall not be based on the assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both.

18 CFR § 292.305(c).

In addition to eliminating proposed Section 7.2 of Detroit Edison's proposed RAST, Exelon asserted that Section 8.2.1 should be modified to exempt self-service customers from the application of the system use charge. Without that change, Exelon continued, using Detroit Edison as a back-up source of power on just one occasion could unreasonably obligate a self-service customer to pay the utility's system use charge for the next 12 months.

The ALJ agreed with Exelon and recommended rejecting Detroit Edison's proposed Section 7.2 in its entirety. According to the ALJ, the range of customer choice provided under Act 141 included the right to rely on self-service power. However, he continued, Detroit Edison's proposal would severely restrict customers' ability to choose self-service power. With regard to Section 8.2.1 of the RAST, the ALJ likewise supported Exelon's request to exempt self-service customers from imposition of Detroit Edison's suggested system use charge. According to him, "there is no evidence in the record to support charging [a] self-service power user a system use charge based on a one-time use during the prior 12-month period." PFD, p. 28.

Detroit Edison excepts to the ALJ's recommendation to eliminate proposed Section 7.2 and to revise Section 8.2.1 to exempt users of self-service power. According to the utility, making the ALJ's recommended changes would leave it with "no defined methodology to charge customers

with on-site generation for distribution service.” Detroit Edison’s exceptions, p. 9. As a result, the utility continues, it would have no means for recovering system investments made to provide for the distribution of energy to those customers. Detroit Edison goes on to assert that nothing in proposed Sections 7.2 and 8.2.1 is improper. To the contrary, the utility notes that those suggested pricing provisions are comparable to the “Non-Generation Charge” set forth in its Rider No. 3, concerning parallel operation and stand-by service provided to non-open access customers.

The Commission finds that the proposal offered by Detroit Edison (which effectively treats self-service customers as if they will never rely on their own sources of generation) and that suggested by Exelon (which would preclude the utility from recovering the cost of making distribution service available to those customers) are both excessively self-serving. A more reasonable result would be to retain the current fee structure under which customers may arrange for self-service power. The Commission therefore finds that the ALJ’s recommendations should be rejected and that the existing rate structure should be retained.

15. Continuing Commission Authority

Although Detroit Edison’s electric choice program is subject to its RAST, its Supplier Handbook, and various agreements entered into with program participants, only the proposed RAST has been submitted for review and approval in this proceeding. CMS MS&T objected to that process and asserted that Detroit Edison should have also presented for Commission review all other agreements and documents concerning retail open access, with the exception of those matters properly within the FERC’s exclusive jurisdiction. The utility’s failure to do so, CMS MS&T argued, results in a situation where any objectionable terms and conditions contained in those documents will have to be resolved through the complaint process. CMS MS&T therefore asked that Detroit 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.” CMS MS&T’s initial brief, p. 4.

The ALJ held that CMS MS&T’s request was “too vague and untenable” to justify its approval. PFD, p. 29. Specifically, he noted that CMS MS&T presented no substantive examples of unreasonable, discriminatory, or otherwise harmful proposals or practices that should be subject to immediate Commission review. Moreover, he continued, CMS MS&T has adequate legal recourse (in the form of complaints or requests for declaratory rulings) to resolve any conflicts that may arise during the future operation of Detroit Edison’s retail open access program. He therefore recommended that because nothing in either the RAST or Act 141 limits the Commission’s continuing jurisdiction over issues related to open access, CMS MS&T’s current request should be denied.

CMS MS&T excepts to that recommendation, and reasserts its claim that the best way to avoid potential conflicts arising from Detroit Edison’s unilateral adoption of contract language is to require advance Commission approval of all such provisions. Energy Michigan supports that exception, and agrees with CMS MS&T that the Commission should specifically assert its intent to review and approve each mandatory requirement before it can be inserted in the utility’s Supplier Handbook or its various contracts concerning retail open access.

In response, Detroit Edison concedes that the Staff (as opposed to the Commission) should provide oversight with regard to such things as the contract prototypes for use under its open access program. Nevertheless, it asserts that it would be a complicated and unwieldy process to incorporate all commercial aspects of the program into the RAST. Moreover, it contends that many terms set forth in these documents “are commercial business terms that do not relate to

essential ‘rate’ elements and therefore, should not necessarily be the subject of Commission regulation.” Detroit Edison’s replies to exceptions, p. 6.

The Commission agrees with the ALJ’s recommendation. No showing was made to the effect that some specific provisions of either the Supplier Handbook or the retail open access contracts should be included as part of the RAST. Moreover, the Commission finds that Staff oversight of the contract initiation process (which the Commission intends to be quite extensive), when coupled with the parties’ ability to seek redress of any disputes either by filing complaints or seeking declaratory rulings, should be adequate to ensure that the open access program is operated in a manner that is fair to all parties. The Commission therefore concludes that CMS MS&T’s request should be rejected.

17. Taking Title to Power

Detroit Edison proposed including, as part of Section 1.2 of the RAST, language to the effect that AESs must take title to power prior to arranging for its sale in Michigan’s retail electric market. Energy Michigan opposed that language on the grounds that it could be viewed as preventing an AES from serving as a scheduler of power in situations where the customer had secured its power from another source. In support of its position, Energy Michigan asserted that there is no legal requirement in Act 141 supporting the utility’s proposal.

The ALJ agreed with Energy Michigan, and recommended deleting that requirement from the RAST. According to him, Detroit Edison failed to show either a “reasonable nexus between the legal title [to the electricity] and the subsequent sale to a customer” or a “relationship of legal title to the statutory scheme of Act 141.” PFD, p. 30.

In its exceptions, Detroit Edison states that it can accept the ALJ's holding. However, it goes on to assert that, logically, someone must take title to the power at some point prior to its delivery to a retail customer.

In response, Energy Michigan states that the utility's concern is unfounded. In cases where the open access customer's AES does not actually take title to the electricity, a third-party AES can do so instead. At that point, the third-party AES can schedule delivery of that power as an agent of the customer's AES.

The Commission finds that the ALJ's recommendation should be adopted. As shown by Energy Michigan, other options exist beyond requiring the customer's AES to take title to the power. Because Act 141 expresses no reason for foreclosing those options, the Commission finds that the disputed language should be stricken from Section 1.2 of the RAST.

18. Definitions

Energy Michigan offered alternatives to Detroit Edison's proposed definitions for the following terms: AES, customer, customer service capacity, demand conversion table, distribution point of receipt, interval demand meters, and marketer. All disputes were resolved prior to the filing of exceptions (either by agreement of the parties or through their respective decisions to accept the ALJ's recommended resolution) except those involving the definitions of customer service capacity and marketer.³

With regard to customer service capacity, Energy Michigan proposed replacing the phrase "based on the thermal limits of the meter and any associated transformers" with "based on the

³Although the precise wording for the definition of "interval demand meter" remained in dispute late into this proceeding, it appears that the Detroit Edison and Energy Michigan have finally agreed to use the definition suggested by Energy Michigan's witness, coupled with Detroit Edison's recommended phrase ensuring the utility's right to use information derived from the meter to bill the customer.

thermal limits of the meter and the associated Detroit Edison Distribution System.” See, Exhibit A-2, p. 3; Exhibit A-3, p. 2. The ALJ recommended adopting a definition that effectively combined the two parties’ respective proposals.

Detroit Edison excepts to that recommendation, and asserts that its suggested definition of customer service capacity is one of technical significance. Although disagreeing with that assertion, Energy Michigan goes on to concede (in its replies to exceptions) that it will accept the utility’s definition as long as customer service capacity is not used to determine eligibility for the telemetry waiver.

Earlier in this order, the Commission rejected Detroit Edison’s proposal to describe the 1,000 kW telemetry threshold in terms of customer service capacity. This serves to satisfy Energy Michigan’s concerns. The Commission therefore finds that it should reject the ALJ’s recommendation to combine these parties’ definitions of customer service capacity and adopt the language initially proposed by Detroit Edison.

As for the definition of marketer, Detroit Edison essentially proposes using the same language that appears in its existing open access tariffs. Thus, under the utility’s proposal, the term “marketer” refers to any entity that (1) generates, brokers, markets, or otherwise procures power to be supplied to Detroit Edison’s system, obtains the necessary transmission services to move the power, and arranges for the power’s receipt, (2) satisfies all applicable state and federal statutes and regulations, and (3) adheres to all applicable reciprocity requirements imposed by the Commission. Energy Michigan argues that this definition should be “restricted to include entities that take title to power and have FERC authorization to market energy services.” Among the reasons for doing so, Energy Michigan claims, is to remove the reciprocity requirement from

marketers and to make them exempt from both “Michigan regulatory requirements and local power delivery requirements.” Energy Michigan’s replies to exceptions, p. 23.

The Commission finds that Energy Michigan’s scaled-down definition of marketer should be rejected as inconsistent with various aspects of this order, prior Commission decisions, and other portions of the RAST. For example, forcing all marketers to take title to power (as necessitated by Energy Michigan’s language) would run counter to the Commission’s earlier decision not to require AESs to take such title. Moreover, shielding marketers from the reciprocity requirement would conflict with Commission rulings issued throughout the introduction of retail open access in Michigan and specifically confirmed by Act 141. The Commission therefore concludes that Detroit Edison’s proposed definition of a marketer should be approved instead.

20. Multiple Meters at Residential Locations

Detroit Edison proposed, at Section 2.7 of the RAST, language (1) requiring multiple loads at residential locations to be combined into a single metered load or account unless the customer chooses to re-wire all loads through the residence’s principal meter, (2) imposing a monthly meter charge for the second and any additional meters, and (3) specifying that interruptible rates are not available under retail open access service. Energy Michigan suggested modifying that provision to ensure that multiple meters at a multi-family residential structure would not have to be combined into a single metered load. It also objected to the utility’s plan to begin charging residential customers for additional meters.

The ALJ recommended adopting Energy Michigan’s proposed version of Section 2.7. Among other things, he felt that this was necessary to continue the practice of maintaining separate metering for unrelated families.

Although agreeing with the need to exempt multi-family residential structures from the effect of Section 2.7, the Staff excepts to the ALJ's recommendation to achieve that goal by simply adopting Energy Michigan's alternative. According to the Staff, the competing proposals submitted by Detroit Edison and Energy Michigan are actually attempts to address two different situations. Specifically, the Staff contends, the utility's language was intended to address single residences with multiple meters, whereas Energy Michigan's proposal involved multiple residences with multiple meters. The Staff therefore argues that a better result would be to combine the parties' two proposals, instead of simply adopting one or the other.

In response, Energy Michigan contends that Detroit Edison's plan will pose serious problems even if revised in the manner suggested by the Staff. Among these, Energy Michigan continues, is that it would preclude open access customers' use of an important load management tool, namely interruptible service. Energy Michigan claims that this would be patently improper.

The Commission agrees with the Staff, finds that the ALJ's recommendation should be rejected, and concludes that a combination of the proposals submitted by Detroit Edison and Energy Michigan should be adopted for use as Section 2.7. This would consist of (1) starting with the utility's proposed language, (2) inserting the phrase "belonging to a single residential customer" in the first sentence, (3) identifying the residence referred to in that sentence as the "customer's" residence, and (4) adding, as Section 2.7's final sentence, an acknowledgement that "this does not apply to multi-family residential locations." In reaching this decision, the Commission specifically rejects Energy Michigan's claim that retail open access customers should retain the ability to obtain interruptible service from Detroit Edison. Because these customers' loads are being served by AESs or marketers, and not by Detroit Edison, the utility should not be required to provide them with load management services. Rather, the potential provision of interruptible

service (as well as the installation of any equipment necessary for that service) is an issue to be addressed exclusively by the open access customer, on the one hand, and its AES or marketer, on the other.

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

Detroit Edison proposed including language in Section 2.10.4 shielding it from liability for any lost revenue or added costs that AESs or open access customers might experience “due to meter or calculation errors or malfunctions.” Exhibit A-2, p. 8. According to the utility’s proposal, the sole remedy for meter-related problems would be for Detroit Edison to replace or repair the meters, if necessary, and prepare revised bills. Similarly, the utility sought to include language in Sections 9.1 and 9.3 providing it with full immunity from claims “for any incidental or consequential damages” arising from its provision of open access service. *Id.*, at 16.

In contrast, Energy Michigan asserted that Detroit Edison should be held accountable for all harm arising from the utility’s negligent, mistaken, or otherwise improper practices related to its provision of retail open access service. According to Energy Michigan, this would include requiring Detroit Edison to compensate AESs and open access customers for all imbalance penalties and additional power costs caused by inaccurate meter reads. To do otherwise, Energy Michigan argued, would conflict with the requirement, set forth in Section 10c(1)(c) of Act 141, that the Commission provide “any other remedies that would make whole a person harmed” in the course of retail open access. MCL 460.10c(1)(c).

The ALJ agreed with those arguments, and recommended revising the utility’s proposed language in the manner requested by Energy Michigan. This involved making significant revisions to proposed Section 2.10.4 and deleting, in their entirety, Sections 9.1 and 9.3.

Detroit Edison excepts to this recommendation on the grounds that it cannot be held liable for circumstances and events beyond its control, such as when a meter malfunctions due in no part to the utility's own actions. Moreover, it asserts that reasonable protection must be provided when the utility is "entering into a new business--in this case, retail access service." Detroit Edison's exceptions, p. 9. Finally, it contends that the proper assignment of liability will benefit the program by forcing AESs and marketers to take full responsibility for the quality of the electric services they provide and by encouraging open access customers to implement reasonable protections.

The Staff also excepts to the ALJ's recommendation, albeit for different reasons than Detroit Edison. Specifically, the Staff notes that instead of assigning all potential liability to one group or another, Section 10c(1) of Act 141 applies equally to AESs and electric utilities. It therefore contends that the Commission should adopt and apply "equivalent liabilities or liability protections" consistent with the complaint-based process described in that section. Staff's exceptions, p. 6.

The Commission agrees with the Staff regarding the need for applying equivalent liabilities and protections, rather than assigning all liability to one group or the other as Energy Michigan and Detroit Edison effectively propose. This sharing of responsibilities with regard to the implementation and operation of retail open access is clearly expressed in Section 10c of Act 141. The Commission therefore finds that the ALJ's recommendation to revise Section 2.10.4 in the manner suggested by Energy Michigan should be rejected and that the language set forth in that portion of the RAST should be revised to assign and apportion full liability based on fault (rather than on an entity's status as a utility, AES, marketer, or customer). For the same reasons, the Commission finds that it should adopt the ALJ's recommendation to delete proposed Sections 9.1 and 9.3 (under which Detroit Edison sought broad-based immunity). Moreover, to be consistent

with these findings, the Commission concludes that proposed Section 9.2 should also be stricken from the RAST. Any failure to do so would allow Detroit Edison to cap its potential liability at the amount of the monthly charges received from the complaining customer, in direct violation of Section 10c(1)(c) of Act 141.

22. Meter Installation Costs

Energy Michigan recommended modifying Section 2.8.1 of Detroit Edison's proposed RAST to clarify that the costs incurred when changing or installing meters should be assigned to the utility, rather than its open access customers. Energy Michigan asserted that its proposal would prevent misunderstandings and promote accurate billing.

The ALJ held that neither Energy Michigan's proposed language nor that initially suggested by Detroit Edison directly addressed the responsibility for these costs. The ALJ therefore recommended revising Section 2.8.1 to clearly delineate when meter installation and revision costs are the responsibility of Detroit Edison and when those costs are the responsibility of the open access customer. However, he did not provide a recommendation regarding whether the utility, as opposed to the customer, should bear these costs.

CMS MS&T and Energy Michigan except to the ALJ's recommended handling of this issue, and contend that all meter-related costs should be borne by the utility. According to CMS MS&T, Sections 8.6 and 8.7 of the proposed RAST include all meter-related costs and, as a result, no other meter charge should be imposed. Energy Michigan agrees, and argues that, because Detroit Edison has discretion regarding whether to install an interval demand meter, equity would dictate that the utility bear all of these costs.

Detroit Edison also excepts to the ALJ's recommendation, but for a different reason than those two intervenors. Specifically, it contends that the disputed provision (Section 2.8.1) does not

address costs at all. Rather, the utility continues, that section merely indicates that all customers taking service at 4,800 volts or more (its primary service customers) must use an interval demand meter. Detroit Edison therefore asserts that no change is warranted for Section 2.8.1.

The Commission agrees with Detroit Edison, and finds that no need exists for revising Section 2.8.1. It is well established that, regardless of what type of service a customer takes or which customer class that entity belongs to, the utility must bear the cost of purchasing and setting the customer's electric meter. Likewise, it is beyond dispute that the customer is responsible for the cost of wiring its structure in a manner that allows for the safe and efficient connection of the meter to the structure's electric system. Detroit Edison's proposed version of Section 2.8.1 does nothing to alter this structure. Moreover, testimony indicates that revising this provision in the manner suggested by Energy Michigan could actually create confusion with regard to other sections of the RAST. See, 2 Tr. 141. The Commission therefore concludes that the ALJ's recommendation should be rejected and that Detroit Edison's proposed version of Section 2.8.1 should be adopted without revision.

24. Access to Customer Data

Energy Michigan sought to include in Section 2.9.1 a provision stating that an AES "shall have direct access to [its customer's] meter data through the same means as Detroit Edison . . . without any further documentation or permission from the customer." Exhibit I-6, p. 8. By gaining access to the customer demand information initially obtained by Detroit Edison, Energy Michigan argued, an AES could avoid the unnecessary time and expense of having to separately poll customer meters and compile its own demand data. This, Energy Michigan asserted, would help eliminate a financial disincentive to taking open access service.

The ALJ found Energy Michigan's proposal reasonable and recommended its adoption. According to the ALJ, there is no valid reason for failing to provide an AES unfettered access to its customer's usage data.

Detroit Edison excepts to that recommendation. It contends that Energy Michigan's proposed method of accessing customer data would be less secure than the utility's suggested approach. It therefore asserts that the Commission should reject the ALJ's recommendation and adopt the utility's proposal concerning access to customer demand data.

The Commission is not persuaded by Detroit Edison's assertions. Nowhere in the record did the utility quantify or otherwise describe its alleged security concerns. On the other hand, it is obvious that adopting Energy Michigan's proposal will reduce the cost of open access, thus helping make it more competitive with Detroit Edison's full service. The Commission therefore finds that it should adopt the ALJ's recommendation and require including, in Section 2.9.1, Energy Michigan's proposed language concerning direct access to customer data.

26. Failure to Pay Detroit Edison

In conjunction with language contained in proposed Section 11.2 of the RAST regarding the effect of an AES's failure to pay Detroit Edison, the utility proposed additional language, to be set forth as Section 11.4, stating that the termination of retail open access service can be initiated by the AES, the customer, or Detroit Edison. See, Exhibit A-2, p. 18. Energy Michigan requested adding language to Section 11.4 specifically requiring that open access customers be given 10 days' written notice by first class mail before termination of that service, which mirrors the standards for discontinuation of service imposed on Detroit Edison pursuant to its existing Tariff B2.5(5)(a).

The ALJ found Energy Michigan's request for 10 days' written notice of termination by first class mail to be reasonable. He therefore recommended revising Section 11.4 to impose that notice requirement.

The Staff excepts to that recommendation on the grounds that Section 11.4 concerns the switching or termination of services provided by AESs, rather than the disconnection of Detroit Edison's service for non-payment of charges (which, the Staff notes, is covered by Section 6.4). Because rules regarding notification of changes in a customer's supplier are "currently under development pursuant to the slamming and cramming requirements" of Act 141, the Staff continues, the ALJ's recommended changes to Section 11.4 should be rejected pending approval of those generic rules. Staff's exceptions, p. 6.

In response, Energy Michigan contends that its proposal to give open access customers 10 days' written notice of a change in their electric service "is entirely reasonable," regardless of whether or when generic slamming and cramming rules are adopted. Energy Michigan's replies to exceptions, p. 32. Because the specific, formal notification of a change in service providers is of such high importance to open access customers, Energy Michigan claims that requiring such notice should not await subsequent Commission action. It therefore asserts that the Commission should adopt the ALJ's recommendation and include the proposed notice requirement as part of Section 11.4.

The Commission agrees with Energy Michigan and finds that it would be beneficial to require that each retail open access customer be given 10 days' advance written notice of a discontinuance of service. However, the Commission further finds that this requirement should apply equally regardless of whether the termination of service was initiated by the customer's AES or by Detroit

Edison.⁴ In this manner, an AES would be allowed to return delinquent customers to full service on the same timetable and under the same conditions as Detroit Edison can use to terminate service for non-payment of charges. The Commission therefore concludes that AESs and Detroit Edison should both comply with the billing rules that govern the shut off of service, R 460.2101 et seq. and R 460.3901 et seq., except that instead of providing a notice of termination, they shall provide a notice of return to full service. Moreover, whichever party initiated the change shall also be required, upon compliance with those procedures, to notify the other service provider that the customer has been returned to full service. When customers are returned to full service, they will pay the full service tariff rate or the market-based rate, as discussed earlier in this order. Under Act 141, AESs and marketers will be unable to return qualifying low-income and senior citizen customers to full service pursuant to the provisions of MCL 460.10t. Therefore, the normal 30-day termination provisions should not apply.

29. Conditions Precedent

Energy Michigan suggested eliminating Sections 15.2 and 15.3 of Detroit Edison's proposed RAST. These sections demanded that, before an AES could begin serving a retail open access customer, (1) all required customer metering equipment should be in place and functioning, and (2) the AES must have complied with all provisions of the RAST, all federal, state, and local laws or regulations, and any applicable administrative and judicial orders. With regard to the first of those conditions precedent, Energy Michigan asserted that service should commence within a certain number of days regardless of the installation of all metering equipment. As for the second

⁴As an entity regulated by the FERC, a marketer would be required to adhere to the customer notice requirements set forth in the applicable OATT, and not those set forth in the RAST.

condition, Energy Michigan argued that it would improperly place Detroit Edison in the position of enforcing the applicable laws and regulations.

The ALJ disagreed with Energy Michigan, and recommended retaining the conditions set forth in Sections 15.2 and 15.3. Specifically, he stated that concerns about the delays in providing telemetry to meters would be greatly reduced assuming that the Commission adopts his recommendation to raise the interval demand meter threshold to 300 kW. Furthermore, the ALJ held that requiring an AES to comply with all tariff provisions, laws, regulations, and orders would do no harm and would put all parties on notice of their respective legal obligations and rights.

Energy Michigan excepts to that recommendation and renews its request to delete these two sections. Due to substantial delays in the installation of telemetry, it asserts that requiring all mandatory metering equipment to be in place before initiating service will greatly slow the spread of customer choice. Moreover, Energy Michigan argues, the enforcement of statutes, regulations, and ordinances should be left to the appropriate authorities, rather than placed in the hands of an AES's chief competitor.

The Commission finds that it should reject, at least in part, Energy Michigan's request to delete the conditions precedent set forth in Sections 15.2 and 15.3 of the RAST.

Earlier in this order, the Commission eliminated mandatory telemetry for customers with less than 1,000 kW of measured demand. As Energy Michigan concedes, eliminating that requirement "will go a long way toward achieving rapid implementation" of retail open access. Energy Michigan's exceptions, p. 17. Thus, the Commission concludes that there is no need to strike or revise Section 15.2. As for Section 15.3, the utility now states that it has no desire to "be a policeman of state and local franchises and regulations." Detroit Edison's replies to exceptions, p. 10. The Commission therefore finds that, although an AES should still be required to satisfy all

tariff provisions before initiating service, the other conditions precedent set forth in Section 15.3 should be deleted.

30. Dispute Resolution

Detroit Edison suggested including in the RAST a dispute resolution procedure that would make use of the American Arbitration Association's commercial arbitration rules. Energy Michigan opposed that suggestion, and recommended adopting the dispute resolution model presented by Consumers (in Case No. U-12488) for inclusion in its own RAST.

The ALJ found Detroit Edison's proposal preferable to that submitted by Energy Michigan. As a result, he recommended adopting the utility's proposed dispute resolution language.

Energy Michigan excepts to that recommendation. According to it, Detroit Edison's proposal is too cumbersome, expensive, and slow, and would unduly limit the Commission's ability to resolve the parties' various disputes. Moreover, Energy Michigan contends that any alternative dispute resolution structure adopted in this case should not be applied to marketers because they are under the FERC's control, and not that of the Commission.

The Commission finds merit in the use of dispute resolution procedures between or among Detroit Edison, AESs, and marketers. Furthermore, it disagrees with Energy Michigan's claim that the process suggested by Detroit Edison and recommended by the ALJ for adoption in this case should be rejected in favor of that proposed by Consumers in Case No. U-12488. Contrary to Energy Michigan's contention, the potential use of an arbitrator will likely prove beneficial, rather than serving as a drawback. The Commission therefore adopts the ALJ's recommendation and concludes that Detroit Edison's proposed process should be approved, albeit with the modifications that the tariff provision is not mandatory and, when used, does not require that an unresolved dispute be arbitrated rather than being brought to the Commission for resolution.

Default Transition Surcharge

Detroit Edison proposes including language in Section 4.2 of the RAST requiring all of the utility's customers to pay a default transition charge of 1.25¢ per kWh on and after January 1, 2002, unless the Commission authorizes some other charge in Case No. U-12639. The Staff proposes using a default transition charge of 0.5¢ per kWh. In contrast, Energy Michigan argues that no transition charge should be implemented unless the Commission specifically establishes one in Case No. U-12639.

The Commission finds this issue to be moot due to today's order in Case No. U-12639.

Implementation 120 Days After Approval

Detroit Edison suggests that the implementation of any changes to its open access tariffs be deferred for at least 120 days following issuance of this order. Energy Michigan objects to that proposal on the grounds that those changes are an insufficient reason to delay implementation of customer choice for all of Detroit Edison's ratepayers beyond the January 1, 2002 start-up date required by Act 141.

The Commission finds that Detroit Edison should implement all of the tariff changes effective January 1, 2002. The changes are not so substantial and the number of current open access customers is not so great that the utility should require any significant time to place them in effect.

The Format of Detroit Edison' Proposed RAST

Energy Michigan points out that Detroit Edison did not produce a redlined version of its revised RAST, and further notes that this failure continued even after other parties to this case requested such a version. According to Energy Michigan, this leaves those parties in the awkward position of not knowing what unidentified changes might be lurking in the utility's proposed

RAST. It therefore asks the Commission to specifically find that no substantive changes to Detroit Edison's current open access tariffs should be made unless specifically approved in this order.

The Commission agrees with Energy Michigan that resolution of this case would likely have been easier had Detroit Edison provided a redlined version of its revised RAST. Nevertheless, the Commission finds that the most constructive way to conclude this case is to attach to the order (as Exhibit A) a full set of updated tariffs. This attachment, which is based on Exhibit A-2, reflects all changes required by the discussion contained in this order, changes made for consistency, and changes needed for clarity. Detroit Edison, if it finds it administratively convenient, may eliminate from the tariffs that it files those provisions that do not apply as of January 1, 2002, such as the provisions on bidding. The Commission will continue to monitor the effect of the RAST and modify its provisions as needed.

Effect of Disputed Charges

Energy Michigan proposes revising Sections 6.2 and 6.4 of the proposed RAST to specifically state that open access customers may not be disconnected or subjected to late payment charges for any portions of their bills from Detroit Edison that are in dispute. Although noting that the utility revised Section 6.4 to make disconnection subject to Section 2.5 of Detroit Edison's own rules and regulations, Energy Michigan asserts that the language added by the utility does not clearly prohibit disconnection in every instance.

The Commission agrees with Energy Michigan, and concludes that Sections 6.2 and 6.4 should be revised as necessary to prohibit either the disconnection of service or the imposition of late payment fees for the non-payment of disputed charges. By requiring these changes, the Commission can better ensure that retail open access customers are treated similarly to Detroit Edison's full service customers.

Complete Billing Option

In response to concerns expressed by Energy Michigan, Detroit Edison agreed to remove all mention of its “Complete Billing Option” from Section 6.1 of its proposed RAST. Nevertheless, Energy Michigan noted that Detroit Edison has yet to remove comparable language concerning that billing option from Section 16.1. It therefore requested that the Commission order these statements to be stricken as well.

In contrast, the Staff proposed retaining the “Complete Billing Option” language in both Sections 6.1 and 16.1 of the RAST. See, Exhibit S-18 at pp. 12 and 21. The basis for providing this optional billing service as a specific part of the RAST was to eliminate the potential delays that could result if every AES and marketer were required to negotiate individually for billing services.

The Commission agrees with the Staff’s proposal and concludes that the “Complete Billing Option,” complete with prices, should be retained in Sections 6.1 and 16.1 of the RAST. Doing so provides an option that any AES or marketer may use without the time and expense of negotiation and does not eliminate the right to negotiate other services and prices.

None of the parties express opposition to that request. The Commission thus concludes that Energy Michigan’s request should be granted and that Detroit Edison should remove all mention of its “Complete Billing Option” from Section 16.1 of the RAST, as it has already done for Section 6.1.

Allocation of Enrollment Capacity Under the Existing Choice Program

Detroit Edison’s proposed RAST and its Supplier Handbook contain provisions relating to the bidding procedure that was used to allocate available capacity under its previous customer choice programs. According to CMS MS&T, changes should be made to those provisions to clarify the

price to use when a customer possesses two or more successful bids at different prices. Specifically, CMS MS&T asserts that language should be added to the effect 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 capacity must be recorded at the weighted average bid price.” CMS MS&T’s exceptions, p. 6.

Detroit Edison opposes making that change on the grounds that it directly conflicts with previously established procedures. According to the utility, its plan to use the highest bid price whenever two or more blocks of capacity are needed to serve a given load (rather than using the lowest price or a weighted average price) was “clearly articulated and published before the bidding for capacity occurred.” Detroit Edison’s replies to exceptions, p. 6. As a result, the utility continues, all bidders should have taken that procedure into account when formulating their bidding strategy. Thus, it contends, it would be patently unfair to change the system after the fact, as CMS MS&T proposes.

The Commission agrees with Detroit Edison, and concludes that CMS MS&T’s proposed after-the-fact revisions to the bid capacity allocation and enrollment system should be rejected. It reaches this conclusion for three reasons. First, allowing a successful bidder to effectively reduce the price of a winning bid after the assignment of capacity would be unfair to all other bidders. Second, permitting such a reduction would conflict with one of the primary goals of the bidding process, namely to reduce the transition charges imposed on later open access customers by maximizing the amount recovered from voluntary, successful bidders. Third, this issue will likely be moot as of January 1, 2002. The Commission thus finds that the capacity allocation and enrollment language contained in the RAST and the Customer Handbook should not be revised in the manner requested by CMS MS&T.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. Detroit Edison's proposed RAST should be approved, as modified by this order.

THEREFORE, IT IS ORDERED that:

- A. The retail access service tariff, attached to this order as Exhibit A, is approved for use by The Detroit Edison Company, effective January 1, 2002.
- B. Within 30 days, The Detroit Edison Company shall file revised tariff sheets consistent with Exhibit A.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of December 20, 2001.

Its Executive Secretary

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

Suggested Minute:

“Adopt and issue order dated December 20, 2001 approving tariffs for the provision of retail open access service by The Detroit Edison Company, as set forth in the order.”