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January 22, 2002

Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-12489

Dear Ms. Wideman:

Enclosed for filing, please find an original and four copies of ABATE'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE PETITION FOR REHEARING and accompanying PROOF OF SERVICE in reference to the above-captioned matter.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

CLARK HILL PLC

Michael P. Calabrese

MPC:pgs

Enclosures

cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

ABATE'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, PETITION FOR REHEARING

NOW COMES the Association of Businesses Advocating Tariff Equity ("ABATE"), by and through its attorneys, Clark Hill PLC, pursuant to Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS R 460.17403, and for its Motion for Clarification or, in the Alternative, Petition For Rehearing, states as follows:

I. INTRODUCTION

This case was commenced on June 19, 2000, on the Commission's own motion, for the purpose of the revising The Detroit Edison Company's ("Edison's") Retail Access Service Tariff ("RAST") to conform to the requirements of 2000 Public Acts 141 ("Act 141") and 142 ("Act 142"), which took effect on June 5, 2000. After extensive discovery, it proceeded to hearing and a full briefing schedule, and on December 20, 2001, the Commission issued its Opinion and Order resolving the disputed issues.

In the meantime, the Commission had considered and decided several other cases in the implementation of Acts 141 and 142, including Case No. U-12639, in which the Commission determined the net stranded costs of Edison and the Consumers Energy Company ("Consumers"), and also determined how certain open access related charges should be implemented. Because of certain consequences that could arise from the Commission's December 20, 2001 Order in this case, which, in light of the Commission's other orders, are clearly not intended by the Commission, ABATE respectfully requests that the Commission issue an Order clarifying its December 20 Order as set forth herein.

II. DISCUSSION

In its December 20 Order, the Commission ruled on various issues of controversy in the Edison's RAST. As part of its ruling, the Commission attached to its December 20 order an exhibit, consisting of the RAST with modifications in conformity with the Order. However, the RAST as attached to the December 20 Order contains three provisions, none of which the Commission discussed in the Order itself, that the Commission cannot have intended to be implemented as they might be interpreted. First, the RAST's provision regarding the "Transition Charge" to be applied to open access customers purports to implement the Commission's ruling in Case No. U-12639, but lists a charge that does not fully reflect that ruling. Second, the RAST's listing of charges for "High Voltage Distribution Service" adopts by reference a tariff provision that contains a generation component which should not be included. And third, the Commission's treatment of metered customer loads acquired through two bids at different prices will have consequences that the Commission could not have intended.

A. Transition Charge

The section of the adopted RAST dealing with the transition charge is §8.4. It states, in pertinent part, "On 1/1/2002 and thereafter, the transition charge shall be 0.00¢ per kWh. As ordered in Case No. U-12639, a 10(d)(5) [sic -- 10d(5)] adjustment to the transition charge of -.47¢ per kWh shall apply." While the Commission's adoption of a policy consistent with its Order in Case No. U-12639 is certainly sensible, the amount of the adjustment that the RAST lists does not fully reflect what was adopted in that case. In its Order in Case No. U-12639, the Commission stated its intention that "ROA customers will be treated the same as full service customers." MPSC Case No. U-12639, Order dated December 20, 2001, p 25 (carrying out a ruling made in Case No. U-12478, Edison's securitization case). Thus, it adopted an adjustment under MCL 460.10d(5) that would "encompass both [a] securitization and tax charge offset *and [a] rate reduction equalization*." Id. (emphasis supplied).

Despite the clear intent stated by the Commission in Case No. U-12639 on the same day it issued its Order in the instant case, the amount of the offset listed in §8.4 of the adopted RAST, 0.47¢ per kWh, reflects only the securitization offset (0.41¢ for the securitization bond charge and 0.06¢ for the securitization bond tax charge). Thus, the RAST as adopted by the Commission could be interpreted as requiring only the securitization offset ordered in Case No. U-12639, but not the rate reduction equalization credits. The Commission should make clear that it did not intend the two orders to conflict, and that there should be added to the 0.47¢ securitization offset listed in §8.4 the rate reduction equalization credits ordered in Case No. U-12639 (which will vary by customer class).

B. High Voltage Distribution Service Charges

In addition, as noted above, the Commission has inadvertently adopted a provision that could be interpreted to saddle certain ROA customers with the payment of generation related charges to Edison, despite the fact that, as ROA customers, they will be taking generation service from an alternative electric supplier. This is because §8.6 of the adopted RAST, which lists charges for High Voltage Distribution Service, adopts by reference charges listed at "Schedule B4.9" [sic] of the Edison's rate book. The referenced tariff sheet lists three different types of charges, only two of which legitimately apply to ROA customers. The charges listed are the "Nuclear Decommissioning Surcharge (NDS)," the "Power Supply Cost Recovery (PSCR) Clause," and the "Securitization Bond Charge (SBC) and Securitization Bond Tax Charge (SBTC)." While ABATE recognizes that the NDS, SBC, and SBTC are appropriate for application to ROA customers, charges for power supply costs are obviously not applicable to a customer that purchases its power elsewhere. Thus, the Commission should clarify that the reference to Schedule B-4.9 in §8.6 of the RAST is only intended to adopt those charges listed in Schedule B-4.9 that have application to ROA customers, i.e. the NDS, SBC, and SBTC, but <u>not</u> the PSCR Clause.

C. The Commission's Ruling On The Bid Amount Will Have Unintended Consequences and Should be Reversed.

In the Section of its Order beginning on page 49 entitled "<u>Allocation of Enrollment Capacity Under the Existing Choice Program</u>" the Commission addressed the issue of what marketers and/or customers should pay in the event that capacity to serve a particular metered load was acquired through two bids with different prices. Under Edison's approach, the highest bid amount would be used whereas CMS MS&T supplied testimony that the most efficient approach would be to use the average weighted bid price. The Commission chose to take the highest price approach because to do otherwise would be "unfair", because of the perceived need to maximize the amount recovered for stranded costs from voluntary, successful bidders and because the issue was moot as of January 1, 2002.

ABATE asserts that the Commission's decision will have the unintended consequence of forcing marketers and/or customers to pay higher than anticipated costs for electric service on or before January 1, 2002. Any unfairness related to this service accrues to the marketers and/or customers and not to the other bidders or to Edison's other customers. ABATE believes that the Commission intended that the bidding process would be used to fairly allocate capacity among the various bidders and not to penalize marketers and customers for their decision to become pioneers and engage in the newly available open access service. Utilizing the average weighted price makes all the sense in the world because it recognizes that on a voluntary basis, bid capacity could be acquired at different prices.

There is no unfairness in using the average weighted price because customers get what they paid for: bid capacity acquired at two different prices. As a consequence of the bid, Edison receives an advance payment towards stranded costs. Using the average weighted cost of the bid prices also makes sense given the Commission's finding that Edison has no stranded costs. As a matter of policy, why is fair to force customers to pay more for bid capacity in light of such a finding?

The second reason given by the Commission is also not justified in light of the finding that there are no stranded costs. Why should the Commission maximize the amount collected from customers in light of finding that there are no stranded costs? One of the principal goals of Act 141 is to foster competition and any pricing methodology, which unfairly penalizes those few participants, is contrary to the stated goal of Act 141. See MCL 460.10(2)(b). If the Commission truly wants to foster competition, then the pricing should reflect the price of the capacity acquired and not be "grossed up" to the highest price if there are two or more capacity allocations being used for a particular meter. Such pricing methodology is anticompetitive and serves to punish the customers who had the fortitude to participate in an entirely new service. Permitting the correct pricing of the service does not harm any other customer and is certainly justified in light of the Commission's finding that Edison has no stranded costs.

Lastly, the Commission said that this issue is likely to be moot as of 2002. The reason that is it moot is that Edison has no stranded costs and the charge effectively drops to zero. This certainly does not make it moot as far as the customers are concerned in that they have had to pay more than they would have otherwise had to if the price were based on the averaged weighted cost of capacity. The Commission's decision with respect to this pricing issue sends a signal that the Commission is inclined to unfairly punish open access participants under circumstances where there is an absolutely fair pricing mechanism for all parties, *i.e.*, the average weighted price of capacity for a particular meter. The Commission's decision simply requires these customers to pay more than they otherwise should for service up until December 31, 2001. Such a decision is contrary to the goals of Act 141 and should be reversed.

III. CONCLUSION

ABATE does not believe that the Commission intended that its December 20 Order should be interpreted to alter the position it adopted in Case No. U-12639 by eliminating the rate reduction equalization credit, nor to apply PSCR charges to ROA customers, nor to apply as described with respect to bid amounts. Because the Order might be interpreted as having these unintended consequences, it is appropriate for the Commission to grant a rehearing of it under Rule 403, which lists "unintended consequences" as one of the bases on which an Order will be reconsidered. Indeed, ABATE believes, in light of the Legislative policy of providing open access on a level playing field and the Commission's demonstrated commitment to that policy, that the better reading of the December 20 Order is one which does not include those consequences at all. However, because it might well be argued that, when read literally, the December 20 Order does in fact omit the rate reduction equalization credit, apply PSCR charges to ROA customers, and contain unintended treatment of bid amounts, the Commission should issue a new order making its intentions on these issues unmistakable.

Respectfully submitted,

CLARK HILL P.L.C.

By: ______________________________

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Dated: January 22, 2002

STATE OF MICHIGAN

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PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Patricia G. Sass, being first duly sworn, deposes and says that she filed electronically a copy of the ABATE'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE PETITION FOR REHEARING in the above docket on the persons identified on the attached service list via e-mail and by depositing the same on January 22, 2002, in the United States mail in the City of Lansing, Michigan with first-class postage thereon fully paid.

Patricia G. Sass

Patricia G. Sass

Jane E. Wedley

Jane E. Wedley, Notary Public
Ingham County, Michigan
My Commission Expires May 15, 2006.

SERVICE LIST

MPSC Case No. U-12489

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