VARNUM
RIDDERING SCHMIDT HOWLETT LLP
ATTORNEYS AT LAW

THE VICTOR CENTER, 201 N. WASHINGTON SQUARE, STE. 810
LANSING, MICHIGAN 48933

TELEPHONE 517 / 482-6237 • FAX 517 / 482-6937 • WWW.VARNUMLAW.COM

ERIC J. SCHNEIDEWIND
MAIL ejschneidewind@varnumlaw.com

January 22, 2002

Ms. Dorothy Wideman
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-12489

Dear Ms. Wideman:

Enclosed for filing in the above captioned matter please find the original and four copies of Energy Michigan's Petition for Rehearing and Clarification. Also enclosed is the original Proof of Service indicating service on counsel.

Please date stamp one copy of the above entitled document for my records and return it in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETTLLP

Eric J. Schneidewind

Eric J. Schneidewind

EJS/mrr

cc: ALJ
parties

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** for to choose an alternative electric supplier.	)))))	Case No. U-12489

ENERGY MICHIGAN, INC. PETITION FOR REHEARING AND CLARIFICATION

I. INTRODUCTION AND SUMMARY OF POSITION

A. Introduction

Energy Michigan, Inc. ("Energy Michigan") by and through its attorneys Varnum, Riddering, Schmidt & Howlett, LLP respectfully requests that the Commission rehear and reconsider, or in the alternative, clarify portions of its ruling in this matter issued December 20, 2001(the Order) pursuant to R 460.17403(1) of the Michigan Public Service Commission ("Commission") Rules of Practice and Procedure.

Energy Michigan commends the Commission for completion of the arduous process of reviewing the many rules, terms and conditions necessary to provide Retail Open Access service to the customers of Detroit Edison and other electric utilities throughout the State pursuant to the mandates of 2000 PA 141. The scope and complexity of this effort including rulings necessary to establish the PA 141 framework for utilities other than Detroit Edison may be without parallel in the history of the Commission. The issues raised below largely involve questions of interpretation or potential unintended consequences rather than disagreement with the fundamental direction of the order. On the whole, Energy Michigan believes that the Commission has established a logical and practical framework for competition that can achieve true Electric Choice and a reliable system of utility and competitive suppliers.

B. Summary of Position

1. Enrollment Deadline

The Commission ordered Detroit Edison to complete the enrollment process within 45 days. The Commission should clarify that the order referenced calendar days not business days.

2. Applicable System Use Charge for Customers Below 20 kW: RAST § 8.2.2

Energy Michigan is concerned that Rule 8.2.2 could be construed to require that customers below 20 kW with energy meters pay for system use on a kWh basis rather than in dollars per kW. The Commission should clarify that energy metered customers with less than 20 kW have the right to the $3.42 per kW system use charge in existence before January 1, 2002 and that their energy use will be converted to kW of demand for this purpose using the optional load profile system established in U-12489 <u>or</u> using the Edison approach to convert kWh of energy use to kW of demand which was in effect prior to January 1, 2002 which.

3. Application of Load Equalization Credit

The proposed Edison RAST should be revised to clearly state at Section 8.4 or elsewhere that load equalization credits will continue to be applied to residential, commercial and industrial Electric Choice bills pursuant to the Commission order in Case U-12639.

4. Reciprocity: RAST § 22.3

The Commission should confirm that the same standard of reciprocity applies to AES entities or their power providers in the Detroit Edison and Consumers Energy territories. That standard should follow the Consumers language which states that the rates, terms and conditions of retail access service will be deemed "comparable" if they have been approved by applicable regulatory authorities.

5. Backup Power Requirement: RAST § 23.3

The Commission should clarify that RAST § 23.3 may not be construed to require that wholesale power suppliers be required to contract for emergency energy supply service from Detroit Edison or any other specific entity.

II. DETAILED DISCUSSION

A. 45 Day Enrollment Deadline

1. Commission Order

The Commission ordered Detroit Edison to complete all open access enrollments within 45 days - a time frame which it stated "provides adequate time to account for billing cycles and other requirements of the process". *Order, p. 23*.

2. Unintended Consequences

The Order did not specifically state that the 45 day enrollment deadline was in calendar days not business days. While the Order does not specifically reference calculation of the time frame to complete enrollment in calendar days, it is noteworthy that both the PFD and the Commission's discussion in the Order itself reference the need to accommodate the Edison billing cycle <u>plus</u> the other requirements of the process which Energy Michigan had estimated should take no more than 15 days. *Order, p. 23; Proposal for Decision, p. 20-21.* The Detroit Edison billing cycle is up to 30 days expressed in calendar days, not business days. Thus, the Commission's intent to accommodate Detroit Edison billing cycle requirements referenced a 30 calendar day cycle. Also, the plain meaning of the term "days" is calendar days not business days. Note that the difference between business and calendar days would be almost 18 days six and one-half weeks for processing versus nine weeks) if business days are used.

3. Action Requested

Pursuant to Rule 406.17403(1), the Commission may revise its ruling to prevent unintended consequences. Here, the Commission's failure to specify that the 45 day enrollment deadline was expressed in calendar days could lead to confusion and a substantial difference from the outcome intended by the Commission. Based upon the preceding, Energy Michigan requests the Commission to specifically state that its 45 day enrollment deadline was expressed in calendar days.

B. System Use Charges For Customers With Energy Meters: RAST § 8.2.2

1. Commission Order

The Commission clearly ruled that the Detroit Edison kW based system use charge of \$3.42/kW for customers with both interval demand meters and energy meters would be carried over from 2001 into 2002. *Order, p. 20*. Specifically, the Commission stated, "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." *Order, p. 20*.

2. Unintended Consequence

RAST § 8.2.2 was retained as submitted by Detroit Edison and states that, "The system use charge shall be the product of the applicable rate as shown in § 8.7 and the customer's energy consumption." *Emphasis supplied.* Note that Section 8.7 as revised by the Commission in this matter contains two system use charges: a charge of demand per kW and a kWh charge. While it was clearly the intent of the Commission to continue allowing energy metered customers to be charged for system use at the $3.42/kW rate which had been in effect during 2002, the language of § 8.2.2 is a bit unclear and could be interpreted as requiring use of the new, optional 2.8 ¢ /kWh system use charge for all energy metered customers.

3. Action Requested

Pursuant to Rule 406.17403(1), Energy Michigan requests that the Commission clarify its intent to continue the right of all energy metered and demand metered customers to pay for system use at the rate of $3.42/kW. In the case of small energy metered customers below 20 kW of demand, their demand would be calculated using the new optional load profiling methodology ordered by the Commission at pages 15-16 <u>or</u> using the Edison demand conversion method of estimating energy metered demand for billing purposes which was in effect prior to December 20, 2001. Such an order would preserve the existing rate structure for energy metered customers which is required by PA 141, § 10d(1) and the Commission order in this matter. *Order, p. 20.*

C. Rate Equalization Credit: RAST § 8

1. Commission Order

In Case U-12639 the Commission ruled that Detroit Edison and Consumers Energy must continue to provide rate equalization credits to Electric Choice customers. *U-12639, p. 26, 28 and 33.*

2. Error or Omission in Detroit Edison RAST

The proposed Edison RAST § 8 and specifically § 8.4 lists transition charges including the adjustment to offset securitization bond and tax charges ordered by the Commission in U-12639 but does not include or require a rate equalization credit adjustment for Detroit Edison residential, commercial and industrial Electric Choice customers. The unintended consequence of this oversight may be to deprive Electric Choice customers of the rate equalization credit ordered by the Commission.

3. Action Requested

Pursuant to Rule 460.17403(1), Energy Michigan requests that the Commission revise or order Detroit Edison to revise the RAST at § 8 to incorporate a rate equalization credit for residential, commercial and industrial customers which is equivalent to the credit granted to those customer classes under bundled sales rates.

E. Reciprocity: RAST § 22.3

1. Commission Order

The issue of reciprocity appeared to be resolved prior to issuance of the PFD in this matter when Detroit Edison proposed reciprocity language similar to that proposed by the Staff in the Consumers Energy tariff Case U-12488. However, the Edison reciprocity language in the RAST § 22.3 differs slightly from the language in the Consumers ROA tariff. The Consumers Tariff defines "comparable" open access service as including "... rates, terms and conditions that have been approved by all applicable regulatory authorities in ROA service transactions." *Sec. F1.6C.* The Edison language is the same as Consumers except that it also includes the requirement that the rates, terms and conditions for open access in the Retailer or generation provider affiliate's service territory be equivalent to the rates, terms and conditions offered by Detroit Edison and that such terms have been approved by all applicable regulatory authorities for use in ROA transactions.

2. Unintended Consequence

Use of different standards for defining "comparable" ROA service in the Detroit Edison and Consumers Energy service territory could produce confusion and disruption of service for Alternate Electric Suppliers and marketers attempting to do business on both the Detroit Edison and Consumers Energy systems.

Also, it would be virtually impossible to determine if a complicated open access tariff in Illinois were comparable to the terms of the Electric Choice tariff used by Edison. For example, it is virtually certain that specific system use charges will vary from one utility to another. If this is an unavoidable outcome, will Detroit Edison claim that reciprocity has not been met since the pricing is not exactly the same in Illinois as Michigan? Such an illogical outcome can be avoided by using the Consumers definition of comparability.

3. Action Requested

Pursuant to Rule 460.17403(1), Energy Michigan requests that the Commission require that the Consumers Energy definition of comparable rates, terms and conditions for purposes of reciprocity be utilized in the Detroit Edison RAST at Sec. 22.3 which requires that those terms and conditions be approved by the appropriate regulatory authority <u>rather</u> than the terms be specifically comparable to the rates, terms and conditions used by Detroit Edison or Consumers Energy.

F. Requirement for Backup Power in Wholesale Power Agreements: RAST § 23.3

1. Commission Order

RAST § 23.3 can be read to require a marketer participating in Edison's Electric Choice program to supply documentation to the International Transmission Company which includes a wholesale power supply agreement for emergency energy supply service. The emergency supply agreement is required either in the event the marketer's power supply fails and before backup is scheduled or in the event that backup service is not contracted for or is not delivered. This issue was not ruled upon by the Commission nor addressed by the ALJ even though the draft tariff presented by Energy Michigan witness Polich recommended deletion of this requirement. Thus, while the issue was contested, there was no finding that Detroit Edison may require marketers participating in their program to purchase what amounts to a wholesale emergency supply commodity. Moreover, mandatory purchase of emergency supply service was specifically disapproved by the Commission Case U-12272, February 22, 2000.

2. Unintended Consequence

RAST § 23.3 should be deleted because it requires marketers to purchase emergency energy supply service which has not been shown to be necessary on the record. Edison's requirement to purchase emergency service was considered and rejected in Case U-12272.

3. Action Requested

Pursuant to R460.17403(1), Energy Michigan requests that, as initially recommended by Energy Michigan witness Richard Polich, the Commission delete RAST § 23.3 because this section attempts to define requirements applicable to wholesale entities which are not within the proper scope of a distribution company tariff. Another reason to reject Sec. 23.3 is that the Commission considered and rejected a similar requirement in Case U-12272, February 22, 2000.

III. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests the Commission to order that:

1. The 45 day enrollment deadline established in this proceeding references calendar days and not business days.

2. In reference to RAST § 8.2.2, customers below 20 kW with energy meters shall be billed for demand at the rate of $3.42/kW and that demand for energy metered customers can be calculated using the optional new load profile methodology or Edison's current demand conversion methodology for such customers.

3. RAST § 8.4 or another section of the RAST be modified to specifically provide continuation of the load equalization credit for all customer classes as mandated by the Commission in this order.

4. The reciprocity requirement in § 22.3 of the RAST should be revised to conform with the Consumers requirement by deleting language requiring that the rates, terms and conditions of open access service in the state or origin for the AES, affiliate or generation provider be comparable to similar terms for Detroit Edison.

5. RAST Section 23.3 be revised to delete the requirement that a marketer purchase emergency energy supply service.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
Attorneys for Energy Michigan

January 22, 2002

By: Eric J. Schneidewind

Eric J. Schneidewind (P20037)
The Victor Center, Suite 810
201 N. Washington Square
Lansing, Michigan 48933
(517) 482-6237

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** for to choose an alternative electric supplier.	)))))	Case No. U-12489

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on the 22nd day of January, 2002 she served Energy Michigan's Petition for Rehearing and Clarification upon the individuals listed on the attached service list by e-mail and regular mail at their last known addresses.

Monica Robinson

Monica Robinson, Deponent

Subscribed to and sworn before me
this 22nd day of January, 2002.

Eric J. Schneidewind

Eric J. Schneidewind, Notary Public
Eaton County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: April 24, 2006

Service List U-12489

Administrative Law Judge
Daniel E. Nickerson, Jr., ALJ
P.O. Box 30221
Lansing, MI 48909
daniel.e.nickerson@cis.state.mi.us

MPSC Staff
David Gadaleto
6545 Mercantile Way
Suite 15
Lansing, MI 48911
gadaletod@ag.state.mi.us

MPSC Staff
Larry W. Bailey
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909-7721
larry.w.bailey@cis.state.mi.us

Detroit Edison Company
Bruce Maters
Jon Christinidis
2000 Second Ave. (Rm. 688 WCB)
Detroit, MI 48226
mpscfilings@dteenergy.com
matersb@dteenergy.com
christinidisj@dteenenergy.com

ABATE
Robert A. Lefevre
2455 Woodlake Circle
Okemos, MI 48864-5941
rlefevre@clarkhill.com

ABATE
Robert Strong
Clark Hill
255 S. Woodward Avenue, Suite 301
Birmingham, MI 48009
rstrong@clarkhill.com

Unicom Energy, Inc.
John Dempsey
Dickinson Wright PLLC
215 S. Washington Square, Suite 200
Lansing, MI 48933
jdempsey@dickinson-wright.com

CMS MS&T Michigan, LLC
CMS Marketing Services and Trading Co.
Julio C. Mazzoli
Michael J. Sheridan
CMS Enterprises Company
330 Town Center Drive, Suite 1000
Dearborn, MI 48126-2712
msherida@cmsenergy.com
jmazzoli@cmsenergy.com

Metro Bureau Group Service
Joseph H. Fields
4700 S. Hagadorn Road, Suite 195
East Lansing, MI 48823
joshfields1@juno.com