CMS ENERGY
Enterprises

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January 22, 2002

VIA ELECTRONIC MAIL and HAND DELIVERY

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

Re: In the matter of the rates, terms, and conditions for retail customers of The Detroit Edison Company to choose an alternative electric supplier, Case No. U-12489

Dear Ms. Wideman:

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

Very truly yours,

Julio C. Mazzoli

JCM/sw
Enclosures

cc: Parties of Record (w/Enclosures)

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

PETITION FOR REHEARING OF CMS MS&T MICHIGAN L.L.C. AND CMS MARKETING, SERVICES AND TRADING COMPANY

CMS MS&T Michigan L.L.C. and CMS Marketing, Services and Trading Company (collectively, "CMS MS&T"), by and through their attorneys, and pursuant to the Rules of Practice of the Michigan Public Service Commission ("Commission"), file this Petition for Rehearing regarding a single issue. The Commission issued its Opinion and Order in this proceeding on December 20, 2001 (the "Order"). On pages 49 and 50 of the Order, the Commission addressed an issue raised by CMS MS&T regarding the bidding procedure used by The Detroit Edison Company ("Detroit Edison") to allocate available capacity under its previous customer choice program.[1] As discussed in more detail below, CMS MS&T respectfully submits the Commission erred in determining "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."

As an initial matter, the Order incorrectly describes CMS MS&T's position as "after-the-fact revisions." Order at 50. No Detroit Edison retail access service tariff ("RAST") authorized

[1] CMS MS&T's position is that if a customer's enrollment capacity (i.e., metered load) is split between two differently priced bids because not enough capacity is available in the higher priced bid, then the customer's enrollment capacity must be recorded at the weighted average bid price. Detroit Edison, on the other hand, records the entire enrollment capacity at the higher priced bid.

by the Commission prior to this proceeding ever specified that Detroit Edison would allocate the entire enrollment capacity at the higher priced bid. Indeed, with respect to the bid process, the Commission determined that "winning bids should be associated with capacity and should not be pre-assigned to any specific customer or retailer" and directed that "[a]s the holder of capacity through multiple bids begins to enroll and serve customers, it shall proceed from the highest to lowest priced bid." Opinion and Order, Case No. U-11290 (March 14, 2000) at 4 (emphasis supplied). This is precisely what CMS MS&T is proposing. On the other hand, the position now adopted by the Commission represents a reversal of its previous position. Rather than requiring Detroit Edison to "proceed from the highest to the lowest priced bid," Detroit Edison is authorized to simply ignore the lower priced bid when the metered load must be split between two differently priced bids.

The only "after-the-fact revisions" regarding this issue were by Detroit Edison to its Supplier Handbook, which Detroit Edison did indeed eventually revise to reflect its position regarding allocation of enrollment capacity. However, this is precisely the type of change that CMS MS&T argued in this proceeding should be subject to Commission authorization before being put into effect. Certainly, CMS MS&T should not be taken to task for seeking "after-the fact revisions" when challenging Detroit Edison's unilateral changes to its RAST program.

The Commission presented three reasons in the Order why it agreed with Detroit Edison. First, the Commission posited that "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." Order at 50. However, CMS MS&T's position results in no reduction in the bid price, "effective" or otherwise. Rather, bidders pay, beginning with the highest priced bid and proceeding down, the exact bid price corresponding to the exact amount of capacity used, no more and no less. For example, assuming two 30 MW block bids at different bid prices must be combined to serve a 45 MW metered load, the use of a weighted average bid price would require that the entire higher bid price block be allocated first to the load, with 15 MW of the lower bid price block making up the remainder. In this manner, the actual bid prices corresponding to the actual enrollment capacities bid are utilized to serve the actual load. By contrast, Detroit Edison's methodology results in the higher bid price being applied to the entire 45 MW load, even though this higher bid price was only for 30 MW and even though a portion of the lower priced block must also be used.

CMS MS&T's methodology is in no way "unfair to other bidders," since CMS MS&T is paying exactly what it bid, beginning with the highest bid, for the bid capacity actually used. Indeed, as previously noted, the Commission in Case No. U-11290 specifically contemplated that a bidder could hold total capacity representing multiple bids. In the case of CMS MS&T, it ended up holding multiple blocks of capacity acquired over multiple bid cycles. As discussed in both its Petition to Intervene and its Initial Brief in this proceeding, CMS MS&T is serving customers at the Rouge Industrial Complex in Dearborn, Michigan using self-service power generated by Dearborn Industrial Generation, L.L.C. and also through Detroit Edison's RAST. Insofar as the metering requirements for these customers was not finalized by Detroit Edison until after the last Detroit Edison RAST bid cycle was completed, CMS MS&T never could have bid to match blocks of capacity with specific meters for specific customers.

The second reason advanced by the Commission in support of Detroit Edison's position was that "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." As previously noted, however, the use of a weighted average bid price does not in any way represent a "reduction" of the underlying bid amounts. On the other hand, the position adopted by the Commission does represent an after-the-fact, <u>involuntary</u> increase to CMS MS&T bid amounts. Undoubtedly, this maximizes the amount of transition charges recovered by Detroit Edison, but it does so in a manner that is patently unfair.

The Commission's third and final reason for supporting Detroit Edison's position is that "this issue will likely be moot as of January 1, 2002." Presumably, this is because the transition charge is no longer subject to a bid process as of that date (though Detroit Edison has not completed billing for 2001 RAST charges). However, this is completely irrelevant. This matter represents an actual, ongoing controversy involving hundreds of thousands of dollars. It is hardly "moot" between the affected parties.

For the foregoing reasons, CMS MS&T respectfully request that the Commission grant relief consistent with this Petition for Rehearing.

Respectfully submitted,

Julia C. Tuzzolo

Dated: January 22, 2002

MPSC Case No. U-12489

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PROOF OF SERVICE

STATE OF MICHIGAN)
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COUNTY OF WAYNE)

Sherry A. White, being first duly sworn deposes and says that she filed electronically copy of the Petition for Rehearing and Proof of Service of CMS MS&T Michigan L.L.C. and CMS Marketing, Services and Trading Company in the above docket on the persons identified on the attached service via U.S. Mail and Electronic Mail on January 22, 2002.

Sherry A. White

Sherry A. White

Jane M. Wagatha

Notary Public

JANE M. WAGATHA
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Aug 9, 2006