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February 12, 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 Reply to the Petitions for Rehearing and /or Clarification Filed by ABATE and Detroit Edison Company**. 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

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

ENERGY MICHIGAN, INC. REPLY TO

THE PETITIONS FOR REHEARING AND/OR CLARIFICATION

FILED BY ABATE AND DETROIT EDISON COMPANY

February 12, 2002

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THE PETITIONS FOR REHEARING AND/OR CLARIFICATION
FILED BY ABATE AND DETROIT EDISON COMPANY

I. INTRODUCTION AND SUMMARY OF POSITION

A. Introduction

Energy Michigan, Inc. (Energy Michigan) by and through its attorneys, Varnum, Riddering, Schmidt & Howlett, LLP respectfully replies to the Petitions for Rehearing and/or Clarification filed by the Detroit Edison Company (Detroit Edison or Edison) and the Association of Businesses Advocating Tariff Equity (ABATE) in this matter pursuant to R460.17403(1) of the Michigan Public Service Commission (Commission) Rules of Practice and Procedure (the Rules) as more fully explained below. Failure to reply to any position or assertion should not be construed as agreement with that position or assertion.

B. Summary of Position

1. Detroit Edison's request to eliminate demand meters below 300 kW should be rejected.

Edison has requested that the Commission reverse its ruling to continue making demand meters available to customers below 300 kW. This Edison request should be rejected. Edison's new proposal to use energy meters and Edison demand conversion tables which convert energy use to estimated demand instead of demand meters would raise typical customer rates 71-83% above the levels which would result from measuring the actual demand as required by the Commission. See Attachment 1. Edison's new proposal is unsupported by evidence of record and produces rate increases higher than produced by the Edison proposal to base system use on energy instead of demand which was rejected by the Commission on December 20, 2001.

2. Detroit Edison's request that the Commission reverse its decision to waive telemetry requirements for customers below 1,000 kW should be rejected.

Edison's request to reinstitute telemetry requirements for demand metered customers below would produce the same delays in enrollment which caused the Commission to abolish telemetry requirements in this class in its December 20, 2001 order. Edison has presented no new evidence to support a change in the order.

3. ABATE's request that RAST § 8.4 be revised to show the rate equalization adjustment should be granted.

Energy Michigan agrees with ABATE that RAST sc/ 8.4 should show rate equalization credit. In its Petition for Rehearing and/or Clarification, page 5 through 6, Energy Michigan supported revision of RAST § 8 to incorporate the rate equalization credit for residential, commercial and industrial customers which was ordered in the Commission in Case U-12639 on December 20, 2001.

4. ABATE's request to revise RAST § 8.6 and 8.7 to exclude references to applicable PSCR adjustment should be granted.

ABATE correctly pointed out that the RAST high and low voltage distribution tariffs (Sec. 8.6 and 8.7) reference surcharges and credits per Schedule B 4.9. However, Schedule

B4.9 includes PSCR costs. The reference to PSCR costs should be deleted since it is not applicable.

II. DETAILED DISCUSSION - REPLY TO DETROIT EDISON

A. Edison Request to Use Energy Metering and Demand Conversion Tables for Choice Customers Below 300 kW: RAST § 8.7

1. Edison position

The Commission ordered that Detroit Edison Electric Choice low voltage customers above 20 kW would <u>continue</u> to be eligible to receive demand meters and continue to be billed for System Use on the basis of <u>actual measured kW of demand</u>. Edison has proposed a <u>new</u> metering position in their Petition for Rehearing which would require customers below 300 kW of demand to use energy meters. Edison proposes to use its demand conversion tables to convert kWh of energy use to estimated kW of demand that would be billed at the $3.42/kW level currently in effect. *Edison Petition, p. 6-9.*

Detroit Edison supports its position with the following unsupported assertions:

1) It would have to install 85,000 interval meters in 2002 and a total of 300,000 such meters through the end of the program. *Petition, p. 8.*

2) Installation of this volume of meters <u>may</u> result in delays of 18 months or more. *Id.*

3) A large but unspecified cost burden associated with these meters would increase future transition charges. *Id, p. 8-9.*

The Commission should note that none of these arguments or assertions were presented or supported on the record in this case.

2. Energy Michigan reply

a. The Detroit Edison proposal produces rate increase of 71-83% for typical customers such as gas stations, convenience stores and small manufacturers.

Like the proposal presented by Edison in its direct case, use of energy meters instead of demand meters requires that system use charges either be changed to a billing on a per kWh basis or some means must be found to covert the actual kWh of usage into an estimate of kW of demand. In its direct case, Edison revised the system use charge to an energy basis. The Commission rejected that mechanism because it increased billings for System Use from 2.7% to 82.1% and it was a modification of Edison's rates which was prohibited by PA 141. *Order, U-12489, p. 20.*

Detroit Edison's new proposal presented for the first time in its Petition for Rehearing is a brand new way of billing Electric Choice customers for system use. Prior to January 1, 2002 all Electric Choice customers were required to install demand meters and their system use charge was billed at a rate of $3.42/kW of actual recorded demand. Since demand meters were used, the kW of demand used for billing purposes were actual kW, not estimates, and customers therefore paid the true cost which they imposed on the system. In a case where an Electric Choice customer had previously been energy metered and thus had no history of demand, Edison used demand conversion tables to produce an estimate which could then be corrected based upon actual use as measured by the new demand meter used by the customer on Electric Choice. *Edison, Electric Choice Supplier Handbook, (the Handbook), Chapter 6, Section 6.2.*

The Edison Handbook contains the conversion tables that were used for this very narrow purpose at Appendices 0.1 through 0.3.

Now, Edison proposes to use such conversion tables on all Electric Choice customers below 300 kW in conjunction with energy meters so that <u>all future billings of system use charges are based upon estimates produced by these demand conversion tables rather than actual metered usage</u>. *See Edison Petition, p. 10.*

This new Edison proposal, seen for the first time in Edison's Petition for Rehearing, would increase system use charges for a typical gas station, convenience store of manufacturer from 71-83% as compared with billings based on actual demand recorded by demand meters. Attachment 1 shows how use of the new Edison proposal would significantly increase billing for System Use. A typical gas station which uses 260,000 kW per year has a maximum demand of 48 kW. Edison's Conversion Table 0.2 would <u>estimate</u> that this customer had 82 kW of demand and thereby <u>over bill for system use charges by $1,395 or 71% per year</u>. A typical convenience store demand would be overestimated by 67% and a small manufacturer would be overestimated by 83%.

It is no coincidence that this new Edison proposal, much like the proposal made in Edison's direct case, severely penalizes the very high load factor customers most likely to switch to Electric Choice.

b. The Edison proposal to use demand conversion tables produces an illegal rate increase.

Edison has not disputed that Electric Choice customers below 300 kW of demand were allowed to utilize demand meters and were billed for system use at the rate of $3.42/kW of demand prior to the passage of 2000 PA 141. *See Order, p. 20.* The analysis contained in Attachment 1 demonstrates that implementation of the new, unsupported Edison proposal to use energy meters with demand conversion tables would result in rate increases from 71-83% for typical gas stations, convenience stores and small manufacturers. Thus, Edison's proposed revisions would cause a rate increase which is a violation of PA 141, § 10d(5).

c. The Edison proposal is bad policy.

The rate increases produced by Edison's energy metering/demand conversion proposal for typical customers are so large that they would clearly discourage participation in the Electric Choice program in violation of PA 141, §10(2)(b). Edison's punitive charges would reduce, not increase, competition.

Moreover, the Edison proposals substitute inaccurate, biased estimates of customer demand for use of actual metered data which accurately measures customer demand and thus accurately assigns system cost. It is bad technical and financial policy to move from an approach which accurately assigns cost to an approach which can under or over estimate use of resources by 70-80% for typical customers.

d. Edison's <u>new</u> proposal is unsupported by record evidence and thus is legally flawed.

1) All of Edison's arguments and proposals <u>could have</u> been made as part of its Rebuttal.

Edison's Petition for Rehearing on this issue is devoid of citations to the record except for the proposition that 300 kW is a good dividing line between small and large customers. *Edison Petition, p. 7*. There are no citations to Edison testimony or evidence supporting use of energy meters in conjunction with its demand conversion tables to bill for system use.

Edison did not present estimates regarding the cost or number of demand meters that would have to be installed if the present system was continued nor did it produce expert testimony supporting its estimate of the enrollment delays that might result.

Even if Edison's statements in its Petition for Rehearing are truthful, there is no reason that these arguments or positions could not have been presented as rebuttal which would have been subject to cross-examination, discovery and potential surrebuttal. Edison's approach in this case has been to present a new concept and assertions to support that concept in a time frame and manner that deprives other parties of their legal right to subject those positions to cross-examination, discovery and rebuttal and surrebuttal if necessary. For this reason, Edison has not met the standard reopening, rehearing or reconsideration which is that evidence or arguments which could have been presented in the direct case are not to be considered as a basis for granting the Petition.

Another ground for rejecting the Edison position is that none of the assertions are supported with citations to the record or any other objective source of information. The assertions are merely the sum of Edison's fears about competition which, at this point, are totally speculative and unsubstantiated and therefore offer no evidentiary basis for revising or reversing the Commission rulings which was based on evidence of record. Associated Truck Lines, Inc. v MPSC, 377 Mich 259; 140 NW2d 515 (1966).

B. The Edison Request to Mandate Telemetry for Customers above 300 kW: RAST § 2.9.1

1. Edison position

Faced with a PFD that recommended waiving all telemetry requirements for customers below 1,000 kW of demand, Edison proposed to define demand as customer service capacity which would reduce the waiver threshold to 300-700 kW. That position was rejected by the Commission. *Order, p. 24.* Now, Edison has asked the Commission to reverse its decision which eliminated the requirement for customers to provide telemetry if they have demands of less than 1,000 kW. Edison has presented a <u>new</u> unsupported proposal that telemetry be required for all Electric Choice customers with demand above 300 kW.

Edison claims that its <u>new</u> telemetry proposal should be instituted because:

1) Manual reads take several minutes and thus would require additional personnel time and therefore cost of "<u>potentially</u> millions of dollars per year" (emphasis supplied). Edison also claims that the meter reads could not be conducted on a weekly basis as is done with telemetry and therefore the timeliness of data provided by a weekly read would be impossible to match. *Edison Petition, p. 3.*

   Edison supports its <u>new</u> proposal with one citation to the record in which its witness Newbold opposed Energy Michigan's proposal to delete telemetry for customers below 1,000 kW of demand on the grounds that use of a telephone to retrieve data is more efficient, use of manual reads would force use of different processes for meter installation and account set up and that there was no evidence that relaxation of the [telemetry] requirement is worth the increase in process time and cost. *2 Tr 129.* In addition, Mr. Newbold explained his view that Detroit Edison has already done a number of things to accelerate the enrollment process.

   <u>Neither Mr. Newbold nor any other Edison witness raised the objections and arguments against the telemetry waiver that are presented in the Edison Petition.</u>

2. Energy Michigan reply

The elimination of the telemetry requirement for customers below 1,000 kW was initially adopted by ALJ Nickerson because he found that, "... Detroit Edison presented no compelling reason to maintain the mandatory telephone link with customers under 1,000 kW while, Staff and EM noted a record showing delay, confusion and finger pointing regarding the responsibility or failure to establish a telephone link. The ALJ finds that elimination of the mandatory telephone link serves the purposes of expediting the implementation of ROA by removing a hurdle that has a record of creating problems. Therefore the ALJ recommends the elimination of the mandatory telephone link for customers under 1,000 kW." *PFD, p. 22.*

In its Order in this matter, the Commission specifically considered and rejected an Edison attempt to narrow the elimination of telemetry to customers below the 700 kW level rather than the 1,000 kW level. *U-12489 Order, p. 23-24*.

Edison's Petition to reinstitute the telemetry requirements for customers above 300 kW should be rejected for the following reasons:

a. The Edison request does not address the issue of enrollment delay.

Both the ALJ and Commission cited enrollment delays produced by the telemetry requirement as a reason for its elimination. *PFD, p. 22; Order, p. 22-24*. Edison's request does not explain how or why a Commission reversal on this issue will avoid the very delay and complication which were the reason for abolishing the telemetry requirement in the first place.

b. The Edison arguments against the telemetry waiver could have been presented in its direct case or rebuttal cases and were not.

Edison's contentions that manual meter reads take more time, cost more money and delay acquisition of data could have been made by their rebuttal Witness Newbold and were not. *2 Tr 129.* Thus, parties to the case had no opportunity to cross-examine Mr. Newbold about issues including a justification of the assumption that cost for manual meter reading would increase when literally all of these meters have been read manually in any event and that the cost of these manual meter reads is already in the Edison rate structure. By presenting these arguments for the first time in a Petition for Rehearing, Edison avoids the requirements of due process which surely would have exposed the weakness of its arguments. As it is, presentation in this manner gives the Commission no legal basis of evidence to support Edison's request to reverse a decision which was made on the basis of record evidence. *See* Associated Truck Lines v MPSC, supra.

C. If the Delay Issue Can Be Addressed, Some Customers May Voluntarily Implement Telemetry

While the Commission has chosen to eliminate the telemetry requirement for customers below 1,000 kW, Electric Choice customers below 1,000 kW could voluntarily install telemetry. The delays caused by telemetry could be addressed for these customers if Detroit Edison would voluntarily agree to commence Choice service upon installation of appropriate demand meters and wait up to two or three months for installation of telemetry. In the mean time, the customer meter could be read manually at no extra charge in return for a customer commitment to ultimately install telemetry within the two or three month time period. Such an approach might make sense for many customers and could be implemented on a voluntary basis.

Conclusion

In summary, Edison's request to reverse the Commission's decision to waive telemetry requirements should be rejected because it is based on unsupported contentions that are not evidence of record and because literally all of the arguments made by Edison could have been made in the context of the proceeding as a part of the Edison rebuttal but were not.

Perhaps the most compelling reason to reject Edison's request is that it fails to address the demonstrated fact that telemetry requirement for customers below 1,000 kW cause enrollment delay. If Edison has a new way to enroll customers quickly and still require telemetry, such a proposal would have been of interest. However, the new Edison proposal presented in this case was not based on fact and surely would cause delay of Electric Choice service.

III. REPLY TO ABATE

A. Revision of RAST § 8.4 to Address Rate Equalization

1. ABATE position

ABATE states that the Detroit Edison RAST tariff attached to the Order in this matter at Sec. 8.4 does not reflect the amount of rate reduction equalization to which a customer is entitled. *ABATE Petition, p. 3.*

2. Energy Michigan reply

Energy Michigan concurs with ABATE and has requested that the Edison RAST be amended to specifically reference rate equalization credits. *Energy Michigan Petition for Rehearing and Clarification, p. 5-6.* Briefly, the support for this position is that the Commission clearly intended to grant the rate reduction equalization credit to ROA customers and, that being the case, the Detroit Edison tariff should reflect that fact. *U-12639 Order, December 20, 2001, p. 33, ¶ B.*

B. RAST Sections 8.5 and 8.7 Should Be Revised to Eliminate Provisions Which Might Apply PSCR Factors to Electric Choice Customers

1. ABATE position

ABATE contends that Sec. 8.5 (and 8.7) of the RAST adopt by reference charges listed in "Schedule B4.9" of the Edison rate book. ABATE notes that the referenced tariff sheet lists and would apply three different types of charges including nuclear decommissioning, securitization bond and tax and Power Supply Cost Recovery. ABATE claims that the PSCR is not applicable to Electric Choice customers since they do not purchase or use generation. *ABATE Petition, p. 4.*

2. Energy Michigan reply

Energy Michigan agrees with ABATE. The RAST provision 8.6 noted by ABATE references high voltage distribution services. Section 8.7 also references low voltage customers and was not mentioned by ABATE. Both sections incorporate by reference all the charges listed in Schedule B4.9 of the Edison rate book. The Schedule B4.9 charges include PSCR charges. Since both high and low voltage Electric Choice customers do not purchase generation from Edison they should not be subjected to PSCR charges.

IV. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests that the Commission:

1. Reject the Detroit Edison request that the Commission reverse its decision to continue requiring demand meters for all Electric Choice customers.

2. Reject the Detroit Edison request that telemetry be required for customers above 300 kW.

3. Grant ABATE's request that RAST § 8.4 be revised to specifically provide that rate equalization credits will be applicable to Electric Choice customers.

4. Grant ABATE's request that RAST § 8.6, and § 8.7 by reference, be revised to eliminate any reference or intimation that the PSCR charge is applicable to Electric Choice customers.

Respectfully submitted,

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

February 12, 2002

By: Eric J. Schneidewind

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ATTACHMENT 1

Demand Charge Calculation Example
Profiled Demand vs. Example Actual Demand

	Edison Profile	Actual	Increase	% Increase (Profile vs. Actual)
Example 1 - Gas Station				
kW Max Demand	82	48	34	71%
Annual kWh[1]	260,698	260,698	-	
System Use Charge	3.42	3.42	-	
12 Month System Use Costs	$ 3,365	$ 1,970	$ 1,395	71%
Example 2 - C-Store				
kW Max Demand	50	30	20	67%
Annual kWh[1]	136,656	136,656	-	
System Use Charge	3.42	3.42	-	
12 Month System Use Costs	$ 2,052	$ 1,231	$ 821	67%
Example 3 - Manufacturer				
kW Max Demand	230	126	104	83%
Annual kWh[1]	750,557	750,557	-	
System Use Charge	3.42	3.42	-	
12 Month System Use Costs	$ 9,439	$ 5,171	$ 4,268	83%

1.) Annual kWh calculated based on demand and load factor data taken from Edison MV-Web site.

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 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 12th day of February, 2002 she served **Energy Michigan, Inc. Reply to the Petitions for Rehearing And/or Clarification Filed by ABATE and Detroit Edison Company** 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 12th day of February, 2002.

Eric J. Schneidewind

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

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