Detroit Edison

A DTE Energy Company

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December 23, 2003

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

Re: **MPSC Case No. U-12915/U-13843**

Dear Ms. Kunkle:

Enclosed please find for filing with the Commission an original and four copies of the Reply Comments of the Detroit Edison Company and Proof of Service in the above-referenced matter.

Very truly yours,

Jon P. Christinidis

JPC/cd

cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, To establish the MICHIGAN RENEWABLES ENERGY PROGRAM.	))))	Case No. U-12915
In the matter of the application of MACKINAW POWER, LLC. and NORTH AMERICAN WIND ENERGY, LLC. to amend and make permanent The Consumers Energy Company green power Pilot program.	))))))	Case No. U-13843

REPLY COMMENTS OF THE DETROIT EDISON COMPANY

I.

INTRODUCTION

The Detroit Edison Company (hereinafter "Edison" or "Company") submits these reply comments in response to the Initial Comments of the parties to this proceeding,[1] the August 18, 2003 Order initiating these proceedings, the October 23, 2003 Opinion and Order in these proceedings and the November 18, 2003 "Annual Report to the Michigan

[1] It appears from the Commission's Electronic Case Filing website that other non-parties may have submitted their thoughts. These persons are not parties to this proceeding and thus their input cannot be relied upon consistent with the Rules of Practice and Procedure Before the Commission (See, by way of example and not limitation, R 460.17101 (f) defining "party," R 460.17201 describing the requirements for intervention, R 460.17325 and R 460.17327 concerning evidentiary requirements, and R 460.17207 explaining the limitations of non-party participation, to the extent the non-party claims to participate pursuant to this rule). Detroit Edison was never served with these non-party thoughts and only recently was made aware of their existence. The Company does not know whether other such comments exist but have yet to be posted to the Commission's website. As a result, the Company has been unable to properly analyze and critique these non-party thoughts. The Company therefore submits that their consideration by the Commission in this proceeding would violate its due process rights. See Consumers Power Company v. PSC (supra); In Re PSC Guidelines, 252 Mich. App. 254 (2002); U.S. Const. Amends. V, XIV; Mich. Const. Art 1, Secs. 2, 17; MCL 24.203, 232. See also Bohannon v. Sheraton Cadillac Hotel, Inc., 3 Mich. App. 81 (1966) "When an administrative agency promulgates a rule for the benefit of litigants and then deprives a litigant of this right, it is a violation of the due process clauses of both the 1908 and 1963 Michigan Constitutions."

Public Service Commission" (hereinafter "the Report") submitted by the Commission Staff with regard to the Michigan Renewable Energy Program (hereinafter "the MREP"). The Report and MREP are solely the result of the "Customer Choice and Electricity Reliability Act" 2000 PA 141 (hereinafter "Act 141"). The relevant provision of Act 141 provides:

> "The commission shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities." MCL 460.10r(6)

Edison again commends Staff for its efforts to address the many issues and perspectives in a complex and generally misunderstood facet of the energy industry. The Staff's thoughtful Report provides a meaningful basis for continued examination and evaluation of the MREP. Detroit Edison supports the creation of an equitable and commercially successful Michigan Renewables Energy program.

Detroit Edison and DTE Energy have a long history of environmental initiatives, involvement and support for renewable and alternative energy projects and programs. Detroit Edison has been an industry leader in reforestation, wildlife habitat restoration and preservation, pumped storage hydropower and other renewable energy offerings. DTE Energy companies are actively producing biomass energy and bringing fuel cell generation technology to market. In sum, Detroit Edison and DTE Energy support environmentally sound, cost-effective and diversified energy products in Michigan and around the nation and have placed a substantial amount of their own capital at risk.[2]

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[2] Detroit Edison's and DTE Energy's voluntary commitments of time, effort and financial resources stands in contradistinction to others in this proceeding who, although it is unclear, appear to be complaining that

Due to the volume of issues addressed by the parties to this proceeding, as well as the relatively short time frame for providing reply comments, Edison's reply comments will generally reply to parties whose positions appear incomplete, inflexible, unrealistic or inequitable. While particular aspects of each party's positions may require further review and analysis, Edison, in a very general sense, believes that the Initial Comments of the Michigan Attorney General, ABATE, MEGA, MECA and Consumers Energy have approached "green power" in a realistic and equitable manner. Therefore, Edison does not intend to specifically reply to their Initial Comments. However, Edison's failure to address each and every issue or position of the parties (set forth in the Report or otherwise) should not be construed as agreement or disagreement with that issue or position.

100% debt financing for renewable energy is not presently available. (See Initial Comments of MIPPA pp.4, 5, 6, 10, 12) (Initial Comments of Mackinaw Power pp. 4, 5, 6) In other words, these parties are seeking *others* (most often Michigan electric utilities and electric customers) to bear the risks of renewable energy investments while they reap the rewards.

The proposed requirement for a 20-year power purchase contract to underwrite a 100% debt financed project further removes any business risk from both the project developer as well as the institution doing the financing. To propose such a one-sided long-term arrangement, and at the same time not provide Detroit Edison with a strong, enforceable "regulatory out clause" is extraordinarily inequitable given the fact that Michigan's utility regulation has undergone a dramatic change in the recent past and will undoubtedly continue to evolve over the next 20 years. It is not inconceivable that 20 years from now retail power supply in Michigan may not be regulated by the MPSC in the same manner as it is today, if at all.

II.

EDISON'S REPLIES TO INITIAL COMMENTS

A. REALITY AND EQUITY MUST PREVAIL TO ACHIEVE PROGRESS

It is important that the MREP have realistic goals and realistic expectations about what should constitute "success." A successful program will not create unrealistic expectations based upon supposition, wishful thinking and good intentions. A successful program will not be founded on unsustainable or illegal subsidies. A successful program will not make electric utilities, or Michigan, less competitive. All parties must recognize that Electric Choice has diminished Michigan electric utility revenues which limits the ability to subsidize the development of new energy initiatives. All parties must recognize that Electric Choice has further complicated the ability to fairly assign power production cost responsibility. This is not a case of "utility opposition or fear" of renewable energy; it is a recognition of economic reality.

We need to carefully and collaboratively evaluate where funds for renewable energy production will come from and be best spent to enhance the State's economy. High cost, unmarketable or speculative renewable energy programs should not be undertaken because of a sense of impatience for results. Act 141 does not require or permit the unilateral adoption of incentive ratemaking for renewable energy. Michigan needs to further investigate renewable energy strategies to determine a workable program for Michigan utilities, Alternative Electric Suppliers and customers that applies equitably to all concerned and does not result in economic hardships. [3] It bears emphasis that the

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[3] The current electric market environment consists of high-cost renewable energy, electric utility customer switching to Alternative Electric Suppliers for lower rates, and a dearth of Alternative Electric Supplier green programs nationwide and in Michigan. Any mandate requiring electric utilities to purchase renewable

present status of the MREP is not preventing anyone from voluntarily and independently financing and implementing renewable energy projects.

As most in the industry are acutely aware, renewable energy technologies are generally capital intensive and several factors of magnitude more expensive than competing conventional energy generation technologies, yet yield far less energy per unit of installed capacity. It would be counterproductive to Michigan's economy and an unreasonable cost to the State's electric customers to rush into renewable energy projects requiring high-priced, long-term energy supply purchase contracts. MIPPA, for example, argues that the only practical means to finance and develop renewable energy is for Michigan electric utilities to subsidize the cost.[4] In addition to the inequity of such a proposal in a market environment, that type of electric policy will not work well in an environment where customers are free to come and go (ie. choose their electric supplier) in pursuit of the lowest possible electric price. The purpose of the MREP should be, and is, to examine and analyze the most promising forms of renewable energy and provide a balanced analysis of the costs and benefits to interested persons.[5]

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energy at above market prices will serve only to further harm Michigan electric utilities. Furthermore, jurisdictional issues exist. FERC's regulation of transmission and the sale of wholesale power under Section 201 of the Federal Power Act has yet to be fully analyzed and considered by the MREP and the collaborative. 16 U.S.C. 824 Other federal law, including PURPA and FERC's regulation of hydroelectric facilities also merits study. 16 U.S.C. 2601 et. seq.; 16 U.S.C. 791a et. seq.

[4] MIPPA misleadingly claims to support a "voluntary" renewable energy program, while its positions invariably rely on some form of electric utility subsidy. (See, for example, Initial Comments of MIPPA pp. 4, 5, 6, 7, 8, 10)

[5] MIPPA and Mackinaw Power also conclude that traditional means of quantifying the "cost" of energy should be eliminated so that "cost" is evaluated based on 20+ year time frames and include various "social costs." (See Initial Comments of MIPPA p. 7; Initial Comments of Mackinaw Power pp. 1, 2, 4, 5, 6, 7, 8) This view tends to ignore the operational deficits of renewable energy (including lack of dispatch ability, sporadic availability, and generally low volume output) and also fails to consider the fact that existing nuclear and environmental regulations effectively "over-price" fossil-fueled and nuclear generation.

B. DUBIOUS COMPARISONS AND QUANTIFICATIONS DELAY PROGRESS

The MREP collaborative process has frequently been sidetracked by attempts to cost-justify clearly more expensive energy alternatives. One example is the comparison of wind-generated energy to natural gas-fired power production. Mackinaw Power, for example, appears to suggest that recent volatility in gas-fired generation fuel prices can be infinitely hedged with its *clearly higher but arguably more stable pricing.* (Initial Comments of Mackinaw Power pp. 4, 5, 6) This perspective fails to place gas-fired generation, and its use and ownership, in its proper context. First, Mackinaw Power overstates the need for such hedging by apparently concluding that gas-fired generation is utilized more frequently than it is. Gas-fired generation is primarily used as peaking capacity and to start up coal-fired power plants. Natural gas usage is an extremely small percentage of Michigan electric utility fuel costs. Furthermore, Mackinaw Power's "hedging" perspective appears to presume uniform ownership and gas cost rate impacts on retail electric customers. Thus, utilizing Mackinaw Power's example, a State long-term commitment to large, and presently expensive, amounts of wind-powered generation may be attempting to "hedge" an extraordinarily small exposure to natural gas fuel expense for the State. Furthermore, due to the peaking nature of natural gas-fired generation, the possibility of further natural gas supply sources, and the variability of wind power output, it is questionable whether wind power will ever provide the predicted "hedge." In other words, the State may commit itself to higher than necessary energy costs that never actually deliver a "hedge" against high prices.

Rather than misspending valuable time attempting to justify the expense of renewable energy generation by recharacterizing long-established metrics of financial value, Edison believes that time would be better spent focusing the MREP collaborative on the scientific and other merits of different renewable technologies and their application to Michigan, while providing the type of education and encouragement for promising technologies that is being delivered by NextEnergy. Additionally, the MREP must be based on the law and circumstances *in Michigan.* [6]

C. <u>EDUCATION AND ENCOURAGEMENT – NOT MANDATES</u>

Act 141 does not establish Commission authority to issue renewable energy mandates to Michigan electric utilities. The statutory provision that is the basis for the MREP expressly provides for examination of (1) the availability of renewable energy, (2) the value of using renewable energy, and (3) the potential for renewable energy to reduce pollution. MCL 460.10r(6) Thus, it is clear that, contrary to the positions of Mackinaw Power and MIPPA, the Legislature intended and authorized the MREP to provide education, examination and encouragement – not specific renewable energy mandates. (Initial Comments of Mackinaw Power pp. 2; Initial Comments of MIPPA pp. 4, 5, 6, 7, 8, 10) [7]

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[6] MIPPA and Mackinaw Power implicitly acknowledge that MCL 460.10r(6) does not provide sufficient Commission authority to impose renewable energy mandates. (Initial Comments of MIPPA p. 10) (Initial Comments of Mackinaw Power pp. 2, 3, 6) No other party appears to dispute the limitations of the Commission's authority. (See Initial Comments of ABATE p. 1; Initial Comments of MEGA pp. 4, 5; Initial Comments of MECA pp. 3-4; Initial Comments of the Michigan Attorney General p. 5; Initial Comments of Consumers Energy pp. 3, 4)

[7] The fundamental purposes of Act 141 include "competition," "reasonable rates" and "financially healthy and competitive utilities in this state." MCL 460.10(2)(b)(d)(e) Mandating that electric utilities purchase uneconomic "green" generation would inhibit competition, harm the financial health of Michigan electric utilities and otherwise raise electric rates in Michigan.

Act 141 indicates that the MREP should be designed to "inform" customers, "promote the use of *existing* renewable energy sources" and "encourage" the development of new facilities. MCL 460.10r(6) Therefore, implicit in Act 141 is the recognition that education on the topic is necessary and mandates are inappropriate.

The Commission's May 16, 2002 Order in Case No. U-12915 recognized that Act 141 provided no source of funding for renewable energy and appropriately favors education and the voluntary, market driven development of renewable energy.

> "[T]he Legislature did not intend to create a program that would require consumers to pay an additional surcharge to support it." (MPSC Case No. U-12915, Order dated May 16, 2002 p. 10)

The Commission should direct the MREP collaborative to pursue these goals and facilitate its work with other state agencies, colleges and universities. A reasonable program designed to achieve Act 141's goals will progress at a rate that will allow time for customers to be educated, technology to improve and costs to be reduced. Mandating Renewable Portfolio Standards (RPS)[8] or mandating an electric utility renewable energy bidding program is not presently lawful and should, if at all, be further examined elsewhere. (See Initial Comments of MIPPA p. 10; Initial Comments of Mackinaw Power p. 6; See also MREP pp. 66-72)[9]

[8] Renewable energy mandates, such as an RPS, which exceed the amount of the State's renewable resources will simply require purchases from outside Michigan to meet the mandate and provide no local benefits.

[9] Neither the MREP nor the collaborative process has revealed a workable or lawful means to utilize the PSCR process (MCL 460.6j), with respect to renewable energy. (See MREP p. 71)

III.

CONCLUSION AND REQUEST FOR RELIEF

Experimentation with renewable energy sources and rates should be market-based and voluntary for both electric utilities and retail electric customers. Edison and DTE Energy support the pursuit of renewable energy alternatives. Both companies' records of innovation and experimentation prove that commitment. These management decisions should be encouraged by the MREP, and assisted by quantification of Michigan's renewable resources and assessment of the economic benefits of their development, without resort to specific mandates. [10] The Commission should encourage the creation of subcommittees on discreet renewable energy topics for purposes of furthering the progress of the collaborative process.

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[10] The power to regulate a utility's rates and charges does not include the power to make management decisions such as whether to or how to utilize renewable energy. Consumers Power Company v. PSC, 460 Mich. 148, 158-159 (1999); Detroit Edison Company v. PSC, 221 Mich. App. 370, 386-389 (1997); Union Carbide v. PSC, 431 Mich. 135, 146-150 (1988) The Commission has no common law powers. It possesses only that authority granted by the Legislature. Michigan Courts strictly construe the statutes that confer power on the Commission. Consumers Power Company v. PSC, 460 Mich. 148, 155 (1999)

Edison respectfully requests that the Commission consider its comments in these proceedings and establish Commission policy consistent with the positions of the Company. Edison will continue to actively participate in the informal MREP collaborative process and in any regulatory proceedings related to the MREP that affect Edison's interests.[11]

Respectfully Submitted,

THE DETROIT EDISON COMPANY

Date: December 23, 2003

[11] Edison renews its objection to the case procedure utilized by the Commission in these proceedings and incorporates by reference the concerns it set forth in its September 29, 2003 "Emergency Appeal of Case Procedure and Request for Clarification of Proceedings" as if fully restated herein. See Consumers Power Company v. PSC (supra); In Re PSC Guidelines, 252 Mich. App. 254 (2002); U.S. Const. Amends. V, XIV; Mich. Const. Art 1, Secs. 2, 17; MCL 24.203, 232.

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PROOF OF SERVICE

STATE OF MICHIGAN)
) **ss.**
COUNTY OF WAYNE)

KIMBERLY A. KRASNODEMSKI, being duly sworn, deposes and says that on the 23rd day of December, 2003 she served a copy of **REPLY COMMENTS OF THE DETROIT EDISON COMPANY** upon the parties listed on the attached Service List, a copy of which is attached, by depositing properly addressed sealed and stamped envelopes into the United States mail by first class and by electronic mail.

Kimberly A. Krasnodemski
KIMBERLY A. KRASNODEMSKI

Subscribed and sworn to before me
this 23rd day of December, 2003

Cheryl Donohoo
Notary Public

CHERYL DONOHOO
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Aug 29, 2007

MPSC Case No: U-12915
MPSC Case No. U-13843
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