

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of	)	
THE DETROIT EDISON COMPANY	)	Case No. U-12966
to unbundle its retail electric rates	)	
_____	)	

JOINT MOTION AND BRIEF TO REJECT APPLICATION AND ORDER REFILING

Introduction

Energy Michigan, Inc. (“Energy Michigan”), the Association of Businesses Advocating Tariff Equity (ABATE) and Exelon Energy, Inc. (“Exelon”) by their respective attorneys (hereinafter collectively called the “Movants”) respectfully move to strike the Application of the Detroit Edison Company to unbundle its retail electric rates (the “Application”) in this matter dated June 4, 2001. Movant’s request that the Application be stricken on the grounds that it does not comply with the mandate of 2000 PA 141 that required the Detroit Edison Company (“Edison”) to file an application to unbundle its existing commercial and industrial rate schedules. Movants also request that Edison be ordered by the Michigan Public Service Commission (Commission) to file an Application to unbundle its rates in compliance with 2000 PA 141. Finally, Movants request that a hearing be scheduled to consider this Motion and the relief requested herein. In support, Movants state as follows:

Background

1. On June 5, 2000 PA 141 (Act 141) became effective. Sec.10b(2) of Act 141 requires electric utilities including Edison to file an application no later than June 5, 2001 to unbundle existing commercial and industrial electric rate schedules to separately identify and charge for discrete services. Act 141 also allows the Commission to require filing of Applications to unbundle

residential rate schedules.

2. On June 4, 2001 Detroit Edison filed its Application in Case U-12966 in which Edison claimed to be in compliance with the mandate of Sec.10b(2) to unbundle its electric retail rates. The Application contains, in part, the following assertions:

a. Edison contends that the legislative intent of Act 141, Sec.10b(2)”...is to give customers a clear indication of the charges they will continue to pay for regulated delivery service...” *Application*, ¶ 3.

b. Applicant contends that when an Order in Case U-12489 (Edison retail access tariff) is issued, “...the unbundled distribution costs for retail access service will be established on a going forward basis and customers will know the charges for [retail access services]...”. and that “When customers are provided with the information needed to determine what they will continue to pay the Company for regulated service, they can determine the residual amount or bulk power supply charges against which they can compare service offers from Alternate Electric Suppliers.” *Application*, ¶ 6 (*emphasis supplied*).

c. Edison contends that it cannot incorporate its RAST charges directly in its full service bundled tariffs because “...in doing so individual customers may see an increase or decrease in their bills...”. *Application*, ¶ 7.

d. Edison proposes to comply with the mandates of PA 141, Sec.10b(2) by continuing its current “bundled” billing format for retail service and merely including an additional message informing customers of Edison’s estimate of the RAST charges which would be applicable should the customer participate in open access service. Edison contends that, “With this information customers are provided with the appropriate pricing for distribution service to determine a ‘comparison shopping amount’ for their bulk power supply service.” *Edison Application*, ¶ 8. Note that Edison provides no detail regarding the methodology

which it proposes to calculate estimated RAST charges and/or transition - cost charges and credits, etc.

e. Edison requests that the Commission establish procedures to consider and approve its Application the proposal described above. *Application*, ¶ 10.

Relief Requested

3. The Movants request that the Commission strike the Application in its entirety, order Edison refile a new Application in this matter which conforms with the requirements of 2000 PA 141, Sec.10b(2) and schedule proceedings necessary to consider these requests.

Argument

4. The Detroit Edison Application clearly violates the requirements of Act 141.

5. Act 141 provides, in part, as follows, “No later than one year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the Commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than one year from the effective date of the amendatory act that added this section, the Commission may order the electric utility to file an application to unbundle existing residential rate schedules. The Commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing.” *2000 PA 141, Sec. 10b(2), (emphasis supplied).*

6. This statutory language clearly and unambiguously requires that Edison file revised industrial and commercial rate schedules which separately identify and charge for the discrete services in those rates. In direct defiance of this mandate, Detroit Edison proposes to continue to present retail billing formats for commercial and industrial services in exactly the same, bundled format as utilized before

the unbundling mandated by Act 141. Edison's only attempt to comply with Act 141 is the provision of additional information related to Retail Open Access charges for a comparable customer.

7. There can be no factual or legal dispute that the Application proposes to continue Edison's existing, pre-Act 141 billing format for commercial and industrial services without any unbundling whatsoever. This is a clear and unambiguous violation of Act 141, Sec.10b(2).

8. Edison admits the desirability of allowing customers to determine their bulk power charges so as to compare with open access service (Edison Application, ¶ 6). However, the approach taken by Edison of merely presenting open access charges alongside fully bundled rates falls far short of the Act 141 mandate to break down the bundled rate into specific subcharges including a specific bulk power charge which could be compared with competitive power supplier alternatives. Thus, Edison's filing frustrates the clear objective of Act 141 as recognized in Edison own's filing to facilitate customer comparisons between regulated and unregulated service offerings. In fact, under Edison's proposal, the customer is not supplied with any information regarding the cost of transmission service which is included in the bundled rates but payable separately by open access customers.

9. Even accepting Edison's contentions that RAST rates could not be used directly in its full service bundled tariffs (Application, ¶ 7), Edison is in no way constrained from filing a new format for bundled service which breaks down or separates their commercial and industrial bundled service offerings into the separate discrete service offerings and associated charges mandated in Act 141. Such a filing must include the transmission rate component of bundled rates. While Edison may wish to debate whether it can incorporate the RAST charges approved in Case U-12489 directly in its full bundled service tariffs, it is not debatable that Edison has refused to do that which it could do: file unbundled retail rates which are separated into their discrete elements. Thus, the Edison Application is a clear and unambiguous violation of the requirements of Act 141.

10. Act 141 gives the Commission legal authority to enforce the requirements of Act 141,

Sec.10b(2) through sanctions or other remedies.

Act 141, Sec.10c(1) provides that, “...upon a complaint or on the Commission’s own motion, if the Commission finds after notice and hearing that an electric utility...has not complied with a provision or order under Sections 10-10b(b) the Commission shall order such remedies and penalties as necessary to make whole a customer or other person who has suffered damages as a result of the violation....”

The remedies provided under Sec. 10c include fines, refunds for excess charges or:

“c. any other remedies that would make whole the person harmed.

* * *

e. Issue cease and desist orders.”

This legal authority gives the Commission a range of sanctions to enforce the requirements of Sec.10b(2).

Relief

WHEREFORE, Movants request that the Commission pursuant to Sec.10c(1) to issue a notice and commence a hearing in this matter and provide the following relief:

1. Enter an order striking the Application;
2. Order that Edison cease and desist from its refusal to implement the requirements of Act 141, Sec.10b(2) and that it file a compliance unbundling filing; and
3. Such other relief as the Commission deems appropriate.

Respectfully submitted,

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June 27, 2001

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NOTICE OF HEARING

To Parties of Record:

Please take notice that the Joint Motion to Strike is scheduled for hearing before the Michigan Public Service Commission on the date scheduled for a pre-hearing conference in this matter or as soon thereafter as counsel may be heard.

Respectfully submitted,

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