

STATE OF MICHIGAN  
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September 24, 2001

Ms. Dorothy Wideman  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48911

Dear Ms. Wideman:

Re: **MPSC Case No. U-12966**

I am enclosing for filing an original and 4 copies of the Attorney General's Replies to Exceptions. I am also enclosing a proof of service. In addition, I am submitting a copy of this notice in PDF electronic format.

Sincerely,

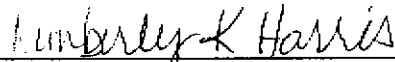
A handwritten signature in cursive script that reads "Donald E. Erickson".

Donald E. Erickson  
Assistant Attorney General

c All Parties  
U-12966

**PROOF OF SERVICE - U-12966/BOH 2001-1172**

The undersigned certifies that a copy of the Attorney General's Replies to Exceptions was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, or by State Interdepartmental mail as indicated, on the 24th day of September 2001

  
\_\_\_\_\_  
Kimberly K. Harris

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STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of THE DETROIT  
EDISON COMPANY to unbundle its retail electric  
rates

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MPSC No. U-12966

BOH Docket No. 2001-1172

**Attorney General's Replies to Exceptions**

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September 24, 2001

## **Replies to the Exceptions Filed by The Detroit Edison Company**

On August 30, 2001, the Administrative Law Judge (ALJ) issued a proposal for decision (PFD) in the captioned case. The PFD recommends that the Commission dismiss the application filed by The Detroit Edison Company (DECo or the Company) and order the Company to file a new application in compliance with MCL 460.10b(2) [Section 10b(2)]. The PFD makes this recommendation based upon the ALJ's conclusion that the application, testimony, and exhibits filed by DECo do not comply with the requirements of Section 10b(2).

On September 13, 2001, DECo filed written exceptions to the PFD. The Attorney General files the following replies to DECo's exceptions.

### **The ALJ did not err by finding DECo failed to meet Section 10b(2) requirements.**

Section 10b(2) states:

No later than 1 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 1 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. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection.

DECo does not directly dispute what the statute requires. DECo's first exception argues that the Company's filing satisfies the requirements of this statute because of the rate freeze requirements established by MCL 460.10d(1) [Section 10d(1)], which states:

Unless otherwise reduced by the commission under subsection (4), the commission shall establish the residential rates for each electric utility with

1,000,000 or more retail customers in this state as of May 1, 2000 that will result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. Notwithstanding any other provision of law or commission order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on the effective date of the amendatory act that added this section and remain in effect until December 31, 2003 and all other electric retail rates of an electric utility with 1,000,000 or more retail customers authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003, unless otherwise reduced by the commission under subsection (4).

DECo argues that any complete unbundling of customer bills beyond the unbundling already contemplated through implementation of DECo's retail access service tariff (RAST) would violate the rate freeze provision in Section 10d(1).

DECo bases its argument upon its claim that individual customers may see an increase or decrease in their bills under the RAST from bills based on existing bundled tariffs. Section 10d(1) does not support DECo's argument. That statute freezes rates, not customer bills.

Pages 3-4 of DECo's exceptions admit that the inclusion of an average delivery charge would preserve the price freeze and 5% rate reduction mandated by 2000 PA 141, but DECo argues that this would result in customers receiving an incorrect price signal for delivery service. Whether or not this is true, Section 10d(1) does not conflict with the unbundling mandate found in Section 10b(2), and Section 10d(1) does not prohibit incorrect price signals. In fact, if correct price signals were the linchpin of the statute, one can only wonder why the Legislature would have adopted any freeze. A freeze by definition does not reflect either increases or decreases in a utility's cost of service, which means that a frozen rate will send an incorrect price signal to the extent that the frozen rate does not accurately reflect costs as they change.

Page 4 of DECo's exceptions argues that a statute must be read as a whole. The Attorney General agrees. But, Section 10b(2) is a part of 2000 PA 141 as is Section 10d(1), and neither

statute should be read as nullifying the other--as DECo admits. The point is that unbundling can be accomplished without violating the rate freeze as DECo carefully but grudgingly admits.

**DECo's Proposal does not identify and charge for discrete services.**

Pages 6-7 of DECo's exceptions argue that the Company's proposal complies with Section 10b(2) because retail access programs provide only two truly discrete services: delivery service and bulk electric energy. DECo's argument presents, at best, a red herring.

Page 5 of the PFD notes that DECo proposes to actually continue its current bundled billing format for retail service and simply include a bill message to customers while the bill would not separate the existing charges into discrete services and would not separately identify those charges. DECo's exceptions do not deny these conclusions.

The PFD is also correct in stating that this is not what Section 10b(2) requires. Therefore, the PFD has properly recommended dismissal and a refiling.

The statutes quoted above create a legal question concerning whether Section 10b(2) and Section 10d(1) conflict. If they conflict, then the language of Section 10d(1) seems to preclude action by the MPSC that conflicts with that section. On the other hand, the MPSC must give meaning to all the language in both statutes if possible. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich. 211, 228; 507 NW2d 422 (1993), and *Klopfenstein v Rohlfing*, 356 Mich 197, 202; 96 NW2d 782 (1959).

The MPSC can unbundle DECo's existing commercial and industrial rate schedules and separately identify and charge for discrete services in compliance with Section 10b(2) and still set rates consistent with those approved pursuant to Section 10d(1) and (4). Therefore, the MPSC should establish unbundled rates pursuant to Section 10b(2). In the alternative, if the

MPSC decides that Section 10b(2) irreconcilably conflicts with Section 10d(1), then the MPSC should dismiss this case on the basis that the Commission cannot comply with both statutes and is bound to comply with Section 10d(1) when there is a conflict between the two statutes.

**Relief Requested**

WHEREFORE, Attorney General Jennifer M. Granholm requests the Michigan Public Service Commission to adopt the recommendations stated in the Proposal for Decision and order DECo to file a new application pursuant to Section 10b(2).

Respectfully submitted,

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Dated: September 24, 2001  
U-12966