



215 S. WASHINGTON SQUARE, SUITE 200
LANSING, MICHIGAN 48933-1816
TELEPHONE: (517) 371-1730
FACSIMILE: (517) 487-4700
<http://www.dickinson-wright.com>

September 24, 2001

JOHN M. DEMPSEY
jdempsey@dickinson-wright.com
(517) 487-4763

**Via First Class Mail
and Electronic Case Filing**

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

**Re: In the matter of the application of Detroit Edison Company to unbundle its
retail electric rates
Case No. U-12966**

Dear Ms. Wideman:

Enclosed for filing regarding the above-captioned matter please find the original and four copies of ***Reply of Exelon Energy to the Exceptions to Proposal For Decision of Detroit Edison***. Also enclosed is the original ***Proof of Service***.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

John M. Dempsey

JMD/mds
Enclosure

C o u n s e l l o r s A t L a w

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR
WASHINGTON, D.C.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

Case No. U-12966

PROOF OF SERVICE

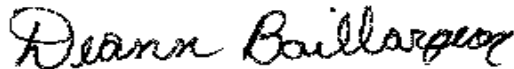
STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

Mindy D. Smith, being first duly sworn, deposes and says she is employed as a secretary at Dickinson Wright PLLC, that she caused a copy of ***Reply of Exelon Energy to the Exceptions to Proposal For Decision of Detroit Edison***, to be served via email and by placing same in envelopes addressed to the parties on the attached list at their respective addresses, with proper first-class postage affixed thereto, and by causing the same to be deposited in a mail receptacle maintained by the United States Government in Lansing, Michigan on the 24th day of September, 2001.



Mindy D. Smith

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 24th day of September, 2001.



Deann Baillargeon, Notary Public
Ingham County, Michigan
My Commission Expires: 2/16/03

SERVICE LIST
CASE NO. U-12966

Administrative Law Judge

Barbara Stump
Bureau of Hearings
611 West Ottawa Street
Ottawa State Office Building, 2nd Floor
P.O. Box 30695
Lansing, MI 48909-8195
(517) 335-2484
(517) 335-6696
email: bstump@state.mi.us

Detroit Edison Company

The Detroit Edison Company

Bruce R. Maters
Jon P. Christinidis
2000 Second Ave. (Rm. 688 WCB)
Detroit, MI 48226
(313) 235-7481
(313) 235-8500 (fax)
email: matersb@dteenergy.com
christinidisj@dteenergy.com
mpscfilings@dteenergy.com

MPSC Staff

Steven D. Hughey
Michigan Public Service Commission
6545 Mercantile Way, Suite 15
Lansing, MI 48909
(517) 241-6680
(517) 482-6937
email: hugheys@ag.state.mi.us

Attorney General

Donald E. Erickson
6520 Mercantile Way, Suite 2
Lansing, MI 48909
(517) 373 1123
email: ericksond@ag.state.mi.us

Energy Michigan

Eric J. Schneidewind
The Victor Center
201 North Washington Square, Suite 810
Lansing, MI 48933
(517) 482-6237
(517) 482-6937 (Fax)
email: ejschneidewind@vrsh.com

ABATE

Robert A.W. Strong
255 S. Old Woodward Avenue
Third Floor
Birmingham, MI 48009-6179
(248) 988-5861
(248) 642-2174 (Fax)
e-mail: rstrong@clarkhill.com

Mr. James T. Selecky
Brubaker & Associates, Inc.
1215 Fern Ridge Parkway, Suite 208
P.O. Box 412000
St. Louis, MO 63141-2000
email: jtselecky@consultbai.com

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application	)	
THE DETROIT EDISON COMPANY	)	Case No. U-12966
to unbundle its retail electric rates	)	BOH No. 2001-1172
_____	)	

REPLY OF EXELON ENERGY COMPANY
TO THE EXCEPTIONS TO PROPOSAL FOR DECISION
OF DETROIT EDISON COMPANY

Exelon Energy Company ("Exelon") hereby submits its reply to Detroit Edison Company's ("Edison") Exceptions to Proposal for Decision ("Exceptions"), in accordance with the schedule set forth in the August 30, 2001 Proposal for Decision ("PFD") issued by Administrative Law Judge ("ALJ") Barbara A. Stump. Edison's Exceptions largely restate arguments offered in its June 4, 2001 application ("Application") and June 29, 2001 response ("Response") to the Joint Motion and Brief to Reject Application ("Joint Motion") filed by Energy Michigan, Inc., ABATE and Exelon. Edison offers little new information that was not already rejected by the ALJ, and the Commission should adopt the PFD notwithstanding Edison's Exceptions.

As discussed more fully below, section 10b(2) of 2000 Public Act 141 ("P.A. 141") required Edison to file an application unbundling its existing commercial and industrial rate schedules **by June 5, 2001**. Three months since that deadline, Edison still has failed to comply with that statutory mandate. In addition to violating the plain language of § 10b(2), Edison's failure to unbundle its rates also frustrates the pro-competitive goals of P.A. 141. Given that now there is only three months left until all customers must be allowed to choose alternative electric suppliers, Edison's delay has endangered the Commission's ability to thoughtfully

consider Edison's unbundling proposal under § 10b(2). In addition to adopting the PFD that rejects Edison's application, therefore, the Commission also should provide clear guidance to Edison regarding the form and substance of the application it must file in this proceeding to eliminate further delay.

A. Edison's Application Must be Rejected Because it Fails to Comply with the Clear Statutory Mandate of Section 10b(2) of P.A. 141.

P.A. 141 § 10b(2) sets forth a clear and unambiguous mandate. It states that by June 5, 2001:

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.

MCL 460.10b(2) (emphasis added). June 5, 2001 has come and gone, however, and the only application filed by Edison to comply with § 10b(2) proposes to *continue its bundled billing* while only "includ[ing] a bill message [in customers' bills] listing the distribution charges contained in the approved RAST." Application at 4. Edison's Application contains no rate schedules with unbundled rates, no plan to unbundle customers' bills, and no separate identification of the generation or transmission related components of customers' rates. Indeed, it contains no information that unbundles its existing rate schedules or separately identifies charges for all of its discrete services. Instead, the Application merely proposes to state, in a separate bill message, only the distribution charge that would apply if the customer "participat[ed] in the Detroit Edison Customer Choice program." Application, Attachment A. That distribution rate would be *different* than Edison's unbundled distribution rate. Application at 4. The ALJ properly found, therefore, that the Application fails to comply with the "clear and

unambiguous language" of P.A. 141 § 10b (PFD at 4) and the Commission should adopt the PFD.

In addition to neglecting the plain language of § 10b(2), Edison's Application frustrates the pro-competitive goals of P.A. 141. The purpose of P.A. 141, in part, is to "ensure that all retail customers . . . have a choice of electric suppliers" and "[t]o allow and encourage the [Commission] to foster competition . . . in the provision of electric supply" MCL 460.10(2)(a), (b). A crucial aspect of customer choice over electric supply is the ability to compare prices for that service, a process that would be facilitated by the separate identification of unbundled generation and transmission rates under § 10b(2). By refusing to unbundle its rates, however, Edison inhibits the ability of customers to know and compare their rates for its discrete services.

Edison suggests that its bill message is sufficient to allow customers to conduct price comparisons. Response at 4. Its proposal, however, identifies no separate generation or transmission charges that would allow customers to conduct simple "apples-to-apples" comparisons between their current Edison charges and the offers they receive from competitive service providers. A customer reviewing Edison's proposed bill message could not simply see that Edison's generation charge is "x," for example, and compare it to a marketer's electric supply offer of "y." Despite Edison's expectation that customers should conduct various calculations based on partial information contained in a "bill message" to determine their potential cost savings, the pro-competitive goals and plain language of P.A. 141 require more: unbundled rates and separately identified charges for discrete services. MCL 460.10b(2). Because Edison's Application fails to accomplish that statutory directive, the Application must be rejected. Moreover, Edison's proposal also inhibits customer choice because the distribution rate Edison

would identify in bill messages would be different than the distribution component of customers' bundled service. Application at 4. Unbundling should allow customers to compare offers for *competitive services* without having to consider how taking service from a competitive provider will affect their rates for *regulated services*. Edison's refusal to provide customers with full unbundled rate information, again, only confuses what should be a customer's simple price comparison for particular and individual competitive services.

In its Exceptions, Edison repeats its contention raised in its Application and Response that incorporating its RAST into its bundled tariff would violate the rate freeze and cap provisions set forth in § 10d of P.A. 141. Exceptions at 2. Edison's insistence that it only can unbundle its rates by incorporating RAST rates into its bundled tariff, however, is misleading. Section 10b does not direct that RAST rates be used to accomplish unbundling; it just directs Edison to unbundle existing rate schedules. Additionally, what effect unbundling rates might have in relation to § 10d is unknown because Edison flatly refused to file an application that unbundled its rate schedules as mandated by § 10b. Edison itself states that incorporating the RAST tariff into its bundled tariff could cause individual customers to see either "an increase *or decrease* in their bills compared to existing tariffs." Application at 3 (emphasis added). As the PFD notes, it may be possible to implement unbundled rates with "separate tariffs and distinct services without changing rates in violation of Section 10d(1)." PFD at 5. In fact, Consumers Energy Company has attempted to unbundle its rates in Case No. U-12970 without using the precise terms of its "ROA" tariff. Edison's Exceptions, therefore, provide no basis for Edison's refusal to comply with the clear statutory mandate of § 10b.

Building on its theory that complying with § 10b would force it to violate § 10d, Edison further repeats its contention from its Response that rules of statutory construction

prevent it from incorporating its RAST rates into its bundled tariff (the only unbundling method it apparently considered). Exceptions at 4. As discussed above, however, it is not clear that unbundling Edison's rates necessarily will violate § 10d because Edison filed no unbundled rates. In any event, moreover, the PFD correctly notes that another long-standing rule of statutory construction is that "statutes are to be construed as to avoid absurd or unreasonable consequences." PFD at 6 citing *Joy Management Co. v. City of Detroit*, 176 Mich. App. 722, 731 (1989). The PFD appropriately concludes that it would be unreasonable to read § 10d(1) as negating § 10b(2). PFD at 6.

To go further, however, Edison contends that it cannot comply with § 10b(2) because implementing its "RAST" rates from MPSC Case No. U-12489 may cause "individual customers [to] see an increase or decrease in their bills" in violation of P.A. 141 § 10d. Exceptions at 3. The fact that Edison has proposed RAST rates in a Commission proceeding cannot obviate a statutory mandate. Indeed, Edison can have the "harmonious" result it seeks simply by unbundling its tariff rates, in compliance with § 10b, as they are frozen and capped by § 10d. Its discussion of "RAST" rates that have been proposed in a Commission proceeding unnecessarily clouds what should be a clear issue: P.A. 141 requires Edison to unbundle its existing rate schedules. Accordingly, the Commission should adopt the PFD because it correctly concludes that Edison's Application fails to comply with P.A. 141.

B. In Addition to Adopting the PFD, the Commission Should Provide Guidance Regarding Edison's Filing Requirements Under § 10b(2) of P.A. 141.

"No later than January 1, 2002," P.A. 141 declares, "the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers . . . to choose an alternative electric supplier." MCL 460.10a(1). By June 5, 2001, Edison was to have

filed an application to "unbundle its existing commercial and industrial rate schedules and separately identify and charge for [its] discrete services." MCL 460.10b(2). Now, on September 24, 2001, Edison has so far failed to unbundle its rates or identify separate charges for its discrete services.

With little more than three months left until customers must be allowed to choose alternative electric suppliers, Edison still is delaying the process of identifying its unbundled rates under § 10b(2) by exploiting purported ambiguities in P.A. 141. In addition to adopting the PFD, therefore, Exelon further requests that the Commission identify clear filing requirements for Edison in this proceeding. Such requirements should include Edison's obligation to file rate schedules that unbundle its bundled rates into the following three traditional retail rate components: generation, distribution and transmission.¹ Edison also should identify separate charges for other optional or mandatory services that could become competitive in the future. In addition to merely stating particular charges, Edison should submit sufficient information that supports its unbundled rates. Such information should give parties an adequate opportunity to understand the assumptions and process used to break Edison's bundled rates into their discrete components and to establish such charges. To ensure that the Commission and parties to this

¹ Edison's contention that it does not provide transmission service, or that transmission service merely is lost in its "bulk power" category (Exceptions at 2), is disingenuous. Despite *Edison's* "intention" never to identify separate transmission charges (Exceptions at 2-3), P.A. 141 *requires* it to identify separate charges for its discrete services. MCL 460.10b(2). Edison itself indicates, moreover, that customers incur charges for transmission that can be separated from generation costs. Exceptions at 3. The Commission, therefore, should reject Edison's refusal to identify customers' transmission charges. Indeed, if customers who seek to choose alternative electric supply service also must obtain transmission from "a transmission provider or through a marketer" as Edison states (Exceptions at 2), then they also must be able to compare their Edison transmission charges with charges offered by alternative providers for that service.

proceeding are not deprived of their opportunity to thoroughly consider Edison's unbundling application, the Commission must give this clear direction to Edison.

C. Conclusion

For the foregoing reasons, Exelon Energy Company respectfully requests that the Commission adopt the August 30, 2001 Proposal for Decision issued in this proceeding, and that the Commission provide additional guidance as requested herein.

Respectfully Submitted,

DICKINSON WRIGHT PLLC

By: 

John M. Dempsey (P30987)

Daniel J. Oginsky (P60526)

Attorneys for Exelon Energy Company

215 S. Washington Square, Suite 200

Lansing, MI 48933-1816

(517) 371-1730

Dated: September 24, 2001

LANSING 34351-20 286566