The Detroit Edison Company
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Detroit Edison

A DTE Energy Company

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June 12, 2001

MICHIGAN PUBLIC SERVICE
FILED
U-12979 JUN 1 1 2001
COMMISSION

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

Re: Request of The Detroit Edison Company for a Declaratory order regarding MPSC jurisdiction associated with the "Rouge Complex" and Dearborn Industrial Generation, L.L.C.

Dear Ms. Wideman:

Please find enclosed for filing with the Commission an original and four copies of The Detroit Edison Company's **Request for Ex Parte Declaratory Ruling Regarding MPSC Jurisdiction** in the above captioned matter, along with Proof of Service.

Very truly yours,

Jon P. Christinidis

JPC/dj
Enclosures

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the request of THE DETROIT EDISON COMPANY for a Declaratory Order regarding MPSC jurisdiction associated with the "Rouge Complex" and Dearborn Industrial Generation, L.L.C.	)	Case No. U- U-12979

REQUEST FOR EX PARTE DECLARATORY RULING REGARDING MPSC JURISDICTION

NOW COMES THE DETROIT EDISON COMPANY, by and through its attorneys, and pursuant to the Rules of Practice and Procedure Before the Commission (R 460.17101 et. Seq.) and the Michigan Administrative Procedures Act (MCL 24.201 et. Seq.), files this Request for Declaratory Ruling Regarding MPSC Jurisdiction associated with the interconnection of distribution equipment owned by The Detroit Edison Company (hereinafter "Detroit Edison" or "Company") and the electrical equipment and generation equipment owned and/or controlled by Dearborn Industrial Generation, L.L.C. (and/or an affiliate thereof) (hereinafter "DIG") and treatment of retail power consumption at the Ford Motor Company Rouge industrial complex (hereinafter "Rouge Complex") site. In support thereof, the Company states as follows:

1. The Detroit Edison Company is a public utility subject to the jurisdiction of the Michigan Public Service Commission ("MPSC"), organized and existing under the laws of the State of Michigan and engaged in the provision of retail electric service in southeastern Michigan.

2. DIG is a limited liability company affiliated with CMS Energy and engaged in the construction and operation of electric generating facilities and other electrical equipment in Dearborn, Michigan as well as, directly or through marketing affiliates, the provision of retail electric service to several industrial customers within or near the Rouge Complex in Dearborn, Michigan.

3. The Detroit Edison Company first undertook a public utility service obligation to provide electrical service to all residents, businesses and industry in the City of Dearborn, Michigan by accepting a public utility franchise from that community in 1905. Detroit Edison's present franchise for the provision of electric service in the City of Dearborn was granted in 1985. The U.S. and Michigan Supreme Courts have explained the nature of public utilities' obligation to serve customers. In Williams v. Mutual Gas Co., 52 Mich 499 (1884), a gas light company in Detroit was found to be bound to supply all customers within its undertaking on demand. In New York & Queens Gas Co. v. McCall, 245 US 345; 38 SCt 122; (1918), the Court explained:

> Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve, and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render.

4. Until boiler explosions rendered it inoperable in 1998, the Ford Motor Company and Rouge Steel owned and operated a generating facility at the Rouge Complex. Pursuant to agreements dated December 15, 1932, August 22, 1952, August 5, 1954, November 26, 1974, July 20, 1979 (and 1981 Amendments thereto) The Detroit Edison Company constructed radial retail service lines to and maintained interconnection

facilities with the Ford Motor Company's Rouge Complex. **The Michigan Public Service Commission explicitly approved the Interconnection Agreements and Detroit Edison's electric rates and other special arrangements for the provision of retail service to the Rouge Complex in Orders issued on March 17, 1975 in Case No. U-4772 and on September 5, 1979 and March 2, 1982 in Case No. U-6218.**

5. Subsequent to the 1998 generator accident at the Rouge Complex, Detroit Edison has played a critical role in repairing and reconfiguring various equipment at the Rouge Complex, and has supplied power at retail tariff rates to the several industrial customers at the Rouge Complex, enabling the Ford Motor Company to quickly return the Rouge Complex to full production. It appears unlikely that the original Rouge Complex generating equipment will be returned to service.

6. During this same period, DIG commenced and continued construction on generation facilities and associated equipment located on or near the Rouge Complex. According to a May 1, 2000 Application for approval of contracts and a Certificate of Public Convenience and Necessity pursuant to Act 69, **which was filed with the Michigan Public Service Commission,** CMS MS&T Michigan (a wholly owned subsidiary of CMS MS&T, and an affiliate of CMS Energy), has entered into agreements to provide retail electric service to the Rouge Steel Company, Ford Motor Company "and other eligible customers" at the Rouge Complex. (MPSC Case No. U-12419, Application dated May 1, 2000) CMS MS& T Michigan and CMS MS&T also acquired a franchise in the City of Dearborn, Michigan to provide electric service. It was apparently contemplated that CMS MS&T Michigan would serve at least two of the Rouge Complex customers (Double Eagle and Ladle Met) in June 2000. (MPSC Case No. U-12419,

Application dated May 1, 2000) **Double Eagle and Ladle Met have always been full service retail electric customers of Detroit Edison, notwithstanding the existence and prior operation of Ford's and Rouge Steel's onsite generation at the Rouge Complex.** The type of service contemplated by CMS and its affiliates has not yet been fully implemented and Detroit Edison, at present, continues to serve all of the Rouge Complex customers pursuant to its Retail Access Service Tariff.

7. It is Detroit Edison's understanding that DIG, either directly or through its marketing affiliates, intends to provide retail electric supply from these generation facilities to the several industrial customers located within or near the Rouge Complex. It is also the Company's understanding that DIG intends to **receive and deliver electric energy on and over the electric system of Detroit Edison for various reasons,** including but not limited to, the profitability of operating their generation facilities and the profitability of directly serving the retail industrial customers at the Rouge Complex.

8. DIG desires to implement a net metering arrangement in which metering is installed only at the points of interconnection and generation is scheduled from the points of interconnection. DIG's position regarding metering is based on a gross oversimplification of the circumstances at the Rouge Complex. Because the DIG facility is located near the Rouge Complex and will, ostensibly, be used at times to serve the various Rouge Complex retail industrial loads, DIG asserts that it should be configured and regulated like any basic "behind the meter" self-service provider. However, DIG's position ignores the reality that the Rouge Complex customers comprise 260 MW of highly variable industrial load that Detroit Edison generators will inevitably be called upon to support. However, the net metering arrangement posed by DIG prevents Detroit

Edison from accurately metering and billing those parties that cause electrical imbalances and utilize Detroit Edison generation assets. The proposed arrangement also prevents Detroit Edison from accurately charging the individual retail customers for their distribution service pursuant to the Company's Retail Access Service Tariff. Furthermore, the proposed DIG net metering arrangement also fails to recognize that the retail customers at the Rouge Complex may someday choose a different supplier. Should that happen, there will be no metering in place to permit their participation in retail access under Detroit Edison's Retail Access Tariff.

9. Michigan law prohibits the proposed DIG net metering arrangement. 2000 PA 141 provides that:

> "The commission shall not prohibit an electric utility from metering and billing its customers for services provided by the electric utility." 2000 PA 141 10q(5)

2000 PA 142 provides that Securitization charges are "nonbypassable." Section 7 of Detroit Edison's Retail Access Service Tariff requires all retail access loads to be "separately metered" by Detroit Edison. In sum, Detroit Edison is statutorily entitled to charge and receive payment for its Securitization Bond charges, transition charges and other distribution-related charges from DIG and the Rouge Complex customers, and to use separate meters for each retail load at the site.[1]

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[1]With regard to the effect of Order No. 888 on state jurisdiction, the FERC unambiguously stated that the "Final Rule will not affect or encroach upon state authority in such traditional areas as...authority to impose non-bypassable distribution or stranded cost charges." Promoting Wholesale Competition Through Wholesale Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats & Regs. Par. 31,036 at 31,782-3 (1996)("Order No. 888"), *order on reh'g,* FERC Stats & Regs. Para. 31,048 (1997)("Order No. 888-A"), *order on reh'g,* 81 FERC Para. 61248 (1997) ("Order 888-B"), *order on reh'g,* 82 FERC Para. 61,046 ("Order No. 888-C").

10. The circumstances involved with the provision of electric service to the Rouge Complex are unique to Detroit Edison and DIG, and the application of Detroit Edison's rules and rate schedules to the Rouge Complex and DIG project are disputed by DIG, CMS MS&T, CMS MS&T Michigan, Rouge Steel and the Ford Motor Company. Service to the Rouge Complex has developed a history of Michigan Public Service Commission involvement. Furthermore, the Rouge Complex is connected to Detroit Edison's distribution system by radial distribution lines which, of necessity, implicate Detroit Edison's Retail Access Service Tariff. In addition, several provisions of 2000 PA 141 and 2000 PA 142 affect and control the provision of retail electric services to the Rouge Complex. Thus, jurisdiction over substantial aspects of the provision of electric service to the Rouge Complex lie squarely and exclusively with the Michigan Public Service Commission.

11. FERC's Rule 888 specifically discussed the potential for schemes such as DIG has proposed and clearly discouraged their creation:

> "Although we are unable to draw a bright line for local distribution facilities that many commenters would like, we believe it is important to make two clarifications regarding local distribution in the context of retail wheeling. **First, even when our technical test for local distribution facilities identifies no local distribution facilities for a specific transaction, we believe that states have authority over the *service* of delivering electric energy to end users.** Second, through their jurisdiction over retail delivery services, states have authority not only to assess stranded costs but also to assess charges for stranded benefits, such as low income assistance and demand side management. Because their authority is over services, not just the facilities, states can assign stranded costs and benefits based on usage (kWh), demand (kW), or any combination or method they find appropriate. **They do not have to assign them to specific facilities.** Thus, while we

believe in most cases there will be identifiable local distribution facilities subject to state jurisdiction, we also believe that even where there are no identifiable local distribution facilities, states nevertheless have jurisdiction in all circumstances over the service of delivering energy to end users. **Under this interpretation of state/federal jurisdiction, customers have no incentive to structure a purchase so as to avoid using identifiable local distribution facilities in order to bypass state jurisdiction and thus avoid being assessed charges for stranded costs and benefits."(emphasis added) Fed. Reg. Vol 61, No. 92, 21626 May 10, 1996**

12. Detroit Edison has, at all times, acted in good faith to facilitate the continued and timely construction of the DIG facility and has attempted, in good faith, to reach a mutually acceptable interconnection arrangement with DIG. Detroit Edison has entered into temporary interconnection arrangements as well as test energy purchase arrangements with DIG during the continued construction of the DIG project. Detroit Edison has, as late as March 2001 entered into short-term Distribution Interconnection Agreements, filed multiple proposed interconnection arrangements at the MPSC and FERC and has otherwise complied with DIG's request that the Company file a long-term unexecuted Distribution Interconnection Agreement at FERC.[2] In fact, the DIG project is already *physically* interconnected to Detroit Edison's distribution system.[3] Unfortunately,

[2] Detroit Edison has previously submitted an Answer to DIG's Protest at FERC wherein DIG has reversed its prior request that FERC disclaim jurisdiction, alleging that *the MPSC disclaimed all jurisdiction by its April 17, 2001 Order in MPSC Case No. U-12866*. Detroit Edison submits that such a conclusion is without basis and notes that the MPSC's Order specifically stated, "Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419 as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et. Seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq. The Commission reserves jurisdiction and may issue further orders as necessary." The Commission also dismissed that case "without prejudice." (MPSC Case No. U-12866, Order dated April 17, 2001 p. 2)

[3] Detroit Edison has also acted in good faith to facilitate retail access service to the industrial loads at the Rouge Complex. Each of the four industrial customers at the Rouge Complex have been enrolled in the

the Company's efforts have not resulted in a Distribution Interconnection Agreement, of any duration, that is completely acceptable to DIG.[4] One fundamental reason for the continued disagreement over the terms of interconnection is DIG's, Rouge Steel's and Ford's position that it is not legally required, over the long-term, and when wheeling in electric energy over the Detroit Edison electrical system, to provide service to the Rouge Complex retail industrial customers pursuant to the Detroit Edison Retail Access Service Tariff. The effective result of DIG's position in situations like this where entities seek to be more than "self-service" generators and/or may seek to engage in "affiliate wheeling" as defined in 2000 PA 141 Sec. 10(a)(6) and (7) would be a bypass of Detroit Edison's securitization, stranded cost, transition and distribution charges associated with the Rouge Complex, thereby inequitably shifting such cost responsibility to other customers and frustrating the intent and purpose of both 2000 PA 141, 2000 PA 142 and the Michigan Public Service Commission's electric restructuring efforts.

13. R 460.17701 and MCL 24.263 permit the Michigan Public Service Commission to issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. Detroit Edison requests a declaratory ruling from the Commission that it has jurisdiction over, inter alia, the following issues:

Company's retail access program, only to have DIG or its agents subsequently, and without Detroit Edison authorization, change the configuration of service, eliminate the Detroit Edison – approved metering points and combine existing industrial retail customer load with DIG generation auxiliary load. Such action is further evidence of DIG's scheme to further its own and/or the Rouge Complex industrial retail customers' intention to avoid proper payment of non-bypassable securitization bond, transition and distribution charges.

a. Whether Detroit Edison has an indefinite, continuing obligation to provide all aspects of electric service, including but not limited to generation service, to customers in the City of Dearborn, Michigan, including the Rouge Complex customers, and DIG for station use, if so requested pursuant to 2000 PA 141 and 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419 as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et. Seq.; MSA 22.13(1) et seq. and other law.

b. Whether the DIG project and the Rouge Complex customers, Ford, Rouge Steel, Double Eagle and Ladle Met, must pay the non-bypassable Securitization Bond charges, transition charges and other distribution charges pursuant to 2000 PA 141 and 2000 PA 142, including but not limited to, 2000 PA 142, Secs. 10i, 10j, and 10k and other law.

c. Whether Detroit Edison is lawfully entitled to install the metering it deems necessary at each retail load, to meter and bill for the distribution services, generation services, transition charges and non-bypassable Securitization Bond charges rendered by Detroit Edison pursuant to its Retail Access Service Tariff (EC2 Secs. 7.1-7.4), 2000 PA 141 Sec. 10q(5) and 2000 PA 142, Secs. 10i, 10j and 10k and other law.

d. Whether the net metering scheme proposed for the DIG project and the Rouge Complex customers is unlawful pursuant to 2000 PA 141 Sec. 10q(5), (EC2 Secs. 7.1-7.4) and 2000 PA 142 Secs. 10i, 10j and 10k and other law.

14. In order to assure the appropriate recovery of securitization, stranded cost, transition and distribution charges of the Company, and to facilitate the completion of the DIG project in an efficient and expeditious manner, Detroit Edison respectfully requests that the Commission immediately review and issue a ruling addressing the Commission's

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[4]Detroit Edison notes that the parties have been successful in reducing the scope and number of issues that remain outstanding. Some of those issues implicate the Michigan Public Service Commission's clear

jurisdiction regarding the DIG project and retail electric service at the Rouge Complex, thereby assuring the appropriate recovery of Detroit Edison charges from DIG, as well as facilitating an increase of independent, non-utility generation capacity in Michigan.

15. An immediate ruling concerning the Commission's jurisdiction will further certain fundamental purposes of 2000 PA 141, including:

> "To encourage the development and construction of merchant plants." [Sec. 10 (2)(c)], and
>
> "[T]o promote financially healthy and competitive utilities in this state." [Sec. 10(2)(e)]

Further, the relief requested by Detroit Edison is consistent with the Commission's February 5, 2001 order in MPSC Case No. U-12485 regarding the interconnection of merchant plants.

16. A Declaratory Ruling concerning the Commission's jurisdiction over the DIG project and retail electric service at the Rouge Complex will not result in any increase in any rates or charges by Detroit Edison to retail electric customers and therefore may be accomplished without notice or hearing as provided for by MCL 460.6a.

WHEREFORE, The Detroit Edison Company respectfully requests that the Commission immediately issue a Declaratory Ruling concerning the Commission's jurisdiction over the DIG project and retail electric service at the Rouge Complex, *ex parte,* finding that the Michigan Public Service Commission has jurisdiction over the

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jurisdiction over distribution facilities, retail energy sales and Retail Access Service.

DIG project and retail electric service at the Rouge Complex such that it shall decide, inter alia, the issues stated in Paragraph 13 above.

Respectfully submitted:

THE DETROIT EDISON COMPANY

Jon P. Christinidis (P 47352)
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Detroit, Michigan 48226
(313) 235-7706

Dated: June 11, 2001

MICHIGAN PUBLIC SERVICE
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the request of THE DETROIT EDISON COMPANY for a Declaratory Order regarding MPSC jurisdiction associated with the "Rouge Complex" and Dearborn Industrial Generation, L.L.C.	)))))))	Case No. U-U-12979

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

DORIS J.HILL-SHAVERS, being duly sworn deposes and says that on the 12th day of June, 2001 she served a copy of The Detroit Edison Company's **REQUEST FOR EX *PARTE* DECLARATORY RULING REGARDING MPSC JURISDICTION** 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.

Doris J. Hill-Shavers
DORIS J. HILL-SHAVERS

Subscribed and sworn to before
me this 12th day of June, 2001

Christina R. Jacobson

CHRISTINA R. JACOBSON
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Mar 16, 2005

SERVICE LIST
MPSC CASE NO. U-

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