STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's Own Motion, to implement the provisions of Section 10a (10) of 2000 PA 141.	)))	Case No.: U-12639

ANSWER OF CITIZENS FOR POWER AND RELIABILITY
TO DETROIT EDISON'S PETITION FOR REHEARING AND CLARIFICATION

Pursuant to Rule 403 of the Rules of Practice and Procedure Before the Commission (R460.17403), Citizens for Power and Reliability ("CPR"), by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., hereby submits its answer to the Petition for Rehearing and Clarification of the Detroit Edison Company as filed in the above-captioned matter on January 22, 2002.

While CPR disagrees with most of the points in Edison's Petition, this answer will focus on the two points that are of the greatest significance to CPR's members. Specifically, CPR opposes Edison's belated request to adopt a new procedure which would charge customers for **estimated** costs, rather than **actual** stranded costs, and CPR objects to Edison's belated attempt to evade the securitization credits that are essential to preserving the legislative intent of Act 141 and protecting customers from excessive overcharges.

As a preliminary matter, CPR notes that Edison's Petition fails to satisfy the threshold legal standards applicable to Petitions for Rehearing under the Commission's rules. The MPSC's standards for considering petitions for rehearing have been repeatedly stated in the following terms:

> "Rule 403 of the Commission's Rules of Practice and Procedure of 1992 AACS, R 460.17403, provides that an application for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances

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> arising after the hearing, or unintended consequences resulting from compliance with the order. An application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovery evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.
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> *In re Michigan Consolidated Gas Co,* MPSC Case No. U-10744 (Order Denying Rehearing dated February 5, 1996), and *In re Consumers Energy Co* MPSC Case No. U-11225-R (Order Denying Rehearing dated March 14, 2000)."

Based on the above-quoted standard, Edison's Petition should be denied on procedural grounds. Even if Edison's Petition were not procedurally defective, it should be denied on substantive grounds, as explained below.

In its Petition for Rehearing and Clarification, Detroit Edison requests "that the Commission adopt a procedure under which Edison may initiate an expedited proceeding to allow for the updating and refining of its net stranded costs based on the fixed-cost revenue deficiency model adopted by the Commission for the purpose of estimating the net stranded costs to be incurred in 2002." (Petition at p. 6). The key word in Edison's request is the word, "estimating." Faced with the reality that it has no actual stranded costs, Edison seeks to substitute a new procedure that would give it the opportunity to estimate stranded costs where none exist. Indeed, the methodology adopted by the Commission demonstrates that Edison is enjoying net stranded *benefits*, which the Commission opted to roll over into the following year. Apparently dissatisfied with the Commission's calculations, Edison seeks to substitute estimated costs in place of actual costs based upon pure speculation regarding the future of Michigan's energy market.

The Commission should flatly reject Edison's self-serving attempt to burden customers with hypothetical costs in lieu of the actual costs calculated by the Commission. At page 6 of

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its petition, Edison states that it "believes strongly" that market participants should receive "accurate price signals." Logic dictates that the most accurate price signals are prices based on actual costs, rather than prices based on estimated costs. To the extent that there is some differential between the time when Edison incurs the costs and the time when the costs are collected, the Commission's methodology clearly provides a mechanism for full recovery of those costs. There is no good reason why customers should be required to pay now for stranded costs that the utility guesses it might incur in the future. Once the actual costs are incurred and measured, they will be collected. This fact alone should be more than sufficient to protect Edison's legitimate interests.

Imposing inflated costs based on self-serving estimates of possible market behavior could lead to anti-competitive abuses. Most notably, customers could be persuaded not to pursue open access alternatives in order to avoid burdensome stranded cost charges that are based on inflated estimates. Moreover, the process of estimating stranded costs would inject yet another element of uncertainty into an already uncertain market. For these reasons, the Commission should reject Edison's belated proposal for a new procedure substituting estimated stranded costs in place of actual stranded costs.

The second substantive point in Edison's Petition which merits rebuttal is Edison's unfounded challenge to the offsetting credits that have been adopted, affirmed, and reaffirmed in a series of Commission Orders. At page 4 of its Petition, Edison attempts to characterize the offsetting credits as "unnecessary" and "questionable." Then, on pages 7 and 8 of its Petition, Edison directly attacks the offsetting credits as supposedly being unlawful. Edison's attacks on the offsetting credits are not only unfounded, but they fail to meet the threshold requirements for Petitions for Rehearing. As noted above, numerous Commission cases have

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explained that it is improper to use a Petition for Rehearing as a vehicle for simply reiterating points that have already been argued and decided. For this reason alone, Edison's Petition should be denied. As set forth in the following paragraphs of this answer, there are additional reasons why the Commission should reject Edison's arguments regarding the offsetting credits.

Edison's first challenge to the offsetting credits is based on the false proposition that the credits create "inaccurate and improper price signals" that will improperly influence customers to participate in electric choice. (Petition at p. 4). Edison's argument, however, is clearly based on a false assumption. Edison assumes that customers will choose electric choice in order to receive the benefit of the credits, but, in fact, the Commission's orders make it clear that **all** customers receive the benefit of the credits. For example, in its Order of November 2, 2000 in Case No. U-12478, the Commission stated as follows:

> "The Commission therefore finds that its approval of Detroit Edison's application should be conditioned upon the utility's express agreement that the utility will reflect on bundled sales and ROA customers' bills alike an offset equal to the sum of each customer's securitization and tax charges payable for that same billing period." (Id. at p. 29).

In the above-quoted Order and in other orders, the Commission has made it clear that the offsetting credits apply to "all bills" issued to all customers, whether they are receiving bundled service or unbundled service. Thus, it is not possible that customers will choose one type of service over another in order to obtain the credits. The simple fact is that the credits apply to all customers of all types and, consequently, the credits cannot possibly serve as an inducement to switch from one type of service to another.

Edison also attempts to undermine the offsetting credits by arguing that the credits supposedly have "the effect of permitting retail access customers to bypass securitization

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charges." While it is true that 2000 PA 142 makes securitization charges non-bypassable, it is absolutely false for Edison to allege that the Commission's Orders have enabled anyone to bypass those charges. To the contrary, the Commission's Orders expressly require all customers to pay securitization charges. In order to avoid overcharging customers, however, the orders also provide for offsetting credits. While these charges and credits may net to zero, there is no escaping the fact that the Commission has structured its orders to require payment of the securitization charge. The Commission did not waive the securitization charge; Rather it provided a credit to offset the charge until such time as a proper transition charge or credit is calculated.

The Commission, of course, wisely decided that offsetting credits were necessary at least until such time as a transition charge is derived the recognizes the full effect of securitization on Consumers' total stranded costs. Without the offsetting credits, customers would be double-billed for the utility's costs. Such double billing, of course, would be grossly unfair. More importantly, it would directly violate the legislative intent of Public Acts 141 and 142. Allowing a utility to effectively raise its rates by collecting securitization charges without a corresponding offset would violate the rate freeze mandated in Act 141. In addition, imposing securitization charges without offsets would also violate Section 10i of Act 142. As indicated in Section 10i (MCL §460.10i), the Commission is not legally authorized to approve securitization unless "the Commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection 2." The standards in subsection 2, in turn, also state that securitization shall provide "tangible and quantifiable

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benefits to customers of the electric utility." MCL §460.10i(2)(b). These statutory provisions are consistent with common sense and the original representations of the utilities that the net impact of securitization should be a savings for the utilities and a corresponding reduction in net stranded costs. In other words, the intended effect of securitization was to reduce utilities' costs, rather than to increase them. Reduced to its essential elements, securitization of utility debt is analogous to refinancing a home mortgage loan. No reasonable person would refinance a debt if the refinancing process resulted in higher net costs. Therefore, the law requires that the costs of securitization must be outweighed by the benefits of securitization. Accordingly, the offsetting credits are necessary in order to avoid a situation where customers pay higher rates after securitization than they would have paid before securitization. At all times, it must be remembered that the legislative intent was to reduce costs to customers, not to increase them.

In its orders, the Commission has also explained other reasons why the offsetting credits are necessary. Among other things, the Commission has specifically noted that the effect of securitization and tax credits "is to avoid shifting costs from one rate class to another and to maintain the competitive balance between bundled and ROA service." (Order of November 2, 2000 in Case No. U-12478, at p. 29). Thus, in order to promote the development of a competitive energy marketplace and avoid unfair overbilling of customers, the Commission must reject Edison's belated attempt to escape the offsetting credits for securitization and tax charges.

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CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Citizens for Power and Reliability respectfully requests that the Commission deny the Petition for Rehearing and Clarification filed by Detroit Edison Company in this matter.

Respectfully submitted,

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Attorneys for Citizens for Power and Reliability

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PROOF OF SERVICE

Jennifer Joy Yocum, duly sworn, deposes and says that on this 12th day of February, 2002 she served a copy of the Answer of Citizens For Power and Reliability to Detroit Edison's Petition for Rehearing and Clarification by regular and e-mail mail upon those individuals named on the attached service list.

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My Commission Expires: March 9, 2004

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