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ERIC J. SCHNEIDEWIND

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June 8, 2006

Ms. Mary Jo Kunkle
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-14838

Dear Ms. Kunkle:

Attached for paperless electronic filing is Reply Of Energy Michigan, Inc. To Detroit Edison Request For Approval Of Amended Notice Of Hearing. Also attached is the original Proof of Service indicating service on counsel.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP

Eric J.
Schneidewind

Eric J. Schneidewind

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EJS/mrr

cc: ALJ
parties

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,	)	
Ordering THE DETROIT EDISON COMPANY to	)	
show cause why its retail rates for the same and	)	Case No. U-14838
distribution of electric energy should not be	)	
decreased.	)	
_____	)	

REPLY OF ENERGY MICHIGAN, INC. TO DETROIT EDISON
REQUEST FOR APPROVAL OF AMENDED NOTICE OF HEARING

Energy Michigan, Inc. ("Energy Michigan") through its attorneys, Varnum Riddering Schmidt & Howlett LLP, hereby files this Reply in opposition to the request of Detroit Edison Company ("Edison" or "Detroit Edison") that the Michigan Public Service Commission ("Commission") approve an amended Notice of Hearing for this case which would allow the scope of the case to include increases in the retail rates for the sale and distribution of electric energy charged by Detroit Edison. In support of its position, Energy Michigan states as follows:

1. On March 23, 2006 the Commission issued an "Order to Show Case and Notice of Hearing in This Matter (the "Show Case Order") on its own Motion requiring Detroit Edison to show cause why its retail electric rates should not be reduced. Show Cause Order, p. 1. In support of its Show Cause Order the Commission cited evidence to the effect that existing Detroit Edison rates were likely to be excessive¹.

2. As further evidence of its intent and the scope of this matter, the Commission Ordered Detroit Edison to publish a copy of a Notice to customers and interested parties. Show Cause Order, p. 7. The Notice of Hearing specifically advised Detroit Edison customers that, "The Michigan Public Service Commission ("Commission") will hold a public hearing to determine if

¹ See reference to return of Choice sales to retail service (p. 3), planned workforce reductions of 18% (Id.), significant increases in net operating income (Id., p. 4-3).

the Detroit Edison Company's ("Detroit Edison") retail rates for the sale and distribution of electric energy should be reduced". Notice of Hearing attached to Show Cause Order, Attachment A (emphasis supplied).

3. On April 20, 2006 Energy Michigan filed a Motion for Declaratory Ruling requesting the Commission to determine that the scope of this proceeding include issues relating to the allocation (functionalizing) of certain costs to the distribution function instead of the generation function. The Commission denied the Energy Michigan Motion stating its intent to revisit this issue in the future when more information is available and its intent to exclude matters relating to cost of service methodology used in the Commission's December 22, 2005 Order in Case U-14399. Opinion and Order of the Commission, May 24, 2006, p. 2.

4. The Testimony of Edison Witness Edward L. Falletich filed on June 1, 2006 contains two proposals which are clearly outside the scope of this proceeding as defined by the Commission in their Notice of Hearing in this matter because both proposals reallocate existing costs between Choice and retail customers and produce rate increases ranging from 27-63% for specific Choice distribution rates.

Edison's witness Falletich proposes to collect Edison's claimed overall revenue deficiency of \$45,283,000 only from increases to distribution customers and not from increases to both the distribution and generation function. Falletich, p. 10. Mr. Falletich arrives at this conclusion by reallocating 100% of the inter-class rate subsidies included in the distribution rates paid by Choice customers returning to full service to a reduction of generation costs and none of the additional revenue to a reduction of distribution costs. The result is that a \$62,874,000 power supply revenue deficiency and a \$17,591,000 distribution function revenue sufficiency turn into a distribution revenue deficiency of \$45,283,000. Id., p. 10-11. This financial alchemy is accomplished by determining that the Commission's Order in U-14399 which specifically prohibited this outcome for Choice customers should be reversed because it was "inappropriate". P. 11-13. Thus, by reallocating inter-class rate subsidy revenue between distribution and generation, Mr. Falletich is able to turn a generation revenue deficiency into a distribution revenue deficiency.

Mr. Falletich's second proposal relates to another revision of Order U-14399 by proposing that the Commission's decision in that matter to charge inter-class rate subsidies only to retail customers be reversed and the inter-class rate subsidy be charged equally to retail and Choice customers. P. 14-15. This result was specifically rejected by the Commission in Case U-14399 on the grounds that that case had increased commercial and industrial Choice customer rates to eliminate any distribution subsidies and that "the current rates are the product of numerous prior Commission decisions that should not be undone too quickly." U-14399, December 22, 2005, p. 33. Yet a mere five months and one week later, Detroit Edison has proposed a complete reversal of the U-14399 Order on this subject.

5. The effect of the two proposals in Mr. Falletich's testimony is to produce enormous rate increases for Electric Choice customers despite the Commission's clearly stated intent in U-14399 that such a result was unacceptable. Mr. Falletich's proposal to require distribution rates that bear the entire \$45 million proposed rate increase and to shift inter-class rate subsidies for generation and distribution to Choice customers who only use distribution produces the following rate increases:

Distribution Rate Increases for Choice Customers²

Rate	Present Charge	Proposed Charge	Percent Increase
1. D-3	3.65 ¢	4.65 ¢	27%
2. D-4	2.48 ¢	3.93 ¢	58%
3. D-6	1.64 ¢	2.68 ¢	63%

Note that for all retail classes the average increase proposed by Edison was only 1.04%.
Application Exhibit B, p. 4.

² Source Exhibit DE-13: Schedule 6., D-3, p. 16, D-4, p. 20, D-6, p. 25.

Thus, the Detroit Edison Application in this matter has ignored or defied the strict instructions of the Commission that the scope of this case be limited to "...a public hearing to determine if the Detroit Edison Company's (Detroit Edison) retail rates for the sale and distribution of electric energy should be reduced." Order, U-14838, March 23, 2006, Attached Notice of Hearing, p. 1. (Emphasis supplied).

6. The distribution rate increases proposed by Detroit Edison will further damage an already weakened Detroit Edison Electric Choice program. The press release accompanying the MPSC Report: Status of Electric Competition in Michigan states that average monthly sales of Alternate Electric Suppliers decreased by 26% in the Detroit Edison territory during 2005 due to increasing power supply costs and State and federal regulatory charges including the implementation of stranded cost surcharges.... MPSC Press Release, February 1, 2006. Additional Choice distribution rate increases ranging from 27-63% will further damage the Electric Choice program. Also, the threat of these increases will certainly chill the market for Electric Choice. For these reasons, as more fully explained below, the Commission must act promptly to inform Edison and the public that rate increases will not be approved in this proceeding.

7. The proposed Choice rate increases that are included in Mr. Falletich's testimony are not properly within the scope of this proceeding for two reasons:

a. The Notice of Hearing published by Detroit Edison in this matter at the Order of the Commission is limited to a consideration of rate decreases, not increases. Thus, is as tacitly admitted by Detroit Edison, the Notice authorized by the Commission does not properly cover the subject matter of the Detroit Edison Application and would be defective unless Edison is allowed to renote the proceeding as requested in its Application.

b. The Commission has the lawful authority under MCL 462.22(c) to initiate an investigation on its own motion. In that investigation it may, "...make like orders in respect [to the investigation] as if such investigation had been made upon complaint". MCL 462.22(c). The statutory provision covering complaints initiated by the

Commission or by other parties allows the Commission to issue a Notice to a party, including a utility, of a complaint. The power to issue such a Notice carries with it the power to determine the content of the Notice. MCL 462.22.

Detroit Edison has provided a flawed interpretation of this authority in order to give itself the power to effectively rewrite the Notice and complaint so that instead of being limited to reduction of excessive rates, the proceeding can and must cover a utility counter-complaint that its rates are inadequate and rates should be increased. However, such authority is not conferred upon Detroit Edison but rather is conferred upon the Commission by the cited statutory provision.

Were the Commission to accede to Detroit Edison's request, every utility in the State could turn each and every customer complaint into a request for a rate increase rather than limiting the scope of hearing to the subject matter complained of. Such an absurd result would make utility complaint procedures meaningless and burdensome because each complaint could be turned into an expensive rate case as Edison has attempted to do in this instance. The Commission should reassert its authority to limit the scope of a proceeding or else it places the entire complaint process in peril.

8. Unless the Commission clarifies the proper scope of this proceeding, Intervenors such as Energy Michigan will be forced to retain consultants to analyze and rebut the complicated and financially disastrous proposals supported by Mr. Falletich. The presentation of the Energy Michigan counter-proposals and consideration of the Edison proposals also will undoubtedly delay this proceeding and divert important resources of intervenors including Staff.

Conclusion

In order to promote administrative efficiency and expedite this case, the Commission must define the proper scope of this proceeding as soon as possible by rejecting Edison's request to consider proposals which would increase, not decrease, rates. In the alternative, if the Commission will not restrict the scope of this proceeding to rate decreases, the request of Energy Michigan to consider allocation of costs between the generation and distribution function should

be approved as a matter of simple fairness because Detroit Edison has included cost reallocation proposals in their Application.

WHEREFORE, Energy Michigan respectfully requests that the Commission:

- a. Deny the request of Detroit Edison to renote the hearing in this matter to include increased rates for generation and distribution service and determine that the scope of this proceeding does not include increases for any generation or distribution rates; or
- b. Reverse the Order in this matter dated May 25, 2006 and allow Energy Michigan to present evidence and testimony regarding the proper allocation of costs between generation and distribution functions.

In keeping with the Commission's desire to expedite this case, Energy Michigan requests that the Commission consider and rule upon the request of Detroit Edison for approval of an amended Notice of Hearing and this Reply at the next Commission meeting on June 15, 2006.

Respectfully submitted,

Varnum, Riddering, Schmidt & Howlett LLP
Attorneys for Energy Michigan, Inc.

June 8, 2006

By: **Eric J. Schneidewind**
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decreased.)
_____)

Case No. U-14838

Proof of Service

Monica Robinson, duly sworn, deposes and says that on this 8th day of June 2006 she served a copy of the Reply Of Energy Michigan, Inc. To Detroit Edison Request For Approval Of Amended Notice Of Hearing upon those individuals named on the attached Service List by e-mail and first class mail at their last known addresses.

Monica
Robinson

Monica Robinson

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Subscribed and sworn to before me
this 8th day of June 2006.

Eric J.
Schneidewind

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Eric J. Schneidewind, Notary Public
Eaton County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: April 24, 2012

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