STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** For authority to recover implementation costs, for approval of stranded cost true-up methodology, and for other relief.	)	Case No. U-11955
In the matter of the application of **THE DETROIT EDISON COMPANY** for authority to recover retail access program implementation costs and for approval of a true-up mechanism in connection with the recovery of stranded costs.	)	Case No. U-11956

ENERGY MICHIGAN REPLY BRIEF

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TABLE OF CONTENTS

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I. INTRODUCTION

This Brief is submitted in reply to the Initial Briefs of Consumers Energy Company (Consumers or Consumers Energy), Detroit Edison Company (Detroit Edison or Edison), the MPSC Staff (Staff), the Attorney General (Attorney General or AG), the Michigan Independent Power Producers Association (MIPPA) and the Association of Businesses Advocating Tariff Equity (ABATE). Failure to reply to all of the issues raised by the aforesaid parties or by any other party should not be construed as agreement with the issues or positions raised by those parties.

II. REPLY TO CONSUMERS ENERGY

Following are the Energy Michigan replies to the Brief of Consumers Energy regarding implementation costs, stranded cost true-up methodology and provision of metering and billing services.

While dealing with the details of this reply, the Commission must not lose sight of the fact that the Consumers position in this case departs from clearly stated Commission policy in the following areas: 1) calculation of actual Market Clearing Price (MCPA); 2) recovery of new nuclear plant investments; and 3) the new "make whole regardless" adjustment presented in ACE-24 to name a few. These excursions from clearly stated Commission policy must not be tolerated. The Energy Michigan position in this case conforms to the Commission's direction regarding the proper scope of this proceeding. Consumers must not be allowed to benefit from disregarding that same Commission direction.

A. Implementation Costs

1. Consumers Position

The Consumers proposal for recovery of implementation costs raises two basic issues: 1) justifying and defending the prudence of Consumers' claimed $19.9 million of implementation costs through 1998 and 2) requesting a new surcharge on all customers to collect the full amount of those implementation costs. These two issues are discussed separately below.

a. Prudence of Consumers implementation costs.

Consumers defends the prudence of its claimed $19.9 million of implementation costs through December 31, 1998. *Brief, p. 4-13.* Consumers claims that even the Staff recommended disallowances of over $4 million do not challenge the prudence of Consumers' actual expenditures but rather took the position that some of the costs have been recovered through current rates because Consumers' current authorized levels of staffing are more than covered by the Consumers rate structure. Thus, current Consumers rates are more than adequate to pay current employee costs. *P. 14-16.* Consumers in particular attacks Staff witness Geml's conclusions and claims

that costs of extra employees for open access implementation and staffing at generating plants was incremental rather than included in existing expense levels. *Consumers Brief, p. 15.*

b. Consumers' request for a new surcharge applicable to all customers for collection of implementation costs.

Consumers witness Rasmussen proposed that open access implementation costs be recovered through a surcharge applied to all customers. *Brief, p. 19-22.* Consumers also proposes that a surcharge on all customers be authorized by the Commission to collect future estimated implementation costs of roughly $200 million which Consumers asks the Commission to approve, in concept, for future recovery. *Consumers Brief, p. 22-23.*

Consumers claims that Mr. Geml's proposals as well as the Energy Michigan proposal that implementation costs be offset against excess revenues collected through base rates constitutes retroactive rate making and is therefore impermissible. *Brief, p. 17-19*. Consumers thus attempts to create a Catch-22 situation. On the one hand, Consumers asked for and obtained Commission approval to defer implementation costs to a future date and now claims that the deferred costs cannot be disallowed or offset through use of past over earnings because of retroactive rate making prohibitions. On the other hand Consumers opposes any mechanism which would allow future disallowance of such previously incurred costs. Thus, through use of deferred, accounting Consumers attempts to insulate itself from any real disallowance of incurred implementation costs whether prudent or not.

2. Energy Michigan Reply

a. Reply to Consumers issues regarding prudence

Energy Michigan supports the MPSC Staff proposal to disallow roughly $4.5 million of Consumers' implementation costs. *See S-48, 5 T 831*. Mr. Geml's point is simple, obvious and correct. In 1998 Consumers spent $30 million less on labor costs than was designed into their last rate case. Thus, Consumers' expenditures on open access implementation did not cause labor costs to rise above the levels contemplated in their last rate case but rather allowed those costs to remain well below projected levels. *5 T 831-32*. This conclusion includes both employee implementation costs related to open access programs and so called employee impact costs related to the impact of restructuring on employees. Mr. Geml's only other adjustment related to a corresponding reduction of carrying costs attributable to the lowering of overall implementation costs. *Id.*

Mr. Geml's point is eminently reasonable. If Consumers did not even expend the authorized level of labor costs by a margin of $30 million, allowance of additional open access implementation labor cost or employee impact costs would simply increase excess profits by more than $4 million. It is one thing to recognize that a cost is prudent but it is another thing to determine that the company will not be able to earn its authorized return unless revenues are increased to cover such costs. Mr. Geml agreed with the former conclusion but not the latter. Energy Michigan supports his position.

b. Use of new charges to all customers for current and future implementation expenses.

Consumers is wrong in labeling Mr. Geml's and Mr. Kuhn's positions that excess earnings should be used to offset implementation costs as retroactive rate making. *Consumers Brief, p. 17.*

Consumers has attempted to confuse this issue. Both MPSC Staff witness Geml (5

T 833) and Energy Michigan witness Kuhn (4 T 96-97) testified that excess Consumers earnings should be used to offset implementation costs for the period prior to 1999. Only to the extent that deferred implementation costs exceed excess earnings should a surcharge be used to collect such unrecovered costs.

The position of Messrs. Kuhn and Geml is forward looking, not retroactive. Their position is tantamount to a conclusion that existing Consumers Energy rate levels prior to 1999 were sufficient to generate enough revenue to pay all of Consumers' open access implementation during the period in which those costs were incurred. This statement can be tested by comparing Consumers above authorized earnings with the total claimed implementation costs. It is clear that Consumers' earnings above authorized levels more than exceeded claimed implementation costs during the period 1998-99. Therefore the Consumers retail rates in effect when implementation costs were incurred were adequate to cover such costs. By inference, the Consumers retail rates on a going forward basis are more than adequate to recover projected implementation costs in the future.

It is Consumers that has the burden of demonstrating that current rate levels are inadequate to generate sufficient revenue to recover existing or future implementation costs. The traditional means of justifying such a rate increase request is to demonstrate a revenue deficiency which is caused by an excess of expenses above revenues. Consumers has not shown such a deficiency and, given their current excess of earnings, would be unlikely to do so. The position advocated by Consumers would allow it to recover greatly excessive earnings and add to that excess by collecting a new implementation surcharge which has not been demonstrated to be necessary. This unreasonable result should be rejected.

Charge to All Customers

Energy Michigan does agree with Consumers that to the extent implementation costs are unrecovered they should be collected from all customers since all customers will be eligible for, and potentially benefit from, the new open access services.

Finally, Consumers is entitled to Commission direction that the reasonable and prudent costs of open access implementation are recoverable from customers. This ruling should not mean that all such costs may be recovered through a surcharge added to customer bills regardless of the current earnings of Consumers Energy. Rather, the Commission ruling should be that open access implementation costs are a proper expenditure which is allowed to offset earnings. To the extent that open access implementation costs and other legitimate utility expenses exceed revenue levels necessary for Consumers to earn its authorized rate of return, new charges such as the proposed implementation surcharges may be authorized. However, if Consumers earnings continue at or above the authorized level despite expenditures for open access implementation or other legitimate purposes, new surcharges should not be authorized. *Consumers request, Brief, p. 22-24 for prior approval.*

B. Consumers Proposed Stranded Cost True-Up Methodology

1. Consumers Energy Position

The Consumers Energy Brief lays out an extremely complex methodology to determine and adjust stranded costs from year to year. *Consumers Brief, p. 25-30.* This nine step process utilizing eleven exhibits contains several new, unapproved cost recovery proposals and is briefly described below for purposes of clarifying the Energy Michigan response:

a. Exhibit ACE-20 proposes total stranded costs of $1.755 billion NPV 1997. Consumers requests this exhibit be updated to include new nuclear plant and regulatory asset additions as they occur in the future.

b. Exhibit ACE-21 shows how Consumers allocates the stranded cost calculated in ACE-20 to open access customers by the ratio of actual open access load to total actual load. *Brief, p. 27*.

c. Exhibit ACE-22 attempts to show how true-up of MCV PPA costs in light of the contract with PECO would be treated. Consumers references the methods established in Cases U-11180R and U-11941 to differentiate between recovery of nuclear plant and regulatory assets (done on a load ratio share by Consumers) and MCV costs where collections from retail customers are compared against actual PPA costs and any deficiency collected from open access customers. *Brief, p. 27*

d. Exhibit ACE-23 claims to adjust proposed stranded costs for changes in the actual Market Clearing Price (MCPA) of power but uses wholesale prices rather than the Retail Open Access customer contract prices mandated by the Commission. *Case No. U-11454, Oct. 29, 1997 p. 14-15*.

e. Exhibit ACE-24 allows Consumers to collect as a stranded cost the difference between interchange power price (which are typically very low becuase the interchanges are based on variable cost) and the estimated Market Clearing Price (MCPA). This methodology greatly understates the benefits to Consumers from low cost interchange power and greatly overstates the stranded cost.

f. Exhibit ACE-25 purports to adjust differences between actual open access load and estimated load, as well as the difference between bid transition charges through 2001 and actual stranded cost calculated as a result of true-up for that period.

g. Exhibit ACE-26 claims to show the stranded cost savings from the PECO /MCV PPA transaction. This exhibit greatly underestimates the market value of MCV capacity and hence understates potential savings.

h. Exhibit ACE-27 and Exhibit ACE-28 claims to translate calculated stranded cost into a per kWh transition charge by spreading stranded costs over only retail and retail open access sales. Wholesale and utility interchange transactions representing over 11% of Consumers output are excluded. *Energy Michigan Brief, p. 30.*

i. ACE-29, 30 and 31 would substitute for ACE-22, 27 and 28 if the PECO transaction is not approved. In particular, ACE-29 would no longer treat MCV costs in a separate manner but would allocate those costs to open access customers using a so-called load ratio share mechanism. *Brief, p. 29-30.*

2. Energy Michigan Reply

a. ACE-20.

There are five major flaws in ACE-20 which result in hundreds of millions of dollars of excess stranded costs and excess impacts on open access customers.

First, Consumers has overstated its stranded costs by understating the market value of MCV and all other PURPA capacity. As detailed in the Energy Michigan Initial Brief, pages 23-26, Mr. Ernst failed to recognize the value of over 4 million Mwh of annual MCV and PURPA capacity which, if dispatched on a 100% load factor basis, would generate .9 ¢ /kWh of capacity or more than $36 million of mitigation each year. In the alternative, if this PURPA capacity were dispatched at the 60% rate

shown in Mr. Ernst's Exhibit ACE-20, the value of the capacity would be significantly greater per kWh of dispatch because it would be available to the customer on a year round basis. In such circumstances it is always the case that the total cost of capacity from a dispatched project is roughly equivalent to the value of an undispatched project regardless of the dispatch rate. That equivalent value is reflected in a higher capacity cost per kWh of disptachable power when the customer has the option to economically dispatch the plant.

Also, Mr. Ernst failed to assume the market value capacity would escalate each year, thus producing significant increases in the total value of capacity. *See Energy Michigan Brief, p. 25-26*.

Collectively, these two changes reduce claimed stranded costs by more than $200 million NPV 1998. *See Energy Michigan Brief, Exhibit 8, line 65*.

Second, Mr. Ernst asks the Commission to buy into an open ended addition to Palisades nuclear plant costs. *4 T 435*. On cross examination Mr. Ernst admitted that 1999 additions alone (not contained in his testimony or the Consumers Brief) would be over $30 million. *4 T 449*. These additions and all other future nuclear plant additions should be rejected for the reason that they are of no benefit to open access customers and exclusively benefit retail customers. *Energy Michigan Brief, p. 22*.

Third, inherent in Mr. Ernst's Exhibit ACE-20 is the assumption that open access customers should always pay a portion of stranded costs no matter how high Consumers' level of retail and/or wholesale transactions. Under this assumption, Consumers Energy retail sales could literally go from the current level of 37 million Mwh to 99 million Mwh and if there were 1 million Mwh of open access transactions, open access customers would still pay 1% of the nuclear and regulatory asset costs. *4 T 450-51*. To the extent the PECO transaction is terminated, MCV capacity would

also be allocated on Mr. Ernst "load ratio share" mechanism with similar unfair results. This unreasonable outcome should be rejected as lacking any foundation in common sense or fairness. *See Energy Michigan Brief, p. 30-33*.

Fourth, inherent in ACE-20 is the assumption that stranded costs should be spread over only retail and open access transactions thereby excluding wholesale and interutility transactions. For 1998, Consumers exhibits contain estimated sales of 35.48 million Mwh (ACE-20, line 2) whereas actual total wholesale and retail sales were 39.78 million Mwh. *Exhibit I-2*. Mr. Ernst admitted that his Exhibit ACE-20 excluded interutility transactions including those in the MECS region. *4 T 452*. Note that after the year 2000, the MECS agreement will terminate and many of these interutility transactions are likely to be at market rates. This potential for significant revenue offset to stranded cost is totally ignored by Mr. Ernst thereby excluding more than 11% of total mitigation potential. *Energy Michigan Brief, p. 30.* These errors in Mr. Ernst's Exhibit ACE-20 (repeated below in other exhibits) result in vastly overstated stranded costs and transition charges.

Fifth, Mr. Ernst proposes to collect OPEB, SFAS and debt costs which continue through 2011, 2016 and 2010 respectively. *ACE-20, line 49, 4 T 456-57*. Most of these post 2007 costs relate to non-nuclear plants and are accelerated and presented for recovery as stranded costs. The accelerated portion of these costs should be denied as unauthorized by the Commission.

b. Exhibit ACE-21 allocates the costs developed in ACE-20 by Mr. Ernst's load ratio share mechanism which is discussed above and provides collection of stranded costs no matter how high retail sales may be. The "load ratio" approach must be rejected. A transaction sales cap should be placed upon the level of sales above which stranded costs are presumed not to exist. Energy Michigan has proposed such a cap (Energy Michigan Brief, p. 30) which will allow recovery of stranded cost depending

on whether Consumers' retail and wholesale transactions exceed or are less than sales levels in 1998 when there was no stranded cost. Mr. Ernst's approach allows literally unlimited stranded cost recovery when there is no stranded cost because total sales (excluding open access) exceeded 1998 levels.

c. Exhibit ACE-23 purports to adjust stranded cost estimates for Market Clearing Price changes but uses wholesale not retail cost data to compare to the Commission estimated retail MCP (MCPE). In essence, Mr. Ernst claims that Consumers can only sell its excess capacity, which is displaced by open access, at wholesale not retail prices. *Consumers Brief, p. 27-28*. This assumption greatly increases stranded costs. On cross examination, Mr. Ernst admitted that Consumers has not committed to preclude special contract sales through 2007. *4 T 457*. Mr. Ernst also admitted that he in fact negotiated a special contract that was approved by the Commission as late as December 6, 1999 with Steelcase. *Case U-12060, December 6, 1999.* Consumers sold power to Steelcase at non-tariff rates in competition with open access capacity. *4 T 453-4*. Energy Michigan witness Kuhn supported use of a retail customer contract for Market Clearing Price data. *4 T 106-107*. ABATE witnesses Selecky and Phillips testified that utilities compete with competitive alternatives such as open access by offering special contracts. *4 T 284, 4 T 318 respectively*. Both ABATE witnesses stated that a utility has a better than excellent chance of retaining a customer if its special contract offer merely equals open access prices. *Id.* In fact, Mr. Selecky went as far as saying that a utility could even offer a price slightly higher than a competitive alternative and still retain business. *4 T 286*.

It is common knowledge that utilities compete with open access service or other competitive alternatives by offering special contracts. The testimony of the witnesses described above demonstrates that if a utility merely offers to equal open access prices it will retain customer business. Therefore, the appropriate standard for utility

revenues in competition with open access is actual Retail Open Access customer contract prices. A utility is not likely to lose business to open access service if the utility merely equals the actual Market Clearing Price (MCPA) of open access power. Therefore MCPA is the correct measure of revenue a utility could have received if it loses open access sales. Use of wholesale transaction prices as a standard for Market Clearing Price under values utility capacity in competition with open access. For this reason, Exhibit ACE-24 is also inappropriate since it rewards a utility for selling below available MCPA prices and is simply a device to make a utility whole when it does not choose to compete.

d. Exhibit ACE-26 should not be used because it erroneously calculates the so-called savings from the PECO transaction. As explained in #1 above, Consumers has understated the market value of MCV and other PURPA capacity. To that extent, so-called savings and benefits from the PECO transaction are similarly understated by more than $36 million per year. Exhibit ACE-26 should not be used or the PECO savings contained in Exhibit ACE-26 should be adjusted to reflect a reasonable and adequate contribution from MCV capacity adjusted as discussed in #1 above.

e. Exhibit ACE-29 should not be used in the event that the PECO transaction is disapproved because it uses the inappropriate load ratio share mechanism discussed above in #1.

In summary, the Ernst Exhibits ACE-20 through ACE-31 utilize overstated stranded costs, fail to spread those costs over relevant sales, allocate the costs by methodology which unreasonably assumes stranded cost no matter how high total retail sales, contain unauthorized nuclear addition expenses and accelerated post 2007 FAS 106 and 109 costs which are for non-nuclear facilities. The Consumers estimate of actual market price (MCPA) for capacity is based on wholesale rates when it is common knowledge and of record in this case that Consumers can always obtain revenue equal to retail open access Market Clearing

Price (MCPA) if it chooses to compete. For these reasons the Consumers true-up methodology as described in Mr. Ernst's Exhibits ACE-20-31 should be rejected.

C. Metering and Billing Issues

1. Consumers Position

Consumers claims that it should continue its monopoly on metering and billing because it is a more efficient and safe provider of meter service than its customers. *Consumers Brief, p.30-33.* Consumers also claims that its existing meter charges are small and that it provides data access to customers at reasonable terms. *Id.*

2. Energy Michigan Reply

The testimony of Energy Michigan witness Polich demonstrated that customers should be allowed to choose their provider of metering service or that metering service should be provided through a bid process. *Energy Michigan Brief, p. 8.*

As a second best alternative, customers and their agents should have unrestricted access to meter data from utility meters at no additional cost and the data should include billing determinates which are needed by and are acceptable to the customer or their agent. *Id.*

The need for the Energy Michigan position is justified by the current refusal of Detroit Edison to provide meters at reasonable rates or to utilize meters which allow customer access to data under reasonable terms. *Energy Michigan Brief, p. 9.* Detroit Edison metering abuses literally force open access customers to invest almost $1000 in additional monthly fees to obtain data that is available to Detroit Edison (which is competing against open access power) at no additional charge. *Id.* Allowing customers to install their own meters for billing purposes is one solution to the Detroit Edison problem because the customer would pay for

only one meter installation which would be used to provide billing data to the utility and to the customer's open access power supplier. A second best solution would be a Commission order requiring that customers be given access to meter data at little or no cost if the meters are owned by the utility. *Id, p. 9*. A Commission order is needed to establish this principal.

D. Reply to Keyser Rebuttal

1. Keyser Rebuttal

Consumers witness Keyser testified 1) to rebut Energy Michigan witness Kuhn's recommendation regarding the calculation of the base market price of power; 2) in opposition to Staff witness Stanton's recommendation regarding the possibility of using Rate DA power sales agreements as a proxy for Market Clearing Price; and 3) to support use of wholesale prices rather than retail prices to calculate actual Market Clearing Price (MCPA). *Keyser 5 Tr 766-770*.

2. Energy Michigan Reply

a. Regarding Energy Michigan testimony of Theodore Kuhn

On cross examination, Mr. Keyser admitted that his understanding when he prepared his testimony was that Mr. Kuhn's discussion of 1998 production data was relative to the periodic assessment of actual Market Clearing Price (MCPA). In reality, an examination of Mr. Kuhn's testimony shows that it was intended to establish the base Market Clearing Price (MCPB) which was to be compared against the actual Market Clearing Price (MCPA) determined every year by looking at market factors. *5 T 773*. Thus, Mr. Keyser was mistaken regarding the thrust of Mr. Kuhn's testimony. For this reason, his critique of Mr. Kuhn's testimony should be disregarded.

b. Keyser critique of Stanton testimony.

Mr. Keyser makes several points regarding the Stanton testimony. 1) He claims that the Rate DA contracts are not the market to which Consumers will be selling released power. 2) He also criticizes the fact that the Rate DA contracts used by Mr. Stanton are out of date (as early as June 1996), were only a very small market segment and are thus not representative, and finally 3) that the open access contract prices might have included other benefits and non-price items which would distort the value. *5 Tr 767-68.*

As noted repeatedly above, Consumers Energy is able to sell its power to retail customers in direct competition with open access service. The medium for competing was the special contract which is used by Consumers as recently as December 6, 1999 for Steelcase. Both Consumers and Detroit Edison have made liberal use of special contracts to compete with alternative power sources. Detroit Edison sells 16% of its power under special contract arrangements. *4 Tr 384*. ABATE witnesses Selecky and Phillips testified that utilities can compete with retail access through use of special contracts and need only offer a rate equal to or even slightly above open access to be able to retain customers. *4 Tr 284 and 318*. Under cross examination Consumers witness Ernst admitted that Consumers has not committed to preclude special contract sales through 2007. *4 Tr 457*. In response to Mr. Keyser's specific criticisms of the Stanton testimony, the above references do show that Consumers will be selling power to retail customers in direct competition with open access retail contracts.

The contract data which will be used will not be out of date since Retail Open Access contracts of the 1999 and later vintage will be used. In fact, each year the true-up could be limited to contracts for the prior twelve months. This mechanism should meet any questions of timeliness raised by Mr. Keyser. While the DA power sales

agreements used by Mr. Stanton might have represented a small portion of the market, new 2000 and 2001 vintage open access contracts could quickly represent 10-12% of the market by January 2001. Since there were virtually no stranded costs under open access during 1999, the data from ROA contracts will be of vintage 2000 and later and thus should be very timely.

Finally, Mr. Keyser's criticism of the fact that the open access contracts might include packages of benefits which would raise contract prices is rather ironic. Utilities have frequently competed with alternative sources of power by bundling items such as transformers, multiple feeds for reliability, metering options, etc. Without specific proof, Mr. Keyser's allegations should be disregarded.

In summary, Mr. Keyser has not introduced any item of proof rather than unsupported opinion regarding the appropriate price proxy for Market Clearing Price. In contrast, numerous witnesses have supported the contention that utilities will be able to sell excess power at retail for prices which equal Retail Open Access contract rates as adjusted for load loss load factor and purchase of mandatory ancillary services. *Energy Michigan Brief, p. 34-36.*

III. REPLY TO DETROIT EDISON

The Detroit Edison Brief covers four major areas: 1) recovery of implementation costs, 2) proposed true-up methodology, 3) proposed class specific transition charges and 4) metering and billing issues. Each of these issues is dealt with below.

The Commission should place the Energy Michigan reply in the following perspective: The Detroit Edison position violates or ignores almost every significant detail of the true-up process mandated by the Commission. New categories of stranded cost are claimed. Edison refuses to use the mechanism mandated by the Commission to calculate Market Clearing Price. Edison refuses to apply

Commission mandated netting concepts to nuclear and regulatory asset costs. Edison introduces new lost margin and class specific recovery mechanisms which would clearly destroy open access economics.

The Commission must reject all of these concepts as unworkable and a violation of Edison's January 15, 1999 commitments in Case U-11726 and September 1, 1999 commitments in Case U-11290to implement the Commission's open access program set forth in the prior Commission restructuring orders.

A. Recovery of Implementation Costs

1. 1998 Through First Quarter 1999 Implementation Costs

a. Edison position

Detroit Edison's discussion and claim for recovery of implementation expenditures for 1998 and the first quarter of 1999 rest primarily on the testimony of witness McCormick. *Edison Brief, p. 31-34.* Edison claims a total of $11.618 million of implementation costs for this time frame. *Id.*

b. Energy Michigan reply

Energy Michigan supports the approximately $1 million disallowances of Edison implementation costs recommended by MPSC Staff witness Geml. *Exhibit S-47*. Other than adjustments to claimed cost of capital, Mr. Geml's disallowances focus on an extremely important point. Mr. Geml noted that only 55% of the personnel time used in the Edison ECIT project was incremental with the remaining 45% being from existing employees transferred from other areas of the company. *5 T 829.* Mr. Geml's conclusion that only 55% of DECo claimed labor costs and associated benefits

were allowable implementation cost is therefore eminently reasonable.

The Detroit Edison above authorized returns during 1998 and 1999 exceeded the claimed implementation costs for the same period. This proves that the existing Edison work force plus additional employees hired to perform implementation tasks did not create a level of expenditure which would have lowered earnings to levels which could not generate Edison's authorized return.

Whether or not the Commission adopts the offset of implementation costs by excess earnings, it should recognize that Edison should not recover additional implementation cost for labor performed by its current work force.

2. Approval of the Level and Areas of Future Detroit Edison Implementation Expenses.

a. Detroit Edison Position

Edison witness Gessner through Exhibit ADE-37 supports future total open access implementation costs of roughly $120.5 million through the year 2001. *ADE-37*. Edison also warns that it might request reimbursement for other implementation costs during future true-up proceedings as the costs become more clearly defined. *Edison Brief, p. 30*. A review of Exhibit ADE-37 reveals that approximately $65 million of planned implementation costs cover data acquisition and information systems with an additional $11 million recovered for metering systems through direct charges in Edison's proposed open access tariff. *Id.,see lines 5, 6 and 10*. Presumably the data acquisition and information systems are the type discussed in III.D. below which deny direct access to meter data by Edison customers or make that data retrieval unaffordable.

b. Energy Michigan reply

As more fully discussed in III.A.4. below, Energy Michigan opposes recovery by Detroit Edison of expenditures related to data acquisition and information systems as well as metering installations which are not configured to allow customers to obtain no cost direct dial in or Internet access to real time demand data. Even Detroit Edison witness Gessner admitted that the type and configuration of Detroit Edison metering and data acquisition equipment will force customers or their energy suppliers to expend up to $1000 to install equipment and data transmission devices necessary to obtain real time data from the Edison energy meters. *5 T 796-97 and 5 T 669-70 (Edison's own witness Gessner).* Edison's meters are configured to give only Edison access to their real time data on a no cost basis.

Energy Michigan witness Polich has testified that this Edison approach to configuring data acquisition and metering restricts the access of customers or their agents to metered electric data. Thus, Edison open access customers are forced to expend more than $1000 per meter to obtain the same data freely available to Detroit Edison itself. *5 T 796-97.* Customer payment for Edison's future installation of data acquisition, metering and information systems which only provide real time data to Edison amounts to a subsidy for anti-competitive activity and should not be approved. In the alternative, the Commission should only approve such expenditures with the restriction that Edison purchase data acquisition, metering and other systems which allow customers to directly access meter demand data on a dial in or Internet basis at no cost.

3. Method of Recovering Implementation Cost from Customers.

a. Edison position

Detroit Edison supports a surcharge on all customers which would recover approved and prudent implementation costs. *Edison Brief, p. 114.*

b. Energy Michigan reply

Energy Michigan supports recovery of implementation costs from all customers since 1) all customers will be eligible for open access programs, 2) all customers will benefit from competition created by those programs and 3) the systems necessary to implement open access would be significantly less expensive if designed to serve only a few customers.

4. Recovering Open Access Implementation Costs past the First Quarter of 1999

a. Edison position

Detroit Edison supports collection of its implementation expenditures incurred after the first quarter of 1999 with the same surcharge mechanism proposed to recover prior expenditures. *Edison Brief, p. 67-68, 114*.

b. Energy Michigan reply

Energy Michigan witness Kuhn testified that Detroit Edison appears to have had earnings well above authorized levels through the Spring of 1999 and that to the extent that these excess earnings are greater than the actual incurred and deferred open access implementation costs, no customer should pay for such implementation costs. *4 T 1996-97*. MPSC witness Geml testified that the Commission may wish to offset the allowed implementation costs with any excess earnings as a result of their findings in Case U-11495. *5 T 833*. Staff testified that after any offsets for excess earnings Staff believes the cost for the first three months of 1999 may be deferred and considered in the year 2000 true-up to create an annual review process. *Id.*

The recommendations of Messrs. Kuhn and Geml clearly amount to the same thing:

Current rate levels of Detroit Edison were and are sufficient to recover all of the claimed 1998 and 1999 implementation costs and likely will cover all or the majority of future projected implementation costs. Energy Michigan does not quarrel with the position that implementation costs, once reviewed and approved by the Commission, are legitimate utility expense items. As such, these items ought to be considered in the determination of whether utility rates are excessive or deficient. The recent earnings history of Detroit Edison demonstrates that its current rate levels are more than sufficient to recover all 1998-99 costs associated with implementation programs and still allow a return that is in excess of authorized levels.

Edison customers should not be forced to pay an additional surcharge which will only increase Edison profits above already excessive levels. Such a Commission finding would not be retroactive rate making since it amounts to a determination that there is no need to implement a rate increase at the current time to recover expenditures from 1998 which, if booked during 1998 would not have caused an earnings deficiency. Nor would these implementation costs cause an earnings deficiency if recovered currently. Thus, the Commission is being asked by Staff and Energy Michigan to determine that Edison's current rate levels are now and have been sufficient to allow recovery of implementation costs without the need for a rate increase. <u>This is not retroactive rate making.</u>

B. Detroit Edison True-Up Proposals

The Detroit Edison true-up proposals were grouped in three major categories: factors to be considered, calculation of stranded costs and calculation of transition charges.

1. Factors to Be Considered.

a. Edison position

Relying primarily on the testimony of witness Padgett, Edison claims that the actual Market Clearing Price (MCPA) should not be determined using Retail Open Access contracts but rather through the resale of an "average slice" of Detroit Edison's excess power. *Edison Brief, p. 42-46*. Edison proposes to sell this average slice of power to marketers (presumably at wholesale), credit average slice sales against the lost margin calculated by witness Falletich and bill the balance to open access customers as a stranded cost. *Brief, p. 49*. Edison claims that its sale of "average slices" of power will produce an indication of true actual Market Clearing Price (MCPA).

Edison strenuously opposes the MCPA true-up actually adopted by the Commission demands evidentiary hearings on determination of market price with the Commission's methodology and requests that the Commission make certain determinations regarding the Commission's initial estimate of Market Clearing Price. *Edison Brief, p. 51-55*.

Edison winds up this presentation with a request that the Commission guarantee that it earn a floor on its return on equity and that the true-up mechanism be reexamined if Edison's reported return falls more than 50 basis points below authorized levels. *Edison Brief, p. 55*.

b. Energy Michigan reply

1) Determination of MCPA

The Energy Michigan Initial Brief provides ample support for the use of open access customer contract costs as adjusted for load factor, losses and addition of ancillary services to establish the true actual Market Clearing Price (MCPA) of power. *Energy Michigan Brief, p. 34-36.*

This position is supported by Energy Michigan witness Kuhn. *4 T 106-07*.

ABATE witnesses Selecky (4 T 284-86) and Phillips (4 T 318) testified that utilities are able to sell their surplus power to customers at rates equal or greater than to open access retail prices in competition to open access. *Selecky, 4 T 284-86; Phillips, 4 T 318.* Thus, a utility may obtain a retail price equivalent to or greater than open access contracts if it chooses to compete with open access service to retain customers.

Utility witnesses provided testimony supporting use of open access customer contracts to establish Market Clearing Price levels. Consumers witness Ernst admitted that he negotiated a special contract with Steelcase Company which was approved as recently as December 6, 1999. *U-12060.* Under that contract, Steelcase may pay less than tariff rates. *4 T 454*. Mr. Ernst also admitted that Consumers is not committed to preclude special contract sales through 2007. *4 T 457*.

Detroit Edison witness Falletich admitted that Edison had over 8 million Mwh of special contract sales in 1998 which is 16% of Edison's total sales. *4 T 384.* This is more than 1000 MW of load, a figure that equals Edison's total potential open access service during the phase in process. Clearly, Edison can compete with open access service by offering special contracts. According to ABATE witnesses, Edison need only equal the price of those contracts to retain customer business. *4 T 284-86, 4 T 318.*

Based upon the facts cited above it is clear that 1) utilities can and probably will compete with open access service by offering special contracts to retail customers and 2) the rates in those contracts need be no lower than open access contracts to retain customer business. The record therefore shows that

utilities may always obtain revenue for excess power at rates equivalent to or greater than open access service if they choose to compete for customer business.

2) The Edison "average slice" concept merely attempts to establish wholesale power prices as the level of MCPA as opposed to retail prices. Wholesale prices are obviously lower than retail and would result in larger stranded cost deficiencies. As noted above, neither Edison nor Consumers Energy need sell excess power at wholesale rates when they have the option (which they frequently utilize) of selling power to retail customers under special contracts and other discounts at rates which may be higher than open access service. Both ABATE witnesses Selecky and Phillips have stated that utilities may retain customers by merely equaling open access rates and in some cases retain the business by offering rates slightly in excess of open access competition. *See 1) above.* Adjustments such as proposed by MPSC witness Stanton are sufficient to compile and adjust current open access contract prices to yield an overall actual Market Clearing Price (MCPA) each year.

3) The Edison "heads I win, tails you lose" lost margin adjustment concept

Edison proposes to collect a new category of stranded cost which is <u>in addition</u> to the Commission approved five buckets by determining a lost margin on open access sales <u>by customer class</u>, subtracting "average slice" revenue and <u>billing the balance to customers as additional stranded costs</u>. Under this concept the customer always pays the same total amount for open access power plus Edison adjustments as for Detroit Edison retail power. <u>There is absolutely no incentive to switch to open access service with</u>

Edison's "lost margin" concept!!

The simplest of arithmetic demonstrates that paying Edison a market price for power as well as the difference between that price and the retail price is the same as requiring the customer to pay total retail price. How can open access service hope to succeed under these handicaps?

Edison also protests against use of the Commission's true-up process. *Edison Brief, p. 51-55.* But Edison should be reminded of its agreements which was filed January 15, 1999 in Case U-11726 and September 1, 1999 in Case U-11290 to implement Commission open access service plans.

2. Calculation of Stranded Costs

a. Edison position

Detroit Edison supported its claims for stranded costs on nuclear and generation issues through the testimony of witness VanHaerents. *Edison Brief, p. 56-63.* Mr. VanHaerents supported over $3.3 billion of costs to be collected. *Exhibit ADE-5-6.* Included in those costs were $2.8 billion of Fermi costs, $310 million of accelerated costs and $180 million of Fermi nuclear plant additions.

Mr. VanHaerents proposed that Edison collect an additional $310 million of unamortized loss on reacquired debt, recoverable income taxes and post retirement benefit costs. *Id. Exhibit ADE-4 and 5.* The total $310 million related to loss on reacquired debt and FAS 106 and 109 costs which would not be fully amortized at the end of 2007 under current Edison accounting practices. *ADE-5, line 13.*

$135 million in 1998 growing to $175 million in 2007 relates to FAS 109 costs for

taxes related to non-nuclear power plants such as Belle River. *4 T 179*. The displayed FAS 106 retirement benefits on line 12 of ADE-4 relate to non-nuclear plant expense of $97 million of which $35 million would not normally be amortized at the end of 2007. Mr. VanHaerents asks for recovery of all $97 million by the end of 2007. *Id.* While these non-nuclear costs would normally be recovered after 2007, Mr. VanHaerents accelerates this recovery to be fully completed through the end of 2007. *4 T 179-80*. Finally, unamortized loss on reacquired debt at a total balance of $76 million at the end of 1998, per line 8 of Exhibit ADE-5, and under normal practices, $41 million would be unamortized at the end of 2007. *4 TR 175-76*. Mr VanHaerents proposes that all $76 million of these non-nuclear costs be recovered as a stranded cost through 2007.

Thus, Mr. VanHaerents proposes total additional stranded costs of about $310 million for assets, accelerated recovery of non-nuclear accounts which would not be retired by 2008, Mr. VanHaerents requests an additional $180 million of new nuclear plant additions.

b. Energy Michigan reply

1) Nuclear additions

Both witnesses Kuhn (4 T 102) and MPSC Staff witness Geml (5 T 834) have opposed collection of new nuclear plant additions as stranded costs. Mr. Geml testified that since 100% of nuclear plant investments are treated as stranded costs they have no value to open access customers and that if such investment is made it must be assumed that the entire value is received by retail service customers. *Id.*

2) $310 million of new costs

Mr. VanHaerents' $310 million of new regulatory asset costs should be opposed on two grounds: First, these expenditures do not relate to the five buckets of cost authorized by the Commission. These expenses are not related to nuclear plants and would otherwise be recovered from retail customers to pay for service rendered by Detroit Edison fossil fuel plants which do not qualify for stranded cost treatment under the Commission's orders. Second, Mr. VanHaerents proposes to accelerate recovery of these costs so that all cost in the category are recovered before 2008 makes no sense. If the plants to which these costs are attributable have not been found to be stranded, where is the need to accelerate recovery of associated costs? A power plant that is found to be competitive at market rates, such as Edison's fossil plants, is in no danger of becoming a stranded cost. The power produced by such plants can generate revenues fully sufficient to pay current operating costs, fixed costs and the type of tax retirement benefit costs proposed by Mr. VanHaerents.

Finally, the loss on reacquired debt proposed by Mr. VanHaerents for recovery as a stranded cost benefitted Detroit Edison by producing lower costs of debt. Since many of these refinancings took place after Case U-10102 which set current retail costs, much of the benefit of the refinancing has not been received by any customer, let alone open access customers. *4 T 198.* Given the fact that current customer rates allow Detroit Edison to retain the benefit of lower cost debt, it is only fair to require Edison to absorb the cost of debt refinancings. Until Detroit Edison's overall return is reduced to give all customers the benefit of lower cost debt, Edison should absorb all unrecovered costs of refinancing.

3. Calculation of Transition Charges

a. Edison position

Detroit Edison witness Loeher proposed a new transition charge calculation methodology which divides transition charges by retail sales and allocates cost to open access customers on the basis of the percentage of total sales represented by open access sales. *Edison Brief, p. 64-67*. Mr. Loeher uses his mechanism to recover the stranded costs developed by Mr. VanHaerents, implementation cost developed by Mr. Gessner and lost margin on sales not recovered by sales of Edison "average slice" of power" as developed by witness Falletich.

b. Energy Michigan reply

Mr. Loeher's methodology should be rejected for the following reasons:

1) Mr. Loeher admits that none of the stranded costs shown in his Exhibit ADE-9 are recovered from wholesale customers. *4 Tr 238*. Only retail sales are used to calculate transition or stranded cost recovery. *4 T 233*. The Energy Michigan Brief has demonstrated that total Edison sales are approximately 5 million Mwh greater than retail sales. *See Exhibit I-2*. With the potential demise of the MECS power sharing mechanisms, Detroit Edison interutility and other wholesale transactions are likely to become increasingly profitable. *Case U-12121 Testimony, Edison Witness Byron, p. 24*. Any approved stranded cost should be spread over total Edison retail, wholesale and open access sales, not just retail and open access sales.

2) At some level of total wholesale, interutility and retail sales, there are no stranded costs. Yet Mr. Loeher always assigns stranded cost to open access sales based on the percentage share of open access service. *4 Tr 234-35*. As explained in the Energy Michigan Brief, III.B.3., p. 31-32, a stranded

cost contribution per unit of sale should be developed by dividing total stranded cost by total 1998 sales, a year in which Detroit Edison had no open access service. The resulting contribution per kWh of power should be multiplied by annual wholesale, interutility and retail sales to determine a total contribution of such sales to stranded costs. Only the difference between the resulting contribution and total stranded costs should be assigned to and collected from open access customers. At some level of retail, interutility and wholesale sales there is no stranded cost. Edison has failed to recognize this fact in Mr. Loeher's testimony.

3) Mr. Loeher's calculation of a transition charge should exclude all nuclear plant additions and $310 million of additional regulatory assets proposed by Mr. VanHaerents as discussed above.

4) The Falletich lost margin proposal and associated costs should be rejected for the reasons discussed in III.C. below.

C. Proposed Customer Class Specific Transition Charges and Recovery of Lost Margins

Detroit Edison witness Edward Falletich proposed that customer class specific transition charges be recovered instead of average transition charges and that a mechanism be implemented to recover all lost margins on a class specific basis as a stranded cost. *Edison Brief, p. 73-81*.

1. Class Specific Transition Charges.

a. Edison position

Edison claims that since current retail rates are skewed in a manner that over recovers cost from some customer classes while under recovering others, only the higher

margin customers will elect direct access. Mr. Falletich claims that this disproportionate participation in open access by high margin customers will cause Edison to under recover stranded costs which are based on average transition charges for all classes of customers. *Edison Brief, p. 73-75.* Mr. Falletich claims that even if Edison's retail rates were based solely on the twelve CP methodology, Edison's current retail rates would still not contribute to cost recovery on an equal basis. *Id., p. 74*. Mr. Falletich cites Edison's own index of return studies showing unequal returns from various customer classes. *Id., p. 75*. Mr. Falletich proposes to correct this deficiency in Edison's existing retail rate structure with a new system of transition charges based on individual classes as shown in his Exhibit ADE-16. *Brief, p. 76.* These charges claimed by Mr. Falletich to produce 12% average savings (Brief, p. 77) and are: .2 ¢/kWh for residential, 2.8 ¢/kWh for commercial secondary and .8 ¢/kWh for primary voltage.

Mr. Falletich claims that use of a uniform transition charge will increase Edison exposure to unrecovered stranded costs by over $300 million per year. *Edison Brief, p. 79.*

b. Energy Michigan reply

Both Detroit Edison witness Falletich (4 Tr 377) and ABATE witness Selecky (4 Tr 287) testified that ABATE and the MPSC Staff have proposed rate designs in pending Edison rate Case U-11495 which will affect the return earned by each Edison customer class. The pending Detroit Edison rate case is the place to address class return inequities. Mr. Falletich's class specific charges are merely a back door attempt to shift revenue requirements among rate classes in a way that will not be visible or accessible to decision makers considering the pending rate design proposals in Detroit Edison rate Case U-11495. If the Commission wishes to address rate design issues, it must do so in the context of a full rate case such as U-11495, not a

true-up case. Interestingly, Edison failed to present rate design changes in U-11495. Since Detroit Edison class specific charges are formulated in part to revise the earned return of each class (Edison Brief, p. 74-75) the proposals should be rejected as inappropriate to this limited scope case.

Mr. Falletich's proposed transition charge of .2 ¢ /kWh for residential, 2.8 ¢ for commercial secondary and .8 ¢ for primary should be rejected as based on faulty data and analysis. *See Exhibit ADE-6*. In his Exhibit ADE-6, Mr. Falletich's uses a top down method of calculating required transition charges which will yield what he deems to be appropriate savings.

A key part of Mr. Falletich's "top down" analysis rests on the assumption that the estimated Market Clearing Price of power is literally the same 3.4 ¢ for residential and commercial customers and 3.2 ¢ for industrial customers. *ADE-6, lines 14, 16, 18*. If the price of power for each class were significantly higher, the resulting transition charge (which, per Mr. Falletich's calculations, presents the entire difference between Detroit Edison's average revenues and the cost of T&D, various surcharges in power) would be significantly lower. In other words, if the market price of power were 5 ¢ instead of Mr. Falletich's claimed 3.2-3.4 ¢/kWh the justifiable transition charge would be zero using the top down method.

In Mr. Falletich's Exhibit ADE-6, as noted above, the price of the estimated Market Clearing Price of power (vertical columns, (f)) is almost identical for all customer classes at 3.2-3.4 ¢ /kWh. However, on cross examination Mr. Falletich admitted that:

1) The class load factors for each class vary from 37.2% for residential to 70.4% for primary. *4 Tr 381-82*. There is no correction of power price for each class to reflect this extreme difference in load factor which should justify

a per kWh differential between industrial and residential customers of more than 1 ¢/kWh.

2) The load losses for these customers vary significantly due to load losses caused by stepping down transmission voltage power to lower voltages to serve each customer class. Mr. Falletich admitted that load losses vary from 1% for the transmission voltage industrial customers to 12% for secondary customers. *4 Tr 385*. The cost of power is not adjusted to reflect these differences for each class which alone, should justify price differentials of at least .5 ¢ /kWh between industrial and residential classes.

3) The estimated cost of power does not reflect the fact that many of these customers will have to bear the expense of demand meter installations and spread these costs over low volumes of power in order to participate in open access. Since Mr. Falletich grouped both demand metered and non-demand metered secondary customers together in his Exhibit, the increased cost of open access participation for small secondary customers are not reflected. *4 Tr 383*.

For all the reasons stated above, Mr. Falletich's top down analysis is deeply flawed because it understates the cost of power for residential and commercial secondary customers by failing to correct for load losses, load factor differentials and the meter related costs of participation. For these reasons, the transition charges justified in the top down analysis are artificially high.

The Sanity Test

This assertion of Energy Michigan can be tested by comparing Mr. Falletich's

proposed transition charges with actual bid results in the first two bid cycles of open access capacity. Mr. Falletich admitted that the winning price of bids for Edison's system averaged .662 ¢ /kWh. *4 Tr 378*. The high winning bid was 1 ¢. *4 Tr 381*. Given these real world results, it is clear that Mr. Falletich's proposed 2.8 ¢ charge for all commercial secondary and .8 ¢ for primary customers would have eliminated all secondary customer participation and almost all primary voltage participation. Mr. Falletich's proposal doesn't meet the sanity test.

Mr. Falletich's proposal in effect takes away literally all customer savings from open access service in the commercial secondary and primary voltage classes. His proposed transition charges in Exhibit ADE-6 (2.8 ¢ /kWh for secondary customers!) are so high as to be unaffordable as proved by recent bid results. Even worse, Mr. Falletich's methodology results in a total no win situation for open access customers as will be shown below. Mr. Falletich's proposed transition charges plus his lost margin recovery proposal always take away form customers as much money in the form of transition charges and lost margins as the difference between open access power and retail power. Thus, customers always pay the same whether they are under open access or retail service. Under these circumstances, why would a customer ever want to switch?

Mr. Falletich's class specific transition charges should be rejected as a back door attempt to implement a huge rate increase which is based on a deeply flawed method of calculating transition charges. Once the flaws in his methodology are exposed it becomes clear that the two purposes in Mr. Falletich's testimony are to totally eliminate retail access competition and/or implement a large rate increase which will go undetected by the decision makers in the pending Detroit Edison rate proceeding U-11495.

2. Lost Margin Recovery Mechanism

a. Edison position

Mr. Falletich also proposes that any lost generation margin which results in amounts bid for open access capacity 1999-2001 being less than the loss of margin calculated pursuant to Mr. Falletich's proposals described above be added to the stranded cost to be collected by Edison and recovered from customers from 2002-2007. Mr. Loeher's Exhibit ADE-9 incorporates these alleged lost margin amounts relating to the period 1999-2001. *Edison Brief, p. 81-82.*

Mr. Falletich proposed to calculate this lost margin by subtracting surcharge and transmission and distribution revenues plus estimated Market Clearing Price from Edison's average customer class price. *Id.*

b. Energy Michigan reply

As discussed above, Mr. Falletich over states lost margin by failing to correct Market Clearing Price for load losses, different customer load factors and additional costs incurred by small customers to participate in open access. Moreover, if Edison is allowed to use wholesale prices for Market Clearing Price or the Edison "average slice" methodology, the customer cost of power will be significantly understated thus increasing the lost margin claimed by Edison for recovery.

If Edison's definition of actual Market Clearing Price (MCPA) power in addition to being at the wholesale level is not adjusted for line losses and differing customer load factors, the price of customer procured power might appear to be 3.5¢. But, for a commercial secondary customer with a 10% load loss, the price would actually be about 3.85 ¢ at the meter. For a customer with a 35% load factor the price might be 4.85 ¢. Edison's lost margin concept ignores all of these details and inevitably yields a significant shortfall between the wholesale cost alleged to be appropriate for open

access power as compared to Edison's retail sales price to the same customer.

The proof that Mr. Falletich's lost margin approach won't work is that, as admitted by witness Falletich, the average price of bids for open access service even at the first round of capacity was only .662 ¢ /kWh for Edison whereas Mr. Falletich's calculations would indicate that the entire commercial class would save more than 3.1 ¢ or 32%. If Mr. Falletich's lost margin (top down) method of calculating stranded costs is correct, why didn't customers bid significantly more than .6 ¢? Why was the high bid only 1 ¢ /kWh? *4 Tr 378.* The answer is clear. Mr. Falletich's methodology is wrong!

D. Edison Critique of Staff True-Up Proposal

1. Edison Position

Detroit Edison critiques and opposes the MPSC Staff true-up proposal on several grounds:

1) Staff's netting of above cost revenues from sales of excess capacity is already accounted for in the shared earnings adjustment.

2) Staff's trailing proposal (review results after the year under consideration) results in the need for large corrections.

3) Recovery of implementation costs only from open access customers.

4) Use of an approach that starts with revenue requirements for stranded cost and subtract revenues received to arrive at unrecovered stranded costs. *Edison Brief, p. 82-96.*

Edison proceeds from this general critique to an alleged modeling of Mr. Celio's concept using innumerable values developed by Edison which are extremely controversial and unsupported by other parties in this case. The result is a series of exhibits which really don't prove anything at all since they are based on Edison's incorrect assumptions about the Staff model or the intentions of Staff.

2. Energy Michigan Reply

Energy Michigan believes that the Staff proposal for stranded cost calculation contains many valuable ideas.

The Staff proposal, unlike that of Detroit Edison, considers the impact of increasing retail sales which generate an increasing level of revenue to pay stranded costs of generation. Inherent in Staff's concept is recognition of the fact that lowered utility production costs should be incorporated in a stranded cost true-up process to offset claimed stranded costs. The Staff concept inherently utilizes this mitigation concept by recognizing that increased unit sales not only generate more revenue but actually lower fixed generation costs by spreading those costs over more units of production.

Unlike Detroit Edison proposals, the Staff concept also inherently incorporates a cap on total stranded cost recovery. To the extent that increased retail sales generate revenue sufficient to cover production costs, there is no need for additional stranded cost recovery. The same cannot be said of the Detroit Edison and Consumers Energy true-up load ratio share concepts which always assess transition charges to open access capacity no matter how high retail sales become. *Energy Michigan Brief, p. 30; Edison witness Loeher, 4 T 234; Consumers witness Ernst, 4 T 450-52.* The utility concept is absurd on its face. The Staff proposal does not contain such a concept.

Mr. Lavere's detailed models are loaded with entirely subjective assumptions and should not

obscure the fact that Staff's proposal has made a valuable contribution to the true-up process because it determines stranded cost by comparing revenue requirements associated with generating plants to the actual sales revenue generated. Edison's true-up model calculates a theoretical stranded cost, assesses transition charges on all units of power and continues to assess and collect this transition charge on all open access sales no matter how high its retail sales become and how much sales related revenue is generated to offset generation revenue requirements.

The last paragraph of the Edison attack on Mr. Celio says it all! *Brief, p. 96*. Edison discusses an example in which the total cost of generation is 7.5 ¢, delivery is 2.1 ¢, stranded cost 1.1 ¢ and the generation component is 4.3 ¢. *Id.* Edison claims that if it can sell its excess power at 3 ¢ it has a 1.3 ¢ deficiency. Under Edison's concept, the deficiency is always charged to customers as an additional stranded cost no matter how high the unit sales to retail customers have become or how high its revenue from wholesale or other transactions which would tend to offset generation cost. Instead, Edison focuses on only retail rates and the difference between each unit of lost sales and the so-called wholesale market rate.

Under any rational stranded cost recovery mechanism, the total volume of Edison retail sales which is growing at a rate of over 3% per year would be utilized to offset stranded costs and then, and only then, would the remaining stranded cost to be recovered from open access sales be calculated. The Staff true-up concept addresses this issue and the Edison true-up proposal ignores it.

E. Detroit Edison Opposition to Energy Michigan Proposal to Make Metering and Billing Competitive Services

VIII and IX of the Edison Brief really deal with the same issue: whether Detroit Edison should continue to be the sole provider of metering used for billing purposes. *Edison Brief, p. 96-112.* VIII is a general discussion of that issue and IX is an attack on the Energy Michigan proposal to allow

customers to provide their own metering installations for Edison billing purposes. The following is a reply to both VIII and IX of the Edison Brief.

1. Detroit Edison Position

Detroit Edison's position on metering contains three basic points:

a. Detroit Edison believes that customer installation of meters for billing purposes would create unacceptable complexity, concerns regarding Edison worker safety, service shut off complexities and other administrative problems. *Brief, p. 101-106.*

b. Edison claims that customer installation of metering is not necessary to give customers adequate access to meter data because Edison will allow customers to use real time pulses from Edison meters, purchase hard copy or diskette version of data or pay for custom meter installations of specific meters chosen by the customers. Edison claims that customer real time data access to Edison meter data might be provided in the future <u>at an additional charge</u>! *P. 111.*

c. Edison disagrees that retaining a monopoly on metering service for billing purposes gives them a competitive advantage. *Brief, p. 112.*

2. Energy Michigan Reply

The basic metering issue is quite clear: Edison will not allow open access power providers to utilize customer meter data without incurring significant extra expenses. However, Edison has real time access to the same data at no cost because of the way the meters are configured. *Energy Michigan Brief, p. 9.* If a marketer needs real time meter data to dispatch power, it must install its own metering and telemetry at very substantial cost or install up to $1000 of

hardware to take pulses from Edison meters and translate the pulses into usable data plus costs of telemetry to convey the data to a central location. *5 T 669-70, Edison's own witness Gessner.* Edison's current use of metering technology which does not allow low cost or no cost dial in access by customers or third party suppliers is responsible for this problem. Use of such technologies creates additional costs for Edison competitors with no benefit for safety, reliability, etc. Consumers Energy has chosen a path which is workable by utilizing meters and procedures which allow both utility and customer no cost access to meter data on a dial in or e-mail basis. *4 T 529.*

The closest Edison will come to a Consumers type commitment is to promise a website sometime in the future which would be available to customers at additional cost as a value added service. *Edison Brief, p. 111.* Thus a customer must pay for an Edison meter but is not allowed to use the meter data without paying additional fees while Edison gets the data at no cost. This is the unacceptable approach opposed by Mr. Polich. *5 T 796.*

Response to Specific Issues

1) Edison's claim of unreasonable complexity or safety related issues from customer installation of metering is contradicted by its own Brief. Edison claims in its Brief that customers can specify any type of approved meter so long as Edison installs the meter. *Brief, p. 101.* If a wide variety of metering equipment is acceptable to Edison, why can't Edison customers install their own meters so long as they are selected from this same list of eligible equipment? If Edison can keep track of different metering types in light of the safety and administrative problems raised in the Edison Brief, why is it not possible to require that customers register their meters with Edison on the same system?

2) Customers do not have reasonable access to Edison meter data.

Edison's own witness Gessner confirmed that it cost about $1000 to install the hardware on an Edison meter necessary to pick up meter pulses and convey them to a central location. *5 T 669-70.* Moreover, there are the monthly costs of the data transmission system to collect this data which must be paid. The only alternative to use of Edison meter pulses is for the customer to install their own meter at an even greater cost. Edison's offer of hard or diskette version of meter data is not helpful. *Brief, p. 111.* The referenced data must be purchased at $180 for hard copy or $240 for diskette per year, per meter. *5 T 796-97.* The data thus secured is historical and not real time. Detroit Edison's claims to provide adequate data are simply false. Any customer requiring real time meter data must install their own meter or pay up to $1000 to obtain real time data from an Edison meter. The costs of the Edison metering system are a mandatory requirement of open access service so the customer wishing to obtain usable data must pay twice, once to Edison and once to its open access energy provider.

3) The Edison metering position gives Edison a competitive advantage.

Edison claims it has no competitive advantage from its current metering policies because it is a regulated distribution utility, not a supplier of energy under open access. *Edison Brief, p. 112.*

Detroit Edison, the regulated utility, is in fact in direct competition with open access service. It is no secret that customers typically choose between open access or retail electric service. ABATE witnesses Phillips and Selecky have confirmed that a utility may keep customers if it is able to offer rates equal to or even slightly higher than competitive open access service. *Selecky 4 T 284-86; Phillips, 4 T 318.* If a utility can force customers to pay for metering as part of mandatory distribution service and then prevent marketers from accessing data produced by that metering, it has in effect forced its competitor to pay $1000 more to compete with Edison than Edison has to pay. Utilities routinely compete with non-utility

energy supplies through the use of special contracts and other devices. Edison made over 16% of its total sales during 1998 under special contracts. *Falletich, 4 T 384*. To provide reasonably fair competition, the Commission at a bare minimum must order Detroit Edison to utilize demand metering which allows customers no cost, dial in or Internet access to demand data produced by this metering.

IV. REPLY TO MPSC STAFF

Energy Michigan supports the MPSC Staff discussion of Commission authority to implement voluntary Retail Open Access programs. *Staff Brief, p. 3-10*. Energy Michigan also concurs with the Staff position that the Commission should offset recovery of implementation costs with any determination of excess company earnings resulting from pending Cases U-11495 and U-11560. *Brief, p. 12.*

There are two areas, however, where Energy Michigan disagrees with the Staff position.

A. Method of Recovering Implementation Costs

1. Staff Position

MPSC Staff proposes that implementation costs be borne by only open access customers. *Brief, p. 13.*

2. Energy Michigan Reply

As of January 1, 2002 Retail Open Access service will be available to all customer classes. Since there will be no limitation on open access load, all customers will be eligible to participate. To prepare for that event, utility systems must be configured to accommodate the possibility that all customers may choose to obtain their power from competitive suppliers.

The costs of open access implementation range from over $100 million for Detroit Edison to over $200 million for Consumers Energy. *See testimony of Gilzow and Gessner*. At modest levels of open access participation these projected implementation costs would form a crushing burden on open access participation for the foreseeable future. A review of the testimony of Consumers witness Gilzow and Edison witness Gessner demonstrates that many of the expenditures for open access implementation will benefit the entire billing data acquisition capability of each utility and will be of long run benefit to all customers. For these reasons, open access service implementation costs should be billed to all customers and all customer classes.

B. Determination of Market Clearing Price

1. MPSC Staff Position

The MPSC Staff Brief lays out three options to determine Market Clearing Price:

> 1) Obtain all price and billing determinate data from the power sales agreements utilized by participants in open access service.
>
> 2) A blend of open access contract prices (70%) and 10% data obtained from each of what are likely to be wholesale prices on three Cinergy and NYMEX sources.
>
> 3) Adjust the Commission's 2.9 ¢ estimate of utility busbar cost of power. *Staff Brief, p. 15-16.*.

Staff leaves all of these options open to the Commission.

2. Energy Michigan Reply

The Commission has already stated that open access customer contract price data is to be used in the determination of an actual Market Clearing Price. *Case U-11454, October 29, 1997, p. 19.*

Moreover, Energy Michigan witness Ted Kuhn, to say nothing of witnesses for ABATE, have testified that actual open access contracts are the best source of market data. *Kuhn, 4 T 106-107; Selecky, 4 T 284-86; Phillips, 4 T 318.*

Energy Michigan also believes that the adjustments proposed by Staff witness Stanton for load factor, load loss and ancillary service costs are an appropriate means of transforming customer contract data into usable Market Clearing Price data. *Energy Michigan Brief, p. 34-36.*

Actual customer pricing data will become quite voluminous and therefore more accurate as open access service expands. The growing body of data possessed by the MPSC Staff will be sufficient to establish true market prices within Michigan.

V. REPLY TO ABATE

A. Commission Authority to Implement a Voluntary Open Access Program

1. ABATE Position

ABATE claims that the Commission lacks authority to implement a voluntary Retail Open Access program. *ABATE Brief, p. 7-12*. ABATE supports its position with a lengthy legal analysis and argument.

2. Energy Michigan Reply

Energy Michigan is on record supporting the authority of the Commission to adopt a voluntary Retail Open Access program. The Staff Brief discussed above provides a detailed response to the ABATE legal arguments. Also, this issue is on appeal to the Michigan Court of Appeals (Docket Nos. 222199 and 222200) and will be decided in that forum rather than in the context of this true-up proceeding.

B. Implementation Costs

1. ABATE Position

ABATE supports the need for a full and complete audit of Consumers' implementation costs. *Brief, p. 13*. ABATE also states its disagreement with the Staff's recommendation that implementation costs be offset against any excess earnings found in Cases U-11495 and U-11560. *Id.* Finally, ABATE recommends that implementation costs be allocated on the basis of the numbers of customers. *Id, p. 14*.

2. Energy Michigan Reply

Energy Michigan agrees that a full and complete audit of all implementation costs is absolutely necessary. However, Energy Michigan supports the Staff position that excess utility earnings should be used to offset implementation costs. Moreover, ABATE has failed to address implementation costs that will be incurred well into the year 2000 before a final decision is rendered in the pending rate cases U-11495 and U-11560. Until a final decision in those rate cases, Edison and Consumers will continue large over collections unless the Staff recommendation to offset implementation costs with excess earnings is followed. This is true because Staff's recommendation actually should be taken as a recommendation that existing rate levels were more than adequate to pay all implementation costs incurred until rate changes as a result of the pending rate cases while still providing a more than adequate rate of return. Adoption of this theory is not retroactive rate making since it merely calls for a

finding that revenue increases in the form of implementation cost surcharges to recover previously incurred implementation expenses are not necessary and were not necessary at the time the expenses were incurred. If Staff's recommendation is not adopted, ABATE has no way of forcing retroactive rate decreases back to 1998 for Cases U-11495 and U-11560 on the one hand and the incurred implementation costs up to the time of a rate case decision will merely be added to future revenue requirements thus decreasing the likelihood of a future rate reduction.

Adoption of the Staff position of offsetting implementation costs with excess earnings is fair to utility and customer alike. To the extent that earnings exceeded the authorized level by an amount equal to or greater than incurred implementation costs, no rate adjustment is necessary in the form of an implementation surcharge because the rate levels in effect when implementation costs were incurred were adequate to pay those costs.

C. Class Specific Transition Charges

1. ABATE Position

ABATE opposes use of uniform transition charges and instead recommends that stranded costs be allocated to each customer class on a 75/25 basis using the latest 12 CP data. *ABATE Brief, p. 17-18*.

2. Energy Michigan Reply

The ABATE stranded cost allocation method should be considered but only if the benefits of netting which are inherent in the MPSC true-up plan are allocated to offset the resulting transition charges on the same 75/25 - 12 CP basis as stranded costs were allocated.

D. Market Clearing Price Calculation

1. ABATE Position

ABATE strongly supports use of customer open access contract data as the basis for determining Market Clearing Price. *ABATE Brief, p. 19-21*. ABATE notes that Edison has stated, through witness Padgett, "Detroit Edison believes that a Market Clearing Price true-up has merit, although it cannot adopt the formula developed by the Commission in their January 14, 1998 in Case U-11290 which uses Market Clearing Price from customer contracts." *ABATE Brief, p. 20.* ABATE correctly notes that Detroit Edison formally agreed on January 15, 1999 in a filing in Case U-11726 that it would comply with implementation of the open access programs set forth in Commission restructuring orders including the January 14, 1998 order referenced above. *ABATE Brief, p. 20.*

2. Energy Michigan Reply

Energy Michigan agrees with ABATE. Edison is in no position to state that it cannot adopt a formula for determination of actual Market Clearing Price (MCPA) which was contained in the Commission's January 14, 1998 order in Case U-11290 and still maintain that it has honored its legally binding commitment to implement the Commission's open access programs.

If Edison cannot honor its legal commitment to implement the Commission's open access program, it must forfeit the financial benefits which it received from Case U-11726. If Edison refuses to implement Commission open access program orders, Energy Michigan urges the Commission to immediately commence proceedings to terminate the financial benefits received by Edison under Case U-11726.

VI. REPLY TO MIPPA

MIPPA raises two issues which relate to calculation of an actual Market Clearing Price.

A. MIPPA Position on Market Clearing Price Calculation

MIPPA claims that if the Commission finds use of actual customer contracts under open access is an impractical source of information, the Commission should use a 12 month strip of NYMEX futures contracts delivered into Cinergy adjusted for locational differences, transmission costs and offpeak power costs.

MIPPA also claims that the market which the Commission is attempting to measure is a wholesale market, not a retail market and that the use of retail transactions would only "introduce error into the process." *MIPPA Brief, p. 8.*

B. Energy Michigan Reply

The Commission has already stated that open access retail contracts should be used as a measure of the actual Market Clearing Price (MCPA). *U-11454, October 29, 1997, p. 14.*

MIPPA's proposal to use the Cinergy contract as a measurement of power price ignores the glaring weaknesses of that contract. As observed by MPSC Staff witness Carlson, the volume of futures trading, particularly into the Cinergy Hub, is relatively low especially for trading months beyond the nearest few months. A very low contract volume would allow easy manipulation of the contract price given the huge potential impact on transition revenue to the utility. *5 Tr 818.* This volatility and lack of market maturity led Staff to conclude in its Brief that, at most, the energy prices from individual NYMEX hub markets should constitute only 10% of a Market Clearing Price proxy. *Staff Brief, p. 16.*

The MIPPA proposal to use wholesale instead of retail prices ignores the Commission order quoted above which mandates use of retail prices. Also, MIPPA ignores the fact that utilities may routinely sell power to customers at a price which is equal to or even slightly higher than the price for open access power. *Kuhn, 4 T 142; Selecky 4 T 284-6; Phillips, 4 T 318.* In fact, Edison's own witness

Falletich testified that Edison supplied over 8 million MW of special contract service, or 16% of total retail deliveries, under special contracts. *4 T 384*. Consumers witness Ernst admitted that he had negotiated a special contract with Steelcase as late as December 1999 in competition with alternative sources of power. *4 T 454*. Mr. Ernst admitted that Consumers has not committed to preclude special contract sales through 2007. *4 T 457*.

The above testimony clearly shows that a utility is likely to dispose of its power at a price equal to or even greater than Retail Open Access contract prices. Use of a wholesale price would drastically understate the potential revenues which would be received by Consumers or Detroit Edison when disposing of their power in a market such as Michigan which is desperately short of capacity.

VII. CONCLUSION AND PRAYER FOR RELIEF

A. Conclusions

Consumers Energy and Detroit Edison have submitted true-up proposals which would radically change the stranded cost calculation and true-up methodology ordered by the Commission in Cases U-11454 and U-11290. Consumers Energy and to a much larger degree Detroit Edison have proposed millions of dollars of new costs including nuclear plant additions, debt restructuring, acceleration of regulatory assets and inclusion of regulatory assets relating to non-nuclear generating plants. These items would add hundreds of millions of dollars to already unaffordable utility stranded cost claims.

The Detroit Edison and Consumers Energy proposals regarding Market Clearing Price clearly defy the Commission's specific statement of October 29, 1997 in Case U-11454 that actual Market Clearing Price (MCPA) should be determined by pricing in actual retail open access contracts on file.

Both Consumers Energy and Detroit Edison proposed to allocate stranded cost to open access customers no matter how high the volume of retail sales. The retail sales for both companies could

literally double from 1998 levels and both utilities would still be charging stranded costs to open access customers while building or buying huge new quantities of power to serve load growth. This makes no sense at all.

Both utilities continue to disregard the financial benefits from wholesale and interutility transactions by failing to include such sales in their recovery of stranded cost.

Finally, both utilities fail to take into account substantial reductions in production cost per kWh which make their power supplies ever more competitive with open access service.

Only the Energy Michigan proposal conforms to both the letter and spirit of the Commission's prior orders regarding the true-up process and the overall stranded cost calculation methodology. The one deviation in the Energy Michigan proposal from the Commission approach adopted in Case U-11290 was to include a component for mitigation by decreasing, rather than increasing, the Market Clearing Price base (MCPB) against which changes in actual Market Clearing Price (MCPA) are compared. This one deviation is a form of mitigation which was authorized by the Commission for consideration on February 11, 1998 in Case U-11290, p. 6.

In summary, Energy Michigan is the only party to this proceeding to present a stranded cost calculation and true-up methodology which complies in all major respects with the guidance of this Commission as expressed through its orders. Consumers and Detroit Edison should not be rewarded for their complete disregard, and in the case of Edison outright defiance of Commission orders. Both utilities should be held to the promises that they would comply with Commission orders regarding open access service.

B. Prayer for Relief

WHEREFORE, Energy Michigan respectfully requests that the Commission adopt the Energy Michigan proposal for stranded cost calculation and true-up as well as recovery of implementation

costs and delivery of meter services as more specifically described in its Brief filed January 28, 2000. Energy Michigan respectfully requests that the Commission reject the true-up proposals filed by Detroit Edison and Consumers Energy in their entirety.

Respectfully submitted,

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