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October 16, 2001

Ms. Dorothy Wideman  
Michigan Public Service Commission  
6545 Mercantile Way  
P.O. Box 30221  
Lansing, MI 48909

Re: Case No. U-12489

Dear Ms. Wideman:

Enclosed for filing in the above captioned matter please find the original and four copies of Replies to Exceptions of Energy Michigan. Also enclosed is the original Proof of Service indicating service on counsel.

Please date stamp one copy of the above entitled document for my records and return it in the self-addressed stamped envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP

A handwritten signature in cursive script that reads "Eric J. Schneidewind".

Eric J. Schneidewind

EJS/mrr

cc: ALJ  
parties

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the rates, terms, and )  
conditions for retail customers of )  
**THE DETROIT EDISON COMPANY** for )  
to choose an alternative electric supplier. )  
\_\_\_\_\_ )

Case No. U-12489

REPLIES TO EXCEPTIONS OF ENERGY MICHIGAN, INC.

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the rates, terms, and	)	
conditions for retail customers of	)	
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_____	)	

REPLIES TO EXCEPTIONS OF ENERGY MICHIGAN, INC.

I. INTRODUCTION AND SUMMARY OF KEY ISSUES

A. Introduction

Energy Michigan, Inc. (Energy Michigan), by and through its attorneys, Varnum, Riddering, Schmidt & Howlett, LLP, submits these Replies to Exceptions to the Proposal for Decision (PFD) filed by the presiding Administrative Law Judge (ALJ) on September 11, 2001. Failure to address or reply to any exceptions of the party should not be taken as agreement with those positions or exceptions.

Approval of “Agreements” Between the Parties

Detroit Edison has recommended acceptance by the Commission of a number of “agreements” between the parties which Edison claims have been memorialized by Staff and submitted with the Staff Brief. *Edison Exceptions, p. 1*. However, the Initial Brief of the Staff was written in such a way that items upon which there was agreement are not clearly distinguishable from items which Staff advocated but on which there was no agreement. Specific examples of areas described by Staff but upon which there is no agreement include:

- return of bid deposit without interest. *RAST Section 32.13, Staff Brief, p. 7-8.*
- allowance of 10 business days to install required metering after customer installation of telemetry. *RAST Section 26.4, Staff Brief, p. 9.*
- use of a penalty for late meter reads (RAST Section 2.9.4) if this requirement is proposed instead of eliminating telemetry requirements to reduce or eliminate processing delays. *RAST Section. 2.9.2.*

While Staff may advocate these positions, it is quite clear that Intervenors including Energy Michigan disagree with the Staff position on these issues. Therefore, the Commission should not assume that all the matters discussed in Staff's Initial Brief represent an agreement among the parties. Rather, only where the parties clearly and specifically agree to a RAST provision or change should the Commission adopt that change without further consideration.

#### B. Summary of Key Issues

Energy Michigan has replied to exceptions regarding 19 issues, however, the five issues summarized below are of critical importance to the competitive industry:

1. PFD Issue # 6: Load profiling systems for energy metered customers and managed load profiles.

The proposal of the ALJ to adopt Edison load leading concepts with the same charge of .46 ¢ /kWh used on the Consumers Energy system will make competitive service uneconomic for energy metered customers. *Polich Testimony in Consumers ROA Case U-12488, 2 Tr 113.* A new case should be commenced to develop a cost based load leading profile service. Meanwhile, energy metered customers should have the alternative of billings and service under the current Detroit Edison RAST rates for Electric Choice or use of load leading service at Staff's recommended charge.



2. PFD Issue #8: Edison's new demand meter and system use charges.

Edison's new system use charge would make energy metered Electric Choice service unaffordable for customers under 300 kW. Increased demand meter charges would raise rates for all low voltage demand metered customers. These increases are a violation of 2000 PA 141.

3. PFD Issue #10: Performance standards

To provide certainty to AES power suppliers and customers, the Commission should require that Electric Choice service commence within 15 days of enrollment. Edison should not be allowed to delay service until 15 days before the next meter read date which could be more than 44 days after date of application plus a 15 day processing period.

4. PFD Issues #20 and #22: Multiple meters at one residential location and meter costs

Edison has proposed RAST changes to discontinue its current practice of allowing a second meter on residential premises to be used for load management purposes at \$2.05 per month for five months. Also, all interruptible service would be prohibited. These provisions would prevent residential customers from obtaining discounted service for managed loads or load served at special time of day rates because managed load must be metered separately. New fees for second meters are an illegal rate increase. Also, these increases make private offerings of managed service uncompetitive with Edison's R-14 rate.

5. PFD Issue #24: Access to customer data

The ALJ proposed to allow an AES to access metered customer usage data which is

already compiled by Detroit Edison at the customer's expense. This proposal should be upheld because use of available Edison meter data will significantly reduce the costs of Electric Choice metering and accessing customer data.

### Conclusion

These five issues will make the difference between economic and uneconomic Electric Choice programs. Adoption of a customer oriented position on each issue will greatly encourage development of competition.

## II. DETAILED REPLIES TO EXCEPTIONS

The Exceptions of the parties will be addressed in the order used in the PFD to discuss the subject issues.

### PFD Issue #1: Defining the Marketer / Detroit Edison Relationship in the RAST

#### A. PFD

The Law Judge adopted an Energy Michigan recommendation to remove the discussion of the marketer role in the Edison tariff since the marketer is a FERC entity. *PFD, p. 3-4.*

#### B. Exceptions

MPSC Staff excepts to the PFD and wants the marketer role to be discussed in the RAST because it claims that discussion of the marketer role will allow an unsophisticated customer to gain an overview of the entire Electric Choice programs. *Staff Exceptions, p. 1.*

C. Energy Michigan Reply

Inclusion of a discussion of the marketer role in the RAST is inappropriate because marketers are regulated by the FERC, not the MPSC. Staff's position may justify preparation of comprehensive explanatory materials which do not have the force and effect of a tariff adopted by the MPSC. Inclusion of the marketer role in the RAST may require the MPSC tariff to be changed when FERC requirements change and gives the incorrect impression that the marketer role or changes in the role are subject to MPSC regulation which is not the case.

PFD Issue #2: Credit Requirements

A. PFD

The ALJ recommended that Alternate Electric Supplier (AES) credit requirements be dropped from the RAST since transition costs are now paid by customers. Credit requirements related to marketers would be covered by FERC tariffs and authority. *PFD, p. 4.*

B. Exceptions

While Edison agrees that credit worthiness requirements for marketers should be removed from the RAST, it proposes that credit requirements be included in Edison's Electric Choice handbook and Edison's marketer agreement. *Edison Exceptions, p. 2.*

C. Energy Michigan Reply

Under Issue #15 (Continuing Commission Authority) the ALJ rejected a CMS/MST proposal that the Commission approve all agreements and documents used by Edison in the ROA program. *PFD, p. 30-31.* If Edison's proposal to address marketer credit requirements in its handbook or agreements is adopted, neither FERC nor the MPSC would have authority to review and approve

marketer credit requirements. Energy Michigan believes that the most effective way to address marketer credit agreements is to defer the issue to the FERC and use MPSC authority over marketer agreements or handbooks to ensure that any provisions relating to marketer credit are deleted or at least conform to appropriate FERC requirements or filings.

PFD Issue #3: Return to Service, RAST Section 5.4

A. PFD

The ALJ shortened the notice for return to service to 10 days and approved two Edison options for return (Option 1: minimum one year at tariff rates, Option 2: maximum of three months at market rates). *PFD*, p. 5-8.

B. Exceptions

ABATE excepts to the failure of the PFD to address its request that there be an immediate return to service with no notification period where a provider defaults on its commitment to supply a customer. *ABATE Exceptions*, p. 1-2.

Detroit Edison concurs with a 10 day notification regarding return to service but insists that return to service occur only on scheduled monthly meter read dates. *Edison Exceptions*, p. 5

C. Energy Michigan Reply

The ABATE position is reasonable. In the event an AES defaults on its obligation to the customer there may be little or no notice. In such cases, a mandatory 10 day notice for return to service would deprive the customer of all electric service for up to 10 days, resulting in shut down of the customer's business or lack of service to a residential customer. Unlike system emergencies related to power shortages or extreme weather conditions, AES defaults are not likely to be industry-

wide phenomena occurring on the same day or hour. Thus, Detroit Edison possesses the resources to immediately serve customers who have been terminated based on the default of their AES, The 10 day notice for return should not apply in the case of AES default.

Edison's position is totally illogical. An example illustrates the problem: under Edison's proposal a customer with a meter read date of the 15th of each month could receive a default notice on the 16th and be deprived of all electric service until 30 days had elapsed until the next scheduled meter read. This level of unpredictability and denial of service would be totally unacceptable to most customers. Even if Edison claims it could not accomplish meter readings or other administrative procedures except on each meter read date, the usage estimating procedure used by Edison for retail customer's billing should easily allow Edison to determine the amount of power provided to a customer where default has occurred between meter reads. Use of estimated data would allow Edison to commence electric service between scheduled reads. The Edison exception should be rejected.

#### PFD Issue #5: Return of Bid Deposits

##### A. PFD

The ALJ adopted a PSC Staff proposal that bid deposits for Choice service which remain unused by December 31, 2001 be returned by March 31, 2002 without interest. *PFD, p. 5.*

##### B. Exceptions

ABATE excepts to the failure of the ALJ to adopt a policy which guarantees return of unused deposits with interest. ABATE supported its position by stating that Edison's delays led to the inability of many customers to participate. *ABATE Exceptions, p. 5.*

##### C. Energy Michigan Reply

Energy Michigan has stated that it would be unfair to require that Edison pay interest to the customer receiving deposit moneys. *Energy Michigan Brief, p. 2, 2 Tr 308*. Energy Michigan has also pointed out that if interest is not paid to the customer, Detroit Edison will get the interest and experience an undeserved windfall. It makes no sense to allow Detroit Edison to keep interest on deposits when the money rightfully belongs to the customer or entity that paid the deposit and was prevented from commencing Electric Choice service on a timely basis, often as a result of Detroit Edison processing problems. *Energy Michigan Reply Brief, p. 14*.

PFD Issue #6: Load Profiling (RAST Section 2.7.2)

A. PFD

The ALJ appeared to adopt broad concepts for a load leading profiling program presented in the rebuttal testimony of Edison witness Basso. The ALJ also adopted a charge structure of .46 ¢ /kWh for Edison's profiling service which was taken directly from the Consumers Energy profiling program and presented by MPSC Staff. Since the Edison load leading concept was not detailed and contained many reservations, there is no way to know if the Consumers charge structure would be appropriate for Edison's conceptual service. *PFD, p. 11-14*.

B. Exceptions

Edison agreed with the ALJ's finding that compensation for Edison's load profiling methodology should be at the level used by Consumers and proposed by MPSC Staff until such future time as actual costs are determined and reconciled. *Edison Exceptions, p. 2*.

CMS/MST commented that it was unclear whether the “load profile management service” proposed by the ALJ refers to Edison's original load trailing methodology presented by witness Basso (2 Tr 184-89) or whether it refers to the load leading “profile management service” concept referred by Mr. Basso in his rebuttal testimony (2 Tr 193-95). *CMS/MST Exceptions, p. 1-2*.

C. Energy Michigan Reply

Energy Michigan agrees with CMS/MST that the findings of the ALJ are unclear. In effect, the ALJ appears to have applied a Consumers Energy charge structure to a vaguely described, highly qualified load leading concept presented by Detroit Edison as rebuttal. *Basso, 2 Tr 193-95*. In his rebuttal, Detroit Edison witness Basso objected violently to use of the Consumers Energy charge structure to an as yet undefined Detroit Edison program. *2 Tr 194-95*. Now, it comes as no surprise that Detroit Edison finds it can agree with the Staff fee of .46 ¢ /kWh because Edison knows full well that such a fee would render the residential Electric Choice program unaffordable if applied on a mandatory basis as requested by Edison. *Edison witness Basso, 2 Tr 194; Edison Exceptions, p.2*. There is evidence on the record of Case U-12488 (Consumers Energy ROA Tariff) that a charge of .46 ¢ /kWh for load profiling would make ROA residential service unaffordable. *Richard Polich, U-12488, 2 Tr 113*. Neither Staff nor Edison have presented any evidence regarding the cost consequences of Staff's proposal nor, apparently, has Staff evaluated those consequences.

If the .46 ¢ /kWh charge for load leading profiling were to become mandatory, as was proposed by Edison witness Basso, it would be a prohibited rate increase and could be overturned on appeal.

Also, the Staff proposal makes no reference to development of load leading profiles for managed or interruptible load as recommended by witnesses Polich and Vail. *2 Tr 273 and 2 Tr 254-55, respectively*.

In the face of evidence of record in the Consumers ROA tariff Case U-12488 that a .46 ¢ /kWh charge renders residential ROA service unaffordable, the Commission has two options if it wishes to preserve Electric Choice for residential customers:

Option 1      Reject the .46 ¢ /kWh fee structure for load leading service which is

unsupported by detailed testimony and adopt the Energy Michigan proposal that the current Edison system of estimating demand of energy metered customers be continued. Meanwhile, a proceeding should be ordered to develop a new load leading service for Edison along the lines described by Messrs. Polich, Vail, Bailey and Basso, including appropriate cost based charge structures for this new load leading service. *Energy Michigan Exceptions, p. 8.*

Option 2 In the alternative, the Commission could adopt a load leading profile mechanism along the lines recommended by Staff as an interim but optional service which could be offered to energy metered customers concurrently with retention of the existing Detroit Edison methods and charges for estimating energy metered load pending development of a brand new load leading system as described above which would include profiles for managed load.

#### PFD Issue # 7: Energy Imbalances

A. PFD

The ALJ rejected an ABATE proposal that all energy imbalances be settled at the distribution level rather than the transmission or retail customer level. *PFD, p. 14-15.*

B. Exceptions

ABATE excepts to the failure of the ALJ to adopt its proposal for addressing all energy imbalances at the distribution level. *ABATE Exceptions, p. 6-11.*

CMS/MST excepts to the failure of the ALJ to address Energy Michigan, CMS/MST and



ABATE arguments against using wholesale imbalance penalties to resolve retail imbalances. CMS/MST claims that the Commission should develop special imbalance provisions for retail access customers. *CMS/MST Exceptions*, p. 2-4.

C. Energy Michigan Reply

Energy Michigan set forth a comprehensive program for providing balancing service on a load leading basis including charge structures, imbalance fees where profiles were followed, penalties where profiles were not followed, and balancing systems to be utilized where both energy metered and demand metered customers were balanced. CMS/MST is correct that this vital but complex set of concepts was never addressed and indeed must be addressed in every detail to achieve effective and economic balancing of retail access loads and give certainty to AES regarding their total costs. *See Energy Michigan Initial Brief*, p. 8, *Testimony of Richard Polich*, 2 Tr 272-73 and 2 Tr 301-03. If this proceeding cannot accommodate such complexity then balancing issues should be added to the new docket recommended by Energy Michigan to resolve load profiling. In any event, balancing is one of the greatest uncertainties surrounding retail access. The Commission should take steps to develop the new systems and procedures which will provide full recovery to Detroit Edison for costs incurred but also provide fair treatment for AES and their customers.

PFD Issue #8: Metering and System Use Charges

A. PFD

The ALJ adopted the Detroit Edison proposal to deprive customers between 20 and 300 kW of their current right to utilize and obtain demand metering at their current service charge of \$5.95 per month. These customers would also be forced to use a new energy based system use charge of 2.88 ¢/kWh proposed by Staff instead of the 3.01 ¢/kWh proposed by Edison. The ALJ also approved Edison's proposal to increase metering fees for low voltage demand metered customers above 300 kW from the current \$5.95 per month to \$36 per month (single phase) and \$48 per month

(three phase). *PF*D, p. 15-20.

B. Exceptions

Detroit Edison agreed with adoption of an energy based system use charge and approval of its meter fee increases but excepted to use of the Staff's 2.88 ¢ charge rather than Edison's proposed 3.01 ¢ charge. *Edison Exceptions*, p. 2-3.

C. Energy Michigan Reply

Both the Edison 3.01 ¢/kWh system use charge and Staff's 2.88 ¢ /kWh produce huge increases for customers with load factors of more than 17%. *See Polich Testimony*, 2 Tr 281-82 and *Exhibit I-7*, p. 1 of 2. The Energy Michigan Brief demonstrated that the Staff's 2.88 ¢ charge adopted by the ALJ would produce increases for all customers with load factors greater than 16.3 %. *Energy Michigan Brief*, p. 15. The Energy Michigan testimony and exhibits to this case also demonstrated that Edison's meter charge increases for customers of greater than 300 kW demand would produce significant rate increases. 2 Tr 280-81 and *Exhibit I-7*, p. 2 of 2.

As pointed out in the Energy Michigan Exceptions, the new Edison meter charges and system use charges cause rate increases which are a violation of 2000 PA 141, § 10d(1). *Energy Michigan Exceptions*, p. 9-13.

The Commission has only one alternative in the case of Edison's meter and system use charge increases: these charges must be rejected because they are rate increases which violate 2000 PA 141, § 10d(1). If the Commission wishes to make energy metering a voluntary option for customers with demand between 20 and 300 kW, this course of action may comply with law although the public policy implications are highly questionable.

## PFD Issue #10: Penalties and Performance Standards

### A. PFD

The ALJ adopted the Staff proposal which provides penalties for late meter reads and the Energy Michigan proposal to eliminate telemetry requirements for customers with less than 1,000 kW of demand. A mandatory 15 day processing deadline requested by Energy Michigan was not adopted. *PFD, p. 21-23.*

### B. Exceptions

Edison excepts to the “failure” of the ALJ to “explain” whether the threshold adopted for elimination of telemetry is based on 1,000 kW of measured demand or 1,000 kW of Customer Service Capacity. Edison claims that this difference is significant because capacity based on a level of 1,000 kW of Customer Service Capacity equates to actual demand of 300-700 kW, a figure far lower than the 1,000 kW in the ALJ's recommendation. Edison argues that use of 1,000 kW of Customer Service Capacity for the telemetry waiver which would cover fewer customers than use of 1,000 kW of demand is the more appropriate threshold for waiver of telemetry. *Edison Exceptions, p. 5-6.*

Also, Edison claims that the PFD did not fully define performance standards and should have included:

1. Force majeure exclusions.
2. A measurement of time from Edison receipt of enrollment request to site ready status minus customer controlled activity such as telemetry installation.
3. Language stating that the effective date of switch should be the next scheduled meter read date. *Id.*

C. Energy Michigan Reply

1. Use of Customer Service Capacity to measure demand

The PFD adopted a proposal for waiver of telemetry for customers with demand of less than 1,000 kW which was presented by Energy Michigan and supported by MPSC Staff. *PFD*, p. 22. The ALJ stated, “Therefore the ALJ recommends the elimination of the mandatory telephone link for customers under 1,000 kW.” *P.* 23. The Energy Michigan recommendation was presented by Mr. Richard Polich at 2 Tr 288-89 and also supported by Energy Michigan witness Schlansker at 2 Tr 245. Both witnesses repeatedly reference the waiver as being applicable “for customers less than 1,000 kW or 1,000 kW demand” 2 Tr 245 (*emphasis supplied*). In neither case was the phrase “Customer Service Capacity” utilized. Edison's request that the PFD be amended to make a meter waiver applicable to a far smaller group of customers is totally unsupported by argument and citation to the record.

Finally, the Edison exception proves that Customer Service Capacity is such a vague concept that it cannot be precisely defined. The Edison exceptions state that a customer demand of 1,000 kW could equate to a range of 300-700 kW of Customer Service Capacity. *Edison Exceptions*, p. 6. Such a loosely defined concept would give Edison the ability to frustrate the meter waiver provision by requiring telemetry for customers with as little as 300 kW of demand.

Given the clarity of the Energy Michigan recommendation for waivers below 1,000 kW of demand, Staff's support and PFD language adopting the Energy Michigan position, Edison's exception should be rejected as lacking support on the record.

2. Compliance with performance standards

Adoption of a waiver of telemetry requirements for customers with demand less than

1,000 kW should eliminate a great deal of service delay relating to activities which are allegedly customer controlled. If telemetry requirements are eliminated for customers less than 1,000 kW, Energy Michigan could agree to excluding customer telemetry installation time from the determination of compliance with any mandatory performance standard.

Energy Michigan does not believe it is appropriate to exclude specific force majeure situations such as storms from determination of compliance with performance standards. Exclusion of force majeure situations from performance calculation would simply invite Detroit Edison to drop all Electric Choice installation activity during any storm or other system-wide force majeure type situation. Use of a standard such as 90% of installations within “X” days would be far more appropriate than a standard which provides many exclusions that invite litigation or detailed dispute regarding every external problem encountered by Detroit Edison.

Energy Michigan strongly opposes measurement of Electric Choice enrollment performance using the date of the next meter read as a switch date. Since meters are read approximately once per 30 days, Edison would continue its current practice of slow enrollment coupled with implementing the switch only on meter read days. This practice allows Edison to extend Choice service commencement by up to 30 extra days until the next meter read. In effect, Edison's proposal is intended to give it 45 days to commence service instead of the 15 days recommended by Energy Michigan.

#### Edison Can Implement Customer Switches Between Meter Read Dates

New Edison retail customers of all classes are allowed to commence service on any day of the month. If the customer service date happens to occur between meter read dates, Edison uses its existing billing systems to pro-rate use and bill on an estimated basis for the pro-rated service. Edison can use these same systems and capability to commence Electric Choice service between meter read dates and pro-rate Electric Choice charges.

This is a critical issue because it will eliminate delays in starting Electric Choice service of up to 30 days and reduce uncertainty of service date.

The performance standard must be simple, clear and highly enforceable to be an effective incentive. The 15 day standard recommended by Energy Michigan together with waiver of telemetry meets that test and should be adopted.

PFD Issue #13: Curtailment (RAST Section 10.1)

A. PFD

The ALJ adopted the Energy Michigan proposal for a curtailment process which utilizes economic penalties for curtailment enforcement when there is enough system supply and utilizes curtailment after two hours notice is given to correct the problem where supply is insufficient. *PFD*, p. 27-29.

B. Exceptions

Detroit Edison excepted from the PFD on the grounds that:

1. It claims that the Energy Michigan proposal is based on OATT procedures and that use of OATT procedures is not justified for curtailment since those procedures are designed for transmission constraints not generation deficiencies.
2. An energy imbalance approach could allow the Edison generation to be used as a safety net for AES [generation] resource deficiency. *Edison Exceptions*, p. 8

The MPSC Staff stated its belief that supply failures must result in curtailment otherwise scarce generation might be diverted from bundled sales customers during shortages. *Staff*

*Exceptions, p. 3.*

C. Energy Michigan Reply

The Energy Michigan curtailment proposal treats Alternate Electric Suppliers the same way electric utilities treat each other during shortages. Where power supplies are adequate, utilities penalize other utilities with economic penalties for meeting obligations with insufficient supply. This approach creates a huge disincentive to repeat the problem behavior. Where electric supplies are insufficient, utilities give other utilities up to two hours to correct the problem prior to curtailment. Thus, under insufficient supply situations, curtailment, economic penalties and AES or supplier license removal could all be utilized. This is a far more sophisticated and precise approach than always mandating curtailment which clearly cannot be accomplished in a great many cases since appropriate metering and shut off devices are not in place. 2 Tr 297-98.

Rather than relying on a curtailment threat which cannot be implemented, Energy Michigan proposed curtailment measures which can be implemented, work the same as utilities treat each other and carry stiff economic, curtailment and license removal sanctions which are only utilized as needed.

The Commission should ask itself the following question: is it better to have curtailment procedures relying on a threat which cannot be carried out or to supply power, albeit at a high penalty rate when there is sufficient supply and rely on a combination of curtailment and license removal when supply is insufficient? The Energy Michigan proposal should be adopted because it is a far more logical solution to situations where the AES has insufficient power supplies.

PFD Issue #14: Self Service Power (RAST Sec. 7.2)

A. PFD

The ALJ rejected Edison proposals to base distribution contract for self-service generators capacity on the maximum use of a customer without self-service generation in operation. *PFD*, p. 29-30.

B. Exceptions

Edison excepted to the decision of the ALJ for two reasons:

1. Edison claims that without adoption of the proposal to base distribution charges on the maximum use of a customer without self-service generating, it would have no method to charge on site generation for distribution service. Edison claims this is hardship because “the amount of load carrying capacity that can be drawn by that customer at any time cannot be reused to serve other customers.” *Edison Exceptions*, p. 9-10.
2. Edison claims that the Commission has already approved similar charges in Edison's Standby Rate R-3 in the form of non-generation charges which apply to standby contract capacity. *Id.*

C. Energy Michigan Reply

1. Edison's argument that without new Section 7.2 it would not have a method to charge on site generators for distribution service is incorrect.

Absent Section 7.2, RAST Section 8.2.1 would apply and charge a self-generation customer for system use on the basis of the highest 30 minute integrated kW demand created during the previous 12 months. Thus, to the extent that a self-generator ever uses retail access to deliver standby power, the highest level of demand created during that time would be used to calculate the amount of system use charge paid by the customer throughout the



year.

Edison is also incorrect when it claims that the load carrying capacity serving a self-service generator cannot be reused to serve other customers. A large portion of the Edison distribution system serving each customer consists of high voltage lines which serve many customers, not just one self-generator.

2. Edison is incorrect in its references to the Rate R-3 as a template for its proposed RAST Section 7.2 self-service generation provision.

Standby capacity under the R-3 rate is related to generator name plate capacity not total load of the customer without the self-generation operating. *See R-3 Tariff, p. 2 "Standby Contract Capacity"*. Note that many customers have purchased self-generation units which only produce a base load of electricity, not the customer's peak demand. Thus, the R-3 rate does not charge the customer a distribution standby charge based on total customer peak demand as does Edison's proposed Section 7.2.

In fact, the only aspect of Section 7.2 which resembles R-3 is the intent of Edison to create yet another tariff provision which would make on site generation uneconomic. The Edison exception should be rejected.

#### PFD Issue #15: Continuing Commission Authority

A. PFD

The Commission rejected a CMS/MST proposal that it approve all agreements, documents and handbooks used by Edison in the Electric Choice program. *PFD, p. 30-31.*

## B. Exceptions

CMS/MST argues that the Commission order in Case U-12272 has set a precedent asserting Commission jurisdiction over the contents of Edison contracts or agreements implementing Electric Choice. CMS/MST claims that, by inference, that jurisdiction would also extend to the Supplier Handbook and related web site to the extent that it governs the Electric Choice program. *CMS/MST Exceptions, p. 4-5.*

CMS/MST argues that Case U-12272 also contains facts which demonstrate how terms and conditions unilaterally insisted upon by Edison act as barriers to competition and therefore must be resolved at the Commission level. CMS/MST proposes that there be a comprehensive Commission review of all materials which implement Edison's Electric Choice program, not just the RAST. *Id.*

## C. Energy Michigan Reply

Energy Michigan agrees with CMS/MST. To the extent that Edison incorporates mandatory requirements in its Supplier Handbook and contracts, those documents should be subject to Commission review and approval. CMS/MST is also correct that Case U-12272 proves this point. In that case, Edison inserted provisions in the mandatory supplier agreements which were extremely disadvantages to Electric Choice suppliers and were unauthorized by any law, tariff or Commission authorized procedure. If Edison is free to continue its practice of sabotaging the Electric Choice program with unapproved contract or Supplier Handbook provisions, the program is doomed. The Commission should clearly state its authority to approve, modify or reject any mandatory requirement contained in Electric Choice implementation documents.

The best way to streamline the Electric Choice program and eliminate future complaints would be for the Commission to review each mandatory document and eliminate problem provisions once and for all. Failure to pursue this course of action will certainly result in numerous complaints, programs delays and unnecessary expenditures.

PFD Issue #17: AES and Taking Title to Power (RAST Sections 1.2)

A. PFD

The ALJ adopted an Energy Michigan recommendation to delete the requirement that an AES entity take title to power because requiring title might prevent an AES from serving as a scheduler where the customer had secured power from another source. *PFD, p. 32-33.*

B. Exception

Edison states that it can accept the ALJ's finding but it points out that someone must take title to power at some point before delivery to a retail customer. Edison says that in absence of a title holding party, it becomes difficult to determine where, in fact, the retail sale took place. *Edison Exceptions, p. 3.*

C. Energy Michigan Reply

Edison's concerns can be addressed where the customer's AES does not take title to power. In those cases, a third party AES could take title and schedule as an agent of the customer's AES. Other arrangements may be possible as well.

PFD Issue #18: Definitions

A. PFD

Edison's definition of "Customer", "Distribution", "Point of Receipt" and terms such as "JOATT" and "SINK" were adopted by the ALJ. The Energy Michigan definition of "Demand Conversion Table" was adopted. Energy Michigan's definition of "Customer Service Capacity" which was intended to clarify that Customer Capacity is limited by the load which can be carried by

associated Edison distribution facilities, was modified by the ALJ to add “and any associated transformers” from the original Edison definition. *PFD*, p. 34-35.

## B. Exception

Edison took exception to adoption of the Energy Michigan definition of “Customer Service Capacity”. Edison claims that Customer Service Capacity describes the load carrying capacity recorded in all the Company's information databases. Edison further claims that Energy Michigan's concern that the stated Customer Service Capacity may exceed Edison's actual ability to deliver power and should therefore be derated by any other load limiting constraints is irrelevant since the CSC has no role in billing customers or suppliers. For example, Edison claims that the System Use Charge is always based on measured values, maximum demand for larger customers and kWh usage for smaller ones. *Edison Exceptions*, p. 3-4.

Edison also requests that its definitions of “Interval Demand Meter” and “Marketer” be adopted by the Commission. *Id.*

## C. Energy Michigan Reply

Edison is incorrect in saying that the Customer Service Capacity has no role in billing customers or suppliers. Edison requests at PFD Issue #10 above that Customer Service Capacity be the basis for a waiver of telemetry yet it states in Issue #18 that Customer Service Capacity has no role in billing. This position is inconsistent. Energy Michigan can agree to Edison's proposed definition of Customer Service Capacity if Customer Service Capacity is not used to determine eligibility for telemetry waiver.

As to Edison's request that “Interval Demand Meter” and “Marketer” definitions be adopted, it appears that there is agreement by Edison to adopt the definition of “Interval Demand Meter” proposed by Energy Michigan witness Polich (2 Tr 236) with the addition of phrasing to ensure that

Edison can use the information to bill the customer. *Newbold Rebuttal*, 2 Tr 137. Thus, the Energy Michigan definition of “Interval Demand Meter” as modified by Edison should be adopted.

There is no agreement between Energy Michigan and Edison regarding the definition of “Marketer”. Energy Michigan proposed that the definition of marketer be restricted to include entities that take title to power and have FERC authorization to market energy services. *Polich*, 2 Tr 236. This simple definition references the FERC requirements which govern all marketers and excludes new Edison language which would restrict marketer activity in a way not complemented by FERC.

Edison's definition of “Marketer” should be rejected because it is merely an attempt to restrict the role of a marketer in a way that is not mandated by PA 141. For example, Edison attempts to insert reciprocity requirements, Michigan regulatory requirements and local power delivery requirements in its definition of “Marketer”. *Energy Michigan Brief*, p. 31. The Energy Michigan definition “Marketer” focuses on the fact that a marketer is a FERC entity which interacts with Edison's affiliate International Transmission Company, not Edison. The Edison definition of “Marketer” should be rejected as an attempt to impose state and local regulatory requirements on a federal entity.

PFD Issue #20: Multiple Meters at Residential Locations (RAS Section 2.7)

A. PFD

The ALJ adopted language that would prevent Edison from requiring that all meters must be combined in a multi-family billing setting and charging costs of that revision to the customer. *PFD*, p. 36.

B. Exceptions

The MPSC Staff agrees that Section 2.7 should be changed so that it does not require combining all separately metered residences in a multi-family unit into one meter. However, Staff does support Edison language that would eliminate or charge for more than one meter per single family residence. *RAST Section 2.7; Staff Exceptions, p. 4.*

C. Energy Michigan Reply

The liability Section 2.7 proposed by Edison will eliminate residential load management programs. Edison's new revisions to Section 2.7 prohibit more than one meter per residence and flatly eliminate all interruptible rates under retail access. Edison's lead witness on the RAST didn't even bother to justify the prohibition on interruptible service.

Energy Michigan opposes the Staff exception. If adopted, Staff's position would allow Edison to mandate additional meter charges for interruptible load that is currently served on the Edison system. Two meter charges per residence can make load management programs economically unattractive if applied to Edison competitors because Edison has obtained a new R-14 service for bundled sales customer interruption that does not require a second meter. Under these circumstances, Edison would have a competitive advantage if it can interrupt residential load without a meter but competitors must pay for a second meter to track managed load and interruptible load is prohibited altogether. *See Tariff R-14.*

Edison's proposed additional meter charges for monitoring interruptible load should be rejected as an attempt to disadvantage competitors and discourage a valuable form of load management. As an alternative, Edison should allow AES entities to use the R-14 interruption system or require Edison to verify AES interruption with sampling rather than separate meters. *Energy Michigan Brief, p. 44-45.*

Edison's unsupported ban of interruptible service should also be rejected as an attempt to frustrate future development of competitive services which is not supported by record evidence.

PFD Issue #21: Liability for Meter Errors (RAST Section 2.10.4)

A. PFD

The ALJ ordered that Edison's proposed Section 2.10.4 language be revised so that Edison is liable to any customer or AES to the extent that any penalty is incurred (imbalances, etc.) as a result of an inaccurate meter. *PFD, p. 36-37.*

B. Exceptions

Edison claims that the ALJ's position is unreasonable because it cannot be held liable for circumstances and events out of its control. Edison believes that its liability must be limited to the correction of errors in order to be lawful. *Edison Exceptions, p. 8.*

MPSC Staff believe that liability provisions should apply to both AES entities and electric utilities alike. Staff proposes that the Commission consider this issue in rules as well as AES contracts or service agreements. *Staff Exceptions, p. 5-6.*

C. Energy Michigan Reply

The RAST language proposed by Edison would prevent an AES or Electric Choice customer from avoiding imbalance penalties or obtaining a refund of those penalties where a malfunctioning meter supplied by Edison had caused the delivery of too much or too little power. This is because proposed 2.10.4 limits Edison's liability to a correction of incorrectly metered delivery services but not correction of or compensation for imbalance penalties levied by its affiliate, International

Transmission Company. This position is inequitable and unrealistic.

Moreover, 2000 PA 141, § 10c(1) allows a customer to obtain refund of excess charges or obtain remedies that would make whole a person harmed. Thus, PA 141 could be used by an AES or customer to collect compensation for imbalance penalties levied by the ITC for example that were caused by metering inaccuracies related to Edison supplied meters. Section 2.10.4 as proposed by Edison would frustrate PA 141, § 10c(1).

The proposal adopted by the Law Judge should be upheld because it merely allows an AES or customer to prove their case and obtain compensation for damages or penalties directly caused by malfunctioning Edison meters.

PFD Issue #22: Meter Costs (RAST 2.8.1)

A. PFD

The ALJ deferred to the Commission the issue of whether Edison or the customer will pay for meter installations required by Detroit Edison. *PFD, p. 37.*

B. Exception

CMS/MST excepted to the failure of the ALJ to address this issue. CMS/MST claims that there should be no question that Edison's proposed service charge in both sections 8.6 and 8.7 of the RAST incorporates the cost of meters and no separate meter costs should therefore be levied in addition to the service charge. *CMS/MST Exceptions, p. 5.*

C. Energy Michigan Reply

The issue raised by CMS/MST merely emphasizes the need for clarity with regards to



responsibility to pay for meter costs. Issue #20 discussed above frames the problem. Currently, residential customers pay service charges of \$5.95 per month which cover costs of metering. Residential and small commercial customers with interruptible load have two meter installations but pay an additional charge of \$2.05 per month for five months under DTE interruptible Rate D1.1. If these small interruptible customers decide to subscribe to Electric Choice managed load service, their second meter could be used to monitor and charge for managed load. Edison's revised, new RAST Section 2.7 would impose an additional charge for the second residential meter and flatly prohibits interruptible service. This proposal is not surprising since Edison has devised a new tariff offering (Rate R-14) which eliminates the requirement of metering to track interruptions. Edison has denied use of this service to competitors. Thus, allowing Edison to charge for a second residential meter that has previously been provided at a modest additional charge would effectively eliminate managed load option competition. This is bad public policy.

Energy Michigan rejects Edison's argument that its proposed RAST Section 2.8.1 is appropriate for determining when meter costs are the responsibility of Edison and when such costs are the responsibility of the customer. Edison's proposed Section 2.8.1 requires that all customers receiving electric service at 4,800 volts or greater install interval demand meters. Edison has included several provisions in its RAST which require meter changes which could prove quite expensive. See particularly Section 2.7 which could be construed to require additional meters at any residence currently equipped with a second meter to control interruptible air conditioning, etc. Until the language of 2.8.1 is clarified to ensure that meter changes or any new meter installations required by Edison are at Edison's cost and not the customer's, adoption of 2.8.1 is merely an Edison device to authorize additional charges to RAST customers in violation of 2000 PA 141.

PFD Issue #24: Access to Customer Data (RAST Section 2.9.1)

A. PFD

The ALJ adopted Energy Michigan's proposal to allow an AES to use Detroit Edison's

customer demand data at no additional cost. *PFD*, p. 39.

B. Exception

Edison excepts to this decision on the grounds that the available methods to access customer data are appropriate and sufficient as set forth by Edison witness Newbold. *Edison Exceptions*, p. 8-9 referencing *Newbold testimony at 2 Tr 11-13*.

C. Energy Michigan Reply

Energy Michigan notes that the referenced testimony of Mr. Newbold does not discuss customer access to Edison data. Energy Michigan assumes that the references should have been to rebuttal presented by Mr. Newbold at 2 Tr 142 where Mr. Newbold stated his “belief” that an arrangement that allows both AES and Edison to poll the Edison meter for data is “less secure” than Edison's preferred approach of denying the AES direct access to meter data generated by the AES customer. *Newbold*, 2 Tr 142. Mr. Newbold provided no detail regarding these alleged risks.

Edison's preferred position requires the AES to separately poll meters and compile its own data, thus duplicating the expense incurred by Edison and paid by the customer to compile data. Adoption of the concept approved by the ALJ and recommended by Energy Michigan would allow the AES to use data already compiled by Edison only with the permission of the customer. The Energy Michigan recommendation eliminates duplication of costs and waste of time which otherwise will be a competitive barrier if duplicated by the customer or its AES. *Energy Michigan Brief*, p.

48

PFD Issue #25: Liability and Exclusions (RAST Sections 9.1 and 9.3)

A. PFD

The ALJ adopted an Energy Michigan proposal that revised RAST Sections 9.1 and 9.3 so that Edison does not exclude its liability for penalties, faulty meters and administrative practices. *PFD, p. 40.*

B. Exceptions

Detroit Edison excepts to the PFD on the grounds that

1. Liability protection is a business decision, routinely provided for in commercial contracts and it is not a rate or a rate making issue;
2. Edison should be protected when entering into a new business such as Electric Choice.
3. Edison claims that assigning liability to marketers will encourage quality service on their part;
4. Edison desires protections consistent with what it claims are its retail tariff protections. *Edison Exceptions, p. 9.*

MPSC Staff states that, “As written, this section [25] would appear to contemplate and require a formal complaint proceeding with the Commission's determination of liability or fault...” *Staff Exceptions, p. 6.* Staff urges the Commission to adopt equivalent liabilities or protections for AES entities and electric utilities. *Id.*

C. Energy Michigan Reply

Edison's position is inconsistent. While it claims that liability is a business decision and not a rate making decision, Edison seeks Commission rate making type approval of its extremely

restrictive liability standard. Specifically, Edison's proposed Section 9.2 limits all claims to the amount paid by the customer to Detroit Edison for the location involved during the month in which the claim arose.

Under Edison's proposed limitation on liability, malfunctioning Detroit Edison meters could cause an AES to incur thousands, hundreds of thousands or millions of dollars of imbalance penalties levied by Edison affiliate International Transmission Company but Edison's liability to the AES would be limited to the distribution service charge for the month of the meter read. Note that given the incremental cost of electric power during emergencies which has approached \$10,000/Mwh, such a scenario is not at all impossible.

A second hypothetical is even more disturbing: Edison Rules B-4 and 11 allow retail sales customers up to three years for adjustments for meter errors. *Energy Michigan Brief, p. 55.* Edison's proposed Section 9.2 limitation of liability to the amount paid by the customer to Detroit Edison during the month in which the claim arose would appear to greatly limit the ability of an AES to claim compensation for three years of claims or incorrect meter readings. In fact, Edison's new Section 9.2 language appears to greatly restrict claims by AES entities or their customers against Edison compared to existing Edison standards applied to sales customers.

Moreover, 2000 PA 141 § 10c(1)(c) allows claims against an electric utility “that would make whole a person harmed”. The Edison tariff language would clearly limit this legal right.

Edison's new liability language contained in RAST Sections 9.1, 9.2 and 9.3 is much more restrictive than even Edison's own existing standards of liability and clearly ignores the inability to avoid transmission penalties levied by Edison's affiliate ITC where faulty distribution company meters cause imbalances. Edison's arguments that it needs protection when entering a new business and that assigning more liability to marketers will encourage quality service are a smoke screen designed to hide an attempt to significantly and unreasonably limit its own liability.

In response to Staff and Edison claims that there should be equivalent liability between AES entities and Edison, Energy Michigan notes that it is proposing that Edison in fact be exposed to the type of liability that is the norm in business transactions. It is Edison that is trying to use the regulatory process to greatly restrict its liability. The Edison and Staff Exceptions should be rejected. *Polich, 2 Tr 293.*

PFD Issue #26: Failure to Pay Detroit Edison (RAST Section 11.4)

A. PFD

The ALJ adopted Energy Michigan's proposal that customers be given 10 days written notice by first class mail before discontinuance of service. *PFD, p. 40-41.*

B. Exception

MPSC Staff claims that the ALJ and parties have confused “termination of retail access service” and “disconnection of electric service”. Staff further claims that at Section 11.4, the discussion of termination relates to changes in AES provider, not disconnection from electric service. Staff claims that disconnection of electric service is handled through RAST Section 6.4 and the billing rules and procedures previously adopted by the Commission. Staff therefore recommends rejection of the PFD evidently on the grounds that it believes termination of retail access service does not require specific, formal notification of the customer. *Staff Exceptions, p. 6-7.*

C. Energy Michigan Reply

RAST Section 11.2 allows Detroit Edison to terminate retail access service and in effect return a customer to retail service where the customer's AES fails to pay amounts due to Detroit Edison. Section 11.4 allows Edison to initiate this process.

Energy Michigan proposed that specific standards be adopted for notification of a customer that its AES service was going to be discontinued. *Energy Michigan Brief*, p. 56. Provision of 10 days notice by written mail to the customer under these circumstances is entirely reasonable and this is the position that was adopted by the ALJ. Staff's exceptions to this reasonable requirement should be rejected.

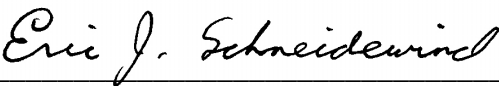
#### IV. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests that the Commission adopt a decision in this matter containing its Exceptions and Replies to Exceptions concerning the PFD as more fully detailed above.

Respectfully submitted,

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October 16, 2001

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

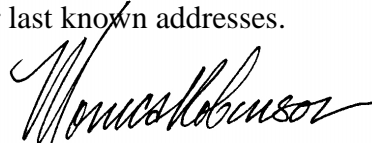
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In the matter of the rates, terms, and )  
conditions for retail customers of )  
**THE DETROIT EDISON COMPANY** for )  
to choose an alternative electric supplier. )  
\_\_\_\_\_ )

Case No. U-12489

**PROOF OF SERVICE**

Monica Robinson, duly sworn, deposes and says that on the 16th day of October, 2001 she served Replies to Exceptions of Energy Michigan, Inc. upon the individuals listed on the attached service list by e-mail and regular mail at their last known addresses.



\_\_\_\_\_  
Monica Robinson, Deponent

Subscribed to and sworn before me  
this 16th day of October 2001.



Eric J. Schneidewind, Notary Public  
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Acting in Ingham County, Michigan  
My Commission Expires: April 24, 2006

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