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December 23, 2003

Mr. Robert Kehres  
Michigan Public Service Commission  
6545 Mercantile Way  
P.O. Box 30221  
Lansing, MI 48909

Re: Case No. U-13933

Dear Mr. Kehres:

Enclosed for filing in the above captioned matter please find the original and four copies of Brief in Support of Energy Michigan Low Income Assistance Plan. 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 & HOWLETTLLP

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 application of )  
THE DETROIT EDISON COMPANY )  
for determination of net stranded costs )  
and for approval of net stranded cost )  
recovery charges. )  
\_\_\_\_\_ )

Case No. U-13933

BRIEF IN SUPPORT OF ENERGY MICHIGIAN LOW INCOME ASSISTANCE PLAN

December 23, 2003

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I. Introduction and Summary of Position

A. Introduction

On December 9, 2003 the Michigan Public Service Commission ("Commission") ordered that testimony of Energy Michigan, Inc, ("Energy Michigan") witness Richard A. Polich, proposing a Low Income Assistance Plan, be placed on the record of this matter. At a hearing on December 16, 2003, presiding Administrative Law Judge Rigas ("ALJ") granted the request of Applicant Detroit Edison Company ("Edison" or "Detroit Edison") that Briefs be filed on December 23, 2003 regarding the new material. The ALJ also granted Detroit Edison's request that Reply Briefs not be allowed over the objections of the Association of Businesses Advocating Tariff Equity ("ABATE"), Constellation/NewEnergy ("NewEnergy") and Energy Michigan.

B. Summary of Position

- 1. The Detroit Edison Low Income Program contains unacceptable legal and policy flaws.

The Energy Michigan Initial Brief and Reply Brief in this matter demonstrate that the Edison Low Income Plan is flawed on policy grounds because the benefits are

distributed evenly regardless of individual customer circumstances and the benefits cannot be used to prevent/restore shut off service or provide conservation benefits where conservation would be the most efficient means of reducing energy costs. Energy Michigan Initial Brief, p. 2, p. 5 through 6.

The Edison plan is legally flawed because it deprives Electric Choice customers of a 5% rate reduction mandated by PA 141 § 10d(7) and is a prohibited reallocation of costs in violation of PA 141 § 10d(7). Energy Michigan Brief, p. 2-3, p. 6-8.

Note that the Commission recently affirmed its finding that continuation of securitization offsets for Electric Choice customers is necessary to avoid a prohibited reallocation of costs and rate reductions are necessary to provide comparability of benefits between Electric Choice and bundled sales customers. Order Denying Rehearing, U-13350, p. 8-9.

2. The REVISED Energy Michigan Assistance Plan is a better approach.

The REVISED Energy Michigan Low Income Assistance Plan proposed by Mr. Polich contains two components: a short term plan and a long term plan.

a. The Energy Michigan short term plan: February 1, 2004 through March 31, 2004.

In the short term, there are enough excess securitization savings available to continue existing Electric Choice offsets and credits and to fund low income energy assistance until April 2004. See III. A. below. Energy Michigan urges the Commission to use the evidence on this record to conclude that low income benefits equivalent to \$0.026/kWh per eligible customer (although not used for the same purposes as Edison) be made available from existing excess securitization savings funding and be targeted first to prevent shut offs or restore shut off service. In any event, at least \$6.5 million of interest or carrying charges

on the Excess Securitization Savings Reserve can be used as soon as possible for shut off prevention/restoration and conservation since no party has indicated there would be restrictions on the use of these carrying charges.

- b. The Revised Energy Michigan long term plan: Starting April 1, 2004.

The formerly stricken testimony of Mr. Polich supports the following long term plan:

- i. Funding:

\$29 million of funding should be raised each year for the indefinite future through a surcharge of \$0.000559/kWh on all Detroit Edison customers implemented as soon as the rate freeze is lifted for each class. This surcharge could be implemented in this docket or in the U-13808 Detroit Edison general rate case docket.

The proposed surcharge would not generate \$29 million during the first and second year because of the rate freeze. The shortfall in funding a \$29 million program should be made up in year one with contributions from Detroit Edison through reductions in their rate recovery for executive bonus programs, reductions of promotional expenses such as DTE Theater, etc. and through recognition of the fact that a \$29 million Low Income Program will substantially reduce Detroit Edison uncollectible expenses. If necessary, a loan from the excess securitization savings reserve could be used. The shortfall in year two funding should be made up entirely from Edison contributions funded by reductions in Edison uncollectibles as mentioned previously.

- ii. Program benefits.

The Low Income Fund should be targeted to pay overdue electric bills which threaten shut off or to restore shut off service for deserving customers. Funds should also be used for conservation measures when the rate reduction benefits from conservation are cost justified. The benefits should be restricted to low income customers.

iii. Delivery mechanism.

The funding provided should be granted to community-based agencies such as THAW, the Family Independence Agency, Community Action Agency, etc. to screen applicants and deliver appropriate benefits.

3. Conclusion

By using the proceedings in this matter to create both a short term program and a long term program which will consider conservation and targeted benefits, the immediate needs of low income customers can be served this winter and an efficient permanent program can be created on a sound legal basis in time for next winter.

Detailed Discussion

II. The Detroit Edison Low Income Program Is Bad Public Policy

A. Policy Flaws

A detailed discussion of the policy flaws in the Detroit Edison Low Income Program is provided in The Energy Michigan Initial Brief, P. 5-6.

B. The Detroit Edison Program Is Vulnerable To Legal Challenge

The legal flaws in the Detroit Edison Program, prospective of statutory requirements, MPSC Case precedent and court precedent are provided in the Energy Michigan Initial Brief, p. 6-8.

Note, also, that the Commission recently reaffirmed its finding that continuation of securitization offsets for Electric Choice customers is necessary to avoid a prohibited reallocation of costs and rate reductions are necessary to provide comparability of benefits between Electric Choice and bundles sales customers. Order Denying Rehearing, U-13350, December 18, 2003.

### III. The REVISED Energy Michigan Low Income Assistance Plan: Legally Sound, Equitably Funded and Targeted to the Neediest Customers

A better approach to low income energy assistance is outlined below which can deliver benefits this winter and in the winters to come with a program that targets the neediest citizens and is funded on a legally sound basis. Both the short term approach and long term approach outlined in the Energy Michigan Initial Brief have been revised to incorporate the stricken testimony of Mr. Polich and the effects of the delay in schedule caused by the need to revise this record.

#### A. The REVISED Short Term Approach: February 1, 2004 Through March 31, 2004

##### 1. Benefits

As demonstrated in the Energy Michigan Initial Brief, there is sufficient evidence to support a Commission determination that excess securitization savings may be used to provide targeted rate reductions sufficient to avoid shut off or restore shut off service for low income customers. See 1 TR 233, also 1 TR 231. If the Commission does not agree with this legal position, then the Commission should use the more than \$6.5 million of carrying charges on excess securitization funds which are available. See Energy Michigan Initial Brief Exhibit 1. Those interest monies would not be subject to the same



restrictions as the excess savings. 1 TR 235. The same argument would be true regarding use of carrying charges for conservation measures.

Energy Michigan believes that the better policy choice would be to use excess securitization savings as necessary to prevent/restore shut off service and then use interest carrying charges as necessary for conservation measures which are an economical alternative to rate reduction credits.

2. February 1, 2004 program commencement.

The record in this matter will not be closed until December 23, 2003. 2 TR 261. The Commission should take notice of the fact that the Commission's offices will be closed from December 24, 2003 until December 29, 2003 and from December 31, 2003 until January 5, 2004. Edison witness Stanczak agreed on cross examination that the Low Income Program would not be established by the Commission until after Briefs were filed and that it would take at least two to four business days to implement and commence a program. 1 TR 129-30. Thus, if the Commission does not issue a final Order until its next scheduled meeting on January 22, 2004, it is unlikely that the Program can commence until February 1, 2004.

3. Program participation will be lower than projected by Edison.

ABATE made the point that Edison has ignored the fact that all of its estimated 300,000 participants could not possibly commence service when a Low Income Program commences since only 136,744 low income customers have been identified at this time. 1 TR 65. Thus, the first two months of the program cannot possibly require the full \$5.1 million of funding each month recommended by Edison to serve 300,000 customers. ABATE Brief, p. 14-15. This means that as of April 1, 2004 the excess savings reserve would contain \$10 million more than projected by Edison or the Energy Michigan Initial Brief at page 10 if the Low Income Program starts February 1, 2004, the initial month

participation level is 136,744 and the second month participation is assumed to be 200,000 low income customers. See #4 below.

4. Revised short term program funding requirements.

To summarize, short term Low Income Program funding requirements should be revised to incorporate:

- i. A delayed program start up of February 1, 2004.
- ii. Initial program participation levels which are reduced below Edison projections.
- iii. Incorporation of carrying charge revenue. See Energy Michigan Brief, p. 11 and Polich's stricken testimony, TR 235.

As can be seen in the revised chart below, these logical changes and assumptions result in the conclusion that short term low income energy assistance benefits can be paid from February 1, 2004 through March 31, 2004, existing Electric Choice rate reductions and offset can be continued and a balance of \$10 million will be available April 1, 2004 at which time it is assumed that the Commission will have ordered or considered a long term program as detailed below.

REVISED ENERGY MICHIGAN POSITION

Funding for Low-income and Choice

Credits

Assumes Choice Credits not

Eliminated

Includes Compounded Interest Calculation on Securitization Funds

Balance

Starting Balance (see Attachment 2) \$30.93

Line	Description	Jan-03	Feb-03	Mar-03	Apr-03
1	Beginning Balance	\$27.42	\$23.71	\$17.51	\$10.03
2	Incremental Sec Savings	\$1.55	\$1.55	\$1.55	\$1.55
3	Carrying Charge on Line 1	\$0.16	\$0.14	\$0.10	\$0.06
4	Total Funds Available	\$29.13	\$25.40	\$19.16	\$11.63
5	Low Income Accounts	-	136,744	200,000	300,000
6	Average Monthly Usage (kWh)	642	642	642	642
7	Credit (\$/kWh)	\$0.0260	\$0.0260	\$0.0260	\$0.0260
8	Low Income Credit per Month	\$0.00	\$2.28	\$3.34	\$5.01
9	Choice Hours	733	758	783	809
10	Choice Credit (\$/GWh)	\$0.0074	\$0.0074	\$0.0074	\$0.0074
11	Choice Credit per Month	\$5.42	\$5.61	\$5.79	\$5.99
12	Ending Funds Balance	\$23.71	\$17.51	\$10.03	\$0.64

B. Revised Long Term Program

Thanks to the Commission Order of December 9, 2003 reinstating the stricken testimony of Richard A. Polich, the Commission can be presented with an efficient and lawfully funded low income assistance alternative to the flawed Detroit Edison plan.

It is important to understand that the long term program outlined below would commence with the Order authorizing interim relief for Detroit Edison in Case U-13808. Energy Michigan agrees with Detroit Edison that the interim U-13808 order is likely to be issued by the end of the first quarter, 2004. 1 TR 126-27.

1. Long term program benefits.

The record in this case demonstrates that there is a need to prevent utility shut off and restore service to some of the more than 24,000 shut off Detroit Edison customers. See Rule 207 statements of Oduno, 1 TR 40-41; Johnson, 1TR 42-43. Also see Polich testimony, 1 TR 230-31.

There is also a need for conservation measures to be provided to low income customers where these measures are a most cost efficient method of lowering bills than cash assistance. Kushler, 1 TR 21-22; Hardesty, 1 TR 16; Sheffield, 1 TR 35; Seubert, 1 TR 20. See also Polich testimony 1 TR 231 and TR 233.

Once the need for shut off protection and conservation measures have been fulfilled, the balance of funding can be provided to low income customers to reduce bills as determined necessary by the community based agencies which can review need on an individual, rather than group, basis. 1 TR 232-33.

2. REVISED long term funding proposal.

Energy Michigan recommends three sources of funding for the proposed long term Energy Assistance Program:

a. The Commission should approve a surcharge on all customers of \$0.000559/kWh commencing with the effective date of interim relief, probably April 1, 2004 or sooner, in Case U-13808. 1 TR 235. Unlike the Detroit Edison proposal, this surcharge would spread the burden of low income energy assistance across all customers and all customer classes, not just one small class. Moreover, the Polich proposal would provide a permanent source of funding rather than the temporary program proposed by DTE.

It is important to note, that because of the PA 141 rate freeze, Mr. Polich's proposed surcharge would produce insufficient funding in both years 2004 and 2005 to create the contemplated \$29 million per year fund, because it would not apply to all customers. This shortfall would be made up as detailed in (b) below.

The DTE proposal in effect creates a sense of entitlement in the low income community which would be frustrated with termination of the Edison temporary program. Undoubtedly, Edison would offer a permanent plan to satisfy this need in the legislation which they have discussed in the press. Exhibit I-7. Thus, Commission approval of the Edison plan would have the perverse consequence of assisting Edison's legislative efforts to hamstring the Commission in the future.

b. Detroit Edison should be required to contribute to resolution of the low income problem to make up the shortfall.

It is outrageous for Detroit Edison to describe a severe need in its community and then walk away from the problem or, worse yet, use the plight of low income customers as a means to reduce its uncollectible costs and frustrate competition.

Energy Michigan witness Polich testified that Edison has several sources of revenue or benefits which could be used to supplement required low income energy assistance. First, Detroit Edison has expended over \$26.5 million for executive bonuses in 2002 and is projected to increase this expense to \$36 million in 2004. 1 TR 235. Surely a portion of these bonuses could be deferred or reduced in order to assist in funding low income assistance. Also Detroit Edison benefits significantly from funding to reduce low income energy bills. Edison's current projection for 2004 uncollectible bills is \$25.3 million and it claims that its actual 2003 uncollectibles were \$30.3 million. 1 TR 121. To the extent that the Low Income Assistance Program reduces Edison's uncollectibles by more than \$5 million, Edison's effect is making money from this program and should be expected to contribute a sum to the Program equaling its reduction of uncollectibles below projected amounts.

Finally, Edison has been holding more than \$30 million of excess securitization savings and has not provided interest on the savings. Detroit Edison should be required to provide interest at a compounded rate as a contribution to low income assistance. 1 TR 235. Energy Michigan estimates that compounded interest on the excess savings reserve would exceed \$6.5 million. See Energy Michigan Initial Brief, Exhibit 1.

Edison contributions and use of excess savings carrying charges should be used to fund low income assistance at \$29 million per year during 2004 and 2005 when the recommended surcharge would be inadequate to produce this amount.

On a going forward basis starting 2006, the surcharge recommended by Energy Michigan would be adequate to provide the recommended \$29 million per year funding.

c. Delivery mechanism.

As with the interim program, community-based agencies should be used to certify eligibility and direct benefits to the most needy. 1 TR 234.

### C. Conclusion

The Commission should adopt the Energy Michigan short term and long term low income assistance proposals which will ensure lawful funding, efficiently targeted assistance and use of, community-based delivery mechanisms to provide permanent low income assistance in the Edison service territory. The Commission should address this issue because it is the right thing to do and because these issues can be resolved by the Commission without the need for Edison's self-serving legislation.

### IV. Prayer for Relief

Energy Michigan respectfully requests that the Commission:

1. Reject the Detroit Edison low income energy assistance proposal.
2. Adopt the Energy Michigan Short Term Low Income Assistance proposal described in III.A. above.
3. Adopt the Energy Michigan interim Long Term Low Income Assistance proposal in III.B. above.
4. Authorize a surcharge of \$0.000559/kWh for all Detroit Edison customer electric consumption to fund the Low Income Program supplemented with use of carrying charge income on the Excess Securitization Savings Reserve and contributions from Edison based on reduction of executive bonuses and impact of this program on Edison's uncollectible accounts.
5. Such other relief as the Commission may desire.

Respectfully submitted,

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Attorneys for Energy Michigan, Inc.

December 23, 2003

By: \_\_\_\_\_  
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Case No. U-13933

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 23rd day of December, 2003 she served a copy of Brief in Support of Energy Michigan Low Income Assistance Plan upon the individuals named on the attached service list by regular mail and e-mail at their last known addresses.

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

Subscribed and sworn to before me  
This 23rd day of December, 2003.

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

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