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December 8, 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 Energy Michigan's Reply Brief. 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

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

REPLY BRIEF OF ENERGY MICHIGAN, INC.

December 8, 2003

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REPLY BRIEF OF ENERGY MICHIGAN, INC.

I. Introduction and Summary of Position

A. Introduction

This Reply Brief of Energy Michigan, Inc. ("Energy Michigan") is filed in response to Initial Briefs of the Detroit Edison Company ("Detroit Edison" or "Edison"), the Michigan Public Service Commission Staff ("MPSC Staff" or "Staff") and the Association of Businesses Advocating Tariff Equity ("ABATE"). Failure to respond to arguments or positions of any parties to this matter should not be taken as agreement with those positions or arguments.

B. Summary of Position

The Commission should be asking a basic question: What are Detroit Edison's objectives in this case?

The Low Income Program proposed by Edison seems almost designed to deny meaningful energy assistance to low income customers. A monthly bill reduction of \$16 will be scant comfort to a customer who is facing shut off for hundreds of dollars of overdue heating bills or who is unable to pay off overdue bills and restore service. Edison's efforts to strike testimony supporting a program which will resolve these problems confirms that it has other objectives than helping low income customers.

The record in this case supports the conclusion that Edison has two obvious objectives and one very subtle objective. Edison's program obviously will hamper competition by making it more expensive to use alternate electric service. Just as obvious, Edison's solution will substantially reduce Edison's uncollectible bills. In fact, if the \$29 million of program funds reduce uncollectibles by more than \$5 million, Edison will spend less than its projected \$25 million of uncollectibles requested in Case U-13808 and will in effect make money with this program.

Much more subtle is the longer term impact of Edison's program. If a \$29 million fund is approved to reduce low income customer bills, these reductions become a form of entitlement in the view of the customers and the organizations supporting those customers. Failure to renew the program will be viewed as a rate increase by these groups. Interestingly, Edison has not proposed a longer term funding mechanism in Case U-13808. Rather, it appears that Edison is leaving the problem of extending the low income program to the legislature which would be addressed in a bill Edison will propose in the coming year. See Exhibit I-7. Addition of a low income program component to that bill will gain support from key legislators for a wider restructuring of competition that will provide even more benefits to Edison.

The Commission should respond to the real needs of low income energy customers, not the needs of Edison, by creating a temporary program to fund low income assistance. The temporary program hopefully should include targeted shutoff protection and conservation measures as well as extension of existing Electric Choice credits and offsets to April 2004. For a permanent program, the Commission should use the U-13808 case or re-open the docket in this proceeding to fashion a longer term program that once and for all targets funding and conservation measures to the neediest customers and establishes a durable long term funding mechanism which is not dependent on legislation.

II. Reply to ABATE

The Initial Brief of ABATE makes three particularly good points:

A. Due Process Violations

From a legal standpoint, the abuses of due process which took place in this proceeding were so serious and pervasive that virtually any order adopting the Edison position would be vulnerable to legal challenge in the courts. ABATE Brief, p. 3-12. On the one hand, Edison and Staff were permitted to repeatedly late file (or in the case of Staff never file) documents to the great prejudice of ABATE and Energy Michigan given the tight time frames in this matter. On the other hand, the Administrative Law Judge ("ALJ") granted Detroit Edison's Motion to Strike virtually every significant alternative proposal in this matter made by ABATE and Energy Michigan.

One is left to wonder how the Commission could possibly wish to spend \$29 million on the basis of a proceeding which excluded literally every alternative suggestion for revised benefits, revised funding mechanisms or revised delivery mechanisms. If the rule of law before this Commission is that proceedings are to be restricted so narrowly to the "issues" raised by the Applicant, future rate requests will be deemed automatically approved since participants will have no opportunity to suggest alternative tariffs, reductions of requested rates or new utility rate design concepts.

B. Inadequate Record

The record in this matter is totally insufficient to support reversal of Commission decisions in Case U-12639 and U-13350 which developed rate reductions and securitization offsets for Electric Choice customers and specified that these mechanisms would be revised in the context of overall rate rebalancing. Compare the detailed testimony which was part of the preceding records with the totally subjective testimony of Edison Witness Stanczak. ABATE Brief, p. 13-16.

C. Disregard of Alternate Funding Mechanisms

Edison ignored three significant alternative sources of funding for low income programs:

1. Edison ignored the fact that the excess securitization reserve should be increased to include compounded interest. ABATE Brief, p. 15.

2. Edison ignored the fact that all of its estimated 300,000 participants cannot possibly commence service when the program commences since only 136,744 low income customers have been identified by Edison at this time. 1 TR 65. Thus, the first months of the program cannot possibly require the \$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 \$5-\$10 million more than projected by Edison or the Energy Michigan Initial Brief at page 10.

3. Edison ignored the findings of the Commission in Case U-13350 that Edison has negative transition charges which could and should be used to offset securitization charges. 1 TR 204; ABATE Brief, p. 24. The Energy Michigan Reply to Edison's Petition for Rehearing demonstrated that calculation of the stranded benefits using the Commission's initial Order in Case U-13350 would produce stranded benefits of \$24.02 million. Energy Michigan Replies to Petition for Rehearing, September 23, 2003, p. 2 (see Attachment 1). These stranded benefits could be used to offset Choice securitization charges per the recommendation of Energy Michigan in Case U-13350.

Given the fact that the proposed Low Income Program cannot likely start until January 1, 2004, the failure to increase available funds to reflect compounded interest and the fact that all projected 300,000 participants cannot commence service immediately, there are more than enough funds and excess securitization savings to continue existing Electric Choice offsets and credits and provide Low Income Assistance well into the month of April 2004. See Energy Michigan Initial Brief, p.12-13. Meanwhile, the Commission can reopen this docket to consider alternative proposals for benefits and long term funding or accomplish the same goal in U-13808 on or before April 1, 2004. See Energy Michigan Initial Brief, p. 13-14.

III. Reply to Staff

A. Staff Position.

Staff supports Edison's proposal to create a low income credit funded by excess securitization savings. Staff Brief, p. 4. The Energy Michigan Reply to the Edison position is set forth in IV below.

The only deviation from Edison's position recommended by Staff is that if the Commission so desires, it could order Edison to provide RAST customers a credit offset sufficient to ensure a 5% reduction of the RAST rate (.053 ¢ to .092 ¢/kWh) rather than the current credit of .28 ¢ to .48 ¢/kWh. Staff Brief, p. 5. Also see Exhibit F6.

B. Energy Michigan Reply.

Note that the findings of the Commission have determined that a 5% rate reduction means .28 ¢ - .48 ¢ /kWh for RAST customers. U-12478, January 4, 2001, p. 4. The Commission cannot adopt the Staff proposal because it is supported by little or no evidence and is therefore not legally sufficient to overturn the detailed findings and conclusions for the higher credit adopted in U-12478 and U-13350.

IV. Reply to Edison

A. The Scope of This Proceeding Was Improperly Limited

1. Edison position.

Edison claims that the Commission's limitation of this case to "the issues raised in Edison's Application" precluded consideration of any alternative benefits, alternative administration or alternative funding mechanisms. Edison Brief, p. 4-5.

2. Energy Michigan reply.

In its Order initiating this proceeding, the Commission stated, "The scope of this proceeding shall be limited to issues raised by Detroit Edison's October 20, 2003 Application." Order U-13933, October 23, 2003, p. 3.

Energy Michigan interpreted this language to mean that this proceeding was limited to proposals for forms of low income energy assistance, mechanisms to efficiently deliver that assistance and mechanisms to fund that assistance. Edison's interpretation effectively precludes consideration of any alternative proposals offered by ABATE or Energy Michigan. *Id.* Despite the protests of ABATE and Energy Michigan the ALJ agreed with Edison and struck testimony of ABATE and Energy Michigan offering any alternatives despite the fact that the stricken testimony was restricted to low income assistance and the means funding that assistance. 1 TR 192 (Selecky) and 1 TR 225 (Polich). Energy Michigan has appealed this ruling on the grounds stated in its Emergency Appeal attached to its Initial Brief in this matter. We will not restate the reasoning contained in that Emergency Appeal.

The Commission should be deeply troubled by the conduct of this case. Interpreted literally, the rulings of the ALJ stand for the proposition that parties to a utility rate case may not propose alternative rate designs, tariff terms or means of collecting a revenue deficiency. Under such restrictions, rate cases would be a farce. If such a precedent is unacceptable in a rate case, it should be equally unacceptable in a case that purports to dispose of \$29 million of ratepayer funds while refusing to consider any alternatives whatsoever. Note that some of these alternative proposals were presented by ABATE, a group which represents a large portion of the customers who provide such funds. Neither the Commission nor Edison's customers who pay utility bills can live with such a precedent.

B. The Edison Program Is Prohibited by PA 141

1. Edison position.

Edison claims that PA 141 § 10d(6) grants the Commission authority to approve the Edison proposal since § 10d(6) allows the Commission to allocate excess savings to "further rate reductions". Edison claims that since its proposal reduces rates of a specific group of customers, it meets the requirements of the previously referenced statute. Edison Brief, p. 5-6.

2. Energy Michigan reply.**Error! Bookmark not defined.**

Detroit Edison conveniently ignores portions of PA 141 which prohibit its program:

a. PA 141 § 10d(7) provides "If securitization savings exceed the amount needed to achieve a 5% rate reduction for all customers, then for a period of six years [the LIEE may be funded]". Emphasis supplied. This provision of PA 141 clearly requires that all customers receive the 5% reduction prior to funding the LIEE. By removing the 5% reduction from Electric Choice customers prior to rate rebalancing, the condition to LIEE funding has been violated.

b. PA 141 § 10d(6) requires that "The Commission shall allocate approved securitization, transition, stranded and other related charges and credits in a manner that does not result in a reallocation of cost responsibility among the different customer classes." In Case U-13350, the Commission ruled that the provision of rate reduction credits and securitization offsets "...enables Choice customers to receive rate benefits that are comparable to bundled customers". Order, p. 28. This interpretation by the Commission of PA 141 § 10d(6) requirements was upheld by the Court of Appeals. See Detroit Edison v MPSC, et al, Case No. 241991, p. 5. If the establishment of rate credits and securitization offsets was necessary to establish comparability between bundled and Choice rates, the removal of those credits and offsets destroys this equality and obviously reallocates cost responsibility between classes of customers in the process. 1 TR 201.

Perhaps the most novel defense of Edison's position that removal of Choice offsets and credits was presented by Witness Stanczak. 1 TR 118-19. Mr. Stanczak claims that the initial Choice credits and offsets reallocated costs from Choice to retail customers. Mr. Stanczak further claims that if Energy Michigan did not oppose this initial "reallocation" it can not oppose elimination of the credits as reallocation.

Mr. Stanczak is confused. Energy Michigan supported the initial credits and offsets and a continuation of the credits in Case U-13350 as a necessary device to prevent the reallocation which would occur if retail rates were lowered and Choice rates were not. See Attachment 2. Removal of these credits prior to rate rebalancing would create a reallocation and is therefore opposed by Energy Michigan.

The Court of Appeals decision referenced above happens to support the Energy Michigan position, not that of Edison.

c. Removal of rate reduction credits and securitization offsets increases the rates of Electric Choice customers in violation of the PA 141 § 10d(2) rate freeze for all Electric Choice customers prior to January 1, 2004 and for Electric Choice customers of 15 kW or less prior to January 1, 2005. Energy Michigan Brief, p. 6-7.

C. The Edison Plan Does Not Meet The Need For Low Income Assistance

1. Edison position.

Edison claims that testimony in this proceeding documented the need for "this form of assistance". Edison cites the testimony of its own Witness Stanczak and then summarizes the Rule 207 statements of five participants in the proceeding. Edison Brief, p. 6-8.

2. Energy Michigan reply.

A careful reading of the record in this case shows broad support among the Rule 207 presenters for exactly the kind of program recommendations of Energy Michigan Witness Polich which were stricken by the ALJ.

Mr. Polich's recommendations on program benefits cited the need for aid which would restore shutoff service or prevent shutoffs and for conservation measures which would reduce energy bills. 1 TR 230-31.

Rule 207 testimony presented by Witnesses Kushler (1 TR 21-22), Hardesty (1 TR 16), Sheffield (1 TR 35) and Seubert (1 TR 20) supported the need for low income conservation measures as a better alternative, in many cases, to cash assistance. Also, Energy Michigan Brief, p. 5.

Rule 207 Witnesses Orduno (1 TR 40-41) and Johnson (1 TR 42-43) cited a need for a form of assistance which would enable restoration of shutoff service or be sufficient to prevent shutoff. Also, Energy Michigan Brief, p. 13.

Thus, the very testimony cited by Edison in its Brief at pages 6 though 8 can be seen to call for exactly the measures recommended by Mr. Polich that target the neediest of customers and provide assistance which would reduce energy bills over the long term. The Commission can remedy this defect in the record by ruling that the Polich testimony should be admitted, cross examined in a future proceeding and final decision rendered on the basis of a full and complete record.

D. Choice Credits And Offsets Do Not Have To End In Order To Fund Low Income Assistance

1. Edison position.

Edison claims that provision of excess securitization savings as a credit is a temporary device which must be ended in order to fund the needs of low income customers. Edison Brief, p. 8-9.

Edison also claims that excess savings should be diverted from providing Electric Choice credits because the needs of low income customers are greater. Id.

2. Energy Michigan reply.

The recent Court of Appeals decision in DTE v MPSC, et al, No. 241991 specifically upheld the Commission's decision that Electric Choice rate reductions and credits would be continued until completion of a rate rebalancing case. Court case, p. 5. That rate rebalancing case (U-13808) is currently in progress and according to Detroit Edison an initial Order is expected no later than the end of first quarter 2004, e.g. March 31, 2004. Stanczak, 1 TR 126-27. The evidence placed by Energy Michigan on this record demonstrates that there are sufficient excess securitization savings to fund both a new low income program and Choice credits and offsets until rate rebalancing occurs in the first quarter of 2004. Energy Michigan Brief, p. 9-13. Thus, the short term approach recommended by Energy Michigan complies with the decision rendered by the Commission in Case U-13350 and as approved by the Court of Appeals regarding the need and ability to provide benefits for low income customers and Choice customers until rate rebalancing. The Edison proposal does not.

The record in this case refutes Edison's claims regarding the benefits of its program.

The Edison program is wasteful because it cannot be used to fund conservation as an alternative to prolonged excess energy consumption. 1 TR 231.

There are more than 24,000 Edison residential customers who have been shutoff. 1 TR 77. The Edison program is inefficient because customers who have been shutoff or are about to be shutoff do not and cannot receive funds sufficient to restore service or prevent shutoff. 1 TR 230; 1 TR 113. It is incredibly ironic that the Energy Michigan proposal to create a program which could help restore service to these customers was stricken from the record at the request of Detroit Edison. If the Commission wishes to help the neediest of Edison's customers, it will require consideration of the Energy Michigan proposal and reject Edison's self-serving proposals.

E. The Edison Plan Is Unreasonable

1. Edison position.

Edison claims that the eligibility requirements and implementation process in its plan are reasonable. Edison Brief, p. 9-10.

2. Energy Michigan reply.

a. There are more than 24,000 Edison residential customers who have been shutoff. 1 TR 77. The Edison plan explicitly excludes all shutoff customers from eligibility for bill reductions. 1 TR 113; 1 TR 230. Also, the Edison plan can't be used to restore shutoff service. 1 TR 116; 1 TR 231.

Any low income program which uses \$29 million of public funds and cannot address the plight of shutoff customers or customers who are about to be shutoff is unreasonable on its face.

b. The Edison program cannot be used to reduce energy use through conservation measures. 1 TR 231. The statements on this record of four Rule 207 witnesses support the need for conservation measures (see IV.C.2. above) as does the above referenced testimony of Energy Michigan Witness Polich. When

it is clear to virtually all members of the low income assistance community that conservation in many cases is a more efficient means of addressing low income energy consumption than cash assistance, how can the Edison program which excludes these measures be deemed reasonable?

The Commission can rectify this situation by reopening the record in this matter to consider Energy Michigan testimony supporting a long term funding mechanism and benefits which would address the needs of shutoff customers and the need to use conservation measures in cases as a more efficient use of money than cash assistance.

F. Edison's Program Changes Requirements of Customer Choice

1. Edison position.

In attempting to refute ABATE Witness Selecky's claim that the Edison proposal is not consistent with the objectives of Act 141, Edison's only refutation consists of citing Section 10(2)(d) which lists among the purposes of PA 141 is an attempt to "ensure that all persons in this State are afforded safe reliable electric power at a reasonable rate." Edison Brief, p. 11.

Edison also cites its Witness Stanczak to the effect that the Edison proposal does not change any "conditions" for requirements for customers to participate in Edison's Electric Choice program. Id, p. 11-12.

2. Energy Michigan reply.

As detailed in IV.B. above, the Edison program is prohibited by PA 141 § 10d(2), 10d(6) and 10d(7).

Edison has placed no facts on this record which effectively refute the determination of the Commission in Case U-13350 that the Choice credits and offsets were necessary to produce rate effects comparable to those experienced by retail customers as a result of securitization. U-13350, July 31, 2002, p. 28. After all, it is the Commission's interpretation of PA 141 not Edison's which has been affirmed by the Court of Appeals.

After the Court of Appeals decision it is clear that a removal of existing credits and offsets will disrupt the equilibrium between Choice customers and retail customers that was effectively mandated by PA 141 § 10d(6) and found appropriate by the Commission on the basis of a detailed record. The record in this case is completely inadequate to overturn those decisions.

V. Conclusion and Prayer for Relief

A. Conclusion

The record in this case supports four basic conclusions:

1. Detroit Edison has failed to establish a sound legal and factual basis to overturn the decisions of the Commission in Cases U-12639 and U-13350 which established the necessity for Electric Choice credits and offsets. The Commission's determinations in these cases were affirmed by the Court of Appeals.
2. The conduct of this case includes such outrageous violations of due process and fundamental fairness that adoption of the position advocated by Detroit Edison would be based on a fatally flawed record.
3. Edison's proposals in this matter cynically use the plight of low income customers to advocate a program which is designed to hinder competition, reduce Detroit Edison uncollectible bills and set the stage for electric restructuring legislation.

4. If the Commission wants to establish a legally sound program of low income energy assistance, it will extend existing Electric Choice credits and offsets and provide funding for shutoff prevention or restoration of service, conservation and some low income bill reduction in the short term. In the long term, the Commission will reopen the record in this matter and establish permanent funding mechanism which can be used for conservation and targeted assistance.

B. Prayer for Relief

Energy Michigan respectfully requests that the Commission:

1. Order that low income energy assistance benefits must include payments to prevent shut off and restore shut off service for low income customers and rate credits sufficient to fund conservation benefits that are economically justified;

2. Order that the excess securitization savings reserve be increased to incorporate interest compounded at the rate of 7%;

3. Order that remaining excess securitization savings be used to continue funding the existing offset of securitization charge and rate reduction credits for Electric Choice customers and commence interim low income energy assistance at up to \$5.1 million per month starting January 1, 2004 through March 31, 2004;

4. Order that the stricken testimony of Mr. Polich be considered:

a. In this case after cross examination by Edison in order to fashion a long term low income plan; or

b. Order that Energy Michigan be allowed to file testimony in Case U-13808 on December 12, 2003 consisting of the testimony of Richard Polich stricken from the

record of this matter and that the Edison rebuttal of Mr. Polich's stricken testimony (1 TR 121, line 18 through TR 124, line 9) as well as that Detroit Edison and other parties to this case be allowed to cross examine Mr. Polich on that material in the cross examination scheduled for Case U-13808 January 5-23, 2004; and

5. Adopt such other relief as the Commission may deem just and reasonable.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
Attorneys for Energy Michigan, Inc.

December 8, 2003

By: _____
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ATTACHMENT 1

p. 1, 2, 5-8.

FACT: The Commission Order specifically adopted a transition charge of less than zero.

The Commission determined that Edison's stranded costs for both 2000 and 2001 were below zero. Order, p. 12. However, a specific numerical finding can easily be determined by subtracting the three specific adjustments to the Edison' claimed stranded costs which were adopted by the Commission: imputation of special contract revenue at tariff rates (Order, p. 17-18), Rouge sales (Order, p. 22) and adoption of the Staff position on third party sales credits (Order, p. 18-22). By subtracting the Commission's three authorized adjustments, it can be determined that the Commission found over \$24 million of stranded benefits for Detroit Edison. Chart #1 below documents this conclusion.

Chart #1: Edison 2001 Stranded Benefits Per 7/31/03 Order

MPSC Staff 2001 Stranded Costs ¹	\$10.012 million
Imputation of Special Contract Revenues @ Tariff Rates ²	<u>-\$34.03 million</u>
Stranded Cost	-\$24.02 million

Thus, the Commission Order in this matter is complete and highly specific. If Edison cannot make the simple mathematical calculation illustrated in Chart #1, the Commission could grant Edison's request for clarity by stating that the Order results in stranded costs of a negative \$24.02 million. The Commission should then use these funds to offset securitization charges as more fully discussed below.

¹ Includes the revenue from Rouge sales (Order, p. 22-23) and third party sales adjustment adopted in Order (Order, p. 20-21). See Staff Brief, p. 4-6.

² Energy Michigan Initial Brief, Exhibit 1, line 20: (\$56.9 million) (59.8% generation) = \$34 million allocation, Order, p. 18.

ATTACHMENT 2

FACT: The Commission's decision provides equal treatment for retail and Choice customers.

Chart #2 below illustrates that all Edison retail and Choice customers are equally liable for payment of securitization charges and have been allocated equal benefits by Commission orders. The net impact of securitization on all retail and Choice customers is that their rates subsequent to securitization are from .28 ¢ /kWh (primary voltage) to .49 ¢ /kWh (secondary voltage) lower than prior to securitization. This equality of outcome is justified by the fact that retail and Choice customers are equally responsible to pay securitization charges. Chart #2 below also refutes Edison's contention that the Commission's orders have reallocated securitization charges and credits in a manner that illegally reallocates cost responsibility. Chart #2 shows that the Commission's orders have preserved the distribution of costs existing prior to securitization.

Chart #2: Securitization Cost and Benefits

	Retail Customers	Choice Customers
1. Total Cost of Power ³	6 ¢ /kWh	5.5 ¢ /kWh
2. Est. Securitization Charges	.42 ¢ /kWh	.42 ¢ /kWh
3. Est. Securitization Offsets	-.42 ¢ /kWh	-.42 ¢ /kWh
4. Rate Reduction ⁴	<u>-.28-.49 ¢ /kWh</u>	<u>-.28-.49 ¢ /kWh</u>
5. Revised Cost of Power	5.72 ¢ - 5.5 ¢ /kWh	5.22 ¢ - 5.0 ¢ /kWh
Total Impact of Securitization	-.28-.49 ¢ /kWh	-.28-.49 ¢ /kWh

Attachment 3, an Edison exhibit from Case U-12639, also refutes Edison's claims that some Choice customers are being paid to leave the Edison system. Attachment 3 at column (f) shows that typical commercial secondary voltage transmission and distribution charges are 2.2 ¢ /kWh and primary

³ Hypothetical assumption for illustrative purposes only.

⁴ U-12478, January 4, 2001, p. 4.

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Case No. U-13933

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 8th day of December, 2003 she served a copy of Energy Michigan, Inc's. Reply Brief 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 8th 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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