VARNUM
RIDDERING SCHMIDT HOWLETT LLP
ATTORNEYS AT LAW

201 N. WASHINGTON SQUARE • SUITE 810
LANSING, MICHIGAN 48933

TELEPHONE 517 / 482-6237 • FAX 517 / 482-6937 • WWW.VARNUMLAW.COM

ERIC J. SCHNEIDEWIND E-MAIL ejschneidewind@varnumlaw.com

September 18, 2009

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

Re: Case No. U-15768

Dear Ms. Kunkle:

Attached for paperless electronic filing is the Initial Brief of Energy Michigan, Inc. Also attached is the original Proof of Service indicating service on counsel.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM, LLP

Eric J. Schneidewind

Digitally signed by Eric J. Schneidewind
DN: c=US, o=Varnum Riddering Schmidt Howlett, cn=Eric J. Schneidewind
Date: 2009.09.18 14:51:32 -04'00'

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 authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of energy.	)	Case No. U-15768

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. Introduction and Summary of Position

A. Introduction.

This Initial Brief is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by Varnum, LLC pursuant to a schedule established by Administrative Law Judge Barbara A. Stump ("ALJ"). Failure to address any issue or position presented by a party to this matter may not be taken as agreement with that issue or position.

B. Summary of Position.

Energy Michigan neither supports nor opposes establishment of a Revenue Decoupling Mechanism ("RDM") which would adjust utility revenue in accordance with changes in utility sales levels.

The purpose of the Energy Michigan presentation in this case is to recommend design factors which should be contained in any RDM adopted by the Michigan Public Service Commission

("Commission") in order to achieve equitable rates. Specifically, Energy Michigan recommends that any RDM adopted by the Commission include the following elements:

1. An approved RDM should use separate adjustments for power supply and distribution charges. Electric Choice customers should only pay RDM adjustments related to distribution costs.

2. Adjustments produced by the RDM should be calculated on a total Company basis, not on a rate class basis. The result will be one adjustment charge for distribution applicable to all rate classes – for both full service and Electric Choice – and one charge for generation applicable only to rate classes for full service customers, not separate adjustments for each rate class.

3. If the Commission approves an RDM only for sales reductions due to an Energy Optimization ("EO") program, then the sales decrease upon which the RDM rate adjustment is based should be limited by the actual decrease in sales that the utility has experienced. If the sales adjustment for an RDM depends on estimated or modeled effects of an EO program, then actual metered sales should be the boundary for sales changes that would be used to revise rates in an RDM.

Detailed Discussion

II. Energy Michigan's Proposed RDM

Energy Michigan Witness Alexander J. Zakem presented three separate recommendations applicable to establishment of an RDM. These recommendations are discussed below.

A. An RDM should contain separate adjustments for power supply and distribution costs.

1. Position of MPSC Staff and DTE.

Only MPSC Staff and DTE proposed RDMs. MPSC Staff Witness Ozar proposed an RDM which contains separate adjustments applicable to bundled and ROA customers. Ozar, Direct Testimony, 7 Tr 1546. The DTE Witness Don Stanczak presented Direct Testimony outlining an RDM but did not specifically recommend (or oppose) separate RDM charges for fully bundled customers and Electric Choice customers. 5 TR 185-91.

2. Energy Michigan Position.

Energy Michigan Witness Alexander Zakem presented Direct Testimony supporting the need for separate power supply and distribution RDM adjustments. Zakem, 5 Tr 434-36.

Mr. Zakem testified that the number of customers is different for full service and for Electric Choice service. Therefore, the amount of sales and revenue would differ for recovery of generation related costs (only purchased by full service customers) and distribution service costs (recovered from all customers, both Electric Choice and full service).

To ensure an accurate match of costs and cost recovery, the Commission must separate utility RDM charges into the distribution related charges – which can be recovered from all customers including Electric Choice because distribution service is used by all customers – and generation related charges which recover costs related to services used only by bundled service DTE customers. Id., Tr 435.

Evidently, DTE agrees with this position because two Discovery Responses provided by DTE (EMDE-1.07/21 and EMDE-1.08/22) to Energy Michigan state that Electric Choice customers would only be surcharged or credited [under an RDM adjustment program] based on distribution costs not generation costs. Exhibit EM-4. From this evidence, DTE appears to agree both with Mr. Zakem and with the Testimony of MPSC Staff

Witness Robert Ozar that Electric Choice and bundled customers should be billed using separate charges. Ozar, 7 Tr 1546.

There are no other positions on the record relating to the use of separate RDM surcharges for Electric Choice and for bundled customers. The Energy Michigan Testimony supporting that position should be adopted since it is both reasonable and unopposed.

B. RDM Adjustments Should Be Calculated And Implemented On A Total Company Basis, Not By Means Of Individual Charges For Each Rate Class.

1. DTE and MPSC Staff Position.

Both DTE (Direct Testimony of Don Stanczak and MPSC Staff (Direct Testimony of Robert Ozar) have proposed that changes in sales levels resulting in RDM adjustments should be recognized by adjusting individual class rates. Both Witnesses Stanczak and Ozar recommend that the Commission adjust rates for a rate class depending on the amount of estimated sales reductions due to Energy Optimization activities (MPSC Staff) or the deviation of actual sales from rate case projected levels (DTE), for that particular rate class. Stanczak, 5 Tr 189 and Ozar, 7 Tr 1546.

2. Energy Michigan Position.

Energy Michigan Witness Zakem testified that the mechanism proposed by DTE and Staff to adjust revenues by rate class works in opposition to the cost of service rate adjustment mechanism that would normally apply in a typical rate case. Mr. Zakem went on to explain that the fixed costs that an RDM is intended to recover are not fixed for each individual rate class in the traditional ratemaking process. Rather, in traditional ratemaking the overall fixed costs of a utility are reallocated among rate classes according to the changes in sales levels of those classes. If sales Class A experiences a sales reduction and other sales classes have the same sales, then the Class A share of revenue responsibility would be reduced and the share of revenue responsibility of the other classes would be correspondingly increased. However, since sales have also change proportionately between Class A and the other classes, the net result of these changes would be a uniform average rate increase to recover the overall revenue requirement for fewer sales. Zakem, 5 Tr 437.

The DTE RDM, which is based on different adjustments for each customer class, produces the exact opposite impact. The DTE proposal does not adjust the revenue responsibility of a rate class even though sales have changed. Consequently, the DTE proposal increases charges to a class as sales and revenue responsibility decrease and decreases charges as sales and revenue responsibility increase. Mr. Zakem's Exhibits EM-2 and EM-3 illustrate this effect together with the fact that the DTE proposal would work in opposition to the adjustments produced by the normal allocation of revenue responsibility in a rate case. Zakem, Id, Tr 438-40.

The MPSC Staff proposal would produce a similar anomaly since it too adjusts rates by class and not on a total utility basis. Id.

Mr. Zakem proposed an alternative method to recover RDM adjustments on a total Company basis. Zakem, Id, Tr 440-42. Under the Zakem proposal, the utility would determine the total Company under or over recovery and collect the amount by means of two equal surcharges or credits (one for distribution applicable to all customers, one for generation applicable to full service customers). These equal surcharges or credits applied on a total Company basis would tend to work *in parallel with, not in opposition to*, the regular ratemaking cost allocation process. Id., Tr 441-42. Exhibit EM-2, EM-3.

The Energy Michigan proposal for an RDM which adjusts rates on a total Company basis therefore would reduce volatility of rate changes by working in parallel with traditional ratemaking mechanics, thus producing both rate stability and rate certainty as opposed to significant potential volatility and unpredictability under the Staff and DTE approaches.

Zakem, Id, Tr 442. This rate stability would be most evident in rate cases which followed RDM adjustments. By using the Zakem approach the rate case process would not significantly change utility rates previously adjusted by an RDM, whereas the Staff and DTE approach of adjusting by class might require significant revisions in subsequent rate cases.

The DTE rebuttal of the Zakem approach was fairly oblique and did not contain any direct contradiction of the conclusions reached by Mr. Zakem. Specifically, the DTE Rebuttal focused on the fact that Mr. Zakem only used examples in Exhibit EM-2 and EM-3 related to energy and not demand, that the magnitude of the hypothetical adjustments analyzed by Mr. Zakem were unrealistic or that the adjustment method proposed by Mr. Zakem would burden reconciliation process with unnecessary allocations. Stanczak Rebuttal, 5 Tr 202-03.

The DTE Rebuttal misses the mark because the examples used by Mr. Zakem in his Testimony were used for hypothetical, illustrative purposes only. Mr. Zakem excluded demand data from his examples for simplicity purposes which is the same approach used by Detroit Edison in their examples <u>which only analyzed energy costs.</u> Finally, contrary to DTE’s apparent misinterpretation, no new cost allocation is required by the Zakem method which spreads RDM adjustment costs uniformly over all customer rates. The DTE criticisms of Mr. Zakem's total Company approach to adjustment are really based on misinterpretation of the Energy Michigan Testimony or are irrelevant comments which should be ignored.

As an example of the disconnect between Edison's RDM adjustment of rates by class instead of on a total Company basis with the normal effective ratemaking, consider the following example: Under the Detroit Edison approach, if sales decreased for customer Class A by 20% but did not decrease for customer Class B, customer Class A with the 20% sales decrease would experience a 25% rate increase with other customer classes showing no increase at all. These changes would cause total Company rates to increase by approximately 11%. However, under traditional ratemaking, the 20% lower sales in Customer Class A would result in a lower allocation of cost responsibility to Class A, and the other customer Class with unchanged sales would find its allocation increased. The result of traditional ratemaking would be that all customers would pay higher rates by approximately 11% to reflect the reallocation of costs between classes due to lower sales in Class A. The DTE and Staff methods ignore the relationship between sales level and allocated costs, and therefore the adjustments produced by both Staff and DTE methods would have to be reversed in the next rate case, causing considerable customer confusion and, likely, resistance. See Exhibit EM-2.

C. RDM Adjustments Should Be Limited To Actual, Not Estimated, Decreases In Sales Levels Compared To Ratemaking Projections.

1. DTE Position.

The DTE RDM bases adjustments on a comparison of actual sales with the sales projections used for ratemaking purposes. Energy Michigan does not contest this feature of the DTE RDM proposal. Zakem, 5 Tr 443.

2. MPSC Staff Position.

Based on the Staff presentation in Case U-15645, the Energy Michigan Direct Testimony theorized that Staff might propose an RDM adjustment in Case U-15768 based on estimated lost sales from an EO program, rather than actual sales losses. In fact, the Direct Testimony of Staff Witness Robert Ozar did propose that RDM adjustments be calculated by treating the estimates of Energy Optimization sales losses as actual sales losses to be compensated <u>whether or not the utility achieves the projected sales levels which were used for ratemaking purposes</u>. In other words, if DTE projects 47 million MWh of retail sales, actually sells 47.5 million MWh but estimates that Energy Optimization will displace 1 million MWh of sales, DTE would receive an RDM surcharge adjustment based on 1 million MWh of lost sales under the Staff proposal. Ozar, 7 Tr 1546-47A.

In effect, the *actual* utility sales would be *greater* than the level used for setting rates in the previous rate case, but the RDM adjustment would be calculated as if the utility sales were *lower*. Energy Michigan opposes this outcome.

3. Energy Michigan Position.

Energy Michigan Witness Zakem testified that RDM adjustments should not be granted for sales deviations (compared to sales levels used for purposes of ratemaking in the previous rate case) greater than actually experienced. Zakem, Id, Tr 444. In particular, if the Commission implements an RDM in this proceeding that is based upon sales decreases attributed to an EO program, then the sales decrease upon which an RDM rate adjustment is based should be limited by the actual decrease in sales that the utility has experienced. Zakem 5 Tr 445. In other words, if DTE rates are based on 50 million MWh of sales and 48 million MWh is actually achieved by the utility, the RDM adjustment would be based on a 2 million MWh reduction even if the DTE Energy Optimization programs were estimated to produce 5 million MWh of sales reductions. Zakem, Id, Tr 444.

Mr. Zakem stated that the intent of RDM mechanisms "is to collect the fixed costs as authorized in the previous rate case given the actual sales level that has subsequently occurred - to collect for any actual under recovery and refund any actual over recovery. The intent is not to collect fixed costs commensurate with an estimated or imputed sales level that would have occurred in the absence of an EO program." Zakem, Id, Tr 444. The Zakem proposal would limit the utility to adjustments that allow it to collect the full amount of its investment for ratemaking purposes.

The Staff approach creates an opportunity for DTE to over-collect: first to collect the full amount of fixed costs for ratemaking purposes, and second to collect an RDM adjustment for sales losses that are fully compensated when the utility sold the full amount of power assumed to be necessary for full collection under traditional ratemaking..

Thus, if it approves an RDM based on estimated sales reductions due to an EO program, the Commission should limit compensation in the RDM to no more than the actual sales reduction experienced by the utility.

4. DTE Rebuttal.

The Rebuttal of DTE Witness Stanczak does not relate in any way to statements by Mr. Zakem that criticize the MPSC Staff RDM proposal based on estimated versus actual sales. Stanczak, 5 Tr 187-88. In fact, the Detroit Edison proposal was not criticized by Mr. Zakem because that proposal is based upon actual not estimated sales levels. It is the Staff proposal to which the limit recommended by Mr. Zakem applies, for the reasons outlined above. The DTE Rebuttal is not on point and therefore should be ignored.

III. Summary and Prayer for Relief

WHEREFORE Energy Michigan respectfully requests that if the Commission adopts a Revenue Decoupling Mechanism, that mechanism should be required to:

A. Use separate RDM adjustments for power supply and distribution, billing Electric Choice customers only for distribution adjustments;

B. Calculate RDM adjustments on a total Company basis rather than by rate class; and

C. Limit use of adjustments to situations where actual sales are less than the sales projections used for ratemaking purposes.

Respectfully submitted,

Varnum, LLP
Attorneys for Energy Michigan, Inc.

Eric J. Schneidewind
Digitally signed by Eric J. Schneidewind
DN: c=US, o=Varnum Riddering Schmidt Howlett, cn=Eric J. Schneidewind
Date: 2009.09.18 14:51:48 -04'00'

September 18, 2009

By: ______________________________

Eric J. Schneidewind (P20037)
The Victor Center, Suite 810
201 N. Washington Square
Lansing, Michigan 48933
517/482-6237

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
The Detroit Edison Company for	)	
authority to increase its rates,	)	
amend its rate schedules and rules	)	Case No. U-15768
governing the distribution and	)	
supply of electric energy.	)	
______________________________	)	

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 18th day of September, 2009 she served a copy of the Initial Brief of Energy Michigan, Inc. upon those individuals listed on the attached service list by e-mail and regular mail at their last known addresses.

Monica Robinson
Digitally signed by Monica Robinson
DN: c=US, o=Varnum Riddering Schmidt Howlett, cn=Monica Robinson
Date: 2009.09.18 14:52:05 -04'00'

Monica Robinson

Subscribed and sworn to before me
this 18th day of September, 2009

Eric J. Schneidewind
Digitally signed by Eric J. Schneidewind
DN: c=US, o=Varnum Riddering Schmidt Howlett, cn=Eric J. Schneidewind
Date: 2009.09.18 14:52:20 -04'00'

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

SERVICE LIST U-15768

Administrative Law Judge
Hon. Barbara Stump
(Discovery - Proof of Service Only)
stumpb1@michigan.gov

MPSC Staff
Kristin Smith
Spencer A. Sattler
Anne Uitvlugt
uitvlugta@michigan.gov
sattlers@michigan.gov
smithkm@michigan.gov

Detroit Edison Company
Bruce Maters
Michael J. Solo
Richard Middleton
Jon Christinidis
Detroit Edison Company
matersb@dteenergy.com
solom@dteenergy.com
middletonr@dteenergy.com
christinidisj@dteenergy.com
mpscfilings@dteenergy.com

MI Dept of Attorney General
Donald Erickson
ericksond@michigan.gov

Constellation NewEnergy, Inc.
John M. Dempsey
Dickinson Wright, PLLC
jdempsey@dickinsonwright.com

National Energy Marketers Association
John Dempsey
Dickinson Wright, PLLC
jdempsey@dickinsonwright.com

Michigan Cable Telecommunications Association
David E.S. Marvin
Jennifer Utter Heston
Fraser, Trebilcock Davis & Dunlap, PC
DMarvin@fraserlawfirm.com
JHest@fraserlawfirm.com]

ABATE
Bob Strong
Clark Hill
rstrong@clarkhill.com

MEC - PIRGIM
Don Keskey
Clark Hill
dkeskey@clarkhill.com

Kroger
Michael Kurtz
Boehm, Kurtz & Lowry
mkurtz@bkllawfirm.com

Detroit Water & Sewerage Dept.
Jennifer M. Rohleder
Michael Zimmer
Thompson Hine, LLP
Jennifer.Rohleder@ThompsonHine.com
Michael.Zimmer@ThompsonHine.com

Utility Workers Local 223
Kimberly Saks
John R. Cazano
Klimist McKnight Sale
McClow & Canzano PC
ksaks@kmsmc.com
jcanzano@kmsmc.com