June 3, 2009

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, STE 7
Lansing, MI 48909

Re: In the Matter of The Detroit Edison Company’s Compliance with Act 295
Docket No. U-15806-RPS

Dear Secretary Kunkle:

Enclosed for filing in the above matter is the Michigan Wholesale Power Association’s Motion for Clarification, together with a proof of service.

Please call if you have any questions.

Very truly yours,

HOWARD & HOWARD ATTORNEYS PLLC

Jon D. Kreucher

Filed Electronically in E-Docket
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion, )
Regarding the regulatory reviews, revisions, )
Determinations, and/or approval necessary for )
THE DETROIT EDISON COMPANY to fully )
Comply with Public Acts 286 and 295 of 2008 )

__________________________________________

Case No. U-15806-RPS

MICHIGAN WHOLESALE POWER ASSOCIATION’S

MOTION FOR CLARIFICATION

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC
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DATED: June 3, 2009

Attorneys for:
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NOW COMES the Michigan Wholesale Power Association ("MWPA"), by and through its counsel Howard & Howard Attorneys PLLC, and for its Motion for Clarification made pursuant to Commission Rule 335 says:

1. The MWPA sought and received intervenor status in this proceeding, and filed both initial and reply briefs.

2. In its briefing, the MWPA and other Intervenors raised questions about whether The Detroit Edison Company’s Code of Conduct would adequately protect confidential and proprietary information Edison required from independent developers. Essentially, the concern was that Edison could capture its competitors’ proprietary information through the utility’s RFP process and then misuse that information for Edison’s own competitive gain. See, generally, e.g., MWPA Initial Brief at 15 – 17, and testimony of MEC Expert Witness Richard Polich, 6 TR 1293.

3. Specifically, MWPA’s Initial Brief also noted that the Code of Conduct prevents preferential treatment only with respect to “any affiliate or other entity within its corporate structure[.]” MWPA Initial Brief at 15. Put differently, the Code of Conduct does not prohibit Edison itself from both collecting other developers’ confidential information and using that information for Edison’s own competitive purposes.

4. To this point in time, Edison has not identified any affiliate which intends to develop renewable projects, i.e., the affiliate(s) to which the Code of Conduct would purportedly apply. In fact, just the opposite has occurred. For example, all of Edison’s renewable energy efforts, including both the evaluation of proposals and the development of the Company’s own renewable projects, appear to report to Ms. Irene Dimitri, Director Renewable Energy for
Edison. According to Ms. Dimity’s Direct Testimony, she is “responsible for planning and executing Detroit Edison’s renewable energy activities[.]” 4 TR 462.

5. The inapplicability of the Code of Conduct to the present situation is underscored by the fact that Edison no longer reports the names of employees who have transferred within the Company and its affiliates as part of its Code of Conduct compliance. Again, therefore, there is no reason to know that a separate affiliate has been established and staffed for purposes of renewables development. See, e.g., MWPA Initial Brief at fn 43, page 17.

6. At page 15 of the Commission’s Order issued on June 2, 2009, the Commission directs Edison to describe the measures Edison will employ “to assure that any bidders who are company affiliates are not afforded a competitive advantage over independent developers” (emphasis supplied).

7. While this aspect of the Commission’s Order is certainly appropriate, it appears to assume that an Edison affiliate will be developing all Edison-owned projects, and, therefore, that the Code of Conduct would apply. In fact, however, this assumption appears to be at odds with the manner in which all of Edison’s renewable activities are currently structured under Ms. Dimitri. The assumption is also at odds with a recent press release issued by the Company on May 22. According to that press release, “Detroit Edison today issued a Request for Information (RFI) to identify potential partners interested in jointly developing wind energy projects with the company.” Notably, the press release was not issued by an Edison affiliate, and expressly states that any joint development will be pursued by “the company,” i.e., by Edison. See, Appendix A.

8. Consequently, the MWPA respectfully requests that the Commission issue clarification of its June 2, 2009 Order, and expressly hold that:
a. In addition to those items identified in the Commission’s Order at the bottom of page 13, that Intervenors raised concerns about both the *inadequacy* and the *inapplicability* of the Code of Conduct to protect the confidential information that competing developers submit in response to Edison’s RFPs;

b. That the Code of Conduct, by its express terms, is inapplicable to development activities pursued directly by Edison, rather than by an Edison affiliate;

c. Because the Code of Conduct is inapplicable to development activities undertaken directly by Edison, that Edison either:

i. Pursue the development of all renewables projects through a separate, at-risk affiliate, and further, that Edison specify the employees involved in such activities and the manner in which they are separated from bid evaluation, and further, that all future transfers of such employees into or out of the affiliated entity be expressly reported to the Commission, and finally, that all other requirements of the Code of Conduct be specifically addressed; or

ii. That if Edison is to pursue development of its own renewable projects (as currently appears to be the case), that Edison must establish a process such that no Edison employee has access to the underlying cost data or any other confidential or proprietary information contained in proposals submitted by competing developers in response to Edison’s future RFPs.
Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

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DATED: June 3, 2009

Attorneys for:
Michigan Wholesale Power Association
APPENDIX A

Detroit Edison Press Release dated May 22, 2009
DTE Energy News Releases

Detroit Edison Seeks Information on Wind Energy Projects

PRNewswire
DETROIT
(:DTE)
May 22, 2009

DETROIT, May 22 /PRNewswire/ -- Detroit Edison today issued a Request for Information (RFI) to identify potential partners interested in jointly developing wind energy projects with the company.

The RFI is intended to gauge the interest of potential and existing wind energy developers to enter into joint agreements with Detroit Edison to build Michigan-based wind energy farms capable of producing at least 75 megawatts of power by 2011.

The energy produced from such developments would help Detroit Edison achieve Michigan's new Renewable Portfolio Standard for the state's electric utilities to provide 10 percent of their retail electric sales from renewable resources by 2015.

"This RFI provides a glimpse of the incredible growth opportunities that will result from comprehensive energy legislation that was enacted in Michigan late last year," said Trevor F. Lauer, vice president of retail marketing for DTE Energy. "We are very excited about the role renewable energy will play in Michigan's future - and we look forward to hearing from companies that share our enthusiasm."

To meet the state's renewable portfolio standard, Detroit Edison expects to add about 1,200 megawatts of renewable power. The company plans to contract with third-party producers for at least half of that capacity, and plans to own renewable energy projects to meet the remainder.

DTE Energy expects the majority of its renewable energy to come from wind resources. The company has acquired easements on more than 60,000 acres of land in Huron County in Michigan's Thumb region for development of large-scale wind farms.

Detailed information on the RFI is available at www.poweradvocate.com. Potential responders must register on the PowerAdvocate Web site to access the documents. Questions regarding the RFI are due by noon on June 2, 2009, and must be posted to the Web site. Responses to the RFI are due by noon on June 5, 2009.

SOURCE: Detroit Edison

Web site: http://www.poweradvocate.com/

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-15806-RPS

CERTIFICATE OF SERVICE

Sandra Dillaha hereby certifies that on the 3rd day of June, 2009, she served Michigan Wholesale Power Association’s Motion for Clarification in the above docket on Detroit Edison Company, and on the persons identified on the attached service list, by electronic mail.

Sandra Dillaha
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