

January 26, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909-7721

Re: 1999 Retail Access Program
MPSC case No. U-12359

Dear Ms. Wideman:

Please find enclosed for filing with the Commission an original and four copies of The Detroit Edison Company's Reply Brief and proof of service.

Very truly yours,



Jon P. Christinidis

JPC/dj
Enclosures

cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
THE DETROIT EDISON COMPANY)
For authority to recover retail access) Case No. U-12359
Program implementation costs incurred)
In 1999.)
_____)

REPLY BRIEF OF THE DETROIT EDISON COMPANY

OVERVIEW OF CASE

Initial briefs were filed in this proceeding by Detroit Edison, ABATE, Plastipak Packaging and the MPSC Staff. The MPSC Staff and Detroit Edison support recovery in the amount of \$20,388,165, consistent with the orders in MPSC Case Nos. U-11955/11956 and U-12478. (Initial Brief of Detroit Edison; Initial Brief of MPSC Staff pp. 3-4) Plastipak does not oppose recovery of this amount, but vaguely suggests, without evidence or argument, that any lesser amount would be acceptable as well. (Initial Brief of Plastipak, p. 1)

ABATE supports similar treatment for 1998 and 1999 Direct Access implementation costs. (Initial Brief of ABATE p. 1) ABATE proposes a disallowance of *all Direct Access implementation costs* until Detroit Edison has “created a workable retail open access program.” ABATE asserts that the present Direct Access program has not met some undefined and presumably subjective standard of success, without offering the criteria it used to reach that conclusion. (Initial Brief of ABATE pp. 1-3) ABATE’s partisan and punitive conclusions and proposals have become predictable and hackneyed. It’s assertions are unsupported on the record in this proceeding and lack merit. It is clear

that ABATE's primary concern is that the costs of Direct Access implementation are attributed and paid in accordance with its wishes. (Initial Brief of ABATE pp. 3-4)

FACTS AND LAW

ABATE has requested that the Commission take official notice of the "MPSC Staff Report on Investigation of Detroit Edison Company Retail Open Access Program Customer Enrollment and Supplier Support Systems and Processes" (hereinafter "Staff Report") submitted to the Commission in December 2000, pursuant R 460.17327. (Initial Brief of ABATE pp. 2-3)

That Commission rule provides:

*Except as otherwise provided by law, the commission and the presiding officer may take official notice of **judicially cognizable facts** and may take notice of general, technical, or scientific facts within the commission's specialized knowledge. (emphasis added) R 460.17327*

Thus, it is never mandatory that the Commission take official notice, and the Commission may only take official notice of facts when to do so is not contrary to law. Under the circumstances, it would be inappropriate for the Commission to take official notice of the Staff Report in this proceeding. MRE 201 provides that:

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. (MRE 201(b))

With all due respect, the Staff Report is a statistical analysis/forecast containing the opinions and conclusions of its authors. Its citation by ABATE, without accurate context, does not constitute a "judicially cognizable fact." In fact, *the only citations set forth in the Initial Brief of ABATE are selected opinions and conclusions from the Staff Report --- not*

cognizable facts. (Initial Brief of ABATE p. 3) Michigan Courts have consistently refused to take judicial notice of matters that are subject to differing interpretations. For example, courts have refused to take judicial notice of certain medical treatises or opinions. Wolak v. Walczak, 125 Mich App 271, 275-276 (1983); Fox v. Detroit Plastic Molding & Corporate Service, 106 Mich App 749, 757 (1981) rev'd on other grounds, 417 Mich 901 (1983) Opinions, even *expert* opinions, may not be officially noticed.

In any event, the Staff has already set forth its opinion on this matter. Staff supports Detroit Edison's recovery of \$20,388,165 subject to the Commission's Orders in MPSC Case Nos. U-12478 and U-11955/U-11956. (Initial Brief of Staff pp.3-4)

Furthermore, 2000 PA 141 Section 10a(1) requires that Detroit Edison be permitted to fully recover its Direct Access implementation costs. The Act provides:

No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. *The orders shall provide for full recovery of a utility's . . . implementation costs as determined by the Commission.* (emphasis added) 2000 PA 141 Section 10a(1)

Thus, contrary to ABATE's claim, there is no basis in law or fact to disallow the implementation costs supported by Staff and the Company. In any event, the Commission has granted Detroit Edison authority to recover \$20,388,165 through the issuance of securitization bonds in MPSC Case No. U-12478. Adoption of ABATE's proposal would be fundamentally inconsistent with that order.

CONCLUSION AND REQUEST FOR RELIEF

No party to this proceeding has credibly contested the prudence or reasonableness of the \$20,388,165 expended by Detroit Edison in 1999 to implement Direct Access in

Michigan. Furthermore, the Commission has, through its orders in MPSC Case Nos. U-12478 and U-11955/11956 already approved the recovery of that amount, subject to certain conditions. Therefore, the Company respectfully requests that the Commission issue an order confirming the reasonableness of Edison's implementation costs and their recoverability as securitized qualified costs and take any additional action it deems appropriate to implement that decision.

Respectfully submitted,

THE DETROIT EDISON COMPANY

By: 

Jon P. Christinidis (P-47352)

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Dated: January 26, 2001

STATE OF MICHIGAN

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THE DETROIT EDISON COMPANY)
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Case No: U-12359

PROOF OF SERVICE

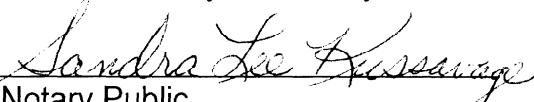
STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

DORIS J. HILL, being duly sworn, deposes and says that on the 26th of January, 2001 she served a copy of **The Detroit Edison Company's Reply Brief** upon those persons identified on the attached service list by electronic mail and by depositing same in the United States mail bearing postage fully prepaid.



DORIS J. HILL

Subscribed and sworn to before
me this 26th day of January, 2001


Notary Public

SANDRA LEE KUSSAVAGE
NOTARY PUBLIC MACOMB CO., MI
MY COMMISSION EXPIRES Oct 22, 2004

Acting in Wayne County, MI

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