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September 16, 2004

Via Electronic Filing and
U.S. First Class Mail

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909-7721

Re: ***MPSC Case No. U-13808***

Dear Ms. Kunkle:

Enclosed please find Exceptions of the Association of Businesses Advocating Tariff Equity with a Proof of Service.

Very truly yours,

CLARK HILL PLC

Signature Not Verified
Digitally signed by Robert A.W. Strong

Robert A.W. Strong

/ag
Enclosures

cc (w/enc): Parties of Record
Administrative Law Judge

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
THE DETROIT EDISON COMPANY to increase
rates, amend its rate schedules governing the
distribution and supply of electric energy, implement
Power Supply Cost Recovery plans, factors and
Reconciliation's in its rate schedules for jurisdictional
Sales of electricity and for miscellaneous accounting
Authority and regulatory asset recovery.
_____/

MPSC Case No. U-13808

EXCEPTIONS OF
THE ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY

CLARK HILL PLC
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Dated: September 16, 2004

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EXCEPTIONS OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE") by its attorneys, Clark Hill PLC, files the following exceptions to the Administrative Law Judge's ("ALJ") Proposal for Decision ("PFD"), dated August 26, 2004..

Exception No. 1: ***The ALJ Erred When He Adopted the Staff's Calculation of Stranded Costs.***

At page 91 of the PFD, the ALJ found that the Staff calculation of stranded costs represented the most reasonable approach, both historically and prospectively. He is presumably referring to $43,613,000, if stranded benefits from 2002 are included, or $56,596,000 if stranded benefits from 2002 are not included, as set forth on page 85 of the PFD. The record evidence shows that these numbers are clearly wrong and vastly overstated.

Staff witness Blair provided the starting point for the calculations made by Staff witness Kusiak. Unfortunately, Mr. Blair did not sponsor any exhibits in this case which required ABATE to seek copies of his work papers and sponsor an exhibit which clearly shows that the Staff's calculations are wrong. Mr. Selecky sponsored Exhibit I-65 which was a work paper that Staff witness Blair utilized to develop the percentage of revenue attributable to fixed production

costs. This exhibit utilized a pre-tax rate of return of 11.93% as shown on lines 4 and 5 of the Exhibit. If one multiplies the 7.66% shown on line 4 times the revenue multiplier on line 5 of 1.558, the result is a pre-tax rate of return of 11.93%.

This percentage can be confirmed by dividing the total jurisdictional amount of revenue requirement production plant on line 5 by the figure shown for net production plant on line 3, and the net result is almost a 12% pre-tax rate of return. This figure is totally inconsistent with the 9.88% sponsored by the Staff and adopted by the ALJ. *See* PFD at 86.

The next clear error is the cost of service revenue figure found on line 11 of $3.524 billion. This Commission, in Case No. U-10142 determined that the appropriate revenue is $3.288 billion. 13 TR 2305. A revenue figure of $3.288 billion is developed from information contained in the Commission's order in the last general rate case, No. U-10102 on pages 47 and 79. Thus, the Commission can consult its own files to determine that the numbers found on Exhibit I-65 are inflated and incorrect.

Even the $3.288 billion is overstated, because it does not reflect the impact on Edison's rates as a result of the Commission's order in Case No. U-11726. In that case, the Commission allowed for an acceleration of the amortization of Fermi 2 and adjusted rates to reflect the Fermi 2 phase-in. The net effect of the order was to reduce rates by approximately $109 million. The cost of service revenue should be reduced to $3.179 billion with this adjustment. *Id*.

There are further omissions on Exhibit I-65. The rate base associated with the production plant is understated by around $407 million. The rate base does not include rate base additions related to the deferred depreciation return associated with Fermi 2, Fermi 2 FAS 90 costs, Greenwood 1 FAS 90 costs, and a deduction from rate base associated with the Fermi 10-year recovery. 13 TR 2304. In addition, the development of the net production revenue requirement

does not include any Fermi 2 phase-in costs. These were included in the development of Edison's revenue requirement in Case No. U-10102. These costs include amortization of deferred return, deferred depreciation and $300 million of Fermi 2 costs that were excluded from rate base. Together these increase the revenue requirement by approximately $127 million. *Id*. The correct Exhibit I-65, with the known numbers, results in an increase in the percentage of total fixed production costs as a percentage of electric revenues from the Staff's figure of 32.92% to 34.46%. This figure is on a total jurisdictional basis. 13 TR 2305.

Mr. Selecky sponsored Exhibits I-66 and I-67 to show what a corrected Staff stranded cost analysis would look like. Mr. Selecky testified that he wanted his analysis to be comparable to the Staff's so he removed the Fermi 2 costs from the revenue requirement. To remove those costs, he relied upon Edison's calculations of the total Fermi 2 revenue requirement as supported by Edison witness Sasek in Case No. U-12478. Mr. Sasek indicated in 2001, the Fermi 2 revenue requirement was $505.634 million. He stated that this revenue requirement utilized a pre-tax rate of return authorized by the Commission in Case No. U-10102 of 10.01%. The source of the Fermi 2 2001 revenue requirement was Exhibit A-13 in Case No. U-12478. 13 TR. 2307.

Exhibit I-66 develops the fixed production cost as a percent of revenue excluding Fermi 2. It began with the data in Case No. U-10102 and then makes adjustments to reflect the rapid amortization of Fermi 2, the end of the phase-in as authorized by the Commission in Case No. U-11726 and the revenue requirement associated with Fermi 2 at the time these assets were securitized. Mr. Selecky also pointed out that the Commission's Opinion and Order in Case No. U-11726 utilized the revenue requirement from Case No. U-10102 to develop the percentage decrease that customers would see as a result of the end of the phase-in of Fermi 2 costs. This was consistent with what he did in connection with developing Exhibit I-66. *Id*.

Mr. Selecky revised Staff witness Kusiak's stranded cost calculation for 2002 and 2003 utilizing the corrected fixed production cost as a percent of revenues. The result was that the Staff's proposed analysis assumes this figure to be 15.23% when the percentage should be 16.3%. According to Mr. Selecky: "[t]he effect of the change in the fixed cost production percentage is to increase the 2002 revenue contribution from ultimate customers from $528.4 million to $566.2 million and for 2003 the change is from $482.0 million to $516.5 million." 13 TR. 2308. The results were summarized in Table 13 which is reproduced below:

TABLE 13

Stranded Costs and Stranded Benefits

Year	Stranded Cost/(Benefits) (000)
2002	$(34,300)
2003	$17,658
Total	$(16,642)

This Table shows that using the Staff methodology, Edison had stranded benefits of $16,642,000 for the period 2002 through 2003. *Id*.

Mr. Selecky also developed Edison's stranded cost using the per unit fixed cost method which is set forth in Exhibit I-67. Under this method, the generation fixed costs, excluding Fermi 2 that are included in Edison's present rates, are stated in a dollar per MWh basis. This methodology developed generation related fixed costs, excluding Fermi 2, of $12.51 per MWh and multiplying that by Edison's bundled sales as shown on Exhibit A-16, Schedule F1-2, page 2 of 4, Mr. Selecky calculates that Edison has $613.578 million and $595.501 million of production fixed costs in rates, excluding Fermi 2, for 2002 and 2003, respectively. Comparing

this to the fixed production revenue requirement calculated by Mr. Kusiak for 2002 and 2003, he testified that Edison had stranded benefits of $81.6 million in 2002 and $61.4 million in 2003. 13 TR. 2308-09. Based upon his analysis, Mr. Selecky said that Edison does not have any stranded costs and that the transition charge should be zero.

Finally, Edison's stranded benefits should be utilized to offset the securitization charge for customers participating in the choice program. Stranded benefits for 2002 and 2003 total $143.041 million, which should be used to offset the securitization charge for RAST customers. 13 TR. 2310. Using the current securitization charge of 4.73 mills per kWh, and the projected Customer Choice sales for 2004, Mr. Selecky calculated that the offset would cost $42.286 million. *Id*. Consequently, stranded benefits would more than pay for the cost of the offset. Mr. Selecky recommended that any stranded unused benefits should be accrued and used to offset future securitization charges and stranded costs. 13 TR. 2311.

Exception No. 2: ***The ALJ Erred When He Recommended That a Control Premium Be Part Of The Revenue Requirement Until The Next Rate Case.***

The ALJ recommended taking Edison's figures as adjusted by the Staff. PFD at 46. The ALJ's recommendation is based on the following policy:

> "Public policy dictates that we allow recovery of and on the acquisition adjustments only where ratepayers receive a net benefit from the change in ownership. *MPSC Case No. U-9323,* dated September 29, 1990."

PFD at 40-41.

The Commission can easily examine Exhibit S-125 to determine that there are no benefits flowing to customers on a net basis as a result of the merger. Whether customers are better off as a result of the merger can simply be seen through a comparison of the pre-merger O&M expenses and the post-merger Staff recommendation of O&M expense for 2004. Pre-merger

figures are shown under the columns labeled "1998", "1999" and "2000". During these three years, the Total Electric O&M expenses were $960,784,000, $996,484,000 and $965,323,000, respectively. The merger was completed May 31, 2001. 7 TR 923. Comparing the 2000 O&M expense of $965,323,000 to the Staff recommendation of $1,295,981,000 clearly shows there is no net benefit of the merger. From 2000 to the Staff's proposed 2004 expense level there is an increase in O&M expenses of approximately $330 million. This represents an annual increase of 7.6% per year. With O&M expense increases significantly in excess of the rate of inflation ratepayers are seeing no net benefits from the merger.

The math of the increase is that from 2000-2002 O&M expense has increased by $230,312,000, or approximately 24%. This is higher than the rate of inflation and does not demonstrate a net benefit to ratepayers. 13 TR 2272-73.

Mr. Selecky conducted an analysis that led him to the conclusion that it is debatable whether the control premium provides $85 million of reduced costs to Edison's ratepayers. He looked at Edison's controllable operation and maintenance expenses from 1999 through 2002 included on Exhibit A-16, Schedule F-11. Total Edison O&M expenses are increasing at about 11.7% or 3.75% per year, including the merger savings. Without the merger savings, the increase over the same period of time is approximately 20.2% or 6.33% per year, which is totally unacceptable if Edison is trying to become more competitive. 13 TR. 2274. There appears to be a problem with the O&M expense category with Corporate Support. The claimed synergy savings are shown on Exhibit A-16, Schedule F5-6 and the Corporate Support expense is estimated to be $222.222 million in 2004. In 2002, however, Edison's actual level of Corporate Support expense was $210.547 million. This produces an increase in expense of $11.675 million. Reviewing the synergy savings shown on Exhibit A-16, Schedule F5-6, the net synergy

savings from 2002 through 2004 is $33.75 million. Therefore, if the claimed synergy savings were eliminated, Edison would be requesting an increase in Corporate Support expense of $45.432 million, or 15.6% from 2002 through 2004. *Id*. Based upon Table 3 found at 13 TR. 2275, Mr. Selecky concluded that it was difficult to believe that Edison's Corporate Support expense would have increased by 15.6% from 2002 to 2004 absent a merger. He noted that the Corporate Support expense does not include costs associated with health care and pensions. He further concluded the costs associated with Corporate Support should largely be controllable. He urged the Commission to question whether or not there are any merger synergies that would justify including the control premium in rates.

> "Therefore, the Commission should seriously question the savings that DECo is claiming as a result of the merger with MCN. The control premium as proposed by Edison should be excluded from DECo's O&M expense."

13 TR. 2275.

In summary, record evidence in this case indicates that customers are not receiving a net savings as a result of the synergies related to the merger, and instead, are seeing rate increases that are far above normal levels. Accordingly, the Commission should reject the acquisition premium as not being justified on this record.

Exception No. 3: ***The ALJ Erred When He Found That The Proposed Large Manufacturing Tariff Should Be Based On The Staff's Recommendation And Limited To Those Customers Currently Served By SMC Contracts.***

ABATE and the Staff both proposed a new large manufacturing tariff. There were two differences in the proposals: The Staff's proposed tariff was priced at the midpoint between the current SMC pricing and the industrial tariffs that the customers would otherwise have to be on and it was limited to only the current SMC customers. ABATE's proposed tariff was based upon

the cost to serve customers having loads of 5 MW or above, was higher than the Staff's proposed tariff in terms of price, and was available to all manufacturing customers with demands in excess of 5 MW. At page 75 of the PFD, the ALJ concluded that the Staff's proposed tariff should be approved and that it should be limited to customers currently served by SMC contracts.

ABATE argued that there was a difference between special contracts which could be tailored to the individual circumstances of the customer, and a tariff, which had to meet the standards of MCL 460.557(4). The ALJ wrongly concluded that no discrimination was present because customers other than SMC customers with loads greater than 5 MW were not former SMC customers, were not facing the expiration of their SMC contracts and were not facing the prospect of rate shock. PFD at 76.

ABATE's proposal, advanced by Mr. Phillips, was that this Commission should adopt a cost based Large Manufacturing Rate that was not discriminatory. To a certain extent, special contracts can be discriminatory in that discounts are targeted to certain customers on a voluntary basis by the utility. However, once one returns to a tariff approved by the Commission, then there can be no imputed revenues and the Commission is obligated to make the tariff non-discriminatory. MCL 460.557(4) provides in pertinent part:

> "The rates of an electric utility shall be just and reasonable and a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions. An electric utility doing business within this state shall not, directly or indirectly, by a special rate, rebate, draw-back, or other device, charge, demand, collect, or receive from a person, partnership, or corporation, a greater or lesser compensation for a service rendered than the electric utility charges, demands, collects, or receives from any other person, partnership, or corporation for rendering a like and contemporaneous service."

Consequently, the Commission must reject the Staff's proposal to establish a new tariff for only the SMC customers. Any tariff must apply to ***all*** customers that are receiving like and contemporaneous service, so any customer with a demand of 5 MW or greater must be eligible for the new tariff. As for Edison's contention that it should receive an additional $10 million if the tariff is expanded to all customers having demands of 5 MW or greater, this proposal is not supported on the record with any empirical evidence and is contra-intuitive. Mr. Phillips developed a cost based rate which, by its very nature, does not require a $10 million increase. In fact, ABATE's proposed rate is the only cost based rate being presented to the Commission. As shown on Schedule 1 of Exhibit I-69, all of the rates contain either subsidies or overcharges.

ABATE's proposed large manufacturing tariff is equal to 4.787¢ per kWh with the 7.68% increase. This is a cost based rate which should be made available to manufacturing customers with peak demands equal to or above 5 MW. ABATE's proposal should be adopted because it is a non-discriminatory rate that complies with MCL 460.557(4). In *AK Steel Corporation v Public Utilities Commission of Ohio*, 765 NE2d 862 (2002), the court was asked to interpret "like and contemporaneous service" and discussed the standard as follows:

> "A reasonable differential or inequality of rates may occur where such differential is based upon some ***actual and measurable differences in the furnishing of services*** to the consumer. *Mahoning Cty. Townships v Pub. Util. Comm.* (1979), 50 Ohio St.2d 40, 43-44, 12 O.O.3d 45, 47, 388 N.E.2d 739, 742."

Id. at 868 (emphasis added).

There are no actual and measurable differences in the furnishing of service to manufacturing customers with a demand of 5 MW or above, because ABATE's proposed rate is based upon the cost of service study where the large manufacturing class became its own class and was separated from the class otherwise eligible for Rates D6, D6.1, D8 and R10. The Staff's

proposed rate is discriminatory whereas ABATE's proposed rate is not. Therefore, the Commission should adopt ABATE's proposed rate and eligibility requirements. In addition, the Commission should specifically find that the rate will be effective until Edison's rates are reset to cost of service levels.

Exception No. 4: ***The ALJ Erred In Finding That Edison's Return On Equity Be Set At 11.0%.***

The PFD does not explicitly pick a single percentage for Edison's rate of return on common equity but instead finds that Edison should be authorized a rate of return on common equity in the range as recommended by Staff of 10%-11%. PFD at 34. The ALJ also said that the point should be set at the mid to high-end of the range. *Id.* However, the ALJ used 11.0% for the calculations in the PFD, so he chose the absolute top point that was proposed by Staff.

The Commission last set Edison's rate of return at 11.0% in Case No. U-10102 at a time where Edison's capital structure was much more costly. In the interim, interest rates have dropped and Edison has refinanced its debt, Edison has transferred the risk of paying for its nuclear investment from shareholders to customers through the issuance of $1.75 billion in securitization bonds, all of which has significantly reduced Edison's costs and business risks. It is counter-intuitive that with the intervening changes, Edison should still be entitled to an authorized a rate of return on common equity of 11.0%.

The Staff, using a proxy beta in the CAPM methodology, justified a range of 9.50% – 11.02%. Using DTE's beta, the Staff found that the range was between 9.43% and 10.42%. PFD at 29. The Staff's DCF methodology resulted in a range of 8.99% to 10.80%. PFD at 31. The Staff's risk premium methodology yielded a result of 10.80% to 10.95%. PFD at 30. Consequently, only one of the Staff methodologies using the proxy beta in the CAPM formula yielded a result in excess of 11.0%. The other methodologies were all below 11% which

indicates that if the Commission accepts the Staff ranges, the Commission should set the ROE at the midpoint or 10.50%. This is more consistent with the Staff's findings and also recognizes less business risk and today's lower interest rate environment. Finally, the midpoint of the range, 10.50%, reflects an increase in the amount of equity recognized in Edison's capital structure. In U-10102, the Commission assumed a 40% equity component and now the ALJ is recommending a 46% equity component which, holding all other factors equal, would dictate that a lower rate of return on common equity and will result in just and reasonable rates.

Exception No. 5: ***The ALJ Erred When He Recommended Pension Expense Of $255.4 Million Coupled With a Pension Equalization Mechanism.***

As stated in Mr. Selecky's testimony, ABATE supports the concept of a pension equalization mechanism, but certainly not the mechanism proposed by Edison as supported by the Staff. There are two major problems with this approach. First, the mechanism proposed by Edison and supported by Staff is an automatic pension adjustment mechanism which does not allow for review of the expenses for reasonableness and prudency. Instead, it is merely a tracking account that will not afford the parties the ability to consider the reasonableness and prudence of the expenses, whether the pension plan is being correctly funded and invested, and whether the resulting rates are just and reasonable.

Second, the rate design proposed by the Staff of surcharges and credits, calculated on an equal per kWh basis, will over allocate expense to all high load factor customers. This will move rates further from cost of service and lead to further rate skewing.

The Commission should adopt ABATE's provision where a regulatory asset/liability account is created and then trued up in the next general rate case because this will afford all parties the ability to determine whether the expense is just and reasonable. This is consistent with normal rate making procedures and affords all parties the right to due process.

Exception No. 6: ***The ALJ Erred In Adopting Return To Service At The Higher Of Market Or Tariff Rates.***

At page 100 of the PFD, the ALJ recommends that the Commission adopt the New Energy proposal which is that there would be no restrictions on the timing of switching back and forth to open access or bundled service, provided that the pricing was at the higher of market or tariff. This proposal, if adopted by the Commission, would have a chilling effect on participation in open access. Under the New Energy proposal, customers would have no idea of what prices they would pay if they returned to Edison service, so the risk involved in moving to open access will be considered extreme. This is against the policy the ALJ said was important to support: providing customers with choice of electric suppliers.

It is entirely unclear how the "market price" would be determined and what obligations Edison will have to buy power. In most instances, the power for returning customers would be supplied by Edison's generation and not through actual purchases. If this turns out to be the case, then Edison could receive a windfall as a result of this particular pricing mechanism. The New Energy proposal, as discussed by the ALJ, is so vague and uncertain that it cannot be adopted by the Commission. In addition, the pricing mechanism is simply unfair.

As part of the PFD, the ALJ assumes that Choice customers will have to pay a securitization charge. Obviously, that securitization charge is to pay for Fermi 2, which represents approximately 10% of Edison's entire generation capability. If Choice customers are paying the securitization charge, then they should have the right to return to bundled rates with some advance warning. Currently, customers are obligated to follow the return to service procedures designed by Edison. Edison's position was that rates are established based upon the cost over an entire twelve month period, and it would be unfair to allow customers to jump on the system during the summer and then jump off during the other months. Accordingly, Edison

proposed, and the Commission accepted, a return to service requirement of having to stay twelve months once the election to return to bundled service was made. There is really no evidence that that requirement is inadequate, although the Commission did ask the parties to make suggestions regarding return to service. In that light, ABATE made a suggestion that was designed to provide the utility with predictability, which even Edison said has a value to the utility.

The Commission should adopt ABATE's proposal, which is that Choice customers are only required to commit to an alternative supplier for two years. During that two year period, there would be rate certainty in that any increases or decreases in the transition charges, etc., would not impact the Choice customers that are under a contract. In addition, customers would be required to notify Edison that they were returning by the end of the year, which would give Edison six months to shop for power needed to meet Edison's summer peak requirements. 13 TR 2312. This proposal provides certainty on both sides of the meter and allows Edison to make timely decisions to sell power or purchase power to meet summer peak requirements. It also recognizes that Choice customers are still making a contribution to support Edison's generation.

Exception No. 7: ***The ALJ Erred When He Recommended Including In Rates a $40 Million Revenue Requirement Related To Funding The Low-Income Energy Efficiency Fund.***

The ALJ is recommending that the Commission impose a tax on customers to pay for subsidies to certain residential customers. Any funds to support this program should be tax dollars, which are raised on the basis of income and not on the basis of energy usage. As recognized by the ALJ, the recommended program is not based upon Act 141, so there must be some other statutory authority authorizing the Commission to impose charges on customers to support the program. The ALJ provides no citation to any statute which provides the Commission with authority to impose a rate increase to fund this problem. Moreover, as the ALJ

recognized, the fund will directly benefit Edison through a reduction in payment delinquencies, late payment collections, uncollectible accounts and termination of service. PFD at 107. What the ALJ did not discuss, or even recognize, is the impact that this fund will have on uncollectible expense. To the extent that such a program is even being considered, there must be a review of the linkage between this program and the uncollectible expense included in rates. With a review of this issue, even assuming that the program were legal, there must be evidence regarding the interaction of the fund and the amount of uncollectible expense contained in rates; otherwise, the rates that include the $40 million revenue requirement for this program cannot be said to be just and reasonable.

Exception No. 8: ***The ALJ Erred When He Found That Act 141 Conferred Authority On The Commission To Order a Renewable Energy Program.***

The ALJ concluded that there was a specific grant of authority to the Commission such that it could mandate that utilities have a renewable energy program. PFD at 117. His analysis was based upon Sections 10b and 10r(6) of Act 141. The ALJ also concluded that these two sections met the standards set forth in *Consumers Energy Co v Public Service Commission*, 460 Mich 148 (1999).

The *Consumers* case involved whether the Commission lacked the statutory authority to order a utility to transmit a third-party provider's electricity through the utility's system to a customer. The court concluded that the Commission lacked the statutory authority to implement the experimental retail wheeling program and reversed the judgment of the Court of Appeals and vacated the PSC order implementing the retail wheeling program. *Id*. at 168. The court also concluded that the Commission has only those powers conferred by "clear statutory language." *Id*. at 164. Section 10r(6), even when read in conjunction with section 10(b) of Act 141, certainly is not a clear statutory mandate and the ALJ's interpretation stretches well beyond the

plain statutory language which utilizes words such as "inform", "promote", and "encourage" development of a renewable energy program. There is absolutely no mandate contained in these sections that confers directly upon the Commission the power to order Edison, or any other utility, to offer a renewable energy program. If the Legislature wanted a mandatory renewable energy program, it would have expressly conferred upon the Commission such authority. Under the existing statutes and case law, the Commission cannot order utilities to conduct their business in a certain fashion. *See Union Carbide Corp v Public Service Commission,* 431 Mich 135 (1988).

The cardinal rule of statutory construction and a court's foremost duty is to discern and give effect to the Legislature's intent. *Murphy v Michigan Bell Telephone Co,* 447 Mich 93, 98; 523 NW2d 310 (1994), AND *Burba v Burba (after remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). All other rules of construction and operation are subservient to this principle. *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 584; 624 NW2d 180 (2001). Statutory analysis must begin with the wording of the statute. *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). When statutory language is unambiguous, courts presume that the Legislature intended the meaning clearly expressed, and no further judicial construction is required or permitted. Only where the statutory language is ambiguous may courts look outside the statute to ascertain the Legislature's intent. *Dibenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000), and *People v McIntire*, 461 Mich 147, 153; 599 NW2d 102 (1999).

Courts presume that each word of a statute is used for a purpose, and, as far as possible, courts give effect to every clause and sentence. A court may not assume that the Legislature inadvertently made use of one word or phrase instead of another. *Robinson v Detroit, supra*, at

459. Furthermore, courts must avoid an interpretation that would render any part of a statute surplusage or nugatory. *State Farm Fire & Casualty, Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002), and *Koontz v Ameritech Services, Inc,* 466 Mich 304; 645 NW2d 34 (2002).

Unless defined in the statute, the plain and ordinary meaning must be ascribed to every word or phrase of a statute. *Robertson v Daimler Chrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002), and MCL 8.3a. In those situations, courts may consult dictionary definitions. *Oakland County Road Comm'rs v Michigan Property & Casualty Ass'n*, 456 Mich 590, 604; 575 NW2d 751 (1998). Courts consider the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme, and statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 199 (1999). Whenever sections of a statute could be in tension or conflict, then, if possible, courts construe an act as a whole to harmonize its provisions, carry out the purpose of the Legislature, and give meaning to each provision. *Nowell v Titan Ins Co*, 466 Mich 478, 483-483; 648 NW2d 157 (2002). Also, when different statutes address the same subject, courts must endeavor to read them harmoniously. *House Speaker v State Administrative Bd*, 441 Mich 547, 568; 495 NW2d 539 (1993). The Supreme Court has discussed and applied these rules of statutory construction in the context of an MPSC appeal. *In re MCI Telecommunications Complaint, supra*, at 411-416.

In summary, the ALJ's findings regarding the ability of the Commission to require a mandatory renewable energy program should be rejected. There is no clear statutory language conferring this power on the Commission. Finally, the Commission has not been conferred with the authority to tax utility customers to support programs for low income residential customers.

II.

RELIEF

WHEREFORE, ABATE requests that the Commission issue an order that reflects the ALJ's recommendations as modified by these exceptions.

Respectfully submitted,

CLARK HILL PLC

By: Signature Not Verified Digitally signed by Robert A.W. Strong

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Dated: September 16, 2004

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STATE OF MICHIGAN
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MPSC Case No. U-13808

_____/

PROOF OF SERVICE

To: Parties of Record

Audrey L. Gilliatt, being first duly sworn, deposes and says that on the 16th day of September, 2004 she served via U.S. Mail and by electronic mail a copy of the Exceptions of the Association of Businesses Advocating Tariff Equity along with this Proof of Service upon those individuals listed on the attached service list.

Signature Not Verified Digitally signed by Audrey L. Gilliatt

Audrey L. Gilliatt

Subscribed and sworn to before me this
16th day of September, 2004

Signature Not Verified Digitally signed by Judy Haffner

Notary Public

PROOF OF SERVICE LIST U-13808

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