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December 1, 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 Initial 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

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

December 1, 2003

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Case No. U-13933

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. Introduction and Summary of Position

A. Introduction

This Initial Brief of Energy Michigan, Inc. ("Energy Michigan") is filed by Varnum Riddering Schmidt & Howlett LLP pursuant to a schedule established in this matter by Order of the Michigan Public Service Commission ("Commission") dated October 23, 2003. Failure to address specific issues raised by any parties should not be construed as agreement with those issues or positions.

B. Summary of Position

The proposed Detroit Edison Company ("Detroit Edison" or "Edison") Low Income Plan distributes approximately \$29 million as a level reduction of 2.6 ¢/kWh (about \$16 per month) to all identified Detroit Edison customers whose income is less than 150% of poverty. The credit is administered as a reduction of the utility bill and is funded by using all excess securitization savings held in reserve and all future excess savings. By Order of the Commission in Case U-13350, these funds are currently used to offset securitization charges and provide rate reductions for Electric Choice customers.

The Detroit Edison Low Income Program contains unacceptable legal and policy flaws:

1. Policy flaws.
 - a. Benefits of \$16 per month are provided regardless of customer need. Some low income customers do not pay heating bills but some need more than \$16 per month to avoid shut offs or to restore shut off service.
 - b. Edison claims that the low income fund cannot be used to prevent shut off with lump sum payments or restore service to any of the more than 24,000 Edison customers who have been shut off.
 - c. The Edison program cannot fund conservation measures which may be a less expensive means to reduce customer bills than cash payments.
 - d. The Edison program will expire after one heating season even though low income heating problems will continue indefinitely.
 - e. Edison's funding proposal allows Edison to keep more than \$6.5 million of interest that should be earned on the excess savings reserve.
 - f. Edison is not required to make a contribution to the low income heating fund despite the fact that payment or reduction of low income customer bills will reduce Edison charge offs or uncollectible bills.
2. Legal flaws.
 - a. Use of excess securitization savings to fund the Edison program prior to rate rebalancing violates PA 141 § 10d(6) and (7) which mandate that all customers receive a 5% reduction prior to rate rebalancing and that authorized credits not produce a reallocation of costs pending such a rate rebalancing. Note

that the Court of Appeals has confirmed this Commission interpretation of PA 141. See decision No. 241991 (Detroit Edison v MPSC, et al at page 5.

b. Removal of securitization offsets and rate reductions would violate the PA 141 § 10d(2) rate freeze for all Electric Choice customers before January 1, 2004 and for Choice customers below 15 kW prior to January 2, 2005.

3. The Commission should adopt a better energy assistance plan.

a. The record should contain alternatives to the Edison plan.

Energy Michigan was not allowed to place a comprehensive alternative approach on this record.

As described in the attached Emergency Appeal, the presiding Administrative Law Judge ("ALJ") struck portions of the Energy Michigan testimony which proposed a low income assistance program targeted to the neediest customers to prevent shut off or restore service and use conservation where effective. See Attachment 1. A funding mechanism was also proposed to provide permanent funding on a legally defensible basis. Energy Michigan urges the Commission to take the steps outline below which will ensure that the merits of the Energy Michigan proposal are considered.

b. The Commission should adopt a short term plan and a long term plan.

i. The Short Term Plan: January 1, 2004 – March 31, 2004

In the short term, there are enough excess securitization savings available to continue existing Electric Choice offsets and credits and fund low income energy assistance at Edison's proposed rate of \$5.1 million per month until April 2004. See III. A. below. Energy Michigan urges the

Commission to use the evidence on this record to conclude that the \$5.1 million per month of available excess savings funding should be targeted first to prevent shut offs or restore shut off service with any fund balance being used for low income rate reductions.

ii. The Long Term Plan: Starting April 1, 2004

Energy Michigan agrees with Detroit Edison that the Commission will issue an order in the interim phase of rate Case U-13808 by the end of March 2004. This schedule would allow the Commission to order that the record in this case U-13933 be revised to incorporate stricken Energy Michigan testimony or that the record in Case U-13808 interim rate case be supplemented to consider the evidence offered by Energy Michigan (and stricken by the ALJ) which would cover alternative methods of delivering low income benefits (targeting assistance to the neediest customers to prevent shut off or restore service and to utilize conservation) and permanent funding on a legally defensible basis.

Energy Michigan will refile its stricken U-13933 proposals as part of its U-13808 interim filing. Edison and other parties will have the opportunity to cross this testimony on January 5-23, 2004 and Edison's rebuttal (1 TR 116-124) of the Energy Michigan stricken testimony should be placed in the record of U-13808.

Alternatively, if the record in this case is supplemented with stricken Energy Michigan testimony, a final revised plan could be ordered while the interim plan described above is implemented and permanent funding through the long term program would be available by April 2004.

4. Conclusion.

By using the proceedings in this matter as an interim phase to establish an interim program effective through March 31, 2004 and using new testimony in this case or using the U-13808 case to create a long term program starting April 1, 2004 which will consider conservation and targeted benefits, the immediate needs of low income customers can be served this winter and an efficient permanent program can be created on a sound legal basis in time for next winter.

Detailed Discussion

II. The Detroit Edison Low Income Program is Bad Public Policy

A. The Edison Plan is Inefficient and Does Not Help the Neediest Customers

1. Benefits cannot be targeted to the neediest customers.

More than Edison 24,000 residential customers have been shut off. 1 TR 77. While the Detroit Edison Low Income Program delivers benefits of approximately \$16 per month to all Edison low income customers, this amount of reduction is too small to prevent shut off for non-payment of large heating bills or to allow a shut off low income customer to repay a delinquent bill and restore service. 1 TR 113, 1 TR 230.

Also, Edison claims that securitization savings cannot be used to restore service to the residential customers who have been shut off. 1 TR 116; 1 TR 231

2. Benefits can not be used to reduce energy use.

Excess securitization savings cannot be used to fund conservation measures or produce electric rate reductions equal to the cost of the conservation measures which may be the cheapest long term solution to high energy bills. 1 TR 231. Also see Rule 207 testimony relating to the need for low income conservation by Witnesses Kushler, 1 TR 21-22, Hardesty, 1 TR 16, Sheffield, 1 TR 35 and Seubert, 1 TR 20.

3. Benefits do not continue past 2004.

The Edison plan ends in 2004. No follow up or continuation program or funding is provided. 1 TR 232.

B. The Edison Program Is Vulnerable to Legal Challenge

1. PA 141 requirements.

- a. 5% reduction - Section 10d(7).

Use of excess securitization savings to fund a low income energy program prevents Electric Choice customers from receiving the same 5% reductions as retail customers. This is a violation of PA 141 § 10d(7) which mandates that all customers receive a 5% rate reduction prior to funding the Low Income Energy Efficiency Fund. 1 TR 231.

- b. No reallocation of costs - Section 10d(6).

Also, PA § 10d(6) requires that the reductions and credits ordered by the Commission not result in a reallocation of cost responsibility among customer classes. Expert testimony on the record shows that the Edison funding mechanism would reallocate costs in violation of PA 141. 1 TR 201.

- c. Violation of Rate freeze - Section 10d(2).

While Edison proposes that their plan be implemented immediately, the resulting change in the current Electric Choice charge structure would violate the PA 141 § 10d(2) rate freeze which is effective until January 1, 2004 for all

Electric Choice customers and until January 1, 2005 for Electric Choice customers below 15 kW of demand.

2. MPSC precedent.

The Commission's Order U-13350 found that the offset of securitization charges and provision of rate reduction credits "enables...Choice customers to receive rate benefits that are comparable to bundled customers." U-13350, Order p. 28. If this comparability of outcome is disturbed by removal of these credits, cost responsibility has been reallocated away from retail customers to Electric Choice customers. The decisions of the Commission and the recent Court of Appeals decision discussed below have correctly interpreted PA 141 to prohibit such a reallocation until a general rate case incorporates securitization reductions in the overall rate structure. 1 TR 200-02.

Thus, MPSC case precedent holds that Termination of the securitization offsets and credits ordered by the Commission in Cases U-12639 and U-13350 prior to rebalancing of rates in a general rate case will create a reallocation of cost responsibilities prohibited by PA 141 § 10d(6).

3. Court precedent.

Recent Court of Appeals decision NO. 241991 confirmed that MPSC decisions mandating use of excess securitization savings to offset securitization charges and provide rate credits are to be continued until rates are rebalanced or reset. Detroit Edison v MPSC, et al, Case 241991, p. 5.

Adoption of the Edison proposal to terminate these credits and offsets is inconsistent with PA 141, decisions of the MPSC interpreting PA 141 and the Court of Appeals decision confirming the above referenced MPSC Orders which are discussed above.

C. Edison Should Be Required To Help Fund a Program

Obvious sources of funding including Detroit Edison have been ignored.

Edison ignored any carrying charge income that should be earned on excess securitization savings reserves. 1 TR 205-06; 1 TR 123. Also, Mr. Stanczak admitted that his calculation of interest which would accrue did not include the effect of compounding. 1 TR 137. Nor does Mr. Stanczak's calculation of compounding in Exhibit A5 continue to accrue interest past the month of October, 2003. 1 TR 137.

Finally, Edison did not recognize the financial benefits to Detroit Edison arising from reduction in their bad debt expense or the reduced charge off of uncollectible bills from these customers. 1 TR 232.

Conclusion

Detroit Edison's Low Income Energy Program is an inefficient, legally flawed approach which appears designed merely to handicap competitors and reduce Edison's own uncollectible expense.

III. A Better Way to Deliver Low Income Energy Assistance

Rulings of the ALJ have deprived the Commission of any meaningful alternatives to the flawed program benefits and funding proposed by Detroit Edison. It would be inexcusable to spend almost \$30 million of public money without the opportunity to consider alternatives to Detroit Edison's two self-serving proposals. A better approach to Low Income Energy Assistance is outlined below which can deliver benefits this winter and in the winters to come with a program that targets the neediest citizens and is funded on a legally sound basis. The proposed program is divided into a short term approach and a long term approach.

A. The Short Term Approach

1. Interim Program Benefits.

The record in this case contains sufficient evidence to support a Commission determination that excess securitization savings may be used to provide targeted rate reductions sufficient to avoid shut off or restore shut off service for low income customers. The potential shut off victims can be identified by Detroit Edison and eligibility could be determined by use of the same mechanisms applicable to the existing MPSC Winter Shut Off Protection Program and the identification and referral procedures described by Witness MacKool. 1 TR 69-72.

Low income customers who face shut off or who have been shut off have failed to pay or will fail to pay large overdue electric bills. PA 141 allows excess savings to be used by the Commission as a "credit" or reduction of authorized charges. See Section 10d(6). The Commission should find that reducing an overdue bill in an amount sufficient to prevent shut off or restore service qualifies as a permissible credit under the PA 141 language quoted above. This decision should be put into effect with commencement of the plan on January 1, 2004. Any funds remaining could be distributed as rate reductions or offsets as proposed by Edison.

2. Interim Program Funding.

Edison's position in this case is that existing excess securitization funds are not adequate to provide both proposed low income benefits and to continue existing Choice credits and offsets beyond February, 2004. See Exhibit A-4, p. 2 of 2 below.

The Edison Position Exhibit A-4

FUNDING FOR LOW-INCOME AND CHOICE CREDITS
(ASSUMES CHOICE CREDITS NOT ELIMINATED)
(\$-MILLIONS)

Line	Description (Col. 1)	Dec-03 (Col. 2)	Jan-04 (Col. 3)	Feb-04 Col. 4)	Mar-04 (Col. 5)	Total (Col. 6)
Securitization Funds						
1	Beginning Balance	\$22.90	\$19.21	\$10.34	\$1.27	
2	Incremental Sec Savings	<u>1.55</u>	<u>1.55</u>	<u>1.55</u>	<u>1.55</u>	
3	Total Funds Available	<u>\$24.45</u>	<u>\$20.77</u>	<u>\$11.89</u>	<u>\$2.83</u>	
4	Low Income Accounts	-	300,000	300,000	300,000	
5	Average Monthly Usage (kWh)	642	642	642	642	
6	Credit (\$/kWh)	<u>\$0.026</u>	<u>\$0.026</u>	<u>\$0.026</u>	<u>\$0.026</u>	
7	Low Income Credit per Month	<u>\$ -</u>	<u>\$5.01</u>	<u>\$5.01</u>	<u>\$1.33</u>	\$11.35
8	Choice Hours (GWh)	708	733	758	683	
9	Choice Credit (\$/GWh)	<u>\$0.0074</u>	<u>\$0.0074</u>	<u>\$0.0074</u>	<u>\$0.0074</u>	<u>\$0.0074</u>
10	Choice Credit per Month	<u>\$5.24</u>	<u>\$5.42</u>	<u>\$5.61</u>	<u>\$1.50</u>	<u>17.77</u>
11	Ending Funds Balance	<u>\$19.21</u>	<u>\$10.34</u>	<u>\$1.27</u>	<u>\$(0.00)</u>	
12	Total Funds	<u>\$19.21</u>	<u>\$10.34</u>	<u>\$1.27</u>	<u>\$(0.00)</u>	<u>\$29.12</u>

However, Edison's exhibit is wrong. As will be seen below, the Commission can provide low income funding of \$5.1 million per month and continue existing credits and offsets for Electric Choice customers with the excess securitization savings that will be available from January 1, 2004 through March 31, 2004.

There is agreement on several points which are critical to identifying the funds necessary to provide \$5.1 million of low income energy assistance per month until a permanent funding mechanism can be established in Case U-13808 on or before April 2004.

a. The Low Income Energy Program is not likely to start until January 1, 2004, not the December 1, 2003 date in Exhibit A-4.

Edison Witness Stanczak agreed, on cross, that the low income program would not be established by the Commission until after Reply Briefs were filed December 8, 2003 and that it would take at least two to four business days to implement and commence a program. 1 TR 129-30. Thus, given the Christmas Holidays, even if the Commission issues a final order in this matter within two weeks of Reply Briefs, the Low Income program likely will not start until January 2004. This fact adds \$5.1 million of available funds to the January 1, 2004 beginning balance of revised Exhibit A-4 below.

b. Edison estimates of available excess securitization savings do not incorporate carrying charges earned on the excess securitization savings reserve. Selecky, 1 TR 205. Edison's calculation of excess savings carrying charges at 7% was \$5.7 million (Exhibit A-5) but Exhibit A-5 does not assume compounding of interest nor continuation of interest accrual past October, 2003. Stanczak, 1 TR 137 and Exhibit A-5. If Exhibit A-5 is revised to include compounding through March 2004 at 7%, \$6.5 million additional funds are produced for use in revised Exhibit A-4. See Attachment 2.

If Mr. Stanczak's Exhibit A-4 is corrected to assume that the Low Income Program does not start until January 1, 2004 and that excess securitization funds earn interest at the rate of 7% compounded through March, there is sufficient money to fund both low income reductions and Electric Choice credits and offsets until April 1, 2004. See revised Exhibit A-4 below.

The Energy Michigan Position (Revised A-4)

Funding for Low-Income and Choice Credits
Assumes Choice Credits not Eliminated
Includes Compounded Interest Calculation

Starting Balance (see Attachment 2):	\$30.93				
		Dec-03	Jan-04	Feb-04	Mar-04
Securitization Funds					
1 Beginning Balance	\$30.93	\$27.42	\$18.89	\$10.30	
2 Incremental Savings	\$1.55	\$1.55	\$1.55	\$1.55	
3 Carrying Charge on Line 1	<u>\$0.18</u>	<u>\$0.16</u>	<u>\$0.11</u>	<u>\$0.06</u>	
4 Total Funds Available	\$32.66	\$29.13	\$20.55	\$11.91	
5 Low Income Accounts	0	300,000	300,000	300,000	
6 Average Monthly Usage (kWh)	642	642	642	642	
7 Credit (\$/kW)	<u>\$0.026</u>	<u>\$0.026</u>	<u>\$0.026</u>	<u>\$0.026</u>	
8 Low Income Credit per Month	\$0.00	\$5.01	\$5.01	\$5.01	
9 Choice Hours (GWh)	708	735	750	783	
10 Choice Credit (\$/GWh)	<u>\$0.0074</u>	<u>\$0.0074</u>	<u>\$0.0074</u>	<u>\$0.0074</u>	
11 Choice Credit per Month	\$5.24	\$5.42	\$5.61	\$5.79	
12 Funds Balance	\$27.42	\$18.70	\$9.74	\$0.55	

The Commission should adopt an interim funding proposal recognizing the delay in the commencement of low income benefits to January 1, 2004 and the use of compounded carrying charges on the excess securitization reserves. Inclusion of compounding income in the calculation of excess savings reserve is supported by the testimony of ABATE Witness Selecky, 1 TR 205-06. Also, Energy Michigan Witness Polich proposed that Detroit Edison should fund a portion of the Low Income Energy Assistance Fund. 1 TR 234.

This evidence can be used to support the conclusion that the excess securitization savings funds should be supplemented with interest income and the balances should be used to

fund both Choice credits and Low Income Energy assistance on an interim basis until stricken testimony Energy Michigan evidence is considered in this case or until the same evidence is considered in the Case U-13808 interim proceeding as described below.

B. Long Term Program

The Energy Michigan testimony stricken from the record in this case regarding alternative benefits and a permanent mechanism to fund Low Income Energy Assistance should be considered in one of two ways: 1) while interim relief starts in this case (as described above) the stricken Energy Michigan evidence can be crossed and a final record with briefs and reply briefs would be made. Edison's rebuttal (and cross of that rebuttal) of the stricken testimony is already on the record or, 2) the stricken Energy Michigan testimony could be considered as part of the Case U-13808 interim filing due December 12, 2003 which will be made by Energy Michigan (and may be crossed by Detroit Edison on January 5). To allow this possibility, the stricken testimony will be included in the Energy Michigan U-13808 interim filing. Also the Edison rebuttal of the stricken testimony (and the cross) should be placed in the U-13808 record.

The Energy Michigan testimony can be crossed January 5, 2004 in Case U-13808. The stricken Energy Michigan testimony supports an uninterrupted funding mechanism which would be available to fund Low Income Assistance from April 1, 2004 going forward indefinitely. Under the Edison plan, the funding ends in 2004 and is subject to legal challenge.

1. Long term program benefits

While new programs or concepts are typically not considered in interim cases, the ALJ's inexplicable exclusion of program benefit and funding alternatives to a proposed \$29 million rate payer expense in this case provides ample public policy justification for an exception to the Commission's normal rule. The issue is relatively simple as demonstrated by Mr. Polich's testimony and the need is compelling. See Rule 207 statements of Orduno, 1 TR 40-41; Johnson, 1 TR 42-43 re need for shut off protection.

Any long term change in program benefits resulting from Mr. Polich's stricken testimony could be implemented effective for the winter 2004-2005.

2. Long term funding.

The Commission should be presented with several options for long term funding which would include:

a. Continuation of customer funding for the Edison proposed winter 2003-2004 plan with termination at the end of that plan; or

b. On going indefinite funding for a winter protection plan such as proposed in the stricken Energy Michigan testimony which uses sources such as uniform rate payer surcharges, contributions from Detroit Edison to recognize the reduction in bad debts achieved by this program and funding by eliminating non-essential executive bonus, advertising, etc. expenses.

With an adequate record in the interim phase of Case U-13808, low income funding can continue seamlessly from January 1, 2004 through April 2004 and indefinitely beyond if a long term decision is rendered by early April 2004.

C. Conclusion

As things now stand, the record of this case is limited to the proposal of Detroit Edison for funding of an inefficient, \$29 million low income program at the expense of its competitors. This situation places the Commission in a no win position. Either the Commission approves a bad program which is wasteful of money and damaging to competition or it rejects the Edison proposal and does nothing for low income energy users this winter.

The Commission should expand its choices by ordering that excess securitization funds be supplemented with compounded carrying charges and that these funds be distributed starting

January 1, 2004 to continue current Electric Choice credits and offsets as well as funding low income customer benefits at the rate of \$5.1 million per month through March 31, 2004.

The Commission should order that Energy Michigan be allowed to propose long term low income program benefits and long term funding mechanisms in this case or in the Case U-13808 interim case. The Commission should also commit to adopt a permanent funding mechanism for whatever benefits are ordered no later than the decision on U-13808 interim relief which is due by April 2004.

IV. 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 the excess securitization savings be used to continue funding the existing offset of securitization charge and rate reduction credits for Electric Choice customers and commence on interim low income energy assistance at the rate of \$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) and 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 & HOWLETTLLP
Attorneys for Energy Michigan, Inc.

December 1, 2003

By: _____
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ATTACHMENT 1

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)	
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EMERGENCY APPEAL

ENERGY MICHIGAN, INC.'S APPLICATION FOR LEAVE TO APPEAL FROM THE ALJ'S RULING EXCLUDING EVIDENCE

This Emergency Appeal is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by Varnum Riddering Schmidt & Howlett LLP.

I. Introduction and Summary of Position

A. Introduction

In Order U-13933 dated October 23, 2003 (the "Order") the Michigan Public Service Commission ("MPSC" or "Commission") directed hearings on the Application of the Detroit Edison Company ("Edison" or "Detroit Edison") to implement a low income energy assistance credit for residential electric customers. The Order established a schedule as follows:

- | | | |
|----|--------------------------------|-------------------|
| 1. | Applicant Testimony | October 31, 2003 |
| 2. | Staff and Intervenor Testimony | November 10, 2003 |
| 3. | Rebuttal | November 14, 2003 |
| 4. | Hearing and Cross Examination | November 20, 2003 |

Order, p. 3-4.

Detroit Edison filed its testimony on October 31, 2003 at the Commission but Edison admitted that it failed to serve parties until November 1, 2003. (1 TR 48). On November 10, 2003 MPSC Staff filed their testimony at the Commission and failed to serve parties with the testimony. (1

TR 160). On November 14, 2003, Detroit Edison filed Motions to Strike Testimony of ABATE and Energy Michigan. These Motions were filed one day late in violation of MPSC Rule 335(2)(b) which required that the Motion to Strike be served on parties seven days before the November 20, 2003 hearing on November 13 rather than November 14, 2003. (1 TR 217-218, 223-224). Energy Michigan filed a Reply to the Edison Motion to Strike on November 17, 2003. The Motions were argued November 20, 2003 and presiding Judge James N. Rigas (the "ALJ") granted Detroit Edison's Motion to Strike substantial portions of the Energy Michigan testimony as more fully described below.

The Edison Application proposed to provide a credit of about \$16 per month to all of its customers who have income at or below 150% of poverty levels. The credit would be funded by using excess securitization savings which are now used to fund Electric Choice securitization offsets and credits. In Case U-13808 Edison proposed to use these very same credits to offset deferred net stranded costs. 1 TR 113, 1 TR 120.

Energy Michigan filed testimony which showed that 1) the Edison program could not be used to restore service shut off customers or to pay large arrearages to prevent shut off; 2) the Edison plan does not provide conservation alternatives; and 3) the Edison plan terminates in Spring 2004. Energy Michigan attempted to propose a low income customer assistance plan that would correct the defects of the Edison plan by 1) funding the program with a permanent surcharge applicable to all customers; 2) requiring Edison to contribute to the funding by using carrying costs (interest) on excess securitization reserves that is currently being kept by Edison and by recognizing the fact that any new low income plan will reduce Edison's bad debt expense; and 3) using low income funds to prevent shut offs and restore shut off service. The ALJ struck Energy Michigan testimony relating to the above described modifications of Edison's program. It is this action of the ALJ which is the subject of this Emergency Appeal.

B. Summary of Position

The action of the ALJ granting Edison's Motion to Strike portions of the Energy Michigan testimony effectively removed from the record details of the Energy Michigan low income

energy assistance plan which was the only comprehensive low income assistance alternative to the Edison plan proposed in the record. Testimony of Detroit Edison contained on the record as well as the testimony of Energy Michigan witness Richard Polich, prove that the Detroit Edison plan cannot address the plight of the restoration of service to shut off electric customers, cannot supply a sufficient amount of assistance to prevent shut off to many customers, cannot function to incorporate energy conservation measures and finally cannot function beyond the spring of 2004. If the Energy Michigan modifications to the Detroit Edison plan are not considered by the Commission, many Detroit Edison citizens will be prevented from obtaining reconnection or will suffer shut off of electric service this Winter which otherwise might have been prevented. Moreover, the Edison low income program will expire in the Spring and no replacement is provided. The plight of low income citizens or those who will be shut off should be sufficient motivation for the Commission to reverse the decision of the ALJ excluding evidence regarding modifications to the Edison proposal which are so clearly in the public interest.

II. Discussion

A. Standard of Review

Under Rule 337(2) of the Commission's Rules of Practice and Procedure, the Commission will grant an Application for Leave to Appeal and review the ALJ's ruling if:

- (a) A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding, or
- (b) A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large. 1992 AACR, R 460.17337(2); emphasis added.

B. Argument

1. This Emergency Appeal meets the criteria of Rule 337(2)(a) and (b).

a. Rule 337(2)(a)

This appeal satisfies both of the Rule 337(a) criteria. A Commission decision granting this appeal and overruling the decision of the ALJ to exclude critical evidence from the record of this proceeding will materially advance timely resolution of the proceeding by ensuring that a full and complete record containing thoughtful, well formed proposals is presented to the Commission and the Commission is able to timely implement the final Order in this matter. If this matter is not resolved on Emergency Appeal, this proceeding may be delayed by future proceedings which would be necessary to allow incorporation of Mr. Polich's stricken testimony into the record. Resolution of this issue now and not in a context of the final Order will accelerate the completion of his proceeding.

b. Rule 337(2)(b)

This appeal also satisfies the criteria of Rule 337(b) because exclusion of Mr. Polich's record evidence will prevent substantial harm to the public at large.

Edison does not contest the fact that its program cannot restore service to customers who have been shut off for failure to pay nor in many cases will the Edison program provide sufficient funds for customers to avoid shut off in the first place. Edison does not deny that its program will expire in the Spring of 2004 and that there is no program which will provide a substitute. Finally, Edison does not deny that its program does not incorporate conservation measures. The \$29 million of funds divested to the Edison program will be used inefficiently, thus requiring substantial future additional funds to prevent shut off when installation of conservation measures could create permanent rate reductions for many customers. A review of the ALJ's decision and an Order requiring that the Mr. Polich's testimony be placed on the record will give the Commission the

basis to create a low income program that is effective, prevents shutoffs and uses money as efficiently as possible. This result will prevent substantial harm to the public at large.

2. The ALJ improperly struck testimony of Energy Michigan Witness Richard A. Polich

The Detroit Edison Motion to Strike Testimony of Richard A. Polich (pages 6 (1 TR 232), line 25 through page 8 (1 TR 234), line 15 inclusive and page 8 (1 TR 234), line 26 through page 10 (1 TR 236), line 3) was based on four grounds:

- a. Edison Motion to Strike

- i. Edison claimed that the testimony was irrelevant because it proposed a form of low income assistance program that was different from, and therefore irrelevant, to Case U-13933. Edison Motion, p. 1-3.

- ii. Edison claimed that the Polich testimony violated Edison's due process rights to have matters currently pending before the Commission in other dockets litigated in those dockets. Specifically Edison claimed that Mr. Polich had raised matters regarding the use of excess securitization savings that should be resolved in Case U-13808. Edison Motion, p. 3-4.

- iii. Edison claimed that the Polich proposals by creating a different program than that proposed by Edison sought to unlawfully infringe on Edison's legal right to manage its own utility business. Edison cited Detroit Edison v Public Service Commission, 221 Mich App 370 (1997) to support its position. Edison Motion, p. 4-5.

- iv. Edison claimed that Mr. Polich's proposal to create and implement a low income program in this case but resolve funding details in Case U-13808 was irresponsible despite the fact that the Detroit Edison proposal

uses excess securitization funds which Edison's U-13808 Application proposed to dedicate to reduction of stranded costs. Edison Motion, p. 5.

b. Energy Michigan Response

i. Relevance:

The most significant test of relevance was contained in the Order at page 3 which requires that the scope of this proceeding be limited to the issues raised by Edison. Order, p. 3 (emphasis supplied).

The Detroit Edison Application in this matter proposes (as noted by Edison on page 2 of the Edison Motion) that a credit or rate reduction be granted to qualifying low income customers which would have the effect of reducing their bills by 2.6 ¢ /kWh or roughly \$15-\$16 per month. There is no support whatsoever for Edison's claim that Energy Michigan proposals to create a low income energy assistance program are irrelevant to the subject matter raised by Detroit Edison.

(a) The Energy Michigan proposal is limited to Low Income customers as is the Detroit Edison program. Polich, p. 6, line 26 (1 TR 2332). Thus, the eligibility criteria are virtually the same as Edison's. Also the issue: low income assistance is the same.

(b) The Energy Michigan proposal is to "make available \$29 million each year to pay, [i.e. to reduce] electric bills of those customers subject to shut off notices due to delinquent payment." Page 6 (1 TR 232), line 21 through page 7 (1 TR 233), line 1. The Energy Michigan testimony also states that the funds would be made available for "use by agencies...to pay the electric bills of those low income customers subject

to shut off notice.” Polich, p. 7 (1 TR 233), lines 2-4. Thus, the Energy Michigan proposal, like the Detroit Edison proposal, would directly reduce electric bills of qualifying low income customers. To claim there is a difference between a low income credit and a reduction of low income bills is to rely on sophistry, not substance. If the Edison program is relevant, the Energy Michigan proposal is equally relevant.

Once again, the Energy Michigan funding proposal sticks to the issue raised by Edison: How do you fund a low income energy program?

(c) Both the Edison program (see Stanczak Rebuttal, p. 17) (1 TR 117) and the Energy Michigan program (Polich, p. 6 (1 TR 232), line 21 through p. 7 (1TR 233), line 1) use non-utility agencies and organizations to assist in the identification of recipients and the delivery of funds. The Energy Michigan proposal covers the same issue raised by Edison: How do you identify and deliver benefits to customers?

In summary, the Energy Michigan proposal covers virtually the same subject matter and issues as the Edison proposal and is therefore relevant and in compliance with the same scope established by the Order.

ii. The Energy Michigan proposal does not violate Edison’s due process rights:

Edison complains that information and background from Edison general rate Case U-13808 is used by Mr. Polich to formulate a response and is not properly part of this proceeding.

It is Edison who has raised U-13808 subject matter in this proceeding through the testimony of Mr. Donald Stanczak. Mr. Stanczak admits in his rebuttal that use of existing accrued excess securitization savings had

been proposed to be utilized by Edison in Case U-13808 to offset previously deferred net stranded costs. Stanczak, Insert p. 14 (1 TR 113) and Rebuttal, p. 20. Edison cannot be heard to claim that its proposal in the current Case U-13933 which would revise its position in Case U-13808 (as admitted by Mr. Stanczak) may not be challenged on those very grounds (as a matter to be properly dealt with in U-13808) when Edison had admitted that such an impact would occur.

iii. The Edison proposal does not usurp Detroit Edison management prerogatives.

In point 3, Detroit Edison claims that the Commission has no authority to issue an order mandating that Detroit Edison implement the Energy Michigan program because such a determination would unlawfully infringe on Edison's managerial prerogatives to design and operate a program. Edison Motion, p. 4-5. Yet, Detroit Edison has come to this Commission for permission to create and operate a brand new low income program never before implemented in the State.

Edison's citation of Detroit Edison v Public Service Commission, 221 Mich App 370 (1997) (for the proposition that the Energy Michigan proposal usurps its management prerogatives) is not correct. In the Detroit Edison v PSC case, the Court of Appeals did overturn the portion of an MPSC decision that created a new type of DSM program and ordered Edison to implement that program. However, later in the case, the Court also said, "There are numerous additional arguments raised regarding 'modifications' the MPSC imposed on Detroit Edison's DSM proposal. We view these arguments including the length of the program, which customers should pay for the program, and recovery for lost revenues as being matters of rate structure. We see no reason not to defer to the PSC with regard to these matters." Id, p. 384 (emphasis supplied).

Unlike the DSM program referenced in Edison v PSC which was created by the PSC and which Edison was ordered to implement, the Energy Michigan proposal recommends minor modifications to a Detroit Edison tariff proposal submitted to the Commission in this matter. Attached to the Application is a tariff sheet creating a low income assistance program. The modifications proposed by Energy Michigan, as with those approved by the Court of Appeals in Detroit Edison v PSC include the length of the program, which customers should pay for the program and recovery for lost revenues. Like Edison, Energy Michigan proposes that program benefits go to low income customers, that community action agencies help identify and administer funds. The Energy Michigan proposal represents an acceptable modification of Edison's program which could be adopted by the Commission. The precedent of Detroit Edison v PSC supports the conclusion that these modifications do not usurp management prerogatives.

iv. It is not irresponsible regulatory policy to defer funding of a low income program to Case U-13808.

In the ultimately irony, Edison claims in point 4 on page 5 in its Motion to Strike that the Energy Michigan proposal should be dealt with in U-13808 but in point 3 of its Motion to Strike (page 4-5), Edison claims that Mr. Polich's proposal to defer adoption of mechanisms to fund this new program to Case U-13808 would be "irresponsible regulatory policy by suggesting that Edison accept the uncertainty of implementing a program before finalizing cost recovery associated therewith". Edison cannot have it both ways. Edison cannot claim that low income funding is inappropriate for consideration in this matter and then oppose consideration for low income funding in the pending U-13808 rate case.

v. Detroit Edison's Motion to Strike should have been rejected as late and a violation of MPSC Rule 460.1733(2)(b).

Finally, Detroit Edison filed its Motion to strike Mr. Polich's testimony on November 14, 2003. 1 TR 223-224. MPSC Rule 460.1733(2)(b) requires service seven (7) days before the hearing which is scheduled for November 20, 2003. The Edison Motion to Strike is therefore defective due to failure to comply with MPSC procedural requirements.

III. Offer of Proof

Pursuant to MPSC Rule 460.17337(3), Energy Michigan hereby attaches as an Offer of Proof the portions of written testimony which were stricken by the ALJ. These stricken portions describe the Energy Michigan recommended modifications the Edison low income plan including use of funding mechanisms which would prevent shut off or restore service to shut off customers, targeting assistance to customers with high energy bills, extension of the program indefinitely and a mechanism to provide such indefinite funding. The stricken portions are attached as Exhibit 1.

IV. Relief Requested


Energy Michigan respectfully requests that the Commission:

1. Grant this Application for Leave to Appeal and reverse the ruling of the ALJ which struck Mr. Polich's testimony page 6, line 25 through page 8, line 15 and page 8, line 26 through page 10, line 3. (See Attachment 1).
2. Issue a ruling placing Mr. Polich's testimony on the record; and
3. Grant any other appropriate relief.

Respectfully submitted,

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

November 21, 2003

By:  Eric J. Schneidewind
Digitally signed by Eric J. Schneidewind
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Date: 2003.11.21
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Eric J. Schneidewind (P20037)
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Lansing, Michigan 48933
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1 Q. Is the program a long term solution?

2 A. Regardless of its ability to implement the program, DECo is proposing to only fund this
3 program for a period six months. After that, it is DECo's hope that legislation will be put
4 into place that will result in long term funding of the program. It is for this reason the
5 MPSC must look at the funding of a low-income energy program in the context of a full
6 rate case so as to ensure a long term solution to a real problem.

7 Q. Will this proposal require modification to DECo's recent general rate case filing in Case
8 U-13808?

9 A. Yes. On page 14 and 15 of Mr. DM Stanczak's testimony in this Case, he raises the issue
10 of impacts upon DECo's. Case U-13808. Mr. Stanczak contends that DECo's proposed
11 program will reduce the amount of excess securitization savings contained in the rate
12 case to offset other DECo costs included in the Case. In fact, upon review of Exhibit A-
13 24, Schedule A1, Page 1 of 2, Line 24, it can be seen that DECo has used Excess
14 Securitization Savings offset \$59.827 million of the Total Rate Request (Column b).
15 Using these funds for the Low-Income Credit would deplete these funds, deleting them
16 as an offset to the Total Revenue Requirement in the general rate case. DECo would
17 need to adjust the rate case to reflect the use of these funds for the Low-Income Credit
18 program. The net impact would be an increase in Net Rate Request (exhibit A-24,
19 Schedule A1, Page 1 of 2, Line 30) and a rate increase for all customers.

20 What DECo did not address is the impact upon bad debt expense their proposal
21 would have on the rate case. A reduction in electric rates for low-income customers will
22 also reduce bad debt expense due to non-payment of customer bills. This expense item
23 will also have to be adjusted in the general rate case.

24 ENERGY MICHIGAN'S PROPOSED SOLUTION

25 Q. ~~How would Energy Michigan structure its Low-Income Energy Assistance Program?~~

26 A. ~~The Low-Income Energy Assistance Program we are proposing would be structured~~
27 ~~similar to and operated as part of other programs and The Heat and Warmth (THAW)~~
28 ~~Fund. Under our proposal, DECO would make available \$23 million each year to pay~~

1 electric bills of those customers subject to shutoff notices due to delinquent payments.
2 These funds would be made available for use by agencies such as THAW, the Family
3 Independence Agency, Community Action Agency, etc., to pay the electric bills of those
4 low-income customers subject to shutoff notice. This would theoretically free up
5 customer funds to be used toward payment of heating bills. As part of this program, the
6 customer would be required to participate in the Low-Income Weatherization program or
7 other energy efficiency programs.

8 Q. What are the advantages of this program versus DECo's program?

9 A. First and most important it effectively directs the funds toward those which need them the
10 most, unlike the simple discount program proposed by DECo. A simple discount will
11 result in some receiving benefits which may not be needed. Providing funds to a
12 Michigan Citizen who is unable to keep up on their energy costs to pay delinquent
13 electric bills is a direct application of the funds to those in need of assistance. Second,
14 Energy Michigan's proposal will avoid the problem discussed earlier regarding straight
15 discounts, namely providing funds for those low-income customers who truly cannot
16 afford even the discounted bill. Third, the program utilizes existing agencies and
17 administrative functions already in place. This reduces program costs and speeds
18 implementation. Fourth, this proposal requires those participating in the program to
19 enroll in energy efficiency programs to reduce future energy costs. Last, as will be seen
20 under our recommendation for funding this program, the MPSC could make this program
21 permanent and not require legislation or future MPSC action to keep the program funded.

22 Q. Should the MPSC establish funding of this program in this case?

23 A. No. The issue of funding should be addressed in the general rate case, Case U-13808.
24 DECO could easily make an amended filing to provide the real details of the program
25 costs and the necessary information for the MPSC to make an informed decision. The
26 speed at which this case is proceeding prevents all parties from doing any due diligence
27 and assessment of DECo's proposal. Delay of funding decisions will not cause any
28 measurable harm to DECo, especially since DECo has already admitted they have the

1 ~~excess securitization savings that could be used as a loan to the Low-Income Assistance~~
2 ~~Program in the interim. In the general rate case, the MPSC could establish funding for~~
3 ~~this program through a surcharge on all electric users and/or through changes in other~~
4 ~~cost re-allocations, thus spreading the cost across all rate classes. If the MPSC is in~~
5 ~~agreement with Mr. Stanczak's position that excess securitization funds cannot be used to~~
6 ~~"arrange forgiveness" of past bills for shutoff customers, then the MPSC can make the~~
7 ~~necessary costs allocation adjustments in the rate case to ensure proper cost recovery not~~
8 ~~using excess securitization funds.~~

9 Q. Are there any advantages to DECo with Energy Michigan's proposed Low-Income
10 Energy Assistance Program?

11 A. Yes. The rate reduction proposed by DECo will not eliminate customer's not paying
12 their electric bills. DECo will still incur a bad debt expense associated with customers'
13 inability to pay their electric bill. Under Energy Michigan's proposal, \$23 million would
14 be made available to pay unpaid electric bills which would reduce this expense item for
15 DECo.

16 Q. If the MPSC wants to immediately fund the Low-Income Energy Assistance Program,
17 how would Energy Michigan propose this program be funded?

18 A. The Low-Income Energy Assistance Fund could be funded immediately from three
19 sources, existing excess securitization savings (as a temporary loan), a surcharge on all
20 electric customers except low-income and Detroit Edison. We would propose that these
21 be funded in equal parts for the first year or until the MPSC reaches a decision in Case U-
22 13808 on funding this program. Our initial proposal was to use \$8 million of excess
23 securitization funds as an immediate cash infusion for 2004 only. This will provide
24 immediate funding for the program and speed up the ability to provide low-income
25 customers protection from shutoff notices.

26 ~~If the MPSC is in agreement with Mr. Stanczak's position that excess~~
27 ~~securitization funds cannot be used to "arrange forgiveness" of past bills for shutoff~~
28 ~~customers, then there are two options for this funding. The first would be to use the~~

1 carrying charges DECo should be applying to the excess securitization savings. In
2 response to ABATE discovery question ABDE1.3/19 of this case, DECO states that it is
3 not applying a carrying charge to the excess securitization savings. This is contrary to
4 how DECo treats instances in which DECo expends funds for plant improvements such
5 as clean air act investments. We estimate there are about \$7.5 to \$12.5 million of
6 carrying charges, depending upon what interest rate should be applied. DECo has been
7 able to use these funds for its own purposes and the MPSC should impute a carrying
8 charge for the period in which DECO has been allowed to retain these funds. The second
9 option would use the amount from the excess securitization temporarily, and recover the
10 expenditures from the surcharge discussed later in my testimony. This should also
11 provide approximately two or three months of direct funding of the program.

12 The second source would be from Detroit Edison funds currently used for
13 marketing and executive bonuses. From the DTE Energy Theater, logo's on ice at Joe
14 Louis Arena and other promotions, it appears DTE is spending several million on
15 marketing which could be put to use in this program. In addition, DECo's 2002 O & M
16 Expense for REP/AIP was \$26.5 million and the projected 2004 O&M Expense is \$36.0
17 million (Discovery response AGDE1.31/121 in Case U-13808).

18 The final source would be surcharge on electric bills for all customers. Assuming
19 the program needs to be funded at the \$23 million level recommended by DECo, the full
20 program surcharge would be \$0.000444/kWh, assuming this surcharge is applied to
21 DECo's projected sales level of 51,835,100 MWh (Exhibit A-13, Schedule E4, Column
22 b, Line 58 of Case U-13808). Energy Michigan proposes that this surcharge would apply
23 to all customers, including special contract and Retail Access. After 2004, funding for
24 the program would be accomplished through the surcharge.

25 Q. Does Energy Michigan's proposal eliminate the need for DECo to adjust its general rate
26 case U-13808?

1 A. ~~No. DECO will still need to adjust its filings and revenue request in Case U-13808 to~~
2 ~~reflect any changes in revenue requirement caused by reduction in bad debt, use of excess~~
3 ~~securitization savings or changes in other expenses.~~

4 Q. Does this conclude your testimony?

5 A. Yes, it does.

ATTACHMENT 2

Calculations without cChoice.

Interest Rate	7.0%		
	Net Excess Savings Balance	Interest on Cumulative Balance	Cumulative Balance
Jan-01			
Feb-01			
Mar-01			
Apr-01			
May-01	\$1,757,524.34	\$10,252.23	\$1,767,776.57
Jun-01	\$5,458,296.56	\$31,899.87	\$5,500,448.65
Jul-01	\$10,172,611.47	\$59,586.12	\$10,274,349.68
Aug-01	\$14,671,537.94	\$86,177.44	\$14,859,453.60
Sep-01	\$19,544,710.19	\$115,106.98	\$19,847,732.83
Oct-01	\$25,040,580.98	\$147,837.69	\$25,491,441.31
Nov-01	\$29,919,143.63	\$177,158.36	\$30,547,162.32
Dec-01	\$34,387,990.18	\$204,260.05	\$35,220,268.92
Jan-02	\$38,517,208.80	\$229,538.68	\$39,579,026.22
Feb-02	\$42,220,210.72	\$252,478.50	\$43,534,506.63
Mar-02	\$43,736,879.78	\$262,798.52	\$45,313,974.22
Apr-02	\$42,882,910.14	\$259,350.03	\$44,719,354.60
May-02	\$43,452,892.66	\$264,187.80	\$45,553,524.92
Jun-02	\$44,579,536.59	\$272,300.98	\$46,952,469.84
Jul-02	\$43,806,075.23	\$269,377.55	\$46,448,386.03
Aug-02	\$42,034,752.97	\$260,616.21	\$44,937,679.97
Sep-02	\$40,628,489.28	\$253,933.26	\$43,785,349.55
Oct-02	\$40,442,145.39	\$254,327.53	\$43,853,333.19
Nov-02	\$39,307,845.73	\$249,194.36	\$42,968,227.89
Dec-02	\$38,814,128.48	\$247,767.98	\$42,722,278.62
Jan-03	\$39,487,192.84	\$253,139.50	\$43,648,482.48
Feb-03	\$38,991,690.24	\$251,725.72	\$43,404,705.60
Mar-03	\$38,579,601.67	\$250,790.27	\$43,243,407.29
Apr-03	\$36,588,997.49	\$240,641.35	\$41,493,444.46
May-03	\$33,856,555.83	\$226,105.85	\$38,987,108.65
Jun-03	\$32,695,577.53	\$220,652.43	\$38,046,782.78
Jul-03	\$31,018,606.57	\$212,157.24	\$36,581,969.06
Aug-03	\$28,885,136.26	\$200,949.58	\$34,649,448.32
Sep-03	\$26,605,095.60	\$188,821.54	\$32,558,229.21
Oct-03	\$24,843,736.56	\$179,648.41	\$30,976,518.58
Nov-03	\$22,900,000.00	\$169,357.90	\$29,202,139.91
Dec-03	\$24,450,000.00	\$179,387.48	\$30,931,527.39
Jan-04	\$24,450,000.00	\$180,433.91	\$31,111,961.30
Total Carrage		\$6,481,527.39	

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

PROOF OF SERVICE

Monica Robinson, duly sworn, deposes and says that on this 1st day of December, 2003 she served a copy of Energy Michigan, Inc's. Initial 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 1st 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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