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February 17, 2010

VIA ELECTRONIC CASE FILING

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

Re: *MPSC Case No. U-15806*

Dear Ms. Kunkle:

Enclosed for filing please find the *Petition to Intervene of the Association of Businesses Advocating Tariff Equity* and a *Proof of Service* relative to the above-referenced matter.

Very truly yours,

CLARK HILL PLC

Robert A. W. Strong

RAWS:llm

cc w/enc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission’s own motion,)	
regarding the regulatory reviews, revisions,)	
determinations, and/or approvals necessary for)	Case No. U-15806
THE DETROIT EDISON COMPANY to fully comply)	
with Public Acts 286 and 295 of 2008.)	
_____)	

**PETITION TO INTERVENE OF
THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, Clark Hill PLC, hereby petitions the Michigan Public Service Commission (“Commission”) for leave to intervene in and become a party to the above-entitled proceedings as they relate to an application for approval of a solar EPC contract which The Detroit Edison Company (“Detroit Edison”) identified as Case No. U-15806-S, and in connection therewith, represents that the rights and interests of this Petitioner, the grounds of the proposed intervention and Petitioner’s position in the proceedings are as follows:

I.

ABATE is a voluntary association of large industrial businesses which are located in and doing business in the State of Michigan. The purposes of ABATE are to appear before the Commission, the Federal Energy Regulatory Commission (“FERC”) and other regulatory bodies having jurisdiction over public utilities and natural gas pipelines, to advocate the adoption of utility and energy rates, terms and conditions of service and other tariffs or contracts governing utility and energy services which are just and reasonable, nondiscriminatory, nonpreferential, equitable and based on the cost of providing service to each class of utility customer. ABATE supports open access on terms which are fair and where there is true competition. ABATE has

been formed for the express purpose of participating in regulatory proceedings to protect the interests of businesses in connection with energy and utility matters. Members of ABATE consume substantial quantities of electricity, and several members of ABATE purchase electricity from Detroit Edison. As large electric customers, ABATE members are vitally interested in achieving increased economic efficiencies for electric utilities and new electricity sourcing options that allow ABATE members to more effectively compete in the worldwide economy.

II

The current members of ABATE are: Alcoa, Inc.; Cargill; Chrysler Group LLC; Delphi Corporation; Dow Corning Corporation; Eaton Corporation; Edward C. Levy Company; Enbridge Energy Company, Inc.; Ford Motor Company; General Motors LLC; GerdauMacsteel (Jackson and Monroe); Marathon Petroleum Company, LLC; Martin Marietta Magnesia Specialties, Inc.; Mueller Industries, Inc.; Praxair, Inc.; and U. S. Steel Corporation.

III

ABATE members are directly impacted by the issues raised in this proceeding because ABATE members purchase large quantities of electricity from Detroit Edison under various tariff provisions and will be subject to the rates, terms, and conditions of service approved in this case. Detroit Edison's renewable energy and energy optimization plans will substantially affect what ABATE members must pay for electric service rendered in the future.

In deciding petitions for leave to intervene, this Commission has repeatedly applied the two-prong test for standing set forth in *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150; 90 S. Ct. 827; 25 L Ed 2d 184 (1970). As set forth in *Association of Data Processing*, the two-prong test consists of a showing that: (1) the petitioner would likely

suffer injury in fact (i.e., its interests are endangered or at issue); and (2) the petitioner's interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. Petitioner meets the standing test because it has a direct interest in the rates, terms and conditions of electric service for customers of Detroit Edison, which Detroit Edison's renewable energy and energy optimization plans will substantially affect, and this interest is within the zone of interests to be protected by the Commission's consideration of the EPC solar contract.

In addition to meeting the two-prong test for standing, ABATE is in the position to provide useful and unique information that will assist the Commission in making determinations on the significant policy issues involved, and thereby also meets the test for permissive intervention.

The interests of ABATE and its members are not adequately represented by the present parties and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

IV

ABATE submits that its members have a substantial interest in these proceedings for the following reasons: On February 5, 2010, Edison filed an Application for *Ex Parte* Approval of a 2010 Solar Engineering, Procurement and Construction Contract, which, if approved by the Commission, would obligate customers to pay excessively high rates for energy produced by the 3,000 kW total output of up to 10 solar installations. Although Edison's Application states on page 3 that the contract capital costs would average \$6,500 per kW, the contract contains a cost figure of \$18.5 million, so that the installed cost per kW ranges from a high of \$6,500 per kW to a low of \$6,116.66 per kW. This number, in and of itself, is excessive. Using a fixed charge rate

of 10%, the lower construction cost of \$18.5 million and a capacity factor of 22%, the average cost per MWh would be \$3,199.80. The fixed charge rate used in this calculation is very low, and a more reasonable fixed charge rate would be 16%. In addition, the capacity factor of 22% assumes that any solar installation would have the ability to track the sun and not be fixed in its relationship to the sun. For a fixed array, the capacity factor would be somewhere between 14-17%. Consequently, the figures used in the above calculation are extremely conservative, yet produce a result which is far in excess of the Detroit Edison projections made in Case No. U-15806, which included projected transfer prices for solar energy ranging from \$70.21 per MWh for 2009 to \$365.58 per MWh for 2029. In the same docket, Edison projected its highest average PSCR cost during the period 2010 – 2014 at \$32.92 per MWh for 2012. During the same period, Edison's highest projected average cost for purchased power was \$78.63 per MWh. Based upon the economics presented by this proposed contract and based upon Edison's previous projections, Edison's decision to enter into this contract is *plainly unreasonable* and should not be approved by the Commission.

Accordingly, ABATE requests that Detroit Edison's Application and related contract be summarily dismissed by the Commission or, in the alternative, set for hearings with the requirement that Edison file testimony specifically addressing why it is reasonable for customers to pay the excessive amounts for electricity produced by solar installations contemplated in this EPC contract.

WHEREFORE, ABATE requests that the Commission grant ABATE's Petition to Intervene in and be treated as a full party hereto. Further, ABATE requests the Commission summarily reject Detroit Edison's Application or, in the alternative, the Commission should direct Detroit Edison to file testimony explaining: (1) why it is reasonable to enter into this

contract; (2) why it is reasonable for customers to pay the excessive rates for power generated by this contract; and (3) a cost benefit analysis of this particular project.

Respectfully submitted,

CLARK HILL PLC

By:

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Date: February 17, 2010

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
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THE DETROIT EDISON COMPANY to fully comply)
with Public Acts 286 and 295 of 2008.)
_____)

Case No. U-15806

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Robert A. W. Strong, being first duly sworn, deposes and says that on February 17, 2010, he did cause to be served, electronically, the Petition to Intervene of the Association of Businesses Advocating Tariff Equity, along with this Proof of Service, in the above docket, on the persons identified on the attached service list.

Robert A. W. Strong

Subscribed and sworn to before me
this 17th day of February, 2010.

Linda L. McCauley, Notary Public
Oakland County, MI, acting in Oakland County, MI
My Commission expires: October 18, 2013

SERVICE LIST
MPSC Case No. U-15806

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