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May 5, 2009

Ms. Mary Jo Kunkle  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
P.O. Box 30221  
Lansing, MI 48909

Re: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for **THE DETROIT EDISON COMPANY** to fully comply with Public Acts 286 and 295 of 2008.  
MPSC Case No. U-15806  
E-File/Paperless

Dear Ms. Kunkle:

Enclosed for filing, in the above-captioned proceeding, please find the **INITIAL BRIEF OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**. Proof of Service upon the Parties of Record is also included. These documents are being filed electronically, in paperless format, on the Commission's Electronic Case Filing System.

Very truly yours,

CLARK HILL PLC

Thomas E. Maier

TEM:met  
Enclosures

cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
regarding the regulatory reviews, revisions, )  
determinations, and/or approvals necessary for )  
The Detroit Edison Company to fully comply )  
with Public Acts 286 and 295 of 2008. )

Case No. U-15806

**ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY'S**  
**INITIAL BRIEF**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by and through its attorneys, Clark Hill, PLC, and pursuant to Rule 339 of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or “Commission”),<sup>1</sup> and the schedule established by Administrative Law Judge Barbara A. Stump (“ALJ”), hereby files its initial brief in the above-captioned proceeding and states as follows:

**I. INTRODUCTION**

On October 21, 2008, the Commission issued an Order opening the above-captioned proceeding in response to the enactment of Public Acts 286 and 295 of 2008. In that Order, the Commission invited The Detroit Edison Company (“Edison” or “DECo” to file an Application for approval of Edison’s Renewable Energy Plan (“REP”), and approval of the Company’s renewable energy plan, approval of the Company’s proposed renewable energy price for recovery under the Company’s Power Supply Cost Recovery process pursuant to MCL 460.6j, authority to implement revenue recovery mechanism surcharges, and Energy Optimization

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<sup>1</sup> 1999 MAC R 460.17339.

(“EO”) plan, and authority to implement EO surcharges. On March 4, 2009, Edison filed such in this Docket.

Following hearings and cross examination, it is ABATE’s position that:

- DECo’s proposed renewable energy plan as submitted should not be approved;
- The Commission should hold a hearing to evaluate the true cost to ratepayers of DECo’s renewable energy plan to determine if DECo’s proposed plan is the lowest cost alternative. This hearing would form the basis for establishing the renewable energy plan surcharge over the evaluation period.
- The Commission should reduce DECo’s proposed renewable energy plan surcharges to reflect the uncertainty associated with the cost that DECo will incur as a result of PA 295 (Act) and that the surcharges require the ratepayers to fund a portion of the renewable program through revenues provided in advance of the costs being incurred.
- DECo’s renewable energy surcharge will provide revenues that exceed the estimated annual plan cost in the early years. These excess revenues will be placed in a regulatory liability account. The reserve in this regulatory reliability account will be drawn down in later years when the cost of compliance exceed the revenues collected.
- Any over-collections associated with the renewable energy plan earn at a rate significantly less than the rate DECo earns on its renewable energy investment.
- Ratepayers provided funds earn at the average short-term borrowing rate of approximately 5%. Conversely, DECo’s pre-tax rate of return, which is the rate that DECo earns on its renewable investment, is 11.76%.
- The Commission should reject DECo’s proposed incentives to achieve energy efficiency savings in excess of the statutory targets. These incentives will not lead to the cost-effective procurement of additional energy efficiency resources. Rather, the incentives will burden customers with unnecessary costs and result in an inefficient use of customer funds that could otherwise be directed toward voluntary conservation efforts by end-use customers.

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 The Detroit Edison Company. 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. ARGUMENT**

### **A. Edison's Renewable Energy Plan is Premature**

With its Applications, and the testimony of its witness Irene M. Dimitry, DECo filed its REP.<sup>2</sup> Under this REP, DECo plans to meet its renewable energy credit requirement by obtaining renewable energy credits from both generating plants from its own renewable energy system and by purchasing or acquiring from third-party suppliers renewable energy credits ("REC") with or without the associated energy. As testified to by ABATE's witness James T. Selecky, "It is premature at this point in time for the Commission to approve DECo's plan for meeting its renewable requirements to comply with the Act."<sup>3</sup> The proposed REP surcharges would allow DECo to over-collect in the early years and apply those over-collections against

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<sup>2</sup> Exhibit A-1.

<sup>3</sup> 5 Tr 799.

future under-collections. Mr. Selecky noted that this over-collection is due to “the fact that these costs are speculative and REP’s surcharge exceeds the expected cost in the early years of the plan.”<sup>4</sup>

A large component of Edison’s REP is the construction of Wind Power Generation. Yet, there exists certain significant uncertainties as to the cost-effectiveness of wind generation. Mr. Selecky testified that it is as yet unanswered whether or not “wind generation provide[s] for any capacity at the time of system peak? If the answer is that wind will not contribute to DECo’s capacity needs then ratepayers would not only be faced with the cost of the renewable energy program but also the additional cost of the new generation that DECo would need to meet those peaks.”<sup>5</sup> On Discovery, DECo admitted that “at this time the Company could not project the net output for its potential wind generation installations since it has not selected a turbine or turbines.”<sup>6</sup> The question is whether this consideration makes other renewable options more cost competitive or cost-effective. This Commission should not look at the renewable energy plan in isolation. Any plan that is approved should consider all relevant or related costs. To accept a renewable option on a stand-alone basis may not be appropriate and may result in a higher overall cost to ratepayers.

It was on this basis that Mr. Selecky recommends,

“that the Commission initiate a separate hearing to evaluate the total cost to ratepayers of meeting the renewable requirement. This proceeding would not only consider the cost of providing the renewable energy but also the cost of meeting DECo’s future peak demand requirements. The Act requires the Commission to review the REP every two years. If waiting for two years does not create a problem for meeting the future requirements, that hearing would

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<sup>4</sup> *Id.*

<sup>5</sup> 5 TR 800.

<sup>6</sup> Discovery Response ABDE 1.5b/42.

be used to develop a REP and provide an estimate of the true cost to the ratepayers.”<sup>7</sup>

To finance its REP and wind generation efforts, DECo has proposed a leveled surcharge. Upon examination of such surcharges, as contained in Exhibit A-17, Edison’s proposed surcharge will result in over-collection in the early years of its REP. Mr. Selecky calculated that such over-collections will occur through 2014. According to Mr. Selecky, “these over-collections are placed in a regulatory liability account and are used to offset future incremental costs of compliance when the future costs exceed the surcharge revenues. The over collections will earn at the average short-term borrowing rate estimated to be approximately 5%. . . DECo is forecasting that the balance in the regulatory liability account will exist through 2029.”<sup>8</sup> The need for this regulatory liability account was never established by DECo and DECo’s own witness, Joseph P. Gallagher, described it as a “risk management tool.”<sup>9</sup>

According to DECo’s own witnesses, this REP fund would grow to as much as \$100 million. Edison witness James H. Byron testified that he is not familiar with any place in Act 295 that requires that the regulatory liability minimum balance be \$100 million. Edison’s witness, Mr. Gallagher, testified that it is unknown what that money will be used for and where it will be applied; “I don’t believe it has been decided yet.”<sup>10</sup> Mr. Byron was a little more definitive regarding Edison’s plans for this fund. He testified that the fund could be used for “any purposes for the Detroit Edison. I believe it would be used for any purposes for Detroit Edison.”<sup>11</sup> On cross examination, it was finally admitted what this fund would be used for, “they’re basically a

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<sup>7</sup> 5 TR 801.

<sup>8</sup> 5 TR 801.

<sup>9</sup> 6 TR 990.

<sup>10</sup> 6 TR 999.

<sup>11</sup> 5 TR 1219.

loan to the Detroit Edison Company. The regulatory liability balance is a loan, a source of short-term capitalization for the Detroit Edison Company.”<sup>12</sup>

DECo is basically asking the Commission to approve a “slush fund” the purpose of which is unclear and may be used for any use DECo sees fit and then to allow DECo to finance this slush fund at their short term interest rate. Mr Selecky testified that “it does not seem equitable to have ratepayers provide for funds to DECo for up to 20 years and only receive interest on those funds at a rate of 5% -- Edison’s Short Term Borrowing Rate.<sup>13</sup> During this same period of time, DECo is requesting to earn a return on its investment of 11.76%.”<sup>14</sup>

ABATE urges the Commission to initially reduce the surcharge that DECo is proposing by 50 percent. Since the REP is speculative, it should not be used to establish the surcharges authorized by the Commission in this case. In addition, reducing the surcharge would avoid the situation proposed by Edison, under which ratepayers would be required to fund the REP and receive a 5% return<sup>15</sup> on their funds while at the same time DECo would use those funds to make investments and charge ratepayers a return of 11.76% on those investments.<sup>16</sup>

**B. The Commission should reject DECo’s Energy Efficiency Incentives**

DECo proposes that the Commission permit it to receive an annual incentive payment if it achieves energy efficiency levels in excess of the statutory requirements. The level of the performance incentives would be set on a graduated scale and would be based on a percentage of DECo’s total energy efficiency program expenditures. The incentive award would gradually

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<sup>12</sup> 6 TR 1221.

<sup>13</sup> 6 TR 1000.

<sup>14</sup> 5 TR 801.

<sup>15</sup> 6 TR 992.

<sup>16</sup> *Id.*

increase until it reaches the statutory maximum level of 15% of energy efficiency program expenditures if DECo attains 105% or more of the mandated energy conservation levels. DECo expects to exceed 105% of the mandated energy efficiency targets in each year of the period 2009 – 2011, and therefore expects to collect the maximum allowable performance incentive in each year of this period. For 2009, this incentive award would equal \$4.01 million. The reward amount increases to \$5.52 million and \$7.95 million in 2010 and 2011, respectively. Moreover, according to the Direct Testimony of DECo's witness, Emmett R. Romaine, DECo proposes to collect this maximum incentive level contemporaneously with its annual collection of energy efficiency program expenditures, meaning that DECo would collect the performance incentive before the requisite energy conservation levels are met.<sup>17</sup>

According to Mr. Selecky's testimony, DECo has not provided any rationale for implementing this incentive mechanism.

“The Company simply references Section 75 of PA 295, which discusses the potential payment of financial incentives to utilities that exceed the energy optimization performance standard specified in the statute. However, the typical arguments in favor of such incentive mechanisms are that they encourage the utility to aggressively promote cost-effective energy conservation efforts and those such incentives are required to offset the alleged disincentive in the form of lost revenues associated with a utility's promotion of energy efficiency programs.”<sup>18</sup>

PA 295 makes it clear that the payment of any financial incentives for exceeding the statutory energy optimization performance standard is subject to the approval of the Commission. Therefore, the Commission is not required to, and should not, implement the energy efficiency incentives requested by DECo in this proceeding.

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<sup>17</sup> 3 Tr 249-250.

<sup>18</sup> 5 Tr 803.

Mr. Selecky testified that DECo does not need an incentive mechanism to compensate it for exceeding the statutory energy efficiency savings targets.

“If such savings lead to lost revenues of a magnitude that would prevent DECo from earning its authorized rate of return, the appropriate remedy available to the Company is to petition the Commission for a base rate increase. Moreover, the Company’s proposal fails to ensure that energy efficiency efforts are pursued in the most cost-effective manner. In addition, the incentive mechanism should be rejected because it would unnecessarily inflate the cost of providing energy efficiency services to retail end users.”<sup>19</sup>

DECo does not need an incentive mechanism to compensate it for potential lost revenues associated with exceeding the statutory energy efficiency program targets. Mr. Selecky testified that DECo does not need these incentives because,

“DECo has always borne the risk of a reduction in revenues between rate cases under the traditional ratemaking process. Such revenue reductions can result from multiple factors, including weather fluctuations, broad economic downturns, as well as independent energy efficiency efforts undertaken by customers on the DECo system. The Company’s shareholders are fairly compensated for assuming the risk of such revenue reductions through the Company’s allowed return on equity. The Company has presented no evidence to demonstrate that any efforts on its part to exceed the mandatory energy efficiency savings targets would create an extraordinary level of business risk that would justify granting the Company an additional financial reward for such efforts.

If DECo experiences lost revenues due to energy efficiency programs or other causes, and the Company believes that such lost revenues are of a magnitude that impairs the Company’s ability to earn its allowed return on equity, the appropriate remedy available to the Company is to petition the Commission for an increase in its base rates. This approach would allow the Commission to comprehensively review all aspects of the Company’s costs and revenues prior to determining whether a rate adjustment is warranted. A full base rate review is required to determine whether cost reductions on the Company’s system might offset the

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<sup>19</sup> 5 Tr 804.

impact of sales declines and thereby obviate the need for a rate increase. This comprehensive rate review is far preferable to authorizing annual rate increases based on a narrow, isolated examination of the Company's energy efficiency program performance.”<sup>20</sup>

In fact, performance incentives, as proposed by DECo are not the most cost-effective method of achieving energy savings that exceed the statutory targets. Retail customers in the DECo service area are exposed to power price fluctuations through the PSCR mechanism. Such customers rationally respond to price signals in the electricity market by undertaking independent efforts to reduce their energy consumption, to the extent that individual customers find such efforts to be cost-effective. As an example of this, Mr. Selecky testified that

“a residential customer is free to install a more energy efficient light bulb if the energy savings justify the added expense, without intervention by DECo. Similarly, an industrial customer can independently take measures to enhance the energy efficiency of its manufacturing processes. Under either scenario, the customer can spend its own resources to independently pursue these conservation efforts without paying a financial incentive to DECo. There is no reason to believe that the Company can procure these energy efficiency services more cost effectively than customers who directly access such services, particularly if the Company demands a financial bonus in exchange for providing these programs in its service area. Thus, all else being equal, allowing the Company to recover a financial incentive for offering conservation programs to its customers in excess of the statutory requirements would artificially inflate the cost of providing energy efficiency services that are otherwise readily available to customers without intervention by the Company.”<sup>21</sup>

For this reason, the Commission can achieve energy savings that exceed the statutory mandate in a more cost-effective manner by providing the proper regulatory environment to encourage voluntary customer conservation efforts. Granting a financial incentive to the DECo to pursue the same objective would result in an unnecessary and wasteful use of customer

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<sup>20</sup> 5 TR 804-805.

<sup>21</sup> 5 TR 805.

resources that could have otherwise been deployed toward voluntary energy efficiency investments by end-use customers.

While ABATE respectfully urges the Commission to reject the energy efficiency incentives requested by DECo, if the Commission does approve such incentives, it should specifically reject revenue decoupling for DECo.

Mr. Selecky recognized that “the standard argument in favor of revenue decoupling is that this approach is needed to remove the disincentive to promote energy optimization programs.” However, he also testified that

“if the Company is allowed to receive a financial reward for energy efficiency savings through its proposed incentive mechanism, such rewards would clearly offset any alleged disincentive to promote energy conservation that may exist under the current regulatory paradigm. Therefore, even if one were to accept the mistaken premise that utilities are entitled to special compensation to ensure that they aggressively pursue energy efficiency efforts, revenue decoupling is unjustified and unnecessary if the Commission approves the energy efficiency incentive mechanism proposed by DECo in this case.”<sup>22</sup>

### **III. CONCLUSION**

For the reasons stated above, the Association of Businesses Advocating Tariff Equity respectfully request that the Michigan Public Service Commission:

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<sup>22</sup> 5 TR 807.

- Not approve DECo's proposed renewable energy plan as submitted;
- Hold a hearing to evaluate the true cost to ratepayers of DECo's renewable energy plan to determine if DECo's proposed plan is the lowest cost alternative. This hearing would form the basis for establishing the renewable energy plan surcharge over the evaluation period;
- Reduce DECo's proposed renewable energy plan surcharges to reflect the uncertainty associated with the cost that DECo will incur as a result of PA 295 and that the surcharges require the ratepayers to fund a portion of the renewable program through revenues provided in advance of the costs being incurred;
- Find that any over-collections associated with the renewable energy plan earn at a rate significantly less than the rate DECo earns on its renewable energy investment.
- Reject DECo's proposed incentives to achieve energy efficiency savings in excess of the statutory targets. These incentives will not lead to the cost-effective procurement of additional energy efficiency resources. Rather, the incentives will burden customers with unnecessary costs and result in an inefficient use of customer funds that could otherwise be directed toward voluntary conservation efforts by end-use customers.

Respectfully Submitted,

By: \_\_\_\_\_

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Date: May 5, 2009

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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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fully comply with Public Acts 286 and 295 )
of 2008. )

Case No. U-15806

PROOF OF SERVICE

STATE OF MICHIGAN )
) ss
COUNTY OF INGHAM )

Mary E. Turney, being first duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on May 5, 2009, a copy of the INITIAL BRIEF OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY, in the above captioned proceeding, was served upon:

SEE ATTACHED SERVICE LIST

Service was accomplished by depositing same in a regular United States Postal Service mail depository, enclosed in envelopes bearing first-class postage, fully prepaid and properly addressed and via electronic mail.

Mary E. Turney

Subscribed and sworn to before me
this 5th day of May, 2009

Tema L. Crowell, Notary Public
Gratiot County, Michigan
Acting in Ingham County, MI
My Commission expires: November 16, 2012

**SERVICE LIST**  
**MPSC Case No. U-15806**  
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**SERVICE LIST**  
**MPSC Case No. U-15806**  
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