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June 22, 2011

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Ste. 7
Lansing, Michigan 48911

Re: MPSC Case No. U-16472 - Hospital Reply Brief

Dear Ms. Kunkle:

Relative to the above-referenced matter, enclosed please find Detroit Medical Center, Henry Ford Health System, William Beaumont Hospital and Trinity Health-Michigan's Reply Brief, and Certificate of Service.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

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RTK:rtk
Encls.
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CERTIFICATE OF SERVICE

Robert T. Kent certifies that on the 22nd day of June, 2011, he served a copy of the Detroit Medical Center, Henry Ford Health System, William Beaumont Hospital and Trinity Health-Michigan's Reply Brief, in relation to MPSC Case No. 16472, upon the parties listed on the attached Service List by electronic mail.

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of THE DETROIT EDISON COMPANY for authority to increase its rates, amend its rate schedules and rules governing the the distribution and supply of electric energy, and for miscellaneous accounting authority.	Case No. U-16472 (Paperless e-file)
In the Matter of the Application of THE DETROIT EDISON COMPANY for Approval to defer certain pension and post-employment benefits expense for future Amortization and Recovery.	Case No. U-16489 (Paperless e-file)

REPLY BRIEF OF DETROIT MEDICAL CENTER, HENRY FORD HEALTH SYSTEM, WILLIAM BEAUMONT HOSPITAL AND TRINITY HEALTH MICHIGAN

Detroit Medical Center, Henry Ford Hospital System, William Beaumont Hospital, and Trinity Health-Michigan (together, the "Hospitals"), by and through their attorneys, Kitch Drutchas Wagner Valitutti & Sherbrook, hereby submit their Reply Brief, and state:

I. Introduction

These Intervenors are not seeking a rate freeze as suggested in the Michigan Public Service Commission Staff's ("Staff's") Initial Brief. If that impression was conveyed, then it was conveyed in error. These intervenors seek only that method by which COS may most efficiently and successfully be established and monitored over time. These intervenors believe, and the facts, law and policy considerations overwhelmingly support, a separate rate class for same, or in the alternative, continuation of the Large Customer Contracts ("LCCs") which have been in place for the last 15 years and which the record establishes have yielded rates above cost of

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service. Indeed, it was the Detroit Edison Company (the "Company") which 15 years ago originally identified these intervenors as a unique group warranting special treatment and special rates. Nothing has occurred in 15 years to warrant now ignoring those increasingly special characteristics and needs of this group.

For these reasons, the Hospitals request that this honorable Commission create a permanent LCC rate class with a rate based on LCC cost of service, or the alternative, create a Health Care rate class which includes these Hospitals and includes a rate based on cost of service to large health care providers, or in the alternative, extend the existing LCCs.

II. Staff's Request to Blockade Creation of a Separate Service Class for Current LCC Customers is Historically and Statutorily Untenable

Like Staff in its initial brief, the Hospitals begin the discussion of cost of service issues by referencing the foundation that the Michigan Public Service Commission uses a cost of service study ("COSS") to establish rate levels for customer classes. The COSS is a tool used to determine how each Total Electric Cost amount should be properly allocated to the specific customer classes. Staff IB 58. The Hospitals also agree with Staff's assertions that Act 286 requires the Commission to establish rate levels for each customer class that equal the cost of providing service to that class. From these two basic principles the Hospitals and Staff appear to diverge. In its Initial Brief, Staff states that based on cost to serve theory, it does not believe establishing a new class for current LCC customers is warranted. *Id*. at 63. Staff makes this argument based on its observation that just "as no two snowflakes are alike, the same can be said about a utility's customers. No customer has exactly the same usage and load patterns…". *Id*. Thus, Staff states that it is impossible to treat each individual

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customer as its own class but rather customers must be grouped into the principal classes: residential, commercial and industrial. *Id*. Staff concludes that the Hospitals have not demonstrated that LCC characteristics are sufficiently different from existing rate schedules within the commercial (secondary) or industrial (primary) classes to warrant, based strictly on cost allocation principles, the creation of a separate class of rates for LCC customers. Staff IB page 64.[1]

Staff's main argument is unsupported by the record and long history of rate regulation in Michigan which includes to date, among other things, 32 rate classes and sub rate classes. Under normal circumstances, the Hospitals would recommend that Staff's argument should be dismissed out of hand. However, given the grim prospect of a 27% rate increase if Staff's recommendation is approved, the Hospitals believe that it should be addressed in detail.

Staff's first argument is its' suggestion that there are only three main service classifications (residential, commercial and industrial) and all customers must fall within one of these classifications. For the Company, nothing could be further from the truth. The Company has separate rates for the interruptible air conditioning rate program, a geothermal rate, a green current rate which buys power for Michigan based renewable energy sources, an electric vehicle rate, a special rate for security lighting, a senior citizen rate for customers that are 62 or older and use 720 kWh or less per month, and a time of day rate. The Company advertises these special rates

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[1] This of course flies in the face of the D7 rate created just for 4 large automotive manufacturers, all of which are special industrial rate payers, but which have been granted their own rate class because of their unique requirements and overall contribution to the total rate payer community. 1995 MPSC U-10646 (Opinion and Order, March 23, 1995). And this, without special legislative fiat.

on its website[2] and these advertised rates are just for residential customers. In all, the Company offers ten different rate classes for residential customers in addition to separate provisions for some customers within those classes (such as a discount for income assistance and farm service). For commercial and industrial customers, the Company offers no less than twenty two different rate options.[3] The Company offers separate rates or rate riders for customers who use electricity for metal melting, process heat, school service (schools, colleges and universities), all electric schools, special manufacturing, storm water pumping, economic development, special purpose facilities, parallel operation, standby service, resale service, cogeneration, greenhouse lighting, commercial space heating, interruptible customers, dispersed generation, and capacity release. Moreover, the service class that Staff wants to move the LCC customers to, D6, is not a standalone rate class; as D6 customers can also be served under D6.1 if they have more than 10 Megawatts at a single site. It also bears noting that Service Class D6.2, service for primary education, was created from the D6 customer base. Why? Because of the special circumstances and contribution these institutions make to the overall ratepayer community. In sum, Staff's argument that customers must fall within one of the three main general service classifications ignores the long history of special rates for special circumstances.

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[2] DTE Energy Company, *Special Rates*, *available at* http://www.dteenergy.com/residentialCustomers/billingPayment/electricRate/specialRates.html (last visited June 20, 2011).

[3] The Detroit Edison Company, *Rate Book for Electric Service,* September 16, 2009, *available at* http://www.dteenergy.com/pdfs/detroitEdisonTariff.pdf (last visited June 20, 2011).

III. Staff Disproved its Own Arguments Against Creation of a New Service Class

Staff's second recommendation is that the LCC customers should be brought back to the D6 service class because there has been no showing that their characteristics are different than that of the D6 customers. This argument is disproved by Staff's own work product. Staff Exhibit S-6 is the Staff COSS and Exhibit S-12 is the proposed revenue requirement by service class.[4] Based on this COSS, Staff developed class revenue requirements for each class which are shown on Exhibit S-12. For the LCC customers the Staff class revenue requirement is $120,707,000.[5]

Staff also presented an analysis of present and proposed rates on a per unit sales basis. Under this analysis Staff calculated current revenues from the LCC Primary customers to be 7.32 cents per kWh. Exhibit S-6, Schedule F-3, page 38 of 43. In this same exhibit Staff also calculated rates assuming that all classes were provided an equal rate of return and all cross subsidization between classes was eliminated. The result of this calculation shows the cost to serve the D6 and LCC customers. A review of this data is illuminating: Pursuant to Staff's analysis, after the rate increase it would cost 8.47 cents per kWh to serve the average LCC customer,

[4] In its pre-filed direct testimony, Staff projected a Total Company Revenue Deficiency of $159,092,000 for the 12-month period ending March 31, 2012. Exhibit S-1, Schedule A1. This is the amount of revenue increase allocated to customer classes reflected in Exhibit S-12. Subsequent to a review of the evidence admitted during cross-examination, Staff has determined that Staff's projected Total Company Revenue Deficiency required a change from $159,092,000 to $161,677,000. Staff did not update Exhibit S-12 for the new revenue requirement. Given the small difference in revenue requirement, for the sake of discussion, all comments are based on the assumption that the existing Exhibit S-12 is the final recommendation.

[5] It must be noted that Staff's imputation of $5,857,000 of revenues to the LCCs (Staff IB 66) is inappropriate: The $5,857,000 number comes from the Company's 2005 LCC report which is not at issue in this rate case, and furthermore, is not an audited value.

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Id., while it would cost 9.27 cents per kWh for the average D6 customer. Exhibit S-6, Schedule F-3, page 28 of 43. Thus per Staff's own analysis it costs almost 9% less to serve an average LCC customer as compared to a D6 customer.

In summary, the facts are clear, and they have been since the LCCs were formed. In fact, due to similar load characteristics, it was the Company itself that singled-out specific customers and offered them LCCs. This fact alone makes it obvious that LCC customers are a separate and distinct group. Furthermore, there is abundant precedent for this utility to establish service classes for certain distinct types of customers. In fact, Staff's analysis, as presented, treated the LCC customers as a separate service class and proved that it does in fact cost less to serve LCC customers than it costs to serve the D6 class. Staff's conclusions are not unlike the Company's 15 years ago which led to the offering of LCCs. For all these reasons the LCC customers should be placed into their own service class when their contracts expire.

As to the issue of setting the LCC class rate; Staff describes the issue as "problematic", Staff IB 64, but provides no solution to the problem. In their direct case the Hospitals analyzed past COSS results.[6] In its Initial Brief staff includes analysis with input data from the late filed Company Exhibit A-13 which includes COSS of previous cases to determine which data could be used. The various COSSs presented give conflicting results. At this point in the proceeding, post record analysis of late filed exhibits will not prove useful. As long as the LCC customers are placed into their own separate service class as an outcome of this proceeding, the

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[6] No COSS was provided in the original filing which showed the LCC customers as a separate service class.

Hospitals are more than willing to let future rate cases determine the correct rate to charge them. What is untenable, however, is the Staff's proposal to charge LCC customers the rates that D6 customers pay. This ignores the special circumstances and needs of these intervenors as acknowledged by the Company 15 years ago. As noted above, the current rate for the LCC customers is 7.32 cents per kWh while Staff's calculated rate for the D6 customers is 9.27 cents per kWh; this represents a 27% rate increase.[7] This is unacceptable given that Staff is recommending an overall increase of only 3%. These intervenors **cannot** sustain this kind of unwarranted and unjustified increase at the same time contributing nearly $1 billion dollars per year in uncompensated care to the Community. Indeed, failing to adjust the rate scheme for these customers unique circumstances, as has been done for other rate payers as described above, constitutes a level of discrimination sanctioned by the State which violates basic equal protection tenets of law.[8] For the LCC customers whose contracts expire at various times over the next year, the only fair solution is to increase existing contracts rates by whatever overall percentage increase the commission allows for to the utility as a whole in this proceeding. Assuming Staff's revenue requirement is approved, this increase would be 3%.

IV. The Company's New Arguments Ignore Its Own Designation of These Customers As Warranting a Special Rate for the Past 15 Years

By its own admission, as reflected in the LCC''s themselves, the Company has identified these customers as worthy of special consideration and special rate

[7] Staff Exhibit S-12 indicates the LCCs would receive a $10.6 million increase; but in reality moving LCCs to D6 would actually mean a 27% increase, which translates to $30 million.

[8] The 14th Amendment Equal Protection provisions of the US Constitution apply to corporations. See *First National Bank v Belotti,* 435 US 765, 780 (1978); *Santa Clara County v Southern Pacific R. Co.*, 118 US 394 (1886).

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treatment. Notwithstanding this long history (reinforced as recently as 5 years ago when the LCC's were renewed), the Company now alleges for the first time in this case that, (1). indexed rates of return are not a reliable indicator of whether or not a class is providing revenues that are at or above the costs to serve the class, and (2). the best way to determine whether or not the LCCs are currently cost justified would come from a COSS with the LCCs as a separate cost of service class. DTE IB at 112-113. As stated in the Hospitals' Initial Brief, indexed rates of return are National Association of Regulatory Utility Commission's ("NARUC's") preferred method for determining class revenues. DMC IB at 16-17. Furthermore, inconsistencies within the Company's latest "separated" COSS show significant disparities between the latest COSS and historic COSSs for which the Company has been unwilling and unable to provide justification. DMC IB 18-20. The Company's last minute "data" flies in the face of their own, freely established, historical treatment of these customers. For all these reasons and for those stated in the Hospitals' initial brief, the Company's recent self-serving, about-face must be disregarded.

V. The Company's Position is Inequitable

All of the Hospitals have, over the years, received regular solicitations by Alternative Energy Suppliers ("AESs") eager to supply the Hospitals' electricity needs at attractive rates. Those market forces are, of course, what forced Edison to offer the LCC contracts that brought the Hospitals' rates in line with Edison's costs. There can be no doubt that absent the 10% cap on electricity supplied by AESs, Edison would continue the LCCs and likely reduce the Hospitals' rates – or the Hospitals would acquire their electricity on the open market at prices reflecting the true costs.

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Instead, because Edison is now protected from competition by the AES 10% cap, Edison feels free to come before this Commission and seek an enormous rate increase on the Hospitals - based on the claim that all of its prior cost reports were not just wrong, but wildly inaccurate. And, while making that astonishing claim, Edison denies meaningful discovery to the Hospitals into Edison's financial gyrations.

If the new energy law and 10% cap are to be successful in their goal of promoting Michigan's economy, Edison cannot be allowed to engage in this sort of conduct. At a minimum, the Commission should provisionally approve a rate class allowing the Hospitals to continue the current LCC rates pending the result of a careful and accurate cost study with full disclosure to the Hospitals and the Commission.

Edison should not be permitted to ignore their own treatment of these customers simply because a lack of competition allows them to turn their backs on them now.[9] The result of a different outcome will necessarily, as a matter of self preservation, be met by the development by these Intervenors of self generation and other alternative means of supplying themselves with their electric needs. This will in fact impact the Company and all rate payers negatively. As result of the direction this case has taken to date, those plans are already under discussion. An adverse result here, will likely yield the execution of those plans.

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[9] The current 10% cap on AESs, paired with restrictive service class regulations which force customers to pay more than market price is a violation of the Sherman Act, 15 USC 1, et seq. Although the Sherman Act does not regulate state actors, a state cannot give immunity to third party corporations. *Northern Securities Co. v US*, 193 US 197, 332, 344-47. See *Cantor v Detroit Edison Co.*, 428 US 579 (1976), where the US Supreme Court found that Edison's light bulb exchange program constituted an unfair restriction on trade; despite the fact the MPSC approved the terms of the program.

VI. If Not an LCC Rate Class; A Hospital Rate Class is Needed

The Hospitals believe that establishing a rate class for LCC customers - which have similar costs of service - would not create a discriminatory rate. However, should the Commission determine that creation of an LCC rate class would cause discriminatory rates, it is these Hospitals' position that the Commission should establish a healthcare rate class which incorporates a rate based upon the reduced cost of service that is inherent to large health care providers. The Hospitals 24/7/365 usage pattern as well as the vital societal role their facilities serve makes their characteristics different enough to justify a cost based rate. Pursuant to the above, should the Commission determine an LCC rate class would constitute a discriminatory rate, or otherwise take issue with the concept, the Hospitals request the Commission establish a separate Large Health Care rate class for these 4 Health Care Intervenors, and for other health care providers with 1 MW at individual sites or 5 MWs for aggregated facilities.

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VII. Conclusion

Pursuant to the above, the Hospitals request that this honorable Commission create a permanent LCC rate class with a rate based on LCC cost of service, or the alternative, create a Health Care rate class which includes these Hospitals and includes a rate based on cost of service to large health care providers, or in the alternative, extend the existing LCCs.

Respectfully submitted,

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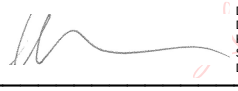

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