

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter, on the Commission's own motion, to consider the restructuring of the electric utility industry. |)))) | Case No. U-11290 |
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| In the matter of the application of THE DETROIT EDISON COMPANY for authority to suspend implementation of its power supply cost recovery clause and related relief. |))))) | Case No. U-11449 |
| _____ |) | |
| In the matter of the request of CONSUMERS ENERGY COMPANY for approval of a retail open access tariff. |)))) | Case No. U-11451 |
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| In the matter of the request of THE DETROIT EDISON COMPANY for approval of a direct access tariff. |)))) | Case No. U-11452 |
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| In the matter of the request of CONSUMERS ENERGY COMPANY for authority to suspend its power supply cost recovery clause and related relief. |))))) | Case No. U-11453 |
| _____ |) | |

In the matter of the request of)
CONSUMERS ENERGY COMPANY and)
THE DETROIT EDISON COMPANY for) Case No. U-11454
approval of a true-up mechanism in connection)
with the recovery of stranded costs.)
_____)

At the March 8, 1999 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

BACKGROUND

In order for Michigan's electric customers to begin receiving the benefits of a competitive power generation market, the Commission, after extensive public hearings and comments, issued an order on June 5, 1997 in Case No. U-11290 (the June 5 order) setting forth the framework for customer choice (also known as open access or direct access) in Michigan. Among other things, that order did the following: First, it concluded that approximately 2½% of each Michigan electric utility's retail load should become eligible for open access each year from 1997 through 2001, 225 megawatts (MW) for The Detroit Edison Company (Detroit Edison), 150 MW for Consumers Energy Company (Consumers), and equivalent amounts for other companies.¹ Second, it held that the phase-in schedule should be applied equally to all customers classes. Third, it directed that all remaining customers would be given the option of choosing their power suppliers in 2002. Fourth,

¹The Commission recognized that because of their size and customer mix, a different phase-in schedule might be appropriate for the smaller utilities.

it stated that, if prudently incurred, five categories of stranded costs should be recovered by the utilities: (1) capital costs of nuclear plants, (2) regulatory assets, (3) capacity costs arising from power purchase agreements, (4) employee retraining costs, and (5) costs related to the implementation of restructuring. Fifth, it indicated that a mechanism should be developed to true-up the amounts collected for stranded costs and each utility's actual stranded costs. Sixth, it established December 31, 2007 as the last day for recovering stranded costs. Seventh, it directed Consumers and Detroit Edison to file tariffs necessary to implement open access service in a manner consistent with that order, as well as proposals for a true-up mechanism. Eighth, it directed the Commission Staff (Staff), after conducting a series of public meetings, to develop a methodology for implementing a Michigan or regional independent system operator and to explore other methods of addressing market power issues, including the adoption of standards of conduct. Ninth, recognizing that customers will need access to sufficient and reliable information in order to compare and select among products and services provided in the electricity market, it requested the Staff to (1) review existing billing practices and available sources of customer information and (2) report to the Commission regarding any steps that should be taken to ensure or enhance customer education.

After the utilities made the filings required by the June 5 order, the Commission issued an order on July 14, 1997 in Case No. U-11290 et al. establishing contested case proceedings in several new dockets. These included Case No. U-11451 (Consumers' direct access tariff), Case No. U-11452 (Detroit Edison's direct access tariff), Case No. U-11449 (Detroit Edison's request to suspend its power supply cost recovery clause), and Case No. U-11454 (stranded cost true-up mechanism for Consumers and Detroit Edison). On October 29, 1997, the Commission issued several orders addressing the issues raised in those dockets. On January 14, 1998, the Commission issued a rehearing order (January 14 order).

On February 11, 1998, the Commission issued an order (February 11 order) clarifying certain aspects of the prior orders. In their motions for clarification, the Association of Businesses Advocating Tariff Equity (ABATE) and Energy Michigan raised several issues regarding implementation of the open access orders. In response, the Commission stated:

In the Commission's opinion, there will be numerous implementation questions, such as these, that will need to be addressed for open access to succeed. However, the Commission's formal administrative process is not necessarily the appropriate forum for determining every minute detail associated with the implementation of open access. Accordingly, the Commission is directing the Staff to initiate informal discussion with interested parties to identify and amicably resolve such implementation issues. If there are issues that can not be resolved informally, then they should be brought to the Commission in formal proceedings.

February 11, 1998 order, Cases Nos. U-11290 et al., p. 13. Subsequently, the Staff conducted a series of informal public discussion meetings with various stakeholders that resolved many, but not all, implementation issues. As part of this process, the utilities circulated draft implementation plans and comments were provided by various parties. The utilities subsequently revised their plans in response to these comments

II.

HISTORY OF PROCEEDINGS

On June 30, 1998, Consumers and Detroit Edison separately filed implementation plans in these combined cases. Consumers requested that the Commission (1) approve the tariff sheets attached to its plan, (2) find that the implementation plan represents a reasonable and prudent approach for providing retail direct access for the utility's electric customers, (3) grant accounting authority with respect to implementation costs, and (4) approve a proposed retail code of conduct. Detroit Edison requested that the Commission (1) approve spending up to \$19.9 million for implementation costs in

1998, (2) approve revised tariff sheets attached to its plan, (3) approve deferred accounting for implementation costs, (4) order that billing and metering services be continued as regulated services through 2007, (5) order Detroit Edison to refrain from sharing customer credit information without express customer consent, and (6) allow Detroit Edison's affiliates to participate in the program.

On July 13, 1998, the Commission issued a scheduling order providing for the filing of written comments on the implementation plans by August 10, 1998. Comments were filed by the Michigan Alliance for Fair Competition (MAFC); ABATE; Attorney General Frank J. Kelley² (Attorney General); Consumers; Energy Michigan; Michigan Consolidated Gas Company (Mich Con); Michigan Electric and Gas Association (MEGA); Michigan Independent Power Producers Association (MIPPA); Michigan Petroleum Association and Michigan Association of Convenience Stores (MPA/MACS); Shell Western E & P, Inc. (SWEPI); the Staff; the Utility Workers Union of America (UWUA), AFL-CIO, the Michigan State Utility Workers Council, UWUA, and Local 223, UWUA (collectively, the Unions); the Michigan United Conservation Clubs (MUCC), American Lung Association of Michigan, Michigan Environmental Council (MEC), and the National Wildlife Federation Great Lakes Natural Resource Center (collectively, the environmental groups); the Federal Trade Commission; Nordic Electric L.L.C. (Nordic); Equipower; the Regents of the University of Michigan (U of M); Shell Energy Services Company, L.L.C. (Shell); and PG&E Corporation. Consumers filed a response to comments.

²Jennifer M. Granholm is now Attorney General.

III.
TARIFFS

As part of their implementation plan filings, Consumers and Detroit Edison requested that the Commission approve revised tariff sheets. The Commission approved tariff sheets for the two companies in the October 29, 1997 order in Cases Nos. U-11451 and U-11452. The February 11 order directed Consumers and Detroit Edison to file revised tariff sheets by February 25, 1998 consistent with the Commission's open access orders. In their implementation plan filings, Consumers and Detroit Edison propose revisions to the tariff sheets previously approved by the Commission.

According to Consumers, there are five categories of material modifications to the previous tariffs. First, Consumers is utilizing the Federal Energy Regulatory Commission (FERC) Open Access Transmission Tariff (OATT) to price and administer transmission service.³ Second, the capacity allocation methodology has been modified to provide a 2 MW set-aside for residential customers and another 2 MW set-aside for residential and small secondary customers.⁴ Third, the tariffs have been modified to revise the bid process⁵ to reflect the set-asides, use of an independent administrator to conduct the bids, bid deposit requirements, the anticipated development of a secondary market for open access capacity, and a time period for successful bidders to obtain

³Consumers filed two sets of retail open access tariffs because at the time the FERC had not yet ruled on the jurisdictional classification of transmission and distribution facilities. On July 29, 1998, in Case No. EL98-21, the FERC issued an order adopting jurisdictional classifications consistent with those used by the Commission.

⁴The June 5 order created a set-aside of 4 MW for aggregators on Consumers' system and 6 MW on Detroit Edison's system. The January 14 order reaffirmed this decision.

⁵The June 5 order directed that, at least initially, the 2½% blocks would be allocated through a bidding mechanism.

necessary approvals. Fourth, definitions have been revised to more accurately describe the roles of various participants and to conform to those used by Detroit Edison. Fifth, the reactive power service supply charge has been modified to be consistent with the provision in bundled retail service tariffs.

Detroit Edison indicates that Exhibit B to its filing provides the revisions to the tariff it had filed on February 25, 1998.

Consistency with Commission-approved Tariffs

As previously noted, after holding a contested case proceeding, the Commission approved specific tariffs for Consumers and Detroit Edison in the order of October 29, 1997 in Cases Nos. U-11451 and U-11452 (the October tariff order). In its implementation filing, Consumers has proposed certain changes to the tariffs previously approved by the Commission. These changes will be discussed by subject in this order. The tariff sheets attached to this order for Consumers utilize the tariff sheets filed by Consumers with adjustments as discussed in this order.

Although the Commission approved a retail open access tariff for Detroit Edison on October 29, 1997, the utility did not base its implementation plan on the Commission-approved tariff. Instead, it used a tariff filed by the company on February 25, 1998, which the Commission has not approved. The company made no attempt to explain the differences between its filing and the Commission-approved tariffs. Many comments noted significant concerns. For example, according to the Staff:

The Commission should be aware that Detroit Edison's implementation plan is based on the tariffs filed by the utility on February 25, 1998. The filed tariffs differ in numerous ways from the tariffs approved by the Commission. Many of these discrepancies are significant. For example, [Detroit] Edison's implementation plan proposes a monthly service charge of \$35.00 for a commercial single-phase customer, even though the charge approved by the Commission is \$5.95.

Staff comments, p. 24.

Because the implementation plan filed by Detroit Edison is based on the tariffs filed on February 25, 1998, and modifications to those tariffs filed with the implementation plan, the attachment to this order utilizes those tariff sheets as a basis. To do otherwise would unnecessarily delay the implementation of open access. However, those tariffs have been modified by substituting the relevant rates, terms, and conditions approved by the Commission in the October tariff order and this order. Additionally, the Commission is instituting a contested case proceeding to determine if any of the rate modifications proposed by Detroit Edison should be approved.

Deposits

Consumers proposes that bidders submit a refundable deposit at the time of their bid submittal in the amount of \$1,000 per MW for residential customers, \$1,500 per MW for small secondary customers, and \$2,000 per MW for primary or large secondary customers. Losing bidders will have the deposit returned immediately after the bids are awarded. For winning bidders, the deposit will be retained and applied to the transition charges. If the winning bidder fails to take service, then the bid deposit is retained by Consumers and applied to transition costs.

Detroit Edison proposes the same deposit amounts as Consumers. According to its implementation plan, Detroit Edison will return the deposit to losing bidders within two business days of the bid award notification. Deposits will be returned to winning bidders as customers become enrolled in direct access.

ABATE argues that the bid deposits are excessive. According to ABATE: “No explanation is given as to why the deposits are not uniform; after all, a megawatt is a megawatt.” ABATE comments, p. 13. ABATE indicates that in the open market, power is usually available in blocks of

50 MW, so that a deposit of \$2000 per MW for primary customers would entail a deposit of \$100,000. ABATE argues that a more reasonable bid deposit would be \$100 per MW.

Energy Michigan indicates that the deposit requirements are excessive and that a marketer

The October tariff order did not approve any deposits for Detroit Edison. For Consumers, the order approved tariff section F3.F(4), which required a deposit from aggregators equal to the cost of the highest one month energy consumption of all customers using the aggregator. This provision has been dropped from the tariff filed with Consumers' implementation plan.

The proposed bid deposits appear to be designed to assure that bidders are participating in good faith. This is a reasonable objective provided that the amount of the deposit is not excessive. In the January 14 order, the Commission made an initial estimate of stranded costs and resulting transition charges of 1.20¢ per kilowatt-hour (kWh) for Consumers and 1.25¢/kWh for Detroit Edison. At these rates, a deposit of \$2000 per MW equates to the transition charges associated with 166 hours' use for a Consumers customer or 160 hours' use for a Detroit Edison customer.⁶ Since there are 720 hours in a month with 30 days, 166 or 160 hours equates to less than one month's consumption unless the customer has a low load factor.⁷ A deposit requirement that reflects transition charges associated with less than one month's consumption can hardly be considered excessive. Thus, the Commission concludes that it should approve the proposed bid deposits.

With respect to the question of interest, the Commission notes that the deposits are intended to help assure the recovery of stranded costs. This is explicit in Consumers' implementation plan, where the deposit of a winning bidder is applied against the customer's initial transition charges and forfeited deposits are used to offset stranded costs. It is not so clear in Detroit Edison's plan. Because the calculation of stranded costs included a discount rate, the Commission will require that

⁶For Consumers: $\$2000/\text{MW} \div (\$.012/\text{kWh} \times 1000 \text{ kW}/\text{MW})$. For Detroit Edison: $\$2000/\text{MW} \div (\$.0125/\text{kWh} \times 1000 \text{ kW}/\text{MW})$.

⁷For a business with a two-shift operation (16 hours per day), this equates to transition charges for ten days.

deposits carry interest at the same rate used to calculate stranded costs.⁸ This will assure that customers are neither advantaged nor disadvantaged by the deposit requirements. In addition, any forfeited deposits will be used as an offset to the utility's stranded costs.

Forfeiture

Consumers' filed tariff provides that a successful bidder must apply for a franchise within 60 days and commence service within 180 days. If the bidder fails to meet either timetable, then it forfeits the right to participate in that bid cycle, and its capacity is awarded to the next highest previously unsuccessful bidder.

Detroit Edison proposes that successful bidders must (1) apply for or have received a certificate, pursuant to 1929 PA 69, MCL 460.501 et seq.; MSA 22.141 (Act 69), or contract with a supplier who has done so, within 60 days, and (2) enroll the customer with Detroit Edison within 180 days. If the bidder fails to meet either timetable, then it forfeits the right to participate in that bid cycle and the capacity is awarded to the next highest previously unsuccessful bidder if the forfeiture is within 60 days of the bid award.⁹ After 60 days, the capacity is rolled into the next bid cycle.

Energy Michigan objects to Detroit Edison's proposed requirement that a successful bidder apply for an Act 69 certificate within 60 days. Energy Michigan notes that a supplier must have a franchise to obtain an Act 69 certificate and that the process of obtaining a franchise could easily take longer than 60 days. In addition, Energy Michigan also recommends that the deadlines be

⁸The initial stranded cost estimate used a discount rate of 7%. The appropriate discount rate would be one of the issues addressed in the annual true-up proceeding.

⁹Since a bidder would fail to meet the first condition only on day 61, it is unclear how this provision would occur, other than for a situation where the bidder voluntarily forfeits the capacity.

extended if the utility or one of its affiliates cause a delay by contesting a competitor's attempt to comply with the requirements.

Nordic objects to Detroit Edison's proposal to allocate forfeited capacity after 60 days to the next bid cycle. Nordic indicates that this effectively reduces the amount of capacity in the affected bid cycle and slows the transition process.

U of M is concerned that Detroit Edison's proposal is unclear and objects to having forfeitures beyond 60 days rolled into the next bid cycle. U of M argues that most forfeitures are likely to occur on the 61st day. In addition, U of M seeks clarification that when a forfeiture occurs, the new winning bidder is given the full time period to comply.

The October tariff order approved the following forfeiture language for Consumers:

The Customer or Aggregator selected through the bidding process must complete all requirements set forth in Rule F3, below, within 60 days of its selection. If the Customer or Aggregator fails to adhere to this timetable for any part of its required Open Access load, its right to receive Retail Open Access Service (for that portion of its load) pursuant to that round of bidding will terminate and the portion of its load covered by its terminated bid will be offered immediately to the next highest (but initially unsuccessful) bidder seeking Open Access Service under any applicable Rate Schedule.

October 29, 1997 order, Cases Nos. U-11451 and U-11452, Attachment. Among other things, Rule F3 required that the supplier "has complied with all applicable franchise, statutory, reciprocity and administrative requirements."

The October tariff order approved the following tariff language for Detroit Edison:

The Aggregator selected through the bidding process must satisfy all requirements set forth in Section 1, "Conditions of Service," within 60 days of its selection. If the Customer fails to adhere to this timetable for any part of its requested Direct Access load, its right to receive Direct Access Service (for that portion of its load) pursuant to that round of bidding will terminate and the portion of its load covered by its terminated bid will be offered immediately to the next highest (but initially unsuccessful) bidder seeking Direct Access Service.

October 29, 1997 order, Cases Nos. U-11451 and U-11452, Attachment.¹⁰ Among other things, Section 1 requires that customers contract with an eligible power supplier or marketer, who, according to the tariff, must satisfy “all applicable franchise and statutory requirements of Michigan law.”

From the above, it is clear that the existing tariff language could be interpreted to require the completion of an Act 69 certificate process (including obtaining a franchise) within 60 days. Thus, the utilities’ proposal to only require that the process be initiated within 60 days and allow 180 days for completion of the process and initiation of service (or enrollment of the customer in Detroit Edison’s case) provides additional time and should serve to make the open access program more attractive to customers.

Objections to the proposals involve concerns about unavoidable delays, lack of clarity, and how forfeited capacity will be handled. With respect to the question of unavoidable delays, each utility is responsible for the reasonable implementation of the tariffs that the Commission has approved. The purpose of the time limits is to assure that suppliers or customers do not unduly delay the implementation of direct access because, during the phase-in period before 2002, there is a limited amount of available capacity. However, a utility may allow reasonable extensions due to circumstances that are not under the control of the customer and the supplier. In addition, the customer or supplier always has the option of filing a complaint with the Commission if the utility fails to implement the tariff in a reasonable manner or delays efforts to comply with the conditions.

Concerns about the lack of clarity appear to be due in part to minor differences between the two utilities. Both use the same basic concept--60 days to start the process and 180 days to complete it.

¹⁰For service to customers larger than 1,000 kW, the same language is used, except that the term “Aggregator” is replaced with “Customer.”

However, for Consumers, the 60-day count involves applying for a local franchise, while for Detroit Edison, it involves applying for an Act 69 certificate. Similarly, for Consumers, the 180-day count involves commencement of service, while for Detroit Edison, it involves customer enrollment. Although the two utilities' concepts are very close, the minor differences could lead to confusion and disputes. Accordingly, the Commission is directing the Staff to work with the utilities and other stakeholders to develop a common approach using the 60 day/180 day timeline.¹¹

Concerns about the treatment of forfeited capacity may be related to the lack of clarity. As previously noted, a literal reading of the Detroit Edison proposal is that forfeited capacity would only be offered to the next highest bidder for 60 days, when the most likely forfeiture event would occur on day 61. It is not at all clear that it was Detroit Edison's intent to propose such unusual timing. It may be reasonable to roll forfeited capacity into the next bid cycle if the forfeiture occurs so long after the existing bids that they have become stale and outdated. As part of its work with the stakeholders, the Staff should attempt to reach a consensus on the time at which forfeited capacity would be rolled into the next cycle.¹²

Finally, the Commission is today opening a proceeding in Case No. U-11915 that may obviate some of the concerns regarding the timeframes for compliance. These concerns arise out of the Commission's decision that suppliers under retail open access are required to obtain an Act 69 certificate. This decision was based on policy considerations rather than a strict reading of the

¹¹As an additional point of clarification, it is the Commission's intent that the timeline for those who receive forfeited capacity begins when they receive the capacity so that they have the full 60 days/180 days.

¹²In order to avoid the ambiguity inherent in Detroit Edison's tariff, the Commission has changed the proposed 60-day timeframe to 90 days, pending the opportunity for the stakeholders to discuss the matter.

requirements of the statute. Act 69 applies equally to both gas and electric utilities. The Commission has not required gas suppliers to obtain an Act 69 certificate, but has required electric suppliers to do so. This policy difference was based upon technical differences between the two industries and the potential impact upon customers in each. The Commission concluded that, under the statute, it could require electric suppliers to obtain an Act 69 certificate, but was not required to do so, and for policy reasons should require the certificate. It has been several years since the Commission developed this policy and, given the changes in the industry, the Commission finds that it is now time to revisit the issue. In the order in Case No. U-11915 issued today, the Commission is initiating a proceeding to investigate whether it should implement a voluntary electric supplier licensing program as an alternative to an Act 69 certificate.

Creditworthiness

Equipower objects to the provision in Detroit Edison's implementation plan that requires that retailers and marketers must meet creditworthiness requirements sufficient to meet various obligations. Equipower argues that this requirement should be eliminated or, if allowed to remain, the Commission should ensure that the creditworthiness requirements are not onerous.

ABATE indicates that under Detroit Edison's OATT filed with FERC, the company has the discretion to impose a deposit requirement on customers who are not creditworthy. ABATE argues that the Commission should find that no such deposit should be required from existing customers unless special, extenuating circumstances exist and that Detroit Edison should bear the burden of proof for imposing a requirement on marketers.

Detroit Edison's implementation plan states that:

Marketers must meet creditworthiness requirements sufficient to cover expected levels of transmission, ancillary services, and other obligations. Minimum require-

ments are described in Detroit Edison's Open Access Transmission Tariff (OATT), which has been filed with FERC, as well as in the Transmission Service Agreement.

Detroit Edison's Implementation Plan, p. 21. As ABATE indicates, the creditworthiness issue arises out of the FERC tariff. This Commission has no jurisdiction to modify the FERC tariff. The proceeding regarding the OATT is currently before the FERC and issues regarding the implementation of the tariff should be addressed to that agency.

Energy Imbalances

ABATE indicates that energy imbalance charges will be calculated in accordance with Detroit Edison's OATT on file with the FERC. ABATE argues that the extremely high imbalance charges for usage outside of the deviation band creates a major problem for larger retail customers who wish to participate in direct access. According to ABATE: "Potential solutions include changing [Detroit] Edison's FERC tariff, or the creation of a market for hourly settlements which will cover demands in excess of scheduled deliveries." ABATE comments, p. 16. MIPPA expressed similar concerns, noting that because Consumers and Detroit Edison had filed a Joint Open Access Transmission Tariff at the FERC, the same provisions that apply to Detroit Edison would apply to Consumers. SWEPI indicates that the imbalance charges under Consumers' OATT are very substantial and are not conducive to a competitive market.

Obviously, this Commission is not authorized to change the FERC tariff. The FERC currently has before it cases regarding the OATT for Consumers and Detroit Edison. Concerns regarding the imbalance charges in the FERC tariff are properly directed to that agency. With respect to ABATE's suggestion of the creation of a market for hourly settlements that will cover demands in excess of scheduled deliveries, the Commission is interested in exploring all reasonable means to assist in the development of a more competitive market in Michigan. The option of a voluntary

supplier licensing program in Case No. U-11915 may be one such approach. The Commission is interested in hearing from stakeholders about any other approaches they might suggest.

Reciprocity

Energy Michigan argues that Consumers' proposed definition of reciprocity is unrealistic and not authorized by prior Commission orders. Energy Michigan interprets Consumers' tariff to require suppliers to open the same amount of load to competition as Consumers. According to Energy Michigan, this means that during the phase-in period, small utilities (less than 150 MW for the first block, 300 MW for the second, etc.) could not meet the reciprocity requirement, and in 2002, no utility smaller than Consumers could do so. Energy Michigan raises the same concern with respect to Detroit Edison's proposed tariff.

Energy Michigan's interpretation of the tariff is not correct, although in hindsight, the tariff could have been more clearly written.¹³ The tariff describes reciprocity as opening "an identical amount of retail customer load to competition by the Company" and "an amount of retail customer load which is equivalent to that provided by the Company." It is clear from a review of the tariff that these two phrases refer to the same concept since no other interpretation is plausible. The intent of the tariff is that other utilities open up to competition the same relative amount of their load as do Consumers and Detroit Edison. To interpret the tariff as applying to the absolute amount of load without regard to the size of the utility would lead to perverse results. For example, even though the same open access schedule applies to Consumers and Detroit Edison, because Detroit Edison is larger, it would be able to compete for Consumers' customers, but Consumers would be

¹³The tariffs attached to this order have been modified slightly to eliminate the lack of clarity.

prevented from competing for Detroit Edison's customers. In fact, this interpretation would create a "reciprocity food chain" where any large utility would be free to compete for customers of all smaller utilities with no ability for the smaller utilities to compete in turn. This would be contrary to the purpose of reciprocity as previously expressed by the Commission:

The reciprocity issue requires a careful balancing of the interests of the utilities and their customers. Utilities have a reasonable expectation that if they open their existing markets up to competition, they will have corresponding competitive opportunities outside of their existing markets. Conversely, customers have a reasonable expectation that they will have a diverse, vibrant market of potential suppliers.

June 5, 1997 order, Case No. U-11290, p. 38. This objective can be achieved only if the amount of load that a competing utility must open to competition is measured relative to the utility's size.

Customer Data Fee

ABATE notes that, in its implementation plan, Detroit Edison proposes to charge an undetermined fee for providing customer usage data.¹⁴ ABATE objects, arguing that providing such data is part of normal utility service and the cost is included in the customer charge. ABATE contends that there should be no charge for providing such data or, in the alternative, the fee should be limited to Detroit Edison's actual out-of-pocket costs, which ABATE claims would be minimal.

Shell does not object to the utilities charging a reasonable fee for providing data, but notes that in other states, utilities are required to provide information without charge. According to Shell, Pennsylvania utilities are required to furnish marketers with 12 months of historical load data at no fee and the New York Commission recently ordered a utility to provide marketers with up to 24 months of data without charge.

¹⁴Consumers indicates that it will provide 12 months of historical information without charge.

Equipower indicates that information is critical for open access and that marketers should receive two years of usage information at no cost.

MPA/MACS argue that utilities should make readily available, upon request, the methodology and data used to estimate a customer's load so that informed decisions can be made about investing in demand metering equipment.

Consumers' proposal to provide 12 months of historical data without charge is reasonable and consistent with industry practice. Although ABATE claims that the costs for providing historical data are included in the customer charge, at the present time there is no dispute for the Commission to resolve. If Detroit Edison files an application seeking to modify its tariff to allow it to charge for providing any customer data, rather than providing 12 months of data without charge as Consumers does, then the Commission will address the issue at that time.

Double Recovery of Expenses

ABATE alleges that certain costs are recovered in both the retail open access distribution tariff and Consumers' OATT filed with the FERC. According to ABATE, the OATT monthly reservation fee of \$1.73 per kW is designed to recover the cost of all transmission and subtransmission substations and the distribution substation charges of \$0.73 to \$0.76 per kW result in a double recovery. ABATE also alleges that the loss charges in the distribution tariff would overcollect Consumers' revenue requirements.

Similarly, Nordic argues that the use of the FERC OATT results in Consumers' transmission customers paying higher rates due to the double counting of transmission- and subtransmission-related distribution equipment and substations. Nordic recommends a credit in Consumers' distribution tariff equivalent to the subtransmission service charges for transmission customers and

removal of the substation service charge. In addition, Nordic indicates that the real power losses for transmission customers are higher than those contained in Consumers' initial tariff and that a line loss credit should be included to compensate transmission service customers for excess losses contained in Consumers' FERC OATT.

In its response, Consumers indicates that on July 29, 1998, in Docket No. EL98-21, the FERC approved the jurisdictional classification of transmission and distribution that the Commission had previously adopted in Case No. U-11283. Consumers indicates that its revised FERC OATT will reflect the new classification and will avoid double collection of costs.

When Consumers filed its implementation plan on June 30, 1998, the FERC had not yet adopted the revised jurisdictional classification. Consumers' plan contained two sets of tariffs: (1) one designated as "Appendix E -- Part 1, 120 kV and above Transmission Service" reflecting the revised classification that the FERC subsequently adopted; and (2) another designated as "Appendix E -- Part 2, 46 kV and above Transmission Service" reflecting the then-current classification. On October 27, 1998, Consumers filed an amended OATT with the FERC, which reflected the revised classification. On December 17, 1998, the FERC accepted the revised OATT for filing, making it effective on January 1, 1999, subject to refund and to the outcome of pending proceedings. The tariff sheets attached to this order reflect the revised classification and are thus consistent with the existing OATT that the FERC has accepted for filing.

Secondary Customer Charges

The October tariff order authorized a monthly customer charge on Consumers' Secondary Rate ROA-S of \$25.40 for customers with an energy and maximum demand recording meter and \$14.75 for customers with an energy-only recording meter. The tariff filed with Consumers' implementa-

tion plan changes these to \$27.00 and \$16.20 respectively. The tariff attached to this order utilizes the customer charges approved by the Commission.

Dedicated Telephone Lines

MIPPA notes that both implementation plans require the use of dedicated phone lines, which are expensive and can be significant barriers to entry. MIPPA recommends that both plans recognize advancements in automated meter reading and be flexible enough to allow use of alternative technologies.

SWEPI makes a similar observation and recommends that the implementation plans not be so inflexible as to mandate one type of technology when more cost-effective alternatives are available.

Energy Michigan indicates that Detroit Edison's implementation plan requires the installation of expensive new meters and does not allow data sharing. Energy Michigan recommends that Detroit Edison use existing demand meters and make the data from those meters available to customers and their suppliers through electronic methods.

The October tariff order approved the following tariff provision for Consumers:

The load under this tariff shall be separately metered by demand and energy hourly recording meters of billing quality. Such metering equipment shall be furnished, installed, maintained and owned by the Company.

A Customer who elects not to use an Aggregator shall be responsible for all costs of all such metering equipment including the associated dedicated telephone line and accompanying monthly fees.

A Customer who elects to use an Aggregator shall be responsible for all costs of all such metering equipment. The Aggregator shall be responsible for the associated dedicated telephone line and accompanying monthly fees.

October 29, 1997 order, Cases Nos. U-11451 and U-11451, Attachment, p. 1-ROA-P.¹⁵

From the above, it is clear that Consumers' approved tariff permits the use of dedicated phone lines. Nonetheless, MIPPA and SWEPI raise legitimate concerns that the open access not be hindered by inflexible rules that prohibit the use of more cost-effective technologies as they are developed. The tariff does not exclude the use of improved technology. Rather, it assigns the responsibility for the cost of a dedicated phone line when one is needed and used. Consumers has the responsibility for implementing the tariff in a reasonable and cost-effective manner.

The October tariff order approved the following tariff provision for Detroit Edison:

Load served under this Tariff shall be separately metered. Metering equipment for Customers taking service under this Tariff shall be furnished, installed, read, maintained and owned by the Company. . . . Meter information from the Company's meters measuring the Customer's use of Direct Access Service will be made available to the Eligible Power Supplier under a separate contract.

October 29, 1997 order, Cases Nos. U-11451 and U-11452, Attachment, p. 11.

In its implementation plan, Detroit Edison states:

For no extra cost, duplicate set of data impulses will be made available at the location of each hourly meter for use by the Customer or any third-party the Customer designates. Each data pulse represents specific amounts of energy measured and recorded by that meter and is generated on a real-time basis. By monitoring and properly accumulating these pulses, the Customer or the Customer's delegate can determine the usage profile over any desired time basis. . . . Neither the Customer nor its delegate will be able to use Detroit Edison's data acquisition (communications) infrastructure for collecting metered data. To control costs, Detroit Edison plans to share a Customer's telephone line. With this technology, the meter, which will initiate the call, can only be programed to call one number. Upon payment of a subscription fee, however, the Customer can obtain the metered data after it has been collected and processed by Detroit Edison. Fees for this service have yet to be determined.

Detroit Edison Implementation Plan, p. 62.

¹⁵The quoted language applies to Rate ROA-P. Substantially equivalent language is contained in the other rate schedules.

Unlike the Consumers situation, the approved tariff for Detroit Edison does not address the dedicated telephone line issue. Detroit Edison's proposal in its implementation plan is confusing.

From the implementation plan, it appears that:

- (1) Detroit Edison will provide a duplicate set of data pulses from the meter to the customer without charge.
- (2) The customer will not be able to use Detroit Edison's data acquisition (communications) infrastructure for collecting meter data.
- (3) To save cost, Detroit Edison plans to share the customer's telephone line.
- (4) The program can only call one number (apparently Detroit Edison's).
- (5) For a fee, Detroit Edison will provide the customer with the data that the utility has collected, apparently using the customer's phone line.

Several points are unclear: How is the customer going to make use of the meter data if the customer's telephone line can only be used to call Detroit Edison? What is the meaning of the term "share" the customer's telephone line? What costs are saved by sharing the line if it can only be used to call one number? How will this cost savings be shared between Detroit Edison and the customer? Finally, if a single technology is locked in, how can the concerns of MIPPA and SWEPI be addressed?

With all of these unanswered questions, the Commission is not prepared to address the issue of dedicated telephone lines until such time as Detroit Edison proposes an appropriate tariff provision.

Lighting Customers

Energy Michigan claims that Detroit Edison's proposal does not make open access available to lighting customers using customer-owned equipment, which, according to Energy Michigan, is discriminatory. The October tariff order for both Consumers and Detroit Edison did not make retail

open access available for streetlighting using company-owned equipment. There do not appear to be any restrictions in the filed tariffs relating to customer-owned equipment.

Self-Generated Power

Mich Con and Energy Michigan note that Detroit Edison's implementation plan applies transition charges to self-generated power unless it was produced from a customer-owned electric generating facility that was in place and operating on January 1, 1999. They say that this is an attempt to discourage or eliminate competing sources of energy at a time when Detroit Edison is short of capacity and will almost completely offset the efficiency advantages of self-generation. They claim that the Commission must reject the cogeneration charge as anticompetitive and a disincentive to efficiency.

The Commission has not authorized the collection of transition charges for self-generated power, nor has it been asked to do so. The Commission will address the issue if an appropriate application is filed.

Distribution Contract Capacity

Energy Michigan indicates that Detroit Edison's filed tariff provides for an initial minimum term of five years during which the minimum charges would apply and the distribution contract capacity could not be reduced. Energy Michigan indicates that this provision conflicts with Detroit Edison's implementation plan, which allows customers to return to bundled tariff service with 30-days' notice. In addition, Energy Michigan claims that the prohibition on demand reduction discourages improved efficiency and is inconsistent with the Detroit Edison's retail tariffs, which allow reduced demand charges after 12 months.

The October tariff order provided for a one-year contract term for existing customer locations and a five-year term for new customer locations. The distribution contract capacity for existing customers is equal to the highest demand during the 12 prior months and could not be reduced during the one-year term. For new customers, the initial distribution contract capacity is negotiated based on the load connected to the utility's system.

For existing customers, it is not unreasonable to have contract capacity determined for the one-year term based on the prior year's demand. To the extent that the customer implements demand reduction measures, these will be reflected in the distribution contract capacity for the following year. For a new customer, the initial distribution contract capacity will be negotiated between the utility and the customer. In this regard, the utility has a duty to implement the tariff in a reasonable manner by utilizing a distribution contract capacity that is consistent with the customer's load. Although not explicit in the tariff, after 12 months, the distribution contract capacity would be adjusted to reflect the actual demand placed on Detroit Edison's system in the same manner that other demand ratchets are adjusted.

Growth

Detroit Edison proposes that customer load growth be restricted so that the total capacity awarded will be as close as possible to 225 MW. Nordic and U of M oppose this as being discriminatory and failing to take into account load growth on each utility's system

During the phase-in period, the Commission has established five 2½% blocks, which equate to 150 MW for Consumers and 225 MW for Detroit Edison based on the utility's historical load, not on its future load. Detroit Edison's proposal regarding customer load growth could be considered only if it was coupled with a proposal to increase the 225 MW to take into account current and

future load growth. Detroit Edison has made no such proposal. Therefore, the Commission must reject Detroit Edison's proposal to restrict customer load growth.

Power Factor

Energy Michigan objects that Detroit Edison proposes to increase charges relating to the customer's power factor and to prohibit power factors less than 70% that had previously been allowed. The power factor charges and conditions in the tariff attached to this order are consistent with those approved in the October tariff order.

Minimum Bid

The October tariff order instituted a minimum bid of 0.5¢/kWh. The January 14 order modified this provision slightly by allowing each utility to require a minimum bid of up to 0.5¢/kWh. The utilities' implementation plans use a minimum bid of this amount. The January 14 order also indicates that the Commission will review the minimum bid if circumstances warrant.

Energy Michigan, Equipower, and Nordic argue that the minimum bid requirement should be eliminated. They contend that the electricity market has changed dramatically since the Commission instituted the minimum bid and that a minimum of 0.5¢/kWh will make retail open access uneconomic.

As discussed subsequently in this order, significant changes have occurred in the electric market since the Commission last reviewed the minimum bid question on January 14, 1998. Dramatic increases in prices occurred in the summer of 1998 and the prices of futures for this summer far exceed historical values. Under these circumstances, the Commission concludes that the minimum bid should be set at zero for at least the initial bid. The Commission will review the results of this bid and change the minimum if warranted.

IV.

IMPLEMENTATION COSTS

Detroit Edison requests that the Commission approve 1998 implementation costs of \$19.9 million and approve deferred accounting for implementation expenses in accordance with Exhibit C to its application. Consumers indicates that it anticipates incurring approximately \$25 million in implementation costs in 1998 and requests deferred accounting for implementation costs and associated tax timing differences.

ABATE argues that the Commission should not grant pre-approval of implementation cost levels and that interested parties should have the opportunity to contest the reasonableness of the implementation expenditures. In addition, ABATE argues that little is known about how implementation costs would be allocated among and collected from customers.

The Attorney General argues that the Commission cannot lawfully authorize recovery of any cost increase without a hearing. The Attorney General indicates that, consistent with prior Commission orders, implementation costs should be audited and reviewed before recovery is authorized and that there are significant issues concerning the appropriate cost-causation and cost-benefit allocation of such costs.

Energy Michigan argues that the proposed implementation costs are unreasonable and should be subject to a hearing. In addition, Energy Michigan contends that since implementation costs will produce a program that will be available to all customers, these costs should be spread over all customers and collected through a mechanism that will be predictable in duration and amount.

The Staff indicates that any Commission approval of the implementation plans should not be misconstrued as approval of the recovery of the implementation costs. The Staff notes that the

Commission has previously indicated that it will examine the prudence of any such costs prior to including them in stranded costs.

In the January 14 order, the Commission stated that:

If a utility incurs any implementation costs for restructuring, those costs should be reviewed for prudence in the annual true-up proceeding and stranded costs adjusted appropriately.

January 14, 1998 order, Cases Nos. U-11290 et al., p. 18.

Consumers and Detroit Edison are scheduled to file their true-up proposals for 1998 by March 31, 1999. At the time that this schedule was established, it was anticipated that open access would begin sometime in 1998. Although that has not occurred, the Commission concludes that a slightly modified proceeding for 1998 would be helpful for two reasons. First, in accordance with the order quoted above, the true-up proceeding is needed to review the prudence of any implementation costs incurred by the utilities. Second, because this will be the first true-up proceeding, there are significant policy decisions that need to be addressed. These could include: How quickly should billing and other direct access systems be phased-in?¹⁶ Should billing and metering functions be limited to utilities or should other providers have the option? How should implementation costs be allocated among and recovered from customers? After these policy issues are resolved in the initial true-up proceeding, future true-up proceedings will be more limited to calculating the appropriate true-up amount in light of the Commission's prior policy determinations. Accordingly, the Commission finds that Consumers and Detroit Edison should file true-up applications by March 31, 1999.

¹⁶For example, it might not be appropriate to expend large sums for implementation of a program that can only be cost-justified if there are a million open access customers, when a less-costly option exists for a smaller number of participants.

Because of the policy issues to be addressed, the Commission finds that the initial true-up should be conducted in a joint proceeding involving both Consumers and Detroit Edison. Testimony by the utilities should be filed in accordance with the schedule determined by the Administrative Law Judge at the prehearing conference in the combined case.

Because the prudence of the implementation costs will be addressed in the true-up proceedings, the Commission finds that it should grant the requests for deferred accounting of implementation costs and associated tax timing differences.

V.

AFFILIATE PARTICIPATION

In its implementation plan, Consumers proposes a retail code of conduct, which would govern relationships between Consumers and its affiliates participating in retail open access in Consumers' service territory. Codes of conduct have been adopted by several states as a tool to prevent the abuse of market power. Consumers asserts that the utility and its affiliates should be permitted to participate under the same conditions that apply to all other potential market participants. Consumers contends that no code of conduct would be needed if such participation is not permitted. Alternatively, if the Commission determines that some form of limitation on participation is appropriate, then Consumers suggests that affiliates be limited to one-third of the total amount of eligible retail open access per bid cycle.

Detroit Edison requests that the Commission issue a declaratory ruling that its affiliates will be permitted to participate in the retail open access program. Like Consumers, Detroit Edison suggests that affiliates be allowed to serve one-third of the load in each cycle if the Commission

determines that some form of limitation be placed on affiliate participation. Detroit Edison indicates that it will submit a code of conduct “in the near future” for the Commission’s review and approval.

ABATE argues that prior Commission orders only allowed affiliates to participate if the load served by them did not count towards the capacity available. However, ABATE supports the development of a code of conduct to assure that all participants are playing on a level playing field.

The Attorney General argues that the Commission cannot grant Detroit Edison’s request for a declaratory ruling because it will affect parties other than Detroit Edison and the Commission, which is not permitted pursuant to MCL 24.263; MSA 3.560(163). The Attorney General does agree that a code of conduct should be established to regulate utility/affiliate relationships to assure fair competitive practices but has not had sufficient time to address the specific details of Consumers’ proposed code.

Energy Michigan argues that if the Commission grants the request to allow affiliates to participate in one-third of the market, then the size of the available open access blocks should be increased by one-third. In addition, Energy Michigan claims that Consumers has proposed a “toothless” code of conduct that will not prevent abuses like the ones that have already occurred. According to Energy Michigan, the impact of Consumers’ proposed code cannot be determined until there is a definition of “first tier” and “second tier” affiliates.

Equipower indicates that utility marketing affiliates should be prohibited from participating in open access until the Commission has approved a code of conduct governing the interaction and relationship between the utility and its non-regulated marketing affiliates.

MAFC supports the adoption of a strict code of conduct to prevent utilities from subsidizing non-regulated activities with revenues from regulated services. MAFC argues that Consumers’

proposed code of conduct should be expanded to apply to the utility's retail sales and service market.

MIPPA supports the use of a code of conduct to guard against potential unfair competitive practices between a utility and its affiliates. MIPPA notes that Detroit Edison has not filed a code of conduct and that further details are needed regarding how Consumers' code would be implemented and supervised.

Nordic argues that retail open access capacity awarded to affiliates should not count towards program capacity limits and that affiliates have a substantial advantage that allows them to "game" the system.

Shell supports development of a code of conduct that will set forth: (1) how the utility and its marketing affiliate will interact; (2) what type of behavior between these entities will be prohibited; and (3) how such conduct, should it occur, will be punishable. Shell indicates that a code is needed to prevent abuse and to prevent a marketing affiliate from unfairly dominating the market.

SWEPI indicates that the adoption of analogous codes of conduct in the natural gas industry supports the adoption of similar provisions for the electric industry in Michigan because the market dynamics in the restructured electric industry are expected to be virtually identical to those in the natural gas industry. SWEPI contends that Consumers' proposed code of conduct is very general and lacks specific language that could be used to ensure fair participation. According to SWEPI, a code of conduct should (1) ensure that no preferential treatment be given to the unregulated marketing affiliate, (2) provide that the unregulated marketing affiliate's operations be completely separated, (3) prohibit subsidization, (4) provide that market and customer data disclosed to an unregulated marketing affiliate be disclosed to non-affiliated marketers, and (5) prohibit an unregulated marketing affiliate from using the utility name or logo. In addition, SWEPI indicates

that the Commission should maintain regulatory oversight and establish fast-track procedures for dealing with complaints.

U of M opposes the request to allow affiliate participation because the Commission had previously determined that affiliates should not count towards each bidding cycle available capacity.

The Unions support the establishment of a true and meaningful code of conduct that would include a commitment to improve service, safety, and reliability.

On December 23, 1998, as a follow-up to the “Staff Market Power Discussion Paper,” the Staff filed a discussion paper entitled “Developing and Implementing Codes of Conduct for Retail Electric Industry.” The Staff concluded the paper by stating that in the “absence of structural remedies, an enforceable code of conduct is a critical behavioral tool to prevent abuse of the utility-affiliate relationship, thus curbing the opportunity to abuse market power.” Staff discussion paper, December 23, 1998, p. 36. In the paper, the Staff identified issues that should be covered in a code of conduct, including provisions which clearly separate regulated and competitive activities and prevent discrimination and discriminatory sharing of information. In addition, the Staff recommended that the code should include definitions of terms, oversight and enforcement procedures, and provisions for handling violations.

The process of introducing customer choice into the electric industry in Michigan is similar to that previously followed by the natural gas industry. In Michigan, large customers have had the ability to choose a natural gas supplier since the 1980s. Currently, there are pilot programs underway to allow residential and small commercial customers of Consumers, Mich Con, and SEMCO Energy Gas Company (SEMCO) to choose their natural gas supplier.¹⁷ These programs

¹⁷Strictly speaking, the previously existing programs did not prohibit these customers from participating, but the rate design made it uneconomic to do so.

have been very successful. In the first year of the Consumers' program, 100,000 customers signed up with an alternative natural gas supplier, which was the limit allowed under the program.

Similarly, it appears that the first-year program limit of 75,000 customers for Mich Con will be reached.

The natural gas customer choice programs allow affiliate participation. However, to assure that fair competition is maintained, the Commission has required the establishment of a code of conduct for each natural gas utility. To date, the Commission has approved such codes for four gas utilities operating gas transportation programs in Michigan.¹⁸

SWEPI, an organization with experience in both industries, assures the Commission that the "market dynamics of the restructured electric industry are expected to be virtually identical to those in the natural gas industry." SWEPI comments, p. 11. Even if the correspondence between the industries is not that close, it is reasonable to expect that the introduction of customer choice to the electric industry will raise issues similar to those encountered in the natural gas industry. This, coupled with the demonstrated success of the natural gas code of conduct, indicates that the natural gas code of conduct could serve as a basis for an electric code, with modification as needed to address electric-specific issues.

A comparison of Consumers' proposed electric code of conduct with its approved natural gas code of conduct indicates nearly complete conformance between the two. There are four differences.

¹⁸These are: (1) SEMCO in Case No. U-11220, dated October 30, 1997; (2) Consumers in Case No. U-11645, dated April 1, 1998; (3) Wisconsin Public Service Corporation in Case No. U-11621, dated April 14, 1998; and (4) Mich Con in Case No. U-11682, dated April 28, 1998. The only other utility with a gas transportation program is Michigan Gas Utilities, which has a code of conduct pending in Case No. U-11648.

First, the electric code defines two classes of affiliates: (1) first tier affiliates, consisting of Consumers' divisions, departments, and wholly-owned subsidiaries; and (2) second tier affiliates, consisting of separately organized affiliated companies or joint ventures. The proposed code indicates that second tier affiliates may participate in the retail open access program immediately, but that first tier affiliates may not do so until January 1, 2002. No such distinction between types of affiliates was made in the natural gas code, although none was necessary. There was no prohibition against natural gas utilities and their marketing affiliates participating in the natural gas customer choice programs. Indeed, marketing affiliates participated in the programs in their affiliated utility's service territory and natural gas utilities participated in other utilities' programs. It was the unrestricted ability of natural gas utilities and their affiliates to participate that prompted the need for the development of codes of conduct.

Second, the natural gas code requires operating employees of Consumers and its marketing affiliate to function independently of each other, be employed by separate corporate entities, and maintain separate business offices. The proposed electric code does not require separate business offices.¹⁹

Third, the natural gas code has provisions relating to discounts offered to affiliates and non-affiliated marketers. No such language is included in the proposed electric code. Many of the natural gas transportation tariffs specify a range of reasonable prices, with a minimum and maximum, rather than a specific rate. The provisions relating to discounts in the natural gas code are designed to assure that affiliated and non-affiliated marketers are treated comparably when prices are negotiated within the reasonable range. Tariffs approved by the Commission for retail electric

¹⁹There is also no explicit requirement for separate corporate entities, but that would appear to be implicit in the nature of being an affiliate.

customer choice contain specific rates rather than a range of reasonable rates and, hence, do not raise the issue regarding disparate treatment of discounts. Because Consumers cannot grant any discounts to an affiliate, no provision is needed in the code of conduct. Of course, if Consumers were to propose tariff provisions that would allow discounts to affiliates, then it would be necessary to revise the code of conduct to be consistent with that approved for Consumers' gas business.

Fourth, the proposed electric code contains a provision indicating that there is no intent to relieve Consumers of its duty to comply with the Standards of Conduct established by the FERC.²⁰ No similar provision is included in the natural gas code.

From the above, it is clear that Consumers' proposed electric code is essentially the same as the Commission-approved natural gas code, except for the lack of a requirement to maintain separate business offices. Since Consumers' affiliates will be required to maintain separate business offices in order to comply with the gas code of conduct, it would be reasonable to include the same requirement in the electric code. Accordingly, the code of conduct attached to this order has been modified to require separate business offices for Consumers' wholly-owned subsidiaries and second tier affiliates.

One additional clarification is needed. Paragraph A(2) of Consumers' proposed code indicates that the code does not apply to Consumers until it participates in the open access program in its service territory by offering power at market prices. The Commission understands this provision to refer to Consumers acting as a supplier, not as a regulated distribution utility. The code of conduct addresses the relationship that Consumers, acting as a regulated distribution utility, maintains with affiliated and non-affiliated suppliers. These provisions apply irrespective of whether Consumers is

²⁰18 CFR §§37.1-37.4.

participating as a supplier in the program. If Consumers participates as a supplier, then the code requires Consumers to treat itself as a supplier equally with all other suppliers.

As previously noted, utilities and their marketing affiliates were not restricted in their participation in the natural gas customer choice program and the codes of conduct were used as the mechanism to assure that all parties were treated fairly. In this case, Consumers has requested similar treatment in exchange for the adoption of a code of conduct. Alternatively, Consumers indicates that, if the Commission determines that some form of limitation is appropriate, then affiliates could be limited to one-third of the total available access.

In the Commission's opinion, there are differences between the natural gas and electric industries that require slightly different treatment. Historically, the natural gas industry had been served by separate companies performing production, transportation, and distribution.²¹ This structure provided a ready nucleus of potential market competitors provided that there was a code of conduct in place to assure fair dealings with affiliates and non-affiliates. Conversely, the electric industry has been dominated by vertically integrated utilities that combine the three functions. Thus, there is not an equivalent supply of potential competitors.²² In the emerging electric market, a balance needs to be struck between two competing objectives. First, it is reasonable to allow utilities and affiliates to participate in customer choice provided there is a code of conduct in place

²¹These are functionally equivalent to generation, transmission, and distribution in the electric industry.

²²This vertical integration has raised significant concerns about market power. The "Staff Market Power Discussion Paper" issued on June 5, 1998 found that the Hirschman-Herfindahl Index for the Michigan electric market is between 2200 and 3300. Values over 1800 are generally considered to be of serious concern. The discussion paper recommended seven actions to address market power concerns, including the establishment of a code of conduct governing the relationship between utility companies and their affiliates.

to assure fair competition. Second, if affiliates are allowed to capture all of the open access load, then a monopoly position will be maintained and there may never be an opportunity for a truly competitive market to develop. The proposal to limit affiliates to one-third of the open access market is a reasonable compromise between these competing goals. Accordingly, the Commission approves Consumers' alternative proposal to allow the utility and affiliates to serve one-third of the total amount of eligible retail open access load per bid cycle consistent with the approved code of conduct.

There are three issues regarding code of conduct remaining to be addressed. First, in its implementation plan, Detroit Edison requested similar treatment to that requested by Consumers and indicated that it would be filing a code of conduct for Commission review "in the near future." To date, no code of conduct has been filed. Accordingly, the Commission will defer ruling on Detroit Edison's request that its affiliates be allowed to participate until the utility files a proposed code of conduct.

Second, the analysis of Consumers' proposed electric code of conduct compared that code with the approved natural gas code. This is in accord with the Commission's determination that the natural gas code of conduct could serve as a basis for an electric code, with appropriate modification as needed to address electric specific issues. The remaining question to be addressed is whether there are specific issues in the electric market that would warrant modifications to the gas code. As previously discussed, on December 23, 1998, the Staff filed in Case No. U-11290 a discussion paper entitled "Developing and Implementing Codes of Conduct for the Retail Electric Industry." That paper discusses the market context of codes, and how they have been employed by the FERC for wholesale transactions and the Commission for natural gas utilities. It looks at what additional provisions will be needed to appropriately cover retail competition in the electric industry and

illustrates this primarily through reference to codes adopted for use by legislatures and regulatory commissions in other states. The Staff code of conduct paper provides a good starting point for addressing this issue. The Staff should meet with Consumers, Detroit Edison, and other interested parties to get their comments on the paper and to attempt to develop a consensus on what additional actions, if any, are needed. The Staff should file a report within 90 days detailing the issues on which there is consensus and identifying any remaining issues that need to be addressed by the Commission.

Third, the Commission has previously adopted requirements for transactions between a utility and its affiliates for Consumers²³, Mich Con²⁴, and Michigan Gas Company²⁵. These conditions address access to books and records, accounting procedures designed to prevent cross-subsidization, reporting requirements, and transfers of personnel, assets, and market data.

Although these conditions regarding affiliate transactions do not directly relate to electric retail open access and related codes of conduct, consideration of these issues has raised concerns regarding the affiliate transaction conditions. First, these conditions only apply to a limited number of utilities, although there are other utilities that would appear to be similarly situated. As a result, some utilities could gain an unfair advantage in the more competitive market brought about as a result of customer choice. Second, it has been several years since the Commission has adopted these conditions, and it is time to review these requirements in order to determine which of these conditions may no longer be appropriate or which new conditions may be required in today's

²³December 7, 1989, March 29, 1990, and August 30, 1990 orders in Cases Nos. U-8678, U-8924, and U-9197; May 7, 1991 order in Case No. U-9346.

²⁴October 28, 1993 order in Cases Nos. U-10149 and U-10150.

²⁵June 29, 1990 order in Case No. U-9323. Michigan Gas Company no longer exists. It was merged into SEMCO.

industry. Accordingly, the Commission is initiating a proceeding today in Case No. U-11916 to review the conditions regarding affiliated transactions.

VI.

CUSTOMER EDUCATION

With regard to the need for customer information, the June 5 order states:

In addition, in order to make efficient use of the direct access program, customers will need access to sufficient and reliable information in order to be able to compare and select among products and services provided in the electricity market. These include: (1) general information regarding the nature of the direct access program, (2) details regarding the prices and specific services being offered by suppliers, and (3) the sources of power generation and other information that the customers may need about the supplier.¹ In consultation with interested parties, the Staff should review existing billing practices and available sources of customer information, and

tion of Retired Persons (AARP), MEGA, and The Heat and Warmth Fund (THAW).²⁶ In addition, Detroit Edison, the Michigan Community Action Agency Association (MCAAA), and AARP support the Commission establishing an independent broad interest working group to develop an action plan for public outreach and education.²⁷

The Customer Focus Report recommends a customer education program patterned after those used in other states and consistent with the restructuring time frame in Case No. U-11290. To meet overall customer needs, the report suggests the following goals: (1) prepare all customers to participate competently in the electric marketplace; (2) impede discriminatory or abusive market practices; (3) minimize customer confusion; (4) provide educational materials to enable comparison of price, fuel mix, environmental impact, and terms of service offered; (5) provide clear, accurate information to assist consumers in making decisions about their electric service; (6) raise awareness of what consumer choice means in the emerging marketplace; and (7) protect vulnerable customers. The Customer Focus Report emphasized that successful electric industry competition requires knowledgeable and well-informed customers with easy access to information.

On January 8, 1998, the Commission issued an order in Case No. U-11290, requesting public comments on the Customer Focus Report. Comments were received from ABATE; the Attorney General; CellNet Data Systems; the Center for Energy and Economic Development; Consumers; Detroit Edison; Energy Michigan; Engage Energy; Enstar Energy Group; Richard Kildea; Indiana Michigan Power Company; Michigan Department of Management and Budget; Michigan Electric Cooperative Association; MEGA; MUCC; Michigan Schools Energy Cooperative; Services

²⁶Specific statements are found in the Customer Focus Report, p. 41.

²⁷Customer Focus Report, p. 44.

Resources, Inc.; the Unions; Wisconsin Electric Power Company; Wisconsin Public Service Corporation and Northern States Power Company-Wisconsin; and David Wright. In general, these comments supported the concept that customer education efforts will be important in successfully implementing electric choice.

Based on the comments received on the Customer Focus Report, the Staff initiated a voluntary working group, which adopted the name Customers Have Options in Choosing Electricity (CHOICE). The CHOICE Advisory Council includes representatives from the Small Business Association of Michigan, THAW, MEC, Michigan Consumer Federation, MCAAA, AARP, Consumers, Detroit Edison, Michigan Manufacturers Association, Michigan League for Human Services, Engage Energy, MEGA, Nordic, Michigan Retailers Association, Michigan Electric Cooperative Association, and the Staff. The CHOICE Advisory Council has been working toward development of a statewide customer education plan.

The Commission, as it previously stated in the June 5 order, believes there is a clear need to address the information requirements of customers and supports the voluntary efforts of the CHOICE Advisory Council to address these needs. Accordingly, the Commission requests the CHOICE Advisory Council to submit a proposal to the Commission within 90 days for a statewide customer education program to ensure an effective, highly visible, and competitively neutral approach to customer education on electric industry restructuring. This proposal should address the education efforts identified in the Customer Focus Report, propose a budget and funding mechanism, and indicate required funding levels necessary to carry out the program. The Commission sees this statewide customer education program as distinct from, but complementary to, the education and information programs identified in the utilities' implementation plans.

VII.

BILLING AND METERING

In its implementation plan filing, Detroit Edison makes the following request for a declaratory ruling:

In order to effectively implement Customer Choice, [Detroit] Edison is required to spend significant dollars to develop a billing and metering system which is capable of facilitating Customer Choice. The Company is concerned that proceeding to expend these costs may not be viewed as reasonable if the Commission is inclined to make billing and metering services open to other providers. If the Company is to spend millions of dollars on these systems, it must be ensured that it will receive recovery. The Company hereby requests that the Commission enter an order stating that the billing and metering functions will continue to be provided by the Company during the transition period through December 31, 2007. An order on this issue is necessary for the Company to prudently make expenditures associated with billing and metering and to ensure recovery of these expenditures.

Detroit Edison's June 30, 1998 filing, p. 6.

The Attorney General argues that Detroit Edison's request does not qualify for a declaratory ruling because it would affect more parties than just Detroit Edison and the Commission.

Energy Michigan argues that metering should be able to be provided by alternative suppliers so as to keep this competitive opportunity open.

The environmental groups indicate that the utilities have proposed expensive billing programs. They propose that the billing mechanism be offered on the same terms and conditions to any energy service provider.

Nordic argues that the utilities can apply for cost recovery of metering costs using the existing ratemaking process.

PG&E argues that energy service providers should be given the option of providing consolidated billing services rather than open access being restricted to dual billing or utility-consolidated

billing. With respect to metering, PG&E indicates that it is critical that energy service providers have access to metered information in a manner that is useful, informative, and on a real-time basis. According to PG&E, it is not imperative that an energy service provider serving a customer own the customer's meter, but the provider must have access to the meter and have the ability to replace or

interest for the Commission to issue an order prohibiting others from providing billing and metering if they can do so more efficiently and cheaply.²⁸ Because it would not be in the public interest to grant the requested ruling, the Commission need not address whether the issue is an appropriate one for a declaratory ruling.

VIII.

CUSTOMER CREDIT INFORMATION

Detroit Edison requests a declaratory ruling that the utility shall not deliver or make available customer credit information to any marketer, retailer, broker, aggregator, or any entity without the express written consent of the customer.

The Attorney General responds that the issue does not qualify for a declaratory ruling under MCL 24.263; MSA 3.560(163). In addition, the Attorney General argues that the issue should involve consideration of state and federal laws regarding consumer credit information.

The Commission declines to issue a ruling in what is essentially a factual vacuum. Detroit Edison provides no background about the extent to which it already provides customer credit information to various entities, if any. Furthermore, there has been no attempt to brief the issue in the context of existing state or federal laws. This is not a matter that falls within the Commission's specialized expertise or jurisdiction. Absent a further development of the issue, the Commission is not able to grant the requested ruling.

²⁸Despite the urging of several parties, the Commission is not in a position at this time to rule on whether billing and metering is a competitive service. As previously noted, the true-up proceeding to be filed by March 31, 1999 will examine policy issues related to the implementation costs being proposed by the utilities.

IX.

ENVIRONMENTAL CONCERNS

The environmental groups argue that the utilities' implementation plans should include additional provisions designed to encourage energy conservation, energy efficiency, and renewable resources. These include (1) energy efficiency surcharges, (2) renewable resource portfolios, (3) standard offers, and (4) net metering.²⁹ MIPPA also supports the establishment of a renewable energy portfolio standard and environmental disclosure for electricity suppliers.

First, the environmental groups propose that the Commission authorize the following non-bypassable³⁰, competitively neutral charges: (1) an energy conservation surcharge of at least 1 mill per kWh, (2) a renewable resource research and development surcharge of at least 0.6 mill per kWh, and (3) a low-income conservation and customer assistance surcharge of at least 1.5 mills per kWh. The environmental groups recommend that the funds from these surcharges be disbursed through a competitive bidding process.

The Commission may not approve rate increases without a hearing. The environmental group's surcharge proposal is new. It was not raised at the time of the hearing that resulted in the October tariff order, nor was it raised in any other hearing. Consequently, the Commission cannot approve it at this time.

²⁹The environmental groups also raise an issue regarding billing, which is addressed elsewhere in this order.

³⁰In this context, nonbypassable appears to mean that the charges would be assessed on the tariffs of customers that participate in open access and of those that do not.

Second, the environmental groups recommend that the portfolio of each utility supplier contain at least 3% renewable energy resources by January 1, 1999; 4% renewable resources by January 1, 2001; 5% renewable resources by January 2006; and 10% renewable resources by January 1, 2011.

The Commission is not convinced that portfolio standards are necessary at the present time. When given a choice, customers have shown a propensity to sign up with suppliers offering green power. As previously noted, in the New Hampshire pilot program approximately 30% of the participants selected a supplier that utilized renewable generation or green power. The largest supplier of residential customers participating in the California open access program has announced that it will cease offering power from other generating sources and will only offer green power. Thus, it is clear that customers will consider green power offerings if they are aware of them. As MIPPA points out, this raises the issue of environmental disclosure. This would be an appropriate issue to consider in Case No. U-11915.

Third, the environmental groups discuss the use of a standard offer, which they describe as follows:

An open offer is made to pay certain amounts (per kWh and/or kW) for documented savings achieved by energy efficiency projects. The specific amounts can be developed for any individual utility or qualified service provider based [on] long term avoided cost estimates for fuel and operating costs, capacity, transmission and distribution, and other appropriate costs. Given the tight energy supply in Michigan, those amounts should be high enough to be attractive to project developers, customers or energy service companies.

Interested customers, or energy service companies on behalf of certain customers, would submit proposals for energy efficiency projects to an advisory board or the utility. A pre-inspection would be conducted and a metering and measurement plan to verify savings would be developed. Participants would agree on the parameters of the project and sign a contract for payments over some specified time frame (3 to 5 years) based in measured energy/demand savings achieved.

Environmental groups comments, pp. 5-6.

It is unclear whether the environmental groups are seeking some change in the utilities' implementation plans or are simply alerting the Commission to the standard offer concept. There do not appear to be any provisions in the implementation plans that would prohibit or restrict the ability of suppliers under the retail open access program from making standard offers to their customers and no party has identified any such restrictions. Suppliers are free to combine energy conservation or efficiency measures with electricity supplies in any manner that the supplier and customer find to be mutually beneficial.³¹ Indeed, if the environmental groups' assertions about high energy costs due to tight supplies are correct, suppliers will have an incentive to develop creative standard offer solutions that combine conservation and supply measures and their customers will have an economic incentive to sign up for these offers.³² Through its restructuring orders, the Commission intends for all suppliers of electric services (including supply resources, conservation measures, and renewable energy) to be able to fully compete in competitive electric markets.

Fourth, the environmental groups indicate that they are ready to work with the Commission to develop and implement a net metering provision for all regulated utility companies to include in their rate structures. They indicate that net metering should be available to all customers by January 1, 1999, and that net metering should be subject to a careful evaluation to determine whether and how it should be continued.

³¹Utilities may also develop standard offer programs that are beneficial to the utility and its customers.

³²The Commission notes that the environmental groups discuss referring energy efficiency proposals to an advisory board or to the utility. Presumably, the purpose would be to screen such projects to determine their value or to eliminate unethical providers. The Commission is not prepared to create an administrative board for the purpose of approving projects. Concerns about unethical providers are better addressed through the Act 69 process or through the voluntary licensing program that the Commission is considering in Case No. U-11915.

In the order of August 27, 1982, in Case No. U-6798, the Commission approved net metering for Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Lake Superior District Power Company, which is now part of Northern States Power Company. In that case, the Commission discussed an equity issue that other customers may be required to subsidize those utilizing net metering. With regard to this issue, the Commission stated:

The amount of load research data and actual operating experience available has left this issue far from resolved. The central issue to be resolved is whether the long run marginal cost savings brought about by such [net metering] facilities in the aggregate will meet or exceed the losses of retail sales revenues. Other relevant questions raised on the record include the proper treatment of revenue for tax purposes and the reliability of standard meters when operated in the reverse mode and whether utilities should actively promote the development of small power producers through the payment of rates above the avoided costs.

August 27, 1982 order, Case No. U-6798, p. 12.

The Commission agrees with the environmental groups that net metering should be subject to a careful evaluation. Seventeen years ago, the Commission noted that there was very little available data, but approved net metering for the three utilities to be consistent with their programs in Wisconsin. The time has come for an evaluation of the existing net metering programs. The Staff shall conduct such an evaluation, file a report with the Commission, and provide a copy of its report to any interested party that requests one.

X.

SCHEDULE

The January 14 order established the final day for submitting bids for the first 2½% block at 30 days after any final approvals by the FERC necessary to implement the open access program, but not sooner than March 31, 1998. The dates for the second and third blocks were 90 days and 150

days after the FERC approval. Consumers and Detroit Edison are required to notify the Commission when they have obtained such approvals, as well as any customers or power suppliers who request the information.

On December 28, 1998, the Commission issued an order in this docket directing Consumers and Detroit Edison to file a report on the status of the FERC proceedings. Consumers and Detroit Edison filed their reports on January 8, 1999. Thereafter, ABATE, the Attorney General, and SWEPI filed comments on the reports.

Detroit Edison reports that, on July 9, 1996, it submitted an OATT in FERC Docket No. OA96-78-000. An Initial Decision³³ was issued on August 13, 1998. Exceptions have been filed and the proceedings are now ripe for a final decision by the FERC.

Detroit Edison indicates that additional FERC actions include the filing and acceptance of modifications to existing transmission service schedule forms, transmission network operating agreements, and Commission-approved retail direct access tariff provisions that involve the provision of FERC-jurisdictional services to eligible power suppliers. Detroit Edison indicates that it expects to submit these filings within 14 days of today's order and that the FERC is required, pursuant to Section 205 of the Federal Power Act, to take action on these filings within 60 days.

Consumers reports that, on January 22, 1998, it made a filing with the FERC in Docket No. EL98-21-000 requesting approval of the same jurisdictional classification of transmission and distribution facilities that this Commission had previously adopted. The FERC granted the request on July 29, 1998.

³³An Initial Decision at the FERC is the equivalent of a Proposal For Decision at this Commission.

Consumers reports that, on October 27, 1998, Consumers filed with the FERC amended tariff sheets for its OATT. On December 17, 1998, the FERC accepted the tariff sheets for filing, making them effective on January 1, 1999, subject to refund and subject to the outcome of the pending proceeding in Docket Nos. OA96-77-000, ER97-1502-000, and ER98-1247-000. Consumers indicates that, at the time of its filing, it was awaiting an Initial Decision in that Docket.³⁴

Consumers indicates that the load profiling methodology for retail open access will deviate from the specific terms of the OATT, which will result in modifications to existing transmission service scheduling forms and service agreements. Consumers indicates that it is unclear whether FERC approval is required for load profiling and that it is attempting to seek a clarification. In any event, Consumers indicates that it will file a request with the FERC within 14 days of the Commission's order on its implementation plan and that it expects that the FERC will act within 60 days thereafter.

The Attorney General indicates that Consumers' report "fails to explain the overall nature of the proceedings in OA96-77-000, ER97-1502-000, and ER98-1247-000; therefore, it is difficult to accurately assess how to go forward with the [Commission's] restructuring of the electric industry in Michigan." Attorney General's comments, p. 2. The Attorney General argues that Detroit Edison has not filed a request with the FERC to adopt the jurisdictional classification of transmission and distribution facilities that the Commission had approved in the order of January 14, 1998 in Case No. U-11337.

ABATE indicates that:

Consumers and [Detroit] Edison have each filed a Report on the status of the FERC proceedings needed to implement open access and the differences in the two

³⁴An Initial Decision was subsequently issued on January 14, 1999.

Reports are startling. [Detroit] Edison's Report shows that it really has not taken any concrete steps to implement open access at the retail level. Instead, it is merely taking a bare bones approach of complying with the FERC requirements with respect to its individual Order No. 888 pro forma tariff and the pro forma tariffs related to the tight pool it operates with Consumers.

ABATE's comments, p. 1.

ABATE argues that Detroit Edison's report is technically responsive to the Commission's order, but that Detroit Edison has failed to make a good faith effort at implementing open access and has failed to file with the FERC to accept the jurisdictional classification of facilities that this Commission has approved.

SWEPI indicates that it has unique circumstances because virtually all of its facilities range in size from 20 kW to 200 kW and thus are not eligible for load profiling under Consumers' implementation plan. SWEPI requests that the Commission direct Consumers to take steps in the FERC OATT approval process to ensure adequate flexibility to deploy technical innovations.

The reports and comments raise several issues that need to be addressed. First is the question of FERC approval for the jurisdictional classification of transmission and distribution. As previously noted, Consumers filed and received FERC approval for the jurisdictional classification that this Commission had previously adopted. At the same time that the Commission adopted a jurisdictional split for Consumers, it also adopted one for Detroit Edison in Case No. U-11337. It is the Commission's understanding that the jurisdictional classification approved in Case No. U-11337 is the same classification utilized as the basis for the FERC OATT. Since the Commission-approved jurisdictional filing is consistent with that already being used by the FERC, no additional FERC filing or

approval is required.³⁵ If this understanding is incorrect, Detroit Edison should notify the Commission immediately and make the required FERC filing as expeditiously as possible.

The second issue is the status of the FERC OATT cases and their impact on retail open access in Michigan. The Initial Decision in Detroit Edison's case was issued in August 1998, which suggests that a final FERC order in the case could be issued in the near future. The status of Consumers' case is not so clear. The Initial Decision on Consumers' OATT was issued on January 14, 1999. The Commission notes that on February 9, 1999, the FERC Executive Secretary authorized an extension of time for filing briefs until April 23, 1999. This suggests that a final FERC decision on Consumers' OATT would not be expected until this summer, at the earliest. However, the FERC has accepted Consumers' revised OATT effective January 1, 1999, subject to refund and the final decision on the OATT. It is the Commission's understanding that this would allow customers to take transmission service at rates subject to later adjustment.

That being the case, the only remaining FERC action necessary for the implementation of open access would be approval of the load profiling methodology and related modifications to transmission service agreements and scheduling forms. Consumers and Detroit Edison indicate that they would be able to make the required filings within 14 days of this order (i.e., by March 22, 1999). There appears to be no disagreement that the FERC would be required to act on these filings within 60 days (i.e., by May 21, 1999). Under the terms of the January 14 order, the final day for submitting bids would be 30 days thereafter, or by June 20, 1999.

Late June would not be an appropriate time to initiate open access in Michigan. Last year, wholesale prices of electricity escalated rapidly beginning on June 24, 1998, reaching a reported

³⁵For Consumers, the jurisdictional classification approved was different from that being used in the FERC OATT, which required additional FERC filing and approval.

peak price of \$7000 per megawatt-hour (MWh).³⁶ Prices during the summer far exceeded any previously experienced or expected. Although it is not known whether similar high prices will be experienced this summer, the current futures market suggests caution. For example, as of February 19, 1999, the futures price (in \$/mWh) at the Cinergy hub (the only one in the midwest with an active futures market) was as follows:

| | |
|-----------|----------|
| May | \$ 27.30 |
| June | 64.15 |
| July | 135.00 |
| August | 126.00 |
| September | 37.25 |
| October | 23.45 |

Under the circumstances, the Commission finds that the first block of open access should be delayed until after the peak summer season. It would not be prudent to initiate open access just at the time that the electricity market is entering the most unstable period of the year. Accordingly, the Commission finds that final bids for the first block of open access should be due on September 20, 1999. Bids for the next three blocks will be due on November 19, 1999, January 20, 2000, and March 20, 2000, respectively. Service can begin as soon as practical thereafter.

XI.

FUTURE PROCEEDING

As previously indicated, the Commission has substituted the relevant rates, terms, and conditions that were approved in the October tariff order and this order for those that Detroit Edison filed on February 25, 1998 and with its implementation plan. If Detroit Edison wishes to seek approval of any of its filed rates, terms, and conditions, it should file a motion to do so, with

³⁶This is equivalent to \$7.00 per kWh.

accompanying testimony, within 21 days. Copies of the motion and testimony should be served on all parties to Case No. U-11452. The Administrative Law Judge in that proceeding should establish a schedule that will permit a final Commission order by the end of August so that the start of open access will not be delayed. The Commission will read the record.

XII.

PROGRAM REVIEW

Many of the issues discussed in this and prior orders in this proceeding are matters of first impression. As the open access program is implemented, it will be necessary for the Commission and other interested stakeholders to be kept up-to-date on the progress of the program and on issues as they arise. The Staff should file reports in this docket as needed to keep the Commission apprised of these matters. In addition, within 30 days of the deadline for bids for the initial 2½% block, the Staff shall file a report with the Commission and any interested party that requests one regarding the following:

1. A summary of the results of the bidding for the first block of capacity and recommendations for any necessary changes.
2. Whether deposit requirements had any impact on participation and, if so, suggestions for alternatives.
3. A review of load profiling and any recommendations for improvements, expansion, or standardization of load profiling.
4. Any actions required to ensure that customers are provided with information that allows them to compare prices and services on a uniform basis.
5. Technology and other innovations that could improve the open access process.
6. Any concerns about slamming that may have arisen in the first block of capacity.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.
- b. The tariffs attached to the order should be approved.
- c. The deferred accounting authority requested by Consumers and Detroit Edison should be granted.
- d. The implementation plans filed by Consumers and Detroit Edison should be approved, as modified by this order.
- e. The code of conduct proposed by Consumers should be approved, as modified by this order.
- f. Detroit Edison's request for declaratory rulings regarding billing and metering and customer credit information should be denied.
- g. Consumers and Detroit Edison should make any necessary filings with FERC within 14 days of this order.
- h. The final date for bids for the first block of open access should be September 20, 1999.

THEREFORE, IT IS ORDERED that:

- A. The tariffs attached to this order are approved.
- B. Consumers Energy Company and The Detroit Edison Company shall file with the Commission, within 14 days of this order, tariff sheets in conformity with this order.

C. Consumers Energy Company and The Detroit Edison Company are granted authority to use deferred accounting for implementation costs as requested in their respective applications.

D. The implementation plans filed by Consumers Energy Company and The Detroit Edison Company are approved, as modified by this order.

E. The code of conduct proposed by Consumers Energy Company is approved, as modified by this order.

F. The request by The Detroit Edison Company for a declaratory ruling regarding billing and metering is denied.

G. The request by The Detroit Edison Company for a declaratory ruling regarding customer credit information is denied.

H. Within 14 days, Consumers Energy Company and The Detroit Edison Company shall make any filings with the Federal Energy Regulatory Commission that are required to implement this order.

I. The final date for bids for the first block of open access is September 20, 1999.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

By its action of March 8, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

By its action of March 8, 1999.

Its Executive Secretary

In the matter, on the Commission's own motion,)
to consider the restructuring of the electric)
utility industry.)
_____)

Case No. U-11290 et al.

Suggested Minute:

“Adopt and issue order dated March 8, 1999 approving open access implementation plans for Consumers Energy Company and The Detroit Edison Company, as set forth in the order.”

CONSUMERS POWER

IMPLEMENTATION

PLAN

TARIFFS

SECTION F RETAIL OPEN ACCESS SERVICE STANDARDS

F1. GENERAL PROVISIONS AND DEFINITIONS

F1.1 Definitions

- (a) "Aggregator" means an entity that pools Customers into a buying group for the purpose of purchasing large blocks of Power. A Retailer and a Broker may also act as an Aggregator.
- (b) "Available Transfer Capability" means the amount of available Transmission Service from the Point of Receipt to the Point of Delivery available for further commercial uses, consistent with the Company's FERC Open Access Tariff.
- (c) "Broker" means an entity which acts as an agent for a Power transaction but does not take title to the Power.
- (d) "Company" means Consumers Energy Company.
- (e) "Company's Distribution System" means the system used to deliver Power from the Company's Transmission System to the Customer.
- (f) "Company's Electric Rate Schedule" means the Company's Schedule of Rates Governing the Sale of Electric Service on file with the Michigan Public Service Commission.
- (g) "Company's FERC Open Access Tariff" means the Company's Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission (FERC), as it may be amended from time to time, or any comparable tariff should the Company's FERC Open Access Tariff cease to exist.
- (h) "Company's System" means all electric transmission and distribution facilities owned by the Company.
- (i) "Company's Transmission System" means the system used to deliver Power from the Point of Receipt to the Company's Distribution System.
- (j) "Customer" means the end-user of electricity who requests or takes Retail Open Access Service.
- (k) "Direct Assignment Facilities" means additional facilities that are only needed to satisfy a request for service under Retail Open Access Service but that do not materially and substantially benefit other users of the Company's System and are not therefore an integral part of the Company's System. Direct Assignment Facilities shall be specified in a contract required under the Company's FERC Open Access Tariff and/or a Retail Open Access Service Contract that governs service to the Customer and/or Retailer, and the costs thereof shall be paid by the Customer and/or Retailer.
- (l) "Distribution Contract Capacity" means the Maximum Demand of the Retailer or the sum of the Maximum Demand of all the Retailer's Customers, which includes Real Power Losses and which is less than or equal to the awarded bid capacity but never less than 1,000 kW.
- (m) "Marketer" means an entity which takes title to and sells Power.
- (n) "Maximum Demand" means the highest 15-minute demand created during the current month or previous 11 months.

(Continued on Sheet No. F-2.00)

(Continued From Sheet No. F-1.00)

F1.1 Definitions (Contd)

- (o) "Point of Delivery" means the point where the Company transfers Power from its system to the Customer's service location.
- (p) "Point of Receipt" means the point where the Company receives Power for delivery through the Company's System to a Customer.
- (q) "Power" means a combination of electric demand and energy which is usually expressed in kilowatts (kW).
- (r) "Real Power Losses" means energy consumed in moving Power through the Company's System between the Point of Receipt and the Point of Delivery.
- (s) "Retail Open Access Rate Schedule" means Retail Open Access Residential Rate ROA-R, Retail Open Access Secondary Rate ROA-S, Retail Open Access Primary Rate ROA-P and/or Retail Open Access Standby Rate ROA-SB.
- (t) "Retail Open Access Service Contract" means the initial agreement, and any amendments or supplements thereto, relating to the service transactions to be provided for a Retailer and/or Customer by the Company under Retail Open Access Service.
- (u) "Retailer" means an entity authorized to make retail sales of electricity according to requirements defined by the Michigan Public Service Commission. Retailers have title to any Power they market and under current laws must obtain a Public Act 69 certification from the Michigan Public Service Commission and a franchise(s) from the local governmental unit to serve Customers
- (v) "Standby Service" means a contractual service that can replace scheduled Power at the Point of Receipt if the Retailer fails to deliver Power or there is a transmission system constraint.
- (w) "Supplier" means an entity that owns or has title to electric generation.
- (x) "Top Incremental Cost" means the Company's highest hourly incremental cost for Power.
- (y) "Transmission Service" means that service that provides for the movement of Power through the Company's 120 kV and above transmission system.

F1.2 Application of Rules

The Transmission Service component of Retail Open Access Service will be supplied under the Company's FERC Open Access Tariff unless otherwise provided for within the Company's Electric Rate Schedule.

For purposes of services rendered by the Company under Retail Open Access Service, any conflicts between the terms of this tariff and the Company's FERC Open Access Tariff shall be resolved by applying the terms of this Retail Open Access Service Tariff. Unless otherwise provided for in this Section F, Retail Open Access Service Customers are subject to the Company's Electric Rate Schedule.

(Continued on Sheet No. F-3.00)

(Continued From Sheet No. F-2.00)

F1.3 Reciprocity Requirement

A reasonable level of reciprocity between the Company and Retailers, Marketers, Brokers, Suppliers and their affiliates must be established.

Through December 31, 2001:

A. In-state and out-of-state utilities and utility affiliates must consent to open the same relative amount of retail customer load to competition by the Company. Further, the consent of out-of-state utilities and utility affiliates to this reciprocity requirement must be expressed as a provision of an enforceable contract. A municipal utility or a municipal power agency is required to provide reciprocity only for the type of service it provides and in the same relative amount.

B. All entities to whom this reciprocity requirement applies must offer "Comparable" Retail Open Access Service.

C. "Comparable" Retail Open Access Service is one which (i) provides for Retail Open Access Service in an amount of retail customer load equivalent to that provided by the Company, and (ii) specifies rates, terms and conditions that are equivalent to those offered by the Company, and that have been approved by all applicable regulatory authorities for use in Retail Open Access Service transactions.

(Continued From Sheet No. F-3.00)

F2. OPEN BID PROCESS AND ALLOCATION OF CAPACITY

Through December 31, 2001 open bids will be used to allocate capacity among bidders for the Retail Open Access Service program as authorized by the Michigan Public Service Commission and as provided in the Retail Open Access bid document. An independent bid administrator will conduct the open bid process.

Bids shall be submitted in one or more of the following three bid classes:

- A. Residential Customers,
- B. Residential and/or Small Secondary Customers with a Maximum Demand less than 20 kW, and/or
- C. Primary Customers and Large Secondary Customers with a Maximum Demand of 20 kW or more.

No more than 150,000 kW will be allocated among the three bid classes in each of the five bid cycles. The total Maximum Demand of load, including Real Power Losses on the Company's System, offered for bid will not exceed 750,000 kW as of December 31, 2001. The Company will allocate capacity among the three bid classes as follows:

| <u>Bid Class</u> | <u>1st Bid</u> September 20, <u>1999</u> | <u>2nd Bid</u> November 19, <u>1999</u> | <u>3rd Bid</u> January 20, <u>2000</u> | <u>4th Bid</u> March 20, <u>2000</u> | <u>5th Bid</u> November 20, <u>2000</u> | <u>Total</u> |
|--|--|---|--|--|---|--------------|
| Residential Set Aside | 2,000 kW | 2,000 kW | 2,000 kW | 2,000 kW | 2,000 kW | 10,000 kW |
| Residential and/or Small Secondary Set Aside | 2,000 kW | 2,000 kW | 2,000 kW | 2,000 kW | 2,000 kW | 10,000 kW |
| All Bid Classes | 146,000 kW | 146,000 kW | 146,000 kW | 146,000 kW | 146,000 kW | 730,000 kW |
| Total Bid | 150,000 kW | 150,000 kW | 150,000 kW | 150,000 kW | 150,000 kW | 750,000 kW |

Each bidder must complete the Retail Open Access bid document and submit their bids(s) to the independent bid administrator. Each bid must specify the bid class requested (Residential, Residential and/or Small Secondary with a Maximum Demand less than 20 kW, or Primary and Large Secondary with a Maximum Demand of 20 kW or more), the bid price (in cents per kWh), and the amount of capacity requested in that respective bid class. All bids will be ranked based on the bid price. If there is a tie among bidders for a block of capacity, a lottery will be held among those in the tie.

(Continued on Sheet No. F-5.00)

(Continued From Sheet No. F-4.00)

F2. OPEN BID PROCESS AND ALLOCATION OF CAPACITY (Contd)

Each bid must be for capacity greater than or equal to 1,000 kW. A bid deposit in the following amounts will be required and administered in accordance with the Retail Open Access bid document.

| | |
|--|----------------------|
| Residential | \$1,000 per 1,000 kW |
| Small Secondary Customers with a Maximum Demand less than 20 kW | \$1,500 per 1,000 kW |
| Primary Customers and Large Secondary Customers with a Maximum Demand of 20 kW or more | \$2,000 per 1,000 kW |

Bid deposits from all successful bidders will be retained. All other bid deposits will be returned to the losing bidders by the independent bid administrator. The bid deposit will be refunded to the successful bidder once the amount collected from the Retailer through the Transition Surcharge equals the bid deposit.

Prior to initiating Retail Open Access Service the successful bidder must be declared a Retailer or designate a Retailer to secure their Power. Within 60 days from the date the capacity was awarded to a successful bidder, the Retailer must have made application to the appropriate governmental unit(s) for a franchise. Within 180 days from the date the capacity was awarded to a successful bidder, Retail Open Access Service associated with that capacity must have commenced. If the Retailer fails to adhere to either one of these timetables, the Retailer forfeits its capacity award and the bid deposit will be retained by the Company and applied toward transition costs. The Company will then contact the next highest (but initially unsuccessful) bidder from that bid cycle where the capacity was awarded and offer the forfeited capacity to that bidder. If that bidder is not interested in participating, the capacity will be offered to the next highest bidder until a bidder commits to serving that capacity. Within 10 days, the bidder that is awarded the forfeited capacity shall pay the bid deposit, equal to the amount previously submitted by the initially successful bidder. The bidder shall make

application(s) for a franchise within 60 days from the date the capacity was awarded and shall commence Retail Open Access Service within 180 days from the date the capacity was awarded.

Successful bidders may sell or assign awarded bid capacity to another entity as long as the capacity is assigned within the same bid class.

The Retailer shall pay a Transition Surcharge through December 31, 2001 equal to the winning bid price multiplied by the kWh consumption of its group of Customers. Beginning January 1, 2002, all customers shall be eligible to take Retail Open Access Service and will pay the Transition Surcharge established by the Michigan Public Service Commission and specified in the then existing Company's Electric Rate Schedule.

(Continued on Sheet No. F-6.00)

(Continued From Sheet No. F-5.00)

F3. SERVICE REQUEST AND ELIGIBILITY

- A. The Customer with a monthly Maximum Demand of less than 1,000 kW must utilize an Aggregator.
- B. The Customer with a monthly Maximum Demand greater than or equal to 1,000 kW is not required to utilize an Aggregator.
- C. A Customer served under Retail Open Access Primary Rate ROA-P and a Secondary Customer with a Maximum Demand of 20 kW or more served under Retail Open Access Secondary Rate ROA-S may be required to execute a Retail Open Access Service Contract (which may include, but is not limited to, on-site generation, Direct Assignment Facilities, etc.) with the Company prior to commencing Retail Open Access Service.
- D. The Retailer shall complete all of the following service requirements within 180 days from the date the capacity was awarded to a successful bidder.
 - (1) Has received all appropriate administrative agency approvals.
 - (2) Has secured sufficient Customer participation such that the Distribution Contract Capacity is equal to or greater than 1,000 kW.
 - (3) Has made application to the appropriate governmental unit(s) for a franchise within 60 days from the date the capacity was awarded to a successful bidder.
 - (4) Has complied with all applicable franchise, statutory, reciprocity and administrative requirements.
 - (5) Has shown that it has obtained the right to generation resources sufficient to serve its Customer(s) load.
 - (6) Has executed the agreements required under the Company's FERC Open Access Tariff.
 - (7) Has executed a Retail Open Access Service Contract (which may include, but is not limited to, a portfolio of Customers, negotiated services, Direct Assignment Facilities, etc.) with the Company.

F4. CHARACTER OF SERVICE

F4.1 Retail Open Access Service

- A. Retail Open Access Service provides for the movement of Power from the Point of Receipt to the Point of Delivery.
- B. The term of Retail Open Access Service under this Section F and the applicable Retail Open Access Rate Schedule shall be the dates specified in the Retail Open Access Service Contract.

F4.2 Standby Service

Standby Service is available under the terms and conditions as set forth in the Retail Open Access Standby Rate ROA-SB. This service is available to a Retail Open Access Service Retailer or Customer with a monthly Maximum Demand greater than or equal to 1,000 kW. All other standby rates and/or standby provisions in the Company's Electric Rate Schedule are not available to Retail Open Access Service Retailers or Customers.

(Continued on Sheet No. F-7.00)

(Continued From Sheet No. F-6.00)

F5. SYSTEM OPERATIONS

F5.1 Scheduling For Power Delivery

- A. Schedules will be made as follows:
- (1) Weekly: The Retailer shall notify the Company, on or before 2:00 PM on the Thursday prior to the week being scheduled (or Wednesday if Thursday is a holiday), of the hourly Retail Open Access Service schedule for the following week.
 - (2) Schedule Changes: The Retailer shall notify the Company of any proposed change of schedule set forth in A. (1) above at least twenty minutes in advance of the effective time of the schedule change. The Company may waive any part of the notice upon request if, in its judgment, operating conditions permit such waiver. The Company may, at its discretion, refuse to make schedule changes requested by the Retailer if such change cannot be reasonably accommodated.
 - (3) Failure to Schedule: If a schedule is not received by 2:00 PM, Thursday for the following week, (or Wednesday if Thursday is a holiday), the Company will assume zero for that week.
 - (4) For the purpose of schedules a week shall consist of the time from 12:00 midnight Sunday to 12:00 midnight the following Sunday.
- B. The Company shall accept any schedule requested unless, in the Company's sole technical judgment, such scheduled delivery would jeopardize the reliability of the interconnected electrical network of which the Company is a part, or cause the Company to violate any operating rule, guideline, or procedure established by the North American Electric Reliability Council, the East Central Area Reliability Coordination Agreement or any regional reliability council to which the Company is subject, in which case the Company shall have the right to not accept such schedule request.

F5.2 Specifications For Power Supply Schedules

- A. Hourly scheduled Power supplied at the Point of Receipt from outside the Michigan Electric Coordination System shall be made in increments of one MW.
- B. Hourly scheduled Power supplied at the Point of Receipt from within the Michigan Electric Coordination System may be made in increments of one kW.

F5.3 Curtailment of Service

- A. In the event the Retailer's sources of supply do not deliver Power to the Point of Receipt due to transmission constraints, the Company has the right to curtail service.
- B. In the event the combined Power requirements of all service commitments exceed the Available Transfer Capability of a portion or all of the Company's Transmission System, the Power deliveries for those Customers affected by the constraint will be curtailed in accordance with the Company's FERC Open Access Tariff.
- C. In the event the Company cannot move Power to the Point of Delivery, then the Emergency Electrical Procedures contained in Rule B12. will apply to Customers taking service under Retail Open Access Service.

(Continued on Sheet No. F-8.00)

(Continued From Sheet No. F-7.00)

F5.4 Retailers with Customers Without Demand and Energy Hourly Recording Meters

Retailers with Customers who do not have demand and energy hourly recording (Time-of-Use) meters shall comply with the following provisions:

- A. Time-of-Use meters shall be installed on a sample set of Customers to achieve a statistically accurate sample rate of 80%, \pm 20%, on an hourly basis during the on-peak hours. Such sample set of Time-of-Use meters shall be furnished, installed, maintained and owned by the Company.
- B. The hourly meter data from the sample set meters, along with historical customer usage history, will be used by the Company to generate and maintain load leading profiles for each Retailer. Load leading profiles will be provided by the Company to the Retailer by 2:00 PM Eastern Time on the Wednesday before the start of the next week (or Tuesday if Thursday is a holiday). The Company may adjust each profile by providing notice at least one and one-half hours in advance of the effective time of the schedule change. The load leading profile shall be used by the Retailer to schedule Power deliveries to the Point of Receipt. Scheduling for Power Delivery, using the load leading profile, shall be in accordance with Rule F5.1.
- C. Monthly and Hourly Energy Imbalances shall be determined as follows:
 - (1) Monthly Energy Imbalances:
 - (a) The Power consumed by the Retailer's Customers shall be determined as follows:
 - (i) The actual meter data will be used for those Customers whose meter read dates coincide with their Retailer's designated meter read date.
 - (ii) A monthly consumption estimate will be used to determine Customer usage for those Customers whose meter read dates do not coincide with their Retailer's designated meter read date.
 - (b) The total Retail Open Access Power consumption assigned to the Retailer shall be the sum of C. (1) (a) (i) and (ii) above, adjusted for Real Power Losses, for all the Retailer's Customers. This sum will be compared to the Retailer's actual monthly Power delivery to the Company's System. The difference between the total Retail Open Access Power consumption assigned to the Retailer and the Retailer's actual monthly Power delivery to the Company's System is the Retailer's Monthly Energy Imbalance.
 - (c) Any monthly energy imbalances shall be subject to the Energy Imbalance Service Schedule in the Company's FERC Open Access Tariff as modified to reflect the use of load leading profiles for Retail Open Access Service Customers. If the Retailer's monthly Power deliveries are more than the actual Power consumed by its Customers, the Company will pay the Retailer the average monthly Top Incremental Cost times the Monthly Energy Imbalance. If the Retailer's monthly Power deliveries are less than the actual Power consumed by its Customers, the Retailer shall pay the Company the average monthly Top Incremental Cost times the Monthly Energy Imbalance.

(Continued on Sheet No. F-9.00)

(Continued From Sheet No. F-8.00)

F5.4 Retailers with Customers Without Demand and Energy Hourly Recording Meters

- C. Monthly and Hourly Energy Imbalances shall be determined as follows: (Contd)
- (2) Hourly Energy Imbalances:
- (a) If the Retailer scheduled Power in accordance with the load leading profiles provided by the Company, then no hourly Energy Imbalance Charge shall occur.
 - (b) If the Retailer did not schedule Power in accordance with the load leading profiles, an hourly Energy Imbalance Charge will apply. Any hourly energy imbalance shall be subject to the Energy Imbalance Service Schedule in the Company's FERC Open Access Tariff.
- D. The actual hourly Power consumption of those Customers without Time-of-Use meters is unknown. Thus, the Retailer is not providing total load following for those Customers being supplied Power by the Retailer; the Company is providing this service. As compensation to the Company for providing generation resources to meet unmetered supply versus consumption deviations, the Customer shall be charged a Profile Management Service Charge as set forth in the applicable Retail Open Access Rate Schedule.

F6. CUSTOMER OR RETAILER COMPENSATION TO THE COMPANY FOR FAILURE TO MEET TARIFF OBLIGATIONS

The Customer or Retailer shall compensate the Company for any and all third-party costs incurred by the Company as the result of the Customer's or Retailer's failure to meet any of its obligations under this Section F and the applicable Retail Open Access Rate Schedule.

F7. BILLING AND PAYMENT

The Company will read the meter and render a bill to the Customer. The Retailer's charges may be billed as part of the Company's bill or may be billed separately by the Retailer.

Where the Company is requested to bill on behalf of a Retailer, the following conditions apply.

- A. The Retailer must provide their pricing structure detail and a rate table, in a mutually agreeable format, at least one calendar week prior to the effective date of such pricing structure and rate table. If this information is not received on a timely basis, the Company will not bill the Customer(s) for the Retailer for the specific billing month(s).
- B. Customer payments for the Retailer charges billed by the Company will be transferred to the Retailer within five business days after the Customer payments are received. Any discrepancies in charges collected and remitted will be corrected and reflected in the next billing cycle.

(Continued on Sheet No. F-10.00)

(Continued From Sheet No. F-9.00)

F7. BILLING AND PAYMENT (Contd)

- C. Payments received from a Customer shall be applied in the following order:
- (1) To the Company's past due and current Retail Open Access Service charges,
 - (2) To the Retailer's past due and current Power supply charges,
 - (3) To the Company's other charges, and
 - (4) To the Retailer's other charges. Retailer's charges will be prorated based on the amount owed, if there are multiple Retailers involved.
- D. Additional services (i.e., billing and remittance processing, credit and collections, meter read information, customer information, etc.) may be provided by the Company pursuant to terms negotiated with the Retailer, and
- E. Amounts owed to the Company by a Retailer may be deducted from the Retailer's Customer payments received by the Company prior to remittance to the Retailer.

Where the Retailer's Customer(s) is not billed by the Company, additional services (i.e., meter read information, customer information, etc.) may be provided by the Company pursuant to terms negotiated with the Retailer.

F8. SHUTOFF OF SERVICE

Shutoff of service to a Customer for nonpayment of the Company's bill or for any violation of the Company's tariffs shall be in accordance with the Company's Electric Rate Schedule. The Company will provide written notice to the Retailer ten days prior to shutoff. The Company shall not be liable for any losses to the Retailer due to shutoff.

F9. TERMINATION OR CANCELLATION OF CONTRACT

The applicable provisions of this Retail Open Access Service tariff, any contract required under the Company's FERC Open Access Tariff and any Retail Open Access Service Contract entered into under this tariff shall continue in effect after termination or cancellation thereof to the extent necessary to provide for final billing, billing adjustments and payments. Notwithstanding the above, if the Retail Open Access Service tariff, any contract required under the Company's FERC Open Access Tariff or any Retail Open Access Service Contract is terminated prior to the end of its initially contemplated term, for reasons other than breach by the Company, the Customer or Retailer shall reimburse the Company for all unrecovered costs applicable to facilities installed pursuant to the provisions of such tariff and contracts.

F10. RETURN TO COMPANY BUNDLED SERVICE

A Customer may return to Company bundled service on the same terms as any new customer applying for service. The Customer must provide a minimum of 30 days notice prior to the Customer's next billing cycle. Through December 31, 2001, Customers returning to bundled service must remain on bundled rates a minimum of one year, unless they have returned due to a Retailer default. On and after January 1, 2002 the obligation to provide service will require mutual agreement between the Company and the Customer.

F11. EFFECTIVE DATE OF RETAIL OPEN ACCESS SERVICE

This Retail Open Access Service tariff becomes effective when all applicable state and federal regulatory approvals are obtained.

RETAIL OPEN ACCESS RESIDENTIAL RATE ROA-R

Availability:

Subject to any restrictions, this rate is available to any residential Customer receiving service at a nominal voltage of less than 2,400 volts for:

- (i) delivery of Power from the Point of Receipt to the Point of Delivery,
- (ii) any usual residential use as defined in Rule B13.3 A., Residential Usage and Rate Application, (iii) single-phase motors, provided the individual capacity of such motors does not exceed 3 hp, nor the total capacity of 10 hp, without the specific consent of the Company, and (iv) service within Company designated service areas.

Service under this rate must be separately metered.

Any Customer under this rate must utilize an Aggregator.

For those Customers that do not have demand and energy hourly recording (Time-of-Use) meters, all Retailers shall assume that each Residential Customer served under this rate has a Maximum Demand equivalent to 0.78 kW per hundred kWh of monthly use, using the month of maximum monthly consumption that occurred within the last 12 months.

Nature of Service:

Alternating current, 60-hertz, single-phase or three-phase, secondary voltage, the particular nature of the voltage in each case to be determined by the Company.

The Company shall not be required to, but may expand its existing facilities to make deliveries under this tariff. The Customer and/or Retailer shall be liable for any and all costs incurred as a result of an expansion of facilities made to make deliveries under this tariff.

Metering Requirements:

The load served under this tariff shall be separately metered by energy-only recording meters of billing quality. Such metering equipment shall be furnished, installed, maintained and owned by the Company.

The Customer may elect a demand and energy hourly recording (Time-of-Use) meter. Such metering equipment shall be furnished, installed, maintained and owned by the Company. The requesting Customer shall be required to pay the higher Customer Charge for all such metering equipment. When required, the Customer shall be responsible for the associated dedicated telephone line and other accompanying equipment and monthly fees.

(Continued on Sheet No. F-12.00)

RETAIL OPEN ACCESS RESIDENTIAL RATE ROA-R
(Continued From Sheet No. F-11.00)

Monthly Rate:

Transmission Service:

Subject to Rule F1.2 hereof, the charges for use of the Company's Transmission System subject to the jurisdiction of the FERC shall be in accordance with the Company's FERC Open Access Tariff.

Customer Charge:

\$9.20 per Customer with an energy-only recording meter, per meter location

\$20.00 per Customer with a Time-of-Use meter, per meter location

Distribution Service Charge:

\$.0208 per kWh

Reactive Power Supply Service Charge:

The Customer will endeavor to control its consumption of reactive power (kilovars) so that the power factor shall not fall lower than a lagging power factor of 0.80. If the Customer's power factor falls lower than 0.80, the Company has the right to be compensated for Reactive Power (Kilovar) Supply based upon a kilovar demand charge of \$.17 per kilovar.

Real Power Losses:

The Retailer is responsible for replacing Real Power Losses associated with the movement of Power. In addition to the Real Power Losses included in the Company's FERC Open Access Tariff, the Retailer is responsible for the Company's Distribution System's Real Power Losses of 9.81%.

Profile Management Service Charge:

The following charge applies to a Customer who does not have a Time-of-Use meter:

\$.0048 per kWh for all kWh consumed.

Customer Switching Service Charge:

\$5.00 each time a Customer switches from one Retailer to another. The Customer may switch Retailers at the end of any billing month by having their new Retailer give the Company at least 30 days written notice.

The Customer Switching Service Charge shall not be applied for the initial switch to Retail Open Access Service or at the time the Customer returns to bundled service or changes Retailers due to Retailer default.

General Terms and Conditions:

This rate is subject to all general terms and conditions shown on Sheet No. E-1.00.

(Continued on Sheet No. F-13.00)

RETAIL OPEN ACCESS RESIDENTIAL RATE ROA-R
(Continued From Sheet No. F-12.00)

Monthly Rate: (Contd)

Surcharges:

This rate is subject to the following surcharges:

Transition Surcharge: Through December 31, 2001, the Transition Surcharge is established via the bid process as described in Rule F2., Open Bid Process and Allocation of Capacity, and will be billed to the Retailer. Thereafter, the Transition Surcharge is \$.0120 per kWh, or as subsequently ordered by the Commission. A Transition Surcharge will be collected through December 31, 2007.

Implementation Surcharge: (As established by the Commission.)

Nuclear Decommissioning Surcharge: \$.001494 per kWh

Minimum Charge:

The Customer Charge included in the rate.

Due Date and Late Payment Charge:

The due date of the Customer bill shall be 21 days from the date of mailing. A late payment charge of 2% not compounded, of the unpaid balance, net of taxes, shall be assessed to any bill that is delinquent.

Term and Form of Contract

All service under this rate shall require a written Retail Open Access Service Contract between the Company and a Retailer.

RETAIL OPEN ACCESS SECONDARY RATE ROA-S

Availability:

Subject to any restrictions, this rate is available to any nonresidential Customer receiving secondary service at a nominal voltage of less than 2,400 volts for:

- (i) delivery of Power from the Point of Receipt to the Point of Delivery,
- (ii) service where the Company elects to provide one transformation from the available primary distribution voltage to another primary voltage desired by the Customer, and
- (iii) service within Company designated service areas.

Service under this rate must be separately metered.

Any Customer whose monthly minimum Maximum Demand is less than 1,000 kW must utilize a n Aggregator.

For those Customers that do not have demand and energy hourly recording (Time-of-Use) meters, all Retailers shall assume that each Secondary Customer served under this rate has a Maximum Demand equivalent to 0.70 kW per hundred kWh of monthly use, using the month of maximum monthly consumption that occurred within the last 12 months.

This rate is not available to General Service Company-Owned Streetlighting Rate L-3 or General Service Outdoor Lighting Rate L-4 Customers.

Nature of Service:

Alternating current, 60-hertz, single-phase or three phase, the particular nature of the voltage in each case to be determined by the Company.

When the service is three-phase, 3-wire, lighting may be included, provided the Customer furnishes all transformation facilities required for such purpose, and so arranges the lighting circuits as to avoid excessive unbalance of the three-phase load. When the service is single phase, or 4-wire, three-phase, the single-phase individual motor capacity shall not exceed 3 hp, nor the total single-phase motor capacity of 10 hp, without the specific consent of the Company.

The Company shall not be required to, but may expand its existing facilities to make deliveries under this tariff. The Customer and/or Retailer shall be liable for any and all costs incurred as a result of an expansion of facilities made to make deliveries under this tariff.

(Continued on Sheet No. F-15.00)

RETAIL OPEN ACCESS SECONDARY RATE ROA-S
(Continued From Sheet No. F-14.00)

Metering Requirements:

The Customer with a Maximum Demand of less than 20 kW shall be separately metered by an energy recording meter, with or without maximum demand recorders, of billing quality. Such metering equipment shall be furnished, installed, maintained and owned by the Company.

The Customer with a Maximum Demand of less than 20 kW may elect to install a demand and energy hourly recording (Time-of-Use) meter. Such metering equipment shall be furnished, installed, maintained and owned by the Company. The requesting Customer shall be required to pay the higher Customer Charge for all such metering equipment. When required, the Customer shall be responsible for the associated dedicated telephone line and other accompanying equipment and monthly fees.

The Customer with a Maximum Demand of 20 kW or more shall be separately metered by a demand and energy hourly recording (Time-of-Use) meter of billing quality. Such metering equipment shall be furnished, installed, maintained and owned by the Company. The Customer shall be required to pay the higher Customer Charge for all such metering equipment. The Customer shall be responsible for the associated dedicated telephone line and other accompanying equipment and monthly fees.

Monthly Rate:

Transmission Service:

Subject to Rule F1.2 hereof, the charges for use of the Company's Transmission System subject to the jurisdiction of the FERC shall be in accordance with the Company's FERC Open Access Tariff.

Customer Charge:

\$24.50 per Customer with an energy and maximum demand recording meter, or a Time-of-Use meter, per meter location

\$14.75 per Customer with an energy-only recording meter, per meter location

Distribution Service Charge:

\$4.78 per kW of Maximum Demand for a Customer with an energy and maximum demand recording meter or a Time-of-Use meter

\$.0209 per kWh for a Customer with an energy-only recording meter

Reactive Power Supply Service Charge:

The Customer will endeavor to control its consumption of reactive power (kilovars) so that the power factor shall not fall lower than a lagging power factor of 0.80. If the Customer's power factor falls lower than 0.80, the Company has the right to be compensated for Reactive Power (Kilovar) Supply based upon a kilovar demand charge of \$.17 per kilovar.

(Continued on Sheet No. F-16.00)

RETAIL OPEN ACCESS SECONDARY RATE ROA-S
(Continued From Sheet No. F-15.00)

Monthly Rate: (Contd)

Real Power Losses:

The Retailer is responsible for replacing Real Power Losses associated with the movement of Power. In addition to the Real Power Losses included in the Company's FERC Open Access Tariff, the Retailer is responsible for the Company's Distribution System's Real Power Losses of 9.81%.

Profile Management Service Charge:

The following charge applies to a Customer who does not have a Time-of-Use meter:

\$.0048 per kWh for all kWh consumed.

Customer Switching Service Charge:

\$5.00 each time a Customer switches from one Retailer to another. The Customer may switch Retailers at the end of any billing month by having their new Retailer give the Company at least 30 days written notice. The Customer Switching Service Charge shall not be applied for the initial switch to Retail Open Access Service or at the time the Customer returns to bundled service or changes Retailers due to Retailer default.

General Terms and Conditions:

This rate is subject to all general terms and conditions shown on Sheet No. E-1.00.

Surcharges:

This rate is subject to the following surcharges:

Transition Surcharge: Through December 31, 2001, the Transition Surcharge is established via the bid process as described in Rule F2., Open Bid Process and Allocation of Capacity, and will be billed to the Retailer. Thereafter, the Transition Surcharge is \$.0120 per kWh, or as subsequently ordered by the Commission. A Transition Surcharge will be collected through December 31, 2007.

Implementation Surcharge: (As established by the Commission.)

Nuclear Decommissioning Surcharge: \$.001620 per kWh

Minimum Charge:

For a Customer with an energy and maximum demand recording meter, or a Time-of-Use meter, the minimum charge shall be the Customer Charge and the Distribution Service Charge.

For a Customer with an energy-only recording meter, the minimum charge shall be the Customer Charge.

(Continued on Sheet No. F-17.00)

RETAIL OPEN ACCESS SECONDARY RATE ROA-S
(Continued From Sheet No. F-16.00)

Monthly Rate: (Contd)

Due Date and Late Payment Charge:

The due date of the Customer bill shall be 21 days from the date of mailing. A late payment charge of 2% of the unpaid balance, net of taxes, shall be assessed to any bill which is not paid on or before the due date shown thereon.

Term and Form of Contract:

All service under this rate shall require a written Retail Open Access Service Contract between the Company and a Retailer.

All service under this rate may require a written Retail Open Access Service Contract between the Company and a Secondary Customer with a Maximum Demand of 20 kW or more.

RETAIL OPEN ACCESS PRIMARY RATE ROA-P

Availability:

Subject to any restrictions, this rate is available to any Customer receiving primary service at a nominal voltage 2,400 volts or greater for the delivery of Power from the Point of Receipt to the Point of Delivery.

Service under this rate shall be separately metered.

Any Customer whose monthly minimum Maximum Demand is less than 1,000 kW must utilize an Aggregator.

Nature of Service:

Alternating current, 60-hertz, single-phase or three phase, the particular nature of the voltage in each case to be determined by the Company.

The Company shall not be required to, but may expand its existing facilities to make deliveries under this tariff.

The Customer and/or Retailer shall be liable for any and all costs incurred as a result of an expansion of facilities made to make deliveries under this tariff.

Metering Requirements:

The load under this tariff shall be separately metered by demand and energy hourly recording (Time-of-Use) meters of billing quality. Such metering equipment shall be furnished, installed, maintained and owned by the Company.

The Customer shall be responsible for the associated dedicated telephone line and other accompanying equipment and monthly fees.

Monthly Rate:

Transmission Service:

Subject to Rule F1.2 hereof, the charges for use of the Company's Transmission System subject to the jurisdiction of the FERC shall be in accordance with the Company's FERC Open Access Tariff.

Customer Charge:

\$115 per Customer Meter Location

Distribution Service Charge:

| | |
|--|---------------------------------|
| For a Customer taking Primary Service: | \$2.10 per kW of Maximum Demand |
| For a Customer taking Subtransmission Service: | \$.87 per kW of Maximum Demand |
| For a Customer taking Transmission Service: | \$.11 per kW of Maximum Demand |

(Continued on Sheet No. F-19.00)

RETAIL OPEN ACCESS PRIMARY RATE ROA-P
(Continued From Sheet No. F-18.00)

Monthly Rate: (Contd)

Substation Service Charge:

Where Subtransmission or Transmission Service is supplied to the Customer through Company-owned equipment, the following appropriate Substation Service Charge will apply:

| | |
|--|---------------------------------|
| For a Customer taking Subtransmission Service: | \$.73 per kW of Maximum Demand |
| For a Customer taking Transmission Service : | \$.76 per kW of Maximum Demand |

Reactive Power Supply Service Charge:

The Customer will endeavor to control its consumption of reactive power (kilovars) so that the power factor shall not fall lower than a lagging power factor of 0.80. If the Customer's power factor falls lower than 0.80, the Company has the right to be compensated for Reactive Power (Kilovar) Supply based upon a kilovar demand charge of \$.17 per kilovar.

Real Power Losses:

The Retailer is responsible for replacing Real Power Losses associated with the movement of Power. In addition to the Real Power Losses included in the Company's FERC Open Access Tariff, the Retailer is responsible for the Company's Distribution System's Real Power Losses as follows:

| | Meter Point | |
|-----------------|-------------|----------|
| | High Side | Low Side |
| Primary | 4.40% | 7.78% |
| Subtransmission | 1.74% | 2.08% |
| Transmission | 0.00% | 0.33% |

Customer Switching Service Charge:

\$5.00 each time a Customer switches from one Retailer to another. The Customer may switch Retailers at the end of any billing month if written notification is provided to the Company by the Customer or the new Retailer at least 30 days in advance. The Customer Switching Service Charge shall not be applied for the initial switch to Retail Open Access Service or at the time the Customer returns to bundled service or changes Retailers due to Retailer default.

General Terms and Conditions:

This rate is subject to all general terms and conditions shown on Sheet No. E-1.00.

(Continued on Sheet No. F-20.00)

RETAIL OPEN ACCESS PRIMARY RATE ROA-P
(Continued From Sheet No. F-19.00)

Monthly Rate: (Contd)

Surcharges:

This rate is subject to the following surcharges:

| | |
|------------------------------------|--|
| Transition Surcharge: | Through December 31, 2001, the Transition Surcharge is established via the bid process as described in Rule F2., Open Bid Process and Allocation of Capacity, and will be billed to the Retailer. Thereafter, the Transition Surcharge is \$.0120 per kWh, or as subsequently ordered by the Commission. A Transition Surcharge will be collected through December 31, 2007. |
| Implementation Surcharge: | (As established by the Commission.) |
| Nuclear Decommissioning Surcharge: | \$.001320 per kWh |

Minimum Charge:

The Customer Charge and the Distribution Service Charge.

Due Date and Late Payment Charge:

The due date of the Customer bill shall be 21 days from the date of mailing. A late payment charge of 2% of the unpaid balance, net of taxes, shall be assessed to any bill which is not paid on or before the due date shown thereon.

Term and Form of Contract:

All service under this rate **shall** require a written Retail Open Access Service Contract between the Company and a Retailer.

All service under this rate **may** require a written Retail Open Access Service Contract between the Company and a Customer.

**DETROIT EDISON
IMPLEMENTATION
PLAN
TARIFFS**

RETAIL ACCESS SERVICE**1. DEFINITIONS**

“Aggregator” means an entity that combines the Power consumption of multiple Customers for the purpose of meeting minimum load criteria necessary for Retail Access Service.

“Commission” means the Michigan Public Service Commission.

“Company” means The Detroit Edison Company.

“Company’s Distribution System” means facilities operated by the Company for the purpose of distributing electric power within the Company’s electric service territory which are subject to the jurisdiction of the Commission.

“Company’s Transmission System” means facilities operated by the Company for the purpose of transmitting electric power within the Company’s electric service territory which are subject to the jurisdiction of the Federal Energy Regulatory Commission.

“Customer” means, for purposes of Retail Access Service, an entity with electrical load facilities connected to the Company’s Distribution System that purchases or receives Power from a Retailer and which power is delivered to its Location(s) pursuant to this Tariff. All retail Customers, regardless of the voltage level of the service, are considered to be connected to the Company’s Distribution System.

“Distribution Contract Capacity” means the load carrying capacity in kilowatts of the Company’s Distribution System necessary to meet a Customer’s maximum load requirements at a particular Location served under this tariff.

“Distribution Point of Delivery” means the point of interconnection between the Company’s Distribution System and the Customer’s service Location.

“Distribution Point of Receipt” means the point of interconnection between the Company’s Transmission and Distribution Systems.

“Load” means electric demand measured in kilowatts (kW).

“Location” means each Customer facility whether owned or leased.

“Marketer” means an entity that:

- (i) generates, brokers, markets or otherwise procures Power to be supplied to the Company at the Transmission Point of Receipt, obtains transmission services as the designated agent of the Customer, through the Customer’s Retailer, and with whom a Customer or a Customer’s Retailer has arranged for the receipt of Power,
- (ii) satisfies all applicable franchise, statutory, and regulatory requirements of Michigan and Federal Law,
- (iii) satisfies all applicable reciprocity requirements set forth in this tariff.

“Open Access Transmission Tariff (OATT)” means the Company’s pro forma open access transmission tariff on file with the Federal Energy Regulatory Commission, as amended from time to time.

"Power" means a combination of the demand and energy requirements of the Customer.

"Retailer" means an entity that:

- (i.) Sells or procures power for a Customer and causes that power to be supplied to the Company for delivery to a Customer.
- (ii.) Satisfies all applicable franchise, statutory and regulatory requirements of Michigan and Federal law.

"Set-Aside" means either of two special groupings of single-phase Customers designed to ensure that small Customers can participate in Retail Access Service.

"Transition Charge" is a surcharge intended to recover the costs associated with the implementation of Retail Access Service and the Company's stranded costs arising from implementation of Retail Access Service.

"Transmission Point of Delivery" means the point of interconnection between the Company's Transmission and Distribution Systems.

"Transmission Point of Receipt" means the point on the Company's Transmission System where Power is received by the Company for delivery to the Transmission Point of Delivery.

2. TERMS AND CONDITIONS OF SERVICE

2.1 This Retail Access Service Rate Schedule sets forth the rates, charges, terms and conditions of service for the delivery of Power to a Customer, procured by a Retailer and supplied by a Marketer. Such Power shall be initially received at a designated Transmission Point of Receipt and ultimately delivered to the Customer through the Company's Distribution System.

2.2 Power received by the Company from a Marketer shall be transmitted across the Company's Transmission System to the Company's Distribution System in accordance with the rates, terms and conditions of service of the Company's Open Access Transmission Tariff.

2.3 A Customer's eligibility to take Retail Access Service is subject to any terms or conditions imposed by preexisting contracts or tariffs with the Company including those which may preclude the Customer from taking retail access service. Customers must have satisfied any past due amounts owed to the Company under any other arrangements or provisions for electric service before taking service under this Rate Schedule. Rider No. 2 agreements between the Customer and the Company will remain in effect during service under this Tariff.

2.4 A Customer will specify only one Retailer and one Marketer at any given time for the supply of Power to separately metered Load. Separately metered loads at a single Location that are at the same service voltage may be combined for the purposes of integrating the demands. If this is done, the combined load can only be served by a single Retailer and/or Marketer.

2.4.1 Customers shall be permitted to change Retailers at the completion of their normal billing cycle. Customers will be assessed a \$5 processing charge for each change.

2.4.2 Retailers shall be permitted to change a Marketer serving any of its Customers with 30 days notice to Detroit Edison.

2.5 If a Retailer or Marketer fails to pay amounts due the Company or otherwise fails to perform obligations undertaken in connection with service to the Customer, the Company will give the Customer notice of the Retailer's or Marketer's default. The Customer acknowledges that Retail Access Service may be terminated if the Customer, its Retailer, or its Marketer fails to pay amounts due the Company or otherwise fails to comply with the provisions of the Tariff or agreements with the Company. Unless the Customer, Retailer or Marketer cures the default with the Company or the Customer changes its Retailer or Marketer in accordance with Company rules, the customer may be transferred to service under the Company's full requirements tariffs subject to the provisions of Section 5.2.

2.6 Customers receiving single-phase Retail Access Service must have their entire Load at a single Location served by one Retailer and one Marketer.

2.7 Retail Access Service is not available to Customers taking Lighting service utilizing Company-owned equipment.

2.8 The responsibilities of Aggregators, Retailers, Marketers or Customers may be undertaken or performed by one or more entities, provided the qualification requirements for each such function set forth in this tariff are met.

3. CHARACTER OF SERVICE

3.1 The Company furnishes alternating current service at a nominal frequency of 60 hertz 24 hours a day, subject to interruption by tariff, agreement, by advance notice, by accident or by other causes not under the reasonable control of the Company.

3.2 For Single Phase Distribution Service, the Company provides service at differing voltages available in differing configurations within its service territory. These include, but are not limited to, single-phase secondary alternating current service at 120/240 volts. In some districts current is supplied from a Y-connected secondary network at 208Y/120 volts. Customers who are considering locating new load or who are considering adding load at an existing location should contact the Company to determine what service is available at a particular location to serve their Load.

3.3 For Three Phase Distribution Service, the Company provides service at differing voltages available in differing configurations within its service territory. These include, but are not limited to, alternating current, three-phase service at nominal 4,800, 13,200, 24,000, 41,570 or 120,000 volts which may be transformed to lower voltages through Company-owned transformation equipment. Where three-phase service is supplied at 480Y/277 volts through Company-owned transformation equipment, the Customer must furnish any transformation for the supply of its 120/240 volt requirements. Customers who are considering locating new load or who are considering adding load at an existing location should contact the Company to determine what service is available at a particular location to serve their Load.

4. AVAILABILITY OF SERVICE

4.1 Until December 31, 2001, eligibility for Retail Access Service will be determined using an open bidding procedure to be authorized by the Commission.. Bids for eligibility may be submitted by prospective Customers , Retailers, Marketers and other parties and shall designate the amount of Load proposed to be served and the amount the Retailer serving such Load shall pay the Company as a Transition Charge for each kilowatt-hour associated with the awarded capacity delivered under this tariff.

4.2 On and after January 1, 2002, all customers with Load connected to the Company's Distribution System shall be eligible for Retail Access and Retailers shall pay the Company a Transition Charge of 1.25 ¢/kWh for all kilowatt-hours consumed by Customers on Retail Access. The Transition Charge is intended to recover the costs associated with the implementation of Retail Access Service and the Company's stranded costs arising from implementation of Retail Access Service. The Transition Charge of 1.25 ¢/kWh to be implemented on January 1, 2002, is an estimate of the charge to be imposed at that time and is subject to adjustment by the Commission.

4.3 Subject to final authorization by the Commission, the total maximum demand of load which may bid for Retail Access Service (Cumulative Load), the final day for submitting sealed bids to the Company, and the implementation dates for Retail Access Service is as follows:

| Final day for Submitting Bid | Cumulative Load | Implementation Date |
|------------------------------|-----------------|--|
| September 20, 1999 | 225,000 kW | as soon as practical after final day for bid submittal |
| November 19, 1999 | 450,000 kW | as soon as practical after final day for bid submittal |
| January 20, 2000 | 675,000 kW | as soon as practical after final day for bid submittal |
| March 20, 2000 | 900,000 kW | as soon as practical after final day for bid submittal |
| November 20, 2000 | 1,125,000 kW | January 1, 2001 |

On and after January 1, 2002, all Load connected to the Company's Distribution System shall be eligible for Retail Access Service.

4.4 Bidding will be allowed up to the total maximum demand available through the current bid period, less any demand assigned to successful bidders in any prior bid periods that has not been forfeited. Bids must be for a minimum of 1,000 kW in capacity. In each bid period, 3,000 kW of the available capacity will be set-aside for use by aggregated Residential Customers. A further 3,000 kW of each bid period's capacity will be set aside for use by aggregated small single phase Customers (including Residential). The remaining 219 MW may be used to serve any class of customer. The set-asides will be accomplished by staging a sequential bidding process with the Residential set-aside first, then the Residential and small single phase set-aside, and finally, the remaining 219 MW. Losing bids in the set-asides will be carried over into the remaining bidding processes, providing, in effect, additional chances that the set-asides are filled. Unused set-aside capacity, if any, may be filled by other bid classes, but a like amount will be added to future bid period's set-asides to maintain the cumulative set-aside total at the original goal. Capacity will be offered in a simple auction process with capacity being awarded to the highest bidders. Capacity will be awarded to successively lower bids until the offered capacity is exhausted. In the event of two or more bids have identical prices, a lottery will be used to select the winning bidder.

4.5 Any individual or entity is allowed to bid, provided they meet the bidding requirements set forth herein and in the Company's filed Implementation Plan. Basic requirements include: a minimum quantity sought of 1,000 kW, a bid price per kWh to be paid as a transition charge, and a deposit. Deposit amounts are \$1.00/KW for the Residential set-aside, \$1.50/KW for the Residential/Single Phase set-aside, and \$2.00/KW for the balance (Primary/Three Phase) of each bid period's capacity. Successful bidders must satisfy all requirements established in this Rate Schedule and in the filed Implementation Plan. The most basic requirement is that capacity owners will have 60 days to contract with a Retailer (or begin the process to qualify as a Retailer themselves) and 180 days from the time of award to enroll customers. Any capacity not meeting these requirements will be forfeited and offered to the holder of the highest unsuccessful bid (if within 90 days of the original award) or re-bid in the next bid period (if default occurs more than 90 days after original award). Capacity owners may sell or assign their capacity rights. If they do so, they must inform Detroit Edison, so the sale and the new owner of record can be recorded. Any sale of assignment does not change the original 180 days to enroll Customers requirement.

5. TERM AND COMMENCEMENT OF SERVICE

5.1 Retail Access Service shall have a minimum term as specified below:

5.1.1 Retail Access Service provided to new Locations shall be for an initial minimum term of five years over which time (a) the minimum charges shall apply, and (b) the Distribution Contract Capacity shall not be reduced.

5.1.2 Retail Access Service provided to existing Locations shall be for an initial minimum of one year over which time the minimum charges shall apply.

5.1.3 Under special circumstances the initial term for Retail Access Service may be increased or reduced at the discretion of the Company.

5.1.4 Upon completion of the initial term, Retail Access Service shall continue on a month to month basis until terminated in writing by the Customer or the Company with 30 days notice.

5.2 Customers may discontinue Retail Access Service and return to the Company's full requirements service upon mutual agreement between the Customer and the Company. The Customer may initiate this return to full requirements service by contacting the Company directly or through its Retailer. The Company has no obligation to verify that the Customer is eligible to terminate the service under the terms of a contract with its Retailer. Such full requirements service shall be for a period of at least one year.

5.3 Retail Access Service may not commence until metering has been installed as specified in the tariff or agreements related thereto and the Company has received from the parties involved:

- Marketer: (i) an executed Transmission Service Agreement,
- (ii) agreements between the Marketer and the Company as specified in Section 8 of this Rate Schedule,
- Retailer: (i) Customer Enrollments with total Distribution Contract Capacity(ies) of at least 1000 kW, and,
- (ii) the Retailer's warranty that the Retailer has obtained all necessary approvals authorizing the Retailer to conduct business at each Location to be served, and
- (iii) the Retailer's warranty that each enrollment submitted is in full compliance with all Company requirements for enrollment, backed by a contract between the Retailer and the Customer that authorizes Detroit Edison to switch the Customer to Retail Access Service

6. RATES AND CHARGES

Description of Charges

6.1 Service Charge. The Service Charge shall apply to each Location served under this Rate Schedule.

6.2 System Use Charge. The System Use Charge shall be the product of the applicable rate and the Customer's Distribution Contract Capacity, at each voltage level, for each Location. The maximum demand shall be the highest 30-minute integrated kW demand created during the previous 12 billing months at each voltage level (whether the Customer received service under this Contract or a Detroit Edison retail tariff or contract), including the current month but not less than 50% of Distribution Contract Capacity.

6.3 Distribution Contract Capacity. Customers shall contract for an amount of capacity sufficient to meet the maximum requirements of the Load connected to the Company's Distribution System at the Customer's Location. Customers not having previously established service requirements shall contract with the Company for a specified Distribution Contract Capacity in a kilowatt amount sufficient to meet maximum requirements for each Location. Customers having previously established contract capacities prior to transferring from retail, full requirements service to Retail Access Service shall have their Distribution Contract Capacity set at their highest 30-minute integrated demand created during the previous 12 billing months for each Location at each voltage level. The Company will provide the necessary facilities to deliver electric power from its distribution system at the Distribution Contract Capacity. Subject to the provisions of the Company's Rules, any incremental cost incurred by the Company to provide the necessary facilities to meet the Customer's increased demand for distribution services over the Distribution Contract Capacity existing when service commences under the Rate Schedule shall be the responsibility of the Customer. Once established, the Distribution Contract Capacity shall not decrease during the contract term unless there is a specific permanent reduction in connected load. Any single 30-minute integrated reading of the demand meter in any month that exceeds the Distribution Contract Capacity then in effect shall become the new Distribution Contract Capacity.

6.4 Redundant Service: Redundant services requested by the Customer may be provided under separate agreement.

6.5 Substation Charge A substation charge shall apply to Customers with service at a service voltage level of 24kV or above who are provided service through a substation owned by the Company and dedicated to the Customer's use. The substation Charge shall be the product of the applicable rate and the Customer's maximum demand.

6.6 Transition Charge: The Transition Charge recovers the costs associated with implementing the restructuring of the electric power supply industry.

Application of Charges

6.7 Minimum Charge. The Customer is subject to a minimum monthly charge equal to the sum of the Service Charge, the System Use Charge and the Substation Charge, if applicable.

6.8 Three-Phase Distribution Service. Customers receiving three-phase Retail Access Service shall pay the Company a rate computed as the sum of the following charges:

| | <u>13.2 and below</u> | | <u>24 or 41.6kV</u> | <u>120kV and above</u> |
|---------------------------------|-----------------------|---------------|---------------------|------------------------|
| | Secondary | Primary | | |
| Service Charge (\$/month) | \$5.95 | \$450 | \$450 | \$450 |
| System Use Charge (\$/kW/month) | \$3.42 | \$2.47 | \$0.57 | \$0.24 |
| Substation Charge (\$/kW/month) | NA | NA | \$0.36 | \$1.18 |
| Surcharges and Credits | Schedule B4.9 | Schedule B4.9 | Schedule B4.9 | Schedule B4.9 |

Any additional Transition, True Up Charges, Surcharges and Credits as may be approved by the Commission

All kWh charges will be based on the metered quantity as determined by the meters at the Customer Locations.

6.9 Single Phase Distribution Service. Customers receiving single-phase Retail Access Service shall pay the Company a rate computed as the sum of the following charges:

| | Single Phase |
|---------------------------------|---------------|
| Service Charge (\$/month) | \$5.95 |
| System Use Charge (\$/kW/month) | \$3.42 |
| Surcharges and Credits | Schedule B4.9 |

Any additional Transition, True Up Charges, Surcharges and Credits as may be approved by the Commission.

All kWh charges will be based on the metered quantity as determined by the meters at the Customer Locations.

6.10 Power Factor Charge. The Power Factor Charge is expressed in \$/kW and is applied to the single highest 30-minute integrated kW demand during the on-peak billing period. Power Factor shall be determined at the time of the single highest 30-minute integrated kVAR demand during the on-peak hours of the billing period and is a function of that kW demand and the corresponding 30-minute integrated kW demand for the same period. The Company maintains distribution system design standards based upon normal operating efficiency levels. Excessive deviations from Power Factor design limits shall be subject to the Power Factor Charge, require the Customer to take corrective action, or both. Customers with Power Factors below 70% must take action to correct Power Factor. Customers served at the 120kV level and above impact the transmission provider's system and compensation for Power Factors shall be made directly to the transmission provider by the Customer under the provisions contained in the Open Access Transmission Tariff.

Power Factor Charges (\$/kW)

| Power Factor Range | 120 kV and up | 24 or 41.6 kV | 4.8 or 13.2 kV |
|--------------------|-------------------------|---------------|----------------|
| 0.85 or higher | Per Transmission Tariff | \$0.00 | \$0.00 |
| 0.800 to 0.849 | Per Transmission Tariff | \$0.29 | \$0.31 |
| 0.750 to 0.799 | Per Transmission Tariff | \$0.59 | \$0.62 |
| 0.700 to 0.749 | Per Transmission Tariff | \$0.88 | \$0.93 |
| 0.699 and below | Per Transmission Tariff | \$0.88 | \$0.93 |

7. METERING, BILLING AND PAYMENT

7.1 Metering. Load served under this Rate Schedule shall be separately metered by meters capable of measuring and recording kW demands (and kVAR demands if applicable) on a 30-minute integrated basis and measuring energy on a kWh basis. Metering equipment for Customers taking Retail Access Service shall be furnished, installed, read, maintained and owned by the Company. For Three Phase and those Single Phase customers not electing the meter waiver provision described below, the Company requires access to the Customer's telephone line for purposes of meter interrogation. If a Customer is not able to allow sharing of the telephone line, the customer shall obtain a separate telephone line for such purposes paying all charges in connection therewith. The Customer is responsible for assuring the performance of the telephone line. If the telephone line used for metering is out of service, Detroit Edison will retrieve the data manually for a fee of \$12/month (one reading). In the event that the telephone line service is out for three consecutive months, the Customer's Retail Access Service may be terminated and the Customer may be returned to service under the Company's full requirement tariffs subject to the provisions of Section 5.2.

7.2 Meter Waiver: The Company reserves the right to require Single-Phase Customers to comply with the above metering requirements, but, until further notice, the Company will waive the metering requirements set forth above for Single-Phase Customers and will statistically derive hourly load profiles which will be used for the purpose of developing charges under the Company's Open Access Transmission Tariff.

7.3 Billing. The Company will bill the Customer for Retail Access Service as outlined in section 6. The Retailer may exercise the option of billing its Customers for service that it provides, although the Company will offer billing services to participating Retailers as outlined in separate agreements.

7.4 Payment. The Customer shall pay the Company the amount billed on or before a due date which shall be 21 days following the date of mailing of the bill. A late payment charge of 2%, not compounded, of the unpaid balance, net of taxes, shall be added to any bill which is delinquent as defined by the Commission Rules.

8. RETAILERS AND MARKETERS

8.1 Retailers desiring to sell or provide Power to Customers under the terms of this Retail Access Service must have all necessary approvals to conduct business in each community in which Power is to be delivered, must comply with all statutory and regulatory requirements, state and federal law, and must enter into agreements satisfactory to the Company for:

- the payment of Transition Charges and other charges,
- the provision and exchange of Customer information associated with service under this tariff.

8.2 Marketers desiring to supply Power to Customers through Retailers, under the terms of this Retail Access Service Tariff, must comply with all statutory and regulatory requirements, state and federal law and must enter into agreements satisfactory to the Company for:

- the payment of Transmission Charges and other charges
- the provision and exchange of Customer information associated with service under this tariff,
- the supply, scheduling and receipt of Power to be received by the Company from the Marketer for delivery to the Customer,
- the supply and scheduling of, and payment for, any backup capacity and energy to be provided by the Company, and
- transmission service as Designated Agent of the Customer under the Company's Open Access Transmission Tariff which agency shall only be effective so long as the Marketer is not in default of any obligation to the Company.

8.3 Real Power Losses. A Marketer is responsible for replacing losses associated with the delivery of power to the Customer's metered Point of Delivery. The amount of Power delivered by the Company on the Company's Distribution System to the Point of Delivery shall be adjusted using the following Real Power Loss Factors for distribution service:

| | <u>1st Quarter</u> | <u>2nd Quarter</u> | <u>3rd Quarter</u> | <u>4th Quarter</u> |
|------------------|--------------------|--------------------|--------------------|--------------------|
| Secondary | 10.88% | 11.95% | 12.01% | 10.23% |
| 13.2kV | 6.61% | 7.13% | 7.37% | 6.31% |
| 24kV | 1.86% | 2.09% | 2.34% | 1.90% |
| 120 kV and above | 0.55% | 0.57% | 0.57% | 0.55% |

Marketers must schedule and supply an amount of Power equal to its Customer's Load x [(1 + D%) x (1 + T%)] to account for losses on the Company's Transmission and Distribution System, where T% is the applicable loss factor contained in the Company's Open Access Transmission Tariff and D% is the applicable loss factor from the table above.

8.4 Reciprocity. The Company will not accept power from a Marketer that does not contractually agree to provide the Company with reciprocal access to retail consumers. A reasonable level of reciprocity between the Company and the prospective Marketer and its affiliates must be established.

Through December 31, 2001:

In-state and out-of-state utilities and utility affiliates must consent to open the same relative amount of retail customer load to competition by the Company. Further the consent of out-of-state utilities and utility affiliates to this reciprocity requirement must be expressed as a provision of an enforceable contract. A municipal utility or a municipal power agency is required to provide reciprocity only for the type of service it provides and in the same relative amount.

On and after January 1, 2002:

No Michigan-based electric utility shall be permitted to utilize the Company's system to make retail sales unless the utility wishing to make the sale provides comparable Retail Open Access Service to retail customers located within its service territory.

No generation supplier that provides retail distribution services, or that has an affiliate that provides retail distribution services, shall be permitted to utilize the Company's system to make retail sales unless the supplier or its affiliate provides comparable Retail Open Access Service. If the transaction involves an intermediary (such as a marketer or broker), the reciprocity obligation may be satisfied by either the regional transmission/distribution affiliate of the intermediary or by the owner of the generation source or its regional transmission/distribution affiliate.

"Comparable" Retail Open Access Service is one which (i) provides for Retail Open Access Service in an amount of retail customer load equivalent to that provided by the Company, and (ii) specifies rates, terms, and conditions that are equivalent to those offered by the Company, and that have been approved by all applicable regulatory authorities for use in Retail Open Access Service transactions.

9. LIABILITY AND EXCLUSIONS

Liability of the Company and Exclusion of Consequential Damages

9.1 In no event will the Company or its suppliers be liable under any cause of action relating to the subject matter of this rate schedule, whether based on contract, warranty, tort (including negligence), strict liability, indemnity or otherwise for any incidental or consequential damages including but not limited to loss of use, interest charges, inability to operate full capacity, lost profits or claims of Customer's customers.

9.2 The Company's total liability to the Customer for all claims arising out of or related to service provided under this rate schedule, whether based on contract, warranty, tort (including negligence), strict liability, indemnity or otherwise shall not exceed the amount paid by the Customer to the Company for the Location involved during the month in which the claim arose.

9.3 The Company will not be liable to a Customer for damages caused by interruption of service, voltage or frequency variations, single phase supply to three phase lines, reversal of phase rotation, or carrier-current frequencies imposed by the Company for system operations or equipment control except such as result from the failure of the Company to exercise reasonable care and skill in furnishing the service. The Customer should install protective equipment if such occurrences might damage its apparatus.

10. OTHER PROVISIONS

All Points of Receipt for Power produced within the Company's retail service territory for delivery to Customers within that territory shall be considered as being points located on the Company's Transmission System.

Customers, Retailers or Marketers desiring to operate electric generation equipment connected in parallel with the Company's system must comply with the Company's Protective Relaying, Operating and Telemetering Guidelines for Independently Owned Generation and before operating such equipment must obtain certification, in writing, from the Company that the conditions outlined in the Guidelines have been met.

Customer equipment must be operated so that voltage flicker and harmonics on the distribution system of the Company shall not exceed permissible limits established by the Company. Failure to comply with this requirement may result in discontinuance of service to the Customer and disconnection of Customer's Load from the Company's system.

The Company's Rules and Regulations as currently in effect are incorporated by reference into this Rate Schedule to the extent applicable and, Rule C-2.2(2) notwithstanding, only to the extent not inconsistent with the terms of this Rate Schedule.

CONSUMERS' ELECTRIC CODE OF CONDUCT

F12. RETAIL OPEN ACCESS PROGRAM STANDARDS OF CONDUCT

This rule is intended to promote fair competition and a level playing field among all participants involved in the Retail Open Access Service program within Consumers Energy Company's ("Consumers") regulated electric service territory. All affiliates of Consumers, whether divisions of, departments within or wholly-owned subsidiaries of Consumers (collectively described herein as first tier affiliates) or separately organized affiliated companies or joint ventures (collectively described herein as second tier affiliates) will be allowed to participate in every aspect of such program on an equal basis to non-affiliates because of Consumers' decision to adopt these standards of conduct. Accordingly, once the MPSC approves such a scope of participation by Consumers' first and second tier affiliates and agrees that Consumers' program and obligations thereunder should be no different because of participation by such affiliates, Consumers agrees to apply the following standards of conduct to the Retail Open Access Service program in its regulated electric service territory:

A. These standards of conduct shall apply as follows to affiliates of Consumers:

(1) The standards of conduct apply to second tier affiliates when they participate in the Retail Open Access Service program within Consumers' regulated electric service territory by offering retail customers power supplies at market prices. Such affiliates can begin to participate immediately in the program.

(2) The standards of conduct will only apply to Consumers or its first tier affiliates if and when they participate in the Retail Open Access Service program within Consumers' regulated electric service territory by offering retail customers power supplies at market prices. The standards of conduct do not apply to Consumers or its first tier affiliates if the power supply is offered as part of a bundled service or if the price of the power supply to the customer remains regulated in any respect by the MPSC.

(3) Within its regulated electric service territory, Consumers and its first tier affiliates will not commence offering retail customers power supplies at market prices pursuant to the Retail Open Access Service program any earlier than January 1, 2002.

B. Consumers will apply any tariff provision relating to Retail Open Access Service in the same manner without undue discrimination to all similarly situated persons.

C. Consumers will not give any Aggregator, Broker, Marketer or Retailer or their customers undue preference over any other Aggregator, Broker, Marketer or Retailer and their customers in matters relating to bidding, scheduling of power, provision of ancillary services, billing, metering, curtailment policy or access to customer information pursuant to the Retail Open Access Rate Schedules approved by the MPSC. Affiliated Aggregators, Brokers, Marketers, Retailers and their customers shall neither receive undue preferences nor be discriminated against, but simply be treated by Consumers like all other Aggregators, Brokers, Marketers, Retailers and their customers.

D. Consumers will not communicate to any of its retail electric customers, or to any Aggregator, Broker, Marketer or Retailer that any advantage may accrue to such customers, Aggregator, Broker, Marketer or Retailer in the use of Consumers' regulated services as a result of that customer, Aggregator, Broker, Marketer or Retailer dealing with any particular Aggregator, Broker, Marketer or Retailer, including an affiliated Aggregator, Broker, Marketer or Retailer.

E. To the extent practicable, Consumers will process all similar requests for Retail Open Access Service in the same manner and within the same period of time.

F. If a Customer requests information about Aggregators, Brokers, Marketers or Retailers, Consumers will provide a list of all Aggregators, Brokers, Marketers or Retailers known to be operating on its system, including its affiliates, and in response to such a quest will not promote any specific Aggregators, Brokers, Marketers or Retailers including its affiliates.

G. Consumers shall not provide customer lists, customer-specific sales volumes and customer-specific patterns of usage to any Aggregator, Broker, Marketer or Retailer, including affiliated Aggregators, Brokers, Marketers or Retailers offering retail customers power supplies at market prices. Once a calendar year a Customer can request in writing that up to 12 months of historic volumetric sales data be provided to a particular Aggregator, Broker, Marketer or Retailer or to all Aggregators, Brokers, Marketers or Retailers, and that request will be honored by Consumers without charge until revoked by the Customer. Additionally, once a calendar year a particular Aggregator, Broker, Marketer or Retailer can request and receive up to 12 months of historic volumetric sales data for one of its current customers and Consumers may without charge provide only that Aggregator, Broker, Marketer or Retailer with such data. Consumers can levy a reasonable fee to fill requests for data that is more than 12 months old or to respond to requests made more frequently than once a calendar year.

H. Consumers will implement its Retail Open Access Service program on a nondiscriminatory basis, and will not engage in any practice which unduly conditions transactions between any Customer, Aggregator, Broker, Marketer or Retailer and Consumers' affiliated Aggregators, Brokers, Marketers or Retailers. Notwithstanding the above, Customers, Aggregators, Brokers, Marketers or Retailers are not relieved of complying with the requirements to execute or complete the contracts, agreements or other forms required by the terms of the Retail Open Access Service program.

I. Except as permitted by these standards of conduct, Consumers' transmission and distribution employees and the employees of its first and second tier affiliates that act as Aggregators, Brokers, Marketers and Retailers offering retail customers power supplies at market prices will function independently of each other. Consumers will maintain separate business offices from its wholly-owned subsidiaries and second tier affiliates engaged in the Retail Open Access Service program.

J. The books of account and records for the regulated utility services provided by Consumers to its retail electric customers will be maintained separately from the books of accounts and records kept by any affiliated Aggregator, Broker, Marketer or Retailer.

K. Nothing in these retail standards of conduct is intended to supplant or relieve Consumers of its duty to comply with the Standards of Conduct for Public Utilities established by the Federal Energy Regulatory Commission in Order Nos. 889 and 889-A. as codified at 18 CFR §§37.1-37.4.