

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own motion,
regarding the regulatory reviews, revisions,
determinations, and/or approvals necessary for
THE DETROIT EDISON COMPANY to fully
comply with Public Acts 286 and 295 of 2008.

Case No. **U-15806**
(e-file paperless)

THE MICHIGAN PUBLIC SERVICE COMMISSION
STAFF'S BRIEF

MICHIGAN PUBLIC SERVICE COMMISSION
STAFF

Patricia S. Barone (P29560)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

Dated: May 5, 2009

Table of Contents

	Page No.
I. Introduction.....	1
A. Nature of the Case—Legal Framework under 2008 PA 295.....	1
B. History of Proceedings.....	7
II. Renewable Plan.....	8
A. Regulatory and Accounting Issues.....	8
1. Setting the Surcharges.....	8
a. Edison's Position.....	8
b. Staff's Position.....	9
2. Regulatory Liability Minimum Balance.....	10
a. Edison's Position.....	10
b. Intervenors' Position.....	11
c. Staff's Position.....	11
3. Timing of Surcharges.....	12
a. Edison's Position.....	12
b. Intervenor's Position.....	12
c. Staff's Position.....	13
B. Utility Plan to Build 50% of Renewable Energy.....	13
1. Cost of PPAs versus Utility Built Generation.....	13
a. Capital Market Conditions.....	13
i. Edison's Position.....	13
ii. Intervenors' Position.....	16
iii. Staff's Position.....	17
b. Project/Price Control.....	18
i. Edison's Position.....	18

	ii.	Intervenor's Position	19
	iii.	Staff's Position.....	19
2.		28% Capacity Factor for Wind and 12.5% Capacity Credit.....	20
	a.	Edison's Position	20
	b.	Intervenors' Position	23
	c.	Staff's Position	23
3.		Service Life Depreciation of Wind Turbines.....	24
	a.	Edison's Position	24
	b.	Intervenor's Position	24
	c.	Staff's Position	25
4.		Tire Fractionation.....	25
	a.	Edison's Position	25
	b.	Intervenors' Position	26
	c.	Staff's Position	26
5.		Solar Programs	28
	a.	Edison's Position	28
	b.	Intervenor's Position	29
	c.	Staff's Position	29
C.		Request for Proposals Process	30
	1.	Edison's Position	30
	2.	Intervenors' Position	32
	3.	Staff's Position	34
III.		Energy Optimization Plan.....	37
	A.	Incentive Mechanism	37
	1.	Edison's Position	37
	2.	Intervenors' Position.....	38

3.	Staff’s Position.....	39
B.	Recovering the Incentive in the Surcharge	40
1.	Edison’s Position	40
2.	Intervenors’ Position.....	40
3.	Staff’s Position.....	41
C.	Including Uncollectibles in the Surcharge.....	42
1.	Edison’s Position	42
2.	Intervenors’ Position.....	43
3.	Staff’s Position.....	43
D.	Self-Directed Customers.....	43
1.	Edison’s Position	43
2.	Intervenors' Position	44
3.	Staff's Position	44
E.	Michigan Energy Measures Database.....	45
F.	Evaluation Workgroups	45
1.	Edison’s Position	45
2.	Staff's Position	45
H.	Required Spending.....	46
1.	Edison's Position.....	46
2.	Intervenor’s position.....	47
3.	Staff’s Position.....	48
V.	Conclusion	49

THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S BRIEF

The Michigan Public Service Commission Staff ("Staff"), by its counsel, Patricia S. Barone, Assistant Attorney General, files the following brief in the above-entitled case.

I. Introduction

A. Nature of the Case—Legal Framework under 2008 PA 295

The following brief presents Staff's finding and recommendations regarding the Detroit Edison Company's ("Edison" or the "Company") Renewal Energy Plan and its Energy Optimization Plan that it filed in response to the Commission's directive in its Temporary Order.¹ The Commission issued this directive in order to carry out its responsibilities set forth in newly enacted legislation entitled the Clean, Renewable, and Efficient Energy Act, 2008 PA 295, effective October 6, 2008 ("PA 295" or the "Act").²

With respect to Edison, the Act pursuant to Section 21 requires it to file a proposed renewable energy plan and the Commission must conduct a contested case to review that plan:

- 1) This section applies only to electric providers whose rates are regulated by the commission.
- (2) Each electric provider shall file a proposed renewable energy plan with the commission within 90 days after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:
 - (a) Describe how the electric provider will meet the renewable energy standards.
 - (b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.
 - (c) Include the expected incremental cost of compliance with the renewable energy standards for a 20-year period beginning when the plan is approved by the commission.

¹ Temporary Order, Case No. U-15800, December 4, 2008.

² 2008 PA 295; MCL 460.1001-MCL 460.1195.

(d) For an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008, describe the bidding process to be used by the electric provider under section 33. The description shall include measures to be employed in the preparation of requests for proposals and the handling and evaluation of proposals received to ensure that any bidder that is an affiliate of the electric utility is not afforded a competitive advantage over any other bidder and that each bidder, including any bidder that is an affiliate of the electric provider, is treated in a fair and nondiscriminatory manner.

(3) The proposed plan shall establish a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the electric provider's customer rates. The revenue recovery mechanism shall not result in rate impacts that exceed the monthly maximum retail rate impacts specified under section 45. The revenue recovery mechanism is subject to adjustment under sections 47(4) and 49. A customer participating in a commission-approved voluntary renewable energy program under an agreement in effect on the effective date of this act shall not incur charges under the revenue recovery mechanism unless the charges under the revenue recovery mechanism exceed the charges the customer is incurring for the voluntary renewable energy program. In that case, the customer shall only incur the difference between the charge assessed under the revenue recovery mechanism and the charges the customer is incurring for the voluntary renewable energy program. The limitation on charges applies only during the term of the agreement, not including automatic agreement renewals, or until 1 year after the effective date of this act, whichever is later. Before entering an agreement with a customer to participate in a commission-approved voluntary renewable energy program and before the last automatic monthly renewal of such an agreement that will occur less than 1 year after the effective date of this act, an electric provider shall notify the customer that the customer will be responsible for the full applicable charges under the revenue recovery mechanism and under the voluntary renewable energy program as provided under this subsection.

(4) If proposed by the electric provider in its proposed plan, the revenue recovery mechanism shall result in an accumulation of reserve funds in advance of expenditure and the creation of a regulatory liability that accrues interest at the average short-term borrowing rate available to the electric provider during the appropriate period. If proposed by the electric provider in its proposed plan, the commission shall establish a minimum balance of accumulated reserve funds for the purposes of section 47(4).

(5) The commission shall conduct a contested case hearing on the proposed plan filed under subsection (2), pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If a renewable energy generator files a petition to intervene in the contested case in the manner prescribed by the commission's rules for interventions generally, the commission shall grant the petition. Subject to subsections (6) and (10), after the hearing and within 90 days after the proposed plan is filed with the commission, the commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(6) The commission shall not approve an electric provider's plan unless the commission determines both of the following:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.

(b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider's energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

* * *

(10) If the commission rejects a proposed plan or amendment under this section, the commission shall explain in writing the reasons for its determination.³

Edison is also required to file an Energy Optimization Plan and the Commission is required to review that Plan as specified in Sections 71 and 73 of the Act:

Sec. 71.

(1) A provider shall file a proposed energy optimization plan with the commission within the following time period:

(a) For a provider whose rates are regulated by the commission, 90 days after the commission enters a temporary order under section 171.

(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative member regulation act, 2008 PA 167, MCL 460.31 to 460.39, or a municipally-owned electric utility, 120 days after the commission enters a temporary order under section 171.

³ MCL 460.1021(1)(6) and (10).

(2) The overall goal of an energy optimization plan shall be to reduce the future costs of provider service to customers. In particular, an EO plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction. The proposed energy optimization plan shall be subject to approval in the same manner as an electric provider's renewable energy plan under subpart A. A provider may combine its energy optimization plan with its renewable energy plan.

(3) An energy optimization plan shall do all of the following:

- (a) Propose a set of energy optimization programs that include offerings for each customer class, including low income residential. The commission shall allow providers flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of their service territory.
- (b) Specify necessary funding levels.
- (c) Describe how energy optimization program costs will be recovered as provided in section 89(2).
- (d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy optimization programs for that rate class.
- (e) Demonstrate that the proposed energy optimization programs and funding are sufficient to ensure the achievement of applicable energy optimization standards.
- (f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.
- (g) Demonstrate that the provider's energy optimization programs, excluding program offerings to low income residential customers, will collectively be cost-effective.
- (h) Provide for the practical and effective administration of the proposed energy optimization programs. The commission shall allow providers flexibility in designing their energy optimization programs and administrative approach. A provider's energy optimization programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.
- (i) Include a process for obtaining an independent expert evaluation of the actual energy optimization programs to verify the incremental energy savings from each energy optimization program for purposes of section

77. All such evaluations shall be subject to public review and commission oversight.

(4) Subject to subsection (5), an energy optimization plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (2).

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (1) and that provide additional customer benefits.

(5) Expenditures under subsection (4) shall not exceed 3% of the costs of implementing the energy optimization plan.

Sec. 73.

(1) A provider's energy optimization plan shall be filed, reviewed, and approved or rejected by the commission and enforced subject to the same procedures that apply to a renewable energy plan.

(2) The commission shall not approve a proposed energy optimization plan unless the commission determines that the EO plan meets the utility system resource cost test and is reasonable and prudent. In determining whether the EO plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

(a) The specific changes in customers' consumption patterns that the proposed EO plan is attempting to influence.

(b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed EO plan.

(c) Whether the proposed EO plan is consistent with any long-range resource plan filed by the provider with the commission.

(d) Whether the proposed EO plan will result in any unreasonable prejudice or disadvantage to any class of customers.

(e) The extent to which the EO plan provides programs that are available, affordable, and useful to all customers.⁴

Various other provisions of the Act provide possible incentives for the utility, set forth requirements for savings, and allow the use of renewable energy credits that reduce usage to meet savings targets, among other things.⁵ Section 89 allows a provider whose rates are

⁴ MCL 460.1071, 460.1073.

⁵ See MCL 460.1075-460.1087.

regulated by the Commission, such as Edison, to recover the actual costs of implementing its approved energy optimization plan:

(1) The commission shall allow a provider whose rates are regulated by the commission to recover the actual costs of implementing its approved energy optimization plan. However, costs exceeding the overall funding levels specified in the energy optimization plan are not recoverable unless those costs are reasonable and prudent and meet the utility system resource cost test. Furthermore, costs for load management undertaken pursuant to an energy optimization plan are not recoverable as energy optimization program costs under this section, but may be recovered as described in section 95.

(2) Under subsection (1), costs shall be recovered from all natural gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge, applied to utility bills as an itemized charge.

(3) For the electric primary customer rate class customers of electric providers and customers of natural gas providers with an aggregate annual natural gas billing demand of more than 100,000 decatherms or equivalent MCFs for all sites in the natural gas utility's service territory, the cost recovery under subsection (1) shall not exceed 1.7% of total retail sales revenue for that customer class. For electric secondary customers and for residential customers, the cost recovery shall not exceed 2.2% of total retail sales revenue for those customer classes.

(4) Upon petition by a provider whose rates are regulated by the commission, the commission shall authorize the provider to capitalize all energy efficiency and energy conservation equipment, materials, and installation costs with an expected economic life greater than 1 year incurred in implementing its energy optimization plan, including such costs paid to third parties, such as customer rebates and customer incentives. The provider shall also propose depreciation treatment with respect to its capitalized costs in its energy optimization plan, and the commission shall order reasonable depreciation treatment related to these capitalized costs. A provider shall not capitalize payments made to an independent energy optimization program administrator under section 91.

(5) The established funding level for low income residential programs shall be provided from each customer rate class in proportion to that customer rate class's funding of the provider's total energy optimization programs. Charges shall be applied to distribution customers regardless of the source of their electricity or natural gas supply.

(6) The commission shall authorize a natural gas provider that spends a minimum of 0.5% of total natural gas retail sales revenues, including natural gas commodity costs, in a year on commission-approved energy optimization programs to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales volumes that are above or below the projected levels that were used to determine the revenue requirement authorized in the natural gas provider's most recent rate case. In determining the symmetrical revenue decoupling true-up

mechanism utilized for each provider, the commission shall give deference to the proposed mechanism submitted by the provider. The commission may approve an alternative mechanism if the commission determines that the alternative mechanism is reasonable and prudent. The commission shall authorize the natural gas provider to decouple rates regardless of whether the natural gas provider's energy optimization programs are administered by the provider or an independent energy optimization program administrator under section 91.

(7) A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:

- (a) In 2009, 0.75% of total retail sales revenues for 2007.
- (b) In 2010, 1.0% of total retail sales revenues for 2008.
- (c) In 2011, 1.5% of total retail sales revenues for 2009.
- (d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.⁶

B. History of Proceedings

On February 2, 2009, Edison filed its Notice of Intent to File Application for Approval of Its Renewable Energy Plan and its Notice of Intent to File Application for Approval of Its Energy Optimization Plan. On March 4, 2009, the Company filed its Application for approval of its Energy Optimization Plan and filed the supporting testimony of eight witnesses: Emmett R. Romine, Ronald G. Ingrody, Richard A. Morgan, Nick Hall, Sherrie L. Siefman, Theresa M. Uzenski, Adella F. Crozier, and Kelly A. Holmes.

Also on March 4, 2009, Edison filed its Application for approval of its Renewable Energy Plan and filed the supporting testimony of Irene M. Dimitry, Sherrie L. Siefman, Barbara J. Tuckfield, James H. Byron, Martin L. Heiser, Joseph P. Gallagher, and Kenneth D. Johnston.

A prehearing conference was held on March 13, 2009. At that time the Petitions to Intervene of the following parties were granted: New Covert Generating Company; Michigan Wholesale Power Association; L.S. Power Associates, LP; LaFarge Midwest, Inc.; Michigan

⁶ MCL 460.1089.

Environmental Council; the Environmental Law & Policy Center; the Ecology Center; Energy Michigan; ABATE; RES North America, LLC; Michigan Sustainable Energy Coalition; Natural Resources Defense Council; Michigan Community Action Agency Association; and the Attorney General.

Hearings were held on April 20 to April 23, 2009. At that time, the testimony of all witnesses was bound into the record and their exhibits were admitted into evidence. The record was closed on April 23, 2009, and consists of 1484 pages. Briefs are due on May 5, 2009, and reply briefs are due on May 12, 2009.

II. Renewable Plan

A. Regulatory and Accounting Issues

1. Setting the Surcharges

a. Edison's Position

The Company requested the surcharge to customers to begin in September 2009. 6 TR 1144. The Company's proposed revenue recovery surcharge mechanisms are illustrated, by customer class, in Exhibits A-21, A-22 and A-24. Edison's witness Kenneth Johnston proposed that all residential customers will pay a \$3 monthly surcharge. 6 TR 1131. He also proposed that commercial secondary / governmental rate customers will pay differing surcharges based on tiers determined by monthly consumption level.

Monthly Consumption	Customer Surcharge
0 – 400 kWh/month	\$4.00/meter/month
401-850 kWh/month	\$8.00/meter/month
851-1,650 kWh/month	\$12.00/meter/month
Above 1,650 kWh/month	\$16.58/meter/month

[6 TR 1136.]

Mr. Johnston further proposed that primary and industrial customers will pay differing surcharges based on tiers determined by monthly consumption level.

Monthly Consumption	Customer Surcharge
0 – 11,500 kWh/month	\$16.58/meter/month
11,501 – 41,500 kWh/month	\$140.00/meter/month
Above 41,500 kWh/month	\$187.50/meter/month

[6 TR 1137.]

Mr. Johnston concluded by stating that he believes that Edison's proposed revenue recovery mechanism comply with MCL 460.1027 and is reasonable and prudent. 6 TR 1174.

In his rebuttal testimony responding to the testimony of the Ecology Center's witness David A. Wright, Mr. Johnston presented the impact of the surcharges to an average bill (3.8% average increase to residential bills, 3.2% average increase to commercial class customers). Mr. Johnston also stated that “approximately 43%, or more than 78,000 customers within the general service commercial customer class, have average monthly consumption below that of the average residential customer yet the lowest recommended revenue recovery mechanism surcharge for the commercial-secondary class is larger than that for all residential customers.” 6 TR 1187.

b. Staff's Position

Staff accepts the Company's position. Act 295 allows the Company to charge its residential customers the maximum allowed surcharge while choosing to charge other classes less than the maximum. Staff agrees with the statement made by Mr. Johnston in his rebuttal testimony that the impact of the Company's proposed renewable energy plan PSCR transfer price will have the same average impact on all customer classes. 6 TR 1188. Staff views this result as “fair.” In addition, Staff points out that the Company's Exhibit A-2, line 14, depicts that even after collecting at near the maximum surcharge, Edison may not meet its RES requirement in all years.

2. Regulatory Liability Minimum Balance

a. Edison's Position

Edison's witness Irene M. Dimitry testified that Edison is proposing customer revenue recovery mechanism surcharges that will recover the incremental costs of compliance and that will result in accumulation of reserve funds in advance of expenditure creating a regulatory liability. She further testified that Edison wants creation of a minimum balance for this regulatory liability of \$100 million through 2024, for the purposes of Sections 21(4) and 47(4) of the Act as shown on line 44 of Exhibit A-2 (IMD-2). 4 TR 474.

During cross-examination, Edison's witness Joseph P. Gallagher acknowledged that mathematically, "It [the surcharge] would be higher [at \$100 million] than if we had a zero minimum regulatory liability" "or 50." 6 TR 941. During cross-examination, Edison's witness Mr. Johnston stated:

If costs were reduced -- if the min reg liability went away and costs were reduced such that we were able to obtain hundred-percent compliance through the entire plan period, then I would agree that we would be able to reduce the surcharges. [6 TR 1224-1225.]

Also, Mr. Gallagher testified that "\$100 million [rather than \$50 million] will give us a higher degree of certainty that we would not move into a regulatory asset position." 6 TR 940 And, Ms Dimitry testified that: "[W]e view it [minimum regulatory liability] as a protection for the customers so that if we are getting close to the point of a regulatory asset, which would suggest costs have exceeded what they should have, it triggers a proceeding, so that's why we're asking for a minimum" 5 TR 775.

During cross-examination, Ms. Dimitry agreed that the regulatory liability could be zero, according to the legislation. 4 TR 603. Ms. Dimitry also stated that when planning the goals for the program, Edison did not include an analysis of avoiding an imposition of a financial burden

on ratepayers, assuming that it were cheaper for Edison to borrow the \$100 million minimum balance on a going forward basis. 4 TR 602.

During cross examination by the Michigan Sustainable Energy Coalition, Company witness Gallagher granted that “The company would not need to have a regulatory balance at all under the statute...” 6 TR 939, that “It’s not quite correct to say that this contested case problem is a justification for maintaining the \$100 million balance...” 6 TR 940 and that the “\$100 million would mean that necessarily the surcharge over time would be higher than otherwise” [under a zero or \$50 million minimum regulatory liability]. 6 TR 941.

b. Intervenor's Position

ABATE's witness Mr. Selecky stated his concerns about applying a short-term interest rate to the regulatory liability balance:

It is my understanding that the short term interest rate is a requirement of the Act. However, it does not seem equitable to have ratepayers provide for funds to DECo for up to 20 years and only receive interest on those funds at a rate of 5%. During this same period of time, DECo is requesting to earn a return on its investment of 11.76%. [5 TR 801-802.]

c. Staff's Position

PA 295 provides:

(4) If proposed by the electric provider in its proposed plan, the revenue recovery mechanism shall result in the accumulation of reserve funds in advance of expenditure and the creation of regulatory liability that accrues interest at the average short-term borrowing rate available to the electric provider during the appropriate period. If proposed by the electric provider in its proposed plan, the commission shall establish a minimum balance of accumulated reserve funds for the purposes of section 47(4).⁷

Staff recommends a minimum regulatory balance of \$22.5 million. Staff notes that in the Company's Exhibit A-2, line 47, the fund is not forecasted to drop below \$82 million prior to 2026. Thus, a minimum reserve balance of \$22.5 million, based on the Company’s projection,

⁷ MCL 460.1021(4).

should not negatively impact the plan. “And in fact, as Company witness Mr. Johnston states: “at the end of the 2029 period, we’re only at a \$22 million reg liability, so that’s a very tiny amount of the 2.2 billion toll.” 6 TR 1225.

Staff further asserts that if the Company’s forecasts turn out to be inaccurate, the Company may make use of its biannual (or more frequent) plan cases to amend the customer surcharges. And, importantly, Staff notes that reducing the minimum balance will potentially save money by not incurring additional interest and may “reduce the surcharges” paid from the customers. 6 TR 1225.

3. Timing of Surcharges

a. Edison’s Position

Edison's witness Mr. Johnston testified that Edison has requested that the surcharge assessed to customers begin in September 2009. 6 TR 1139. In addition, Edison's witness Ms. Dimitry acknowledged that from 2009 until 2011, the Company has no REC requirements and has no capacity requirements in 2009 to 2011. 4 TR 582-583. She also indicated that there are no capacity requirements for 2013 and 2014 and that the surcharges will be in place prior to that period of time. 4 TR 583.

b. Intervenor’s Position

ABATE raised concerns regarding the timing of proposed surcharges to the Company's customers. ABATE's witness Mr. Selecky testified:

The Commission should reduce DECo's proposed renewable energy plan to reflect the uncertainty associated with the cost that DECo will incur as a result of PA 295 (Act) and that the surcharges require the ratepayers to fund a portion of the renewable program through revenues provided in advance of the costs being incurred. [5 TR 798.]

He claimed that Edison's proposed surcharges allow the Company to over-collect in the early years and apply those over-collections against future under-collections. He concluded by

stating that, because of the current economic conditions, the fact that these costs are speculative, and the surcharge exceeds the expected cost in the early years of the plan, it is premature for the Commission to approve the Company's surcharge at this time. 5 TR 799-800.

c. Staff's Position

Staff asserts that Section 21 of PA 295⁸ anticipates that the revenue recovery mechanism, the surcharge, may result in an accumulation of reserve funds in advance of expenditures. Therefore, Staff recommends that the Company commence the approved surcharges as soon as the then approved plan references.

In addition, Staff suggests that by paying the surcharges in the early years, the customers are providing the capital for the utility to invest in renewable energy on the customers' behalf. The result of the Company's combined expenditures on renewable energy and energy optimization, consistent with the purposes and procedures provided by PA 295, can be demonstrated to produce cost savings compared to the alternative of constructing a traditional coal-burning power plant. Exhibit A-3, Second Revised.

B. Utility Plan to Build 50% of Renewable Energy

1. Cost of PPAs versus Utility Built Generation

a. Capital Market Conditions

i. Edison's Position

Edison's witness Ms. Dimitry argued that current financial (capital) markets conditions will likely raise the cost of third-party-owned renewable energy projects relative to Edison-owned projects. 4 TR 477. She stated that in the context of a risk-averse investment climate, third-party projects will likely be forced to finance their projects through greater levels of debt versus equity in addition to having higher return requirements than Edison. 4 TR 477. She also

⁸ MCL 460.1021(4).

noted that Edison will possibly face additional PPA costs due to the imputed debt incurred from PPAs by credit rating agencies. 4 TR 477.

Edison's witness Mr. Gallagher expanded on the effects of imputed debt resulting from PPAs in his direct testimony. He stated that credit rating agencies such as Standard and Poor's tend to view PPAs for the utility industry as fixed, debt-like, financial obligations that represent substitutes for debt-financed capital investments in generation capacity. 6 TR 916. He stated that in his experience with working both for and with these agencies utility engagement in PPAs has a direct effect on their calculated credit-worthiness:

In Moody's last review of the Company in December 2008, their analyst noted, "*...a downgrade could occur if DECO used a greater proportion of debt financing to meet its capital spending program...*". If imputed debt is assessed on the new PPAs, the Company will need to raise additional equity to avoid deterioration in its credit metrics and fund general utility infrastructure investment. Deterioration in Detroit Edison's credit metrics could have credit rating implications, including a potential downgrade in our credit ratings." [6 TR 919.]

Mr. Gallagher stated that the exact structure and terms of the PPAs are not yet known, but that it is possible that some of the PPAs may be accounted for as capital leases under GAAP. 6 TR 921. Mr. Gallagher argued that it is likely that the debt recognized for capital leases will be recorded at 100% of the net present value of the capital lease asset and that this would likely result in higher revenue requirements by Edison; in effect, this raises the cost of the PPA relative to Edison self-build projects, he testified. 6 TR 921. Mr. Gallagher further noted that Edison's Renewable Energy Plan filing does not include this possible cost. 6 TR 921. He argued that a downgrade in Edison's credit-worthiness would require it to offer higher rates of return on the money that it borrows from the financial markets in order to offset the perceived increased risk. 6 TR 919. He stated that this would result in either higher rates for Edison's customers or Edison's inability to obtain the necessary financing to fund both normal capital expenditures and capital expenditures associated with its Plan. 6 TR 919. As a consequence of Edison's risk

exposure to a down-graded credit rating due to imputed debt incurred from PPAs, he stated that Edison has included the costs of new equity in its revenue requirements. 6 TR 921.

Mr. Gallagher provided rebuttal testimony responding to the testimony of the Michigan Wholesale Power Association's witness Margaret Meal. 6 TR 932-937. Ms. Meal claimed that Mr. Gallagher's analysis of the cost effect of imputed debt was a worst case scenario, and Mr. Gallagher claimed in his response that Ms. Meal's testimony presented a best-case scenario. 6 TR 936. He noted that Ms. Meal's testimony acknowledged the likelihood that Standard and Poor's will assign some amount of imputed debt to Edison's REP PPAs even if both Moody's and Fitch assign none. 6 TR 934. He further argued that debt costs tend to migrate to the lowest credit rating and concludes that S&P's methodology and resulting rating should be the only one of concern. 6 TR 935. He further stated that it is impossible to know the precise impact that imputed debt related to PPAs will have on Edison's overall RPS costs, but that incremental debt will likely increase Edison's cost of compliance. 6 TR 936-937. He also testified that the actual cost increase from imputed debt will be established in the annual renewable cost reconciliation hearings and any deviations from his original estimates can be tried-up there. 6 TR 937.

In addition, Mr. Gallagher referred to his direct testimony, as well the Attorney General's witness Mr. McGarry's testimony, in order to highlight the risks associated with capital lease treatment of PPAs on Edison's balance sheet. He noted that capital lease treatment of PPAs would result in 100% of the principle capacity payments that would be deemed imputed debt which significantly increases Edison's equity requirements.

In her rebuttal testimony responding to Richard Polich, the witness for the Ecology Center, Environmental Law & Policy Center, and the Michigan Environmental Council ("Environmental Group"), Ms. Dimitry addressed Mr. Polich's testimony regarding financing costs. She reasserted her opinion that the average independent developer will be forced to offer

higher rates of return on borrowed money due to their relatively high debt levels and weaker balance sheets. 4 TR 522. She also argued that independent developers will likely not be able to construct the highly leveraged financing structure referred to in Mr. Polich's testimony because financial institutions will limit the developers debt levels such that incoming monthly revenue from the PPA contract will exceed that of the required monthly service on debt. 4 TR 522.

ii. Intervenor's Position

The Environmental Group's witness George E. Sancoucy stated that the testimony of Mr. Gallagher regarding the rating requirement to impute a debt level as a result of the wind PPA contracts is significant and serious to the Company and serves to detract from the overall success of the renewable energy program, both for Edison and the State of Michigan. He recommended that the Company, the Commission and the rating agencies work closely to develop methods to mitigate the cost of imputed debt and the subsequent interest costs. 6 TR 1274.

The Environmental Group's witness Mr. Polich disagreed with Ms. Dimitry's claim that renewable energy developers will likely utilize more debt and have higher return requirements than Edison. 6 TR 1287. Mr. Polich stated that interest rates on debt are generally lower than the rate of return on capital. 6 TR 1287. He testified that the overall returns on independent renewable projects will be lower than Edison's authorized rate of return. [6 TR 1288.]

The Michigan Wholesale Power Association's witness Ms. Meal claimed that Mr. Gallagher's analysis of imputed debt effects on its credit-worthiness and cost of capital was narrowly construed and did not incorporate the offsetting benefits of PPAs on its financial statements. 6 TR 1383. Ms. Meal stated that Mr. Gallagher's analysis only considered treatment of imputed debt by one of the three major credit-rating agencies, and that the financial metric adjusted from imputed debt is only one of many metrics used to determine a company's credit-worthiness. 6 TR 1383. Ms. Meal further testified that, as a consequence, Mr. Gallagher's

analysis provided a worst-case scenario and resulted in an unreasonable and imprudent level of revenue requirements for Edison's Renewable Energy Plan. 6 TR 1383. In support of her conclusion, Ms. Meal provided evidence that PPAs actually reduce a number of business risks such as resource procurement. 6 TR 1397. She argued that Moody's or Fitch will likely assign no imputed debt to Edison's Renewable Energy Plan's PPAs. 6 TR 1391-1395. Consequently, Ms. Meal stated that it is reasonable to assume that Renewable Energy Plan PPAs will have no adverse impacts on Edison's creditworthiness. 6 TR 1383.

Ms. Meal further claimed that, even in the unlikely scenario that imputed debt was credited to Edison's Renewable Energy Plan PPAs, the quantity of imputed debt, and hence equity offset, was vastly overestimated by Mr. Gallagher. 6 TR 1404-1405. She argued that even if the quantities of imputed debt assumed by Mr. Gallagher in Exhibit A-12 (JPG-2) were accurate, the resulting 1.3% increase in its debt ratio would be very unlikely to cause a downgrade in Edison's credit rating. 6 TR 1404.

The Attorney General's witness Mr. McGarry noted that Edison's testimony identifies the possibility that some PPAs could be accounted for as capital leases. 6 TR 1430. Mr. McGarry stated that capital leases are recorded on Edison's balance sheet in the same manner as Utility Plant and therefore subject to rate base treatment and higher revenue requirements by Edison. 6 TR 1430. Mr. McGarry stated that PPA costs resulting from capital lease treatment needs to be monitored in order to protect customers. 6 TR 1431.

iii. Staff's Position

Staff recommends that the Commission not allow Edison's recovery of its proposed net equity costs due to imputed debt, as listed in Exhibit A-16 (MLH-2) pgs 1-2, line 22, to be included in their proposed revenue requirements at this time. Staff recommends that the Commission use the annual cost reconciliation process to determine if such debts have been

imputed on Edison's balance sheet by credit rating agencies and to what extent that incremental debt has affected their credit rating and cost of service. Staff finds that the ultimate question of whether or not Renewable Energy Plan PPAs will reduce Edison's overall credit rating through imputed debt impacts is not answerable at this time. Furthermore, Staff notes that sufficient evidence and expert testimony was presented in this case to doubt such a reduction in credit rating due exclusively to the impact of Edison's Renewable Energy Plan PPAs.

b. Project/Price Control

i. Edison's Position

Edison's witness Ms. Dimitry argued that the greater overall control afforded to Edison from self-owned projects maximizes the likelihood that Edison will achieve its RPS targets by the given dates in MCL 460.1027. 4 TR 477. She stated that self-owned projects will give Edison the flexibility to adjust the timing and scale of projects with respect to market conditions. 4 TR 477. Ms. Dimitry stated that Edison's customers will take on unnecessary risk in the form of exposing themselves to market prices for electricity once the term of the PPA has ended. 4 TR 477. She argued that Edison-owned projects would not carry this embedded risk and referred to MCL 460.1037 which states that Edison must consider the risk associated with movement from a contracted pricing structure to a market-based one. 4 TR 477.

In her rebuttal testimony, Ms. Dimitry argued that recovery of possible cost-overruns from Edison-owned projects is subject to Commission approval through the annual renewable cost reconciliation process and therefore not guaranteed. 4 TR 519. Ms. Dimitry stated that this oversight process also allows customers to receive the benefits of Edison-owned projects which are completed with less cost than initially estimated and that this customer benefit is not available with PPAs. 4 TR 519. Ms. Dimitry stated:

Under a PPA scenario, customers receive no benefits from cost savings during the contract term. Mr. Polich, Mr. Dolan, and Ms. Meal all cite the

purported benefits of shifting operating risks through PPAs without acknowledging that independent owners of renewable generation projects would be expected to account for this risk shifting by adding a risk premium to the cost of a PPA. In fact, reasonable business people would calculate the risk premium to cover these potential risks under most circumstances – meaning that over time, and under most circumstances, the expected actual costs will be lower than the risk-premium adjusted PPA cost. All those cost savings will be retained by the independent owner of the renewable generation project with no benefits accruing to Detroit Edison’s customers. Furthermore, Detroit Edison’s customers may bear additional cost risks if the independent renewable energy project supplying the PPA performs poorly and produces less renewable energy than planned. The developer will likely have covered this risk by factoring it into the PPA price, leaving the utility to address the REC shortfall from a different source at potentially higher costs to its customers. [4 TR 519-520.]

ii. Intervenor's Position

The Environmental Group's witness Mr. Polich argued that the fixed-price structure of PPAs lock-in third-party developers’ total revenue for the life of the contract and therefore mitigate the risk to Edison's customers of construction cost overruns. 6 TR 1283-1287. Mr. Polich stated that cost overruns from Edison-owned projects simply get passed on to its customers through rate increases subject to a Commission contested case hearing. 6 TR 1284. He claimed that this will not affect the profitability of the utility-owned projects whereas cost overruns from third-party-owned projects will result in decreased rates of returns rather than higher costs of power. 6 TR 1284-1285.

iii. Staff’s Position

Staff recommends that the Commission find Edison’s proposed allocation of Renewable Energy capacity ownership both reasonable and prudent for purposes of initial Renewable Energy Plan approval. Staff also recommends, however, that the Commission reserve the authority granted it in PA 295, particularly MCL 460.1049, to recommend alteration of Edison’s future Renewable Energy capacity ownership strategy based on its past experiences with both its own capacity development and that of independent developers. Staff asserts that an unambiguous determination of the overall costs associated with PPAs versus those of Edison-

owned projects is not possible at this time. The Commission possesses the authority to pass on the reasonableness and prudence of both independent projects and Edison-owned projects, and this will be the best source of a reliable comparison of project costs. Staff notes that MCL 460.1033(1)(a) authorizes Edison to own up to 50% of its incremental Renewable Energy capacity requirements, and is also mindful of MCL 460.1021 and MCL 460.1049 which charge the Commission with determining whether or not costs incurred by Edison are reasonable and prudent for purposes of initial Renewable Energy Plan approval as well as during annual cost reconciliation hearings.

2. 28% Capacity Factor for Wind and 12.5% Capacity Credit

a. Edison's Position

With an exception for wind energy, Edison's witness James H. Byron recommended the capacity factors and on-peak capacity credit for various renewable energy systems and/or advanced cleaner energy systems, renewable energy system contracts, or advanced cleaner energy systems contract technologies to be identical to those utilized in the 21st Century Energy Plan. The Company is supporting a wind energy capacity of 31% based upon wind data that it has obtained over the past year. 6 TR 1046.

Edison's witness Ms. Dimitry suggested securing additional easement acreage in an effort to achieve the 31% capacity factor as estimated in the Company's renewable energy plan. 4 TR 504.

According to Mr. Byron, the calculation is the 100% Capacity Factor cost divided by the technology's capacity factor. This result is then multiplied by the on-peak capacity credit resulting in the adjusted capacity payment on an MWh basis. The total transfer price is the summation of the annual average LMP and the adjusted capacity payment for the relevant technology. 6 TR 1046; Exhibit A-8. If a renewable energy system and/or advanced cleaner

energy system project is not 100% available on-peak, then that resource's contribution to fulfillment of the Company's MISO load and reserve requirements will be less than its nameplate capacity. The adjusted capacity payment is intended to reflect the technology's on-peak availability. 6 TR 1045.

The Company is recommending that the Commission establish in this case for the years 2009, 2010, and 2011 the Transfer Prices (Exhibit A-8), as permitted under PA 295 Section 47 (2) (b) (iv). 6 TR 1047.

Midwest ISO has established a planning reserve margin target of 12.69% applicable to the Load Serving Entities within MISO's footprint. Because some generators are higher performing, the MISO planning reserve target was translated into an unforced capacity requirement of 5.35%. The planning reserve target of 12.69% and the unforced capacity requirement both provide a loss of load expectation of one day in ten years and meet regional reliability assessment requirements of the Regional Entities, RFC, and MRO.⁹

Edison's witness Mr. Gallagher testified during cross-examination that the Company determined the proxy price for capacity for wind power consistent with Standard & Poor's methodology. 6 TR 962-964.

Mr. Byron explained that the capacity payment is adjusted by a credit for the on-peak availability. If a renewable energy system and/or advanced cleaner energy system project or renewable energy systems contracts or advanced cleaner energy systems contracts, the relevant generation is not 100% available on-peak. Generation capacity must be procured to fulfill Edison's MISO load and reserve requirements, he testified. 6 TR 1045.

Mr. Byron further claimed that PA 295 provided for a Michigan incentive renewable energy credit for electricity generated from a renewable energy system during off peak hours,

⁹ "Summary: U-15770 Electric Supply Reliability Plans," MPSC Staff Cathy Cole, April 2009.

stored using advanced electric storage technology or a hydroelectric pumped storage facility, and used during peak hours. Mr. Byron testified to the following example:

Detroit Edison owns 49% of the Ludington Pumped Hydro Storage facility (Ludington) located in Ludington, Michigan. Consistent with the Commission's Temporary Order in Case No. U-15800, dated December 4, 2008, the Company will determine this incentive value in relation to the utilization of the Ludington plant from each off-peak hour as the lesser of (1) the sum of the net renewable and advanced cleaner energy that is generated during each off-peak hour, or (2) the energy used to charge the advanced electric storage technology or fill the pumped storage facility during each off-peak hour. This value will then be multiplied by 1/5th to determine this Michigan incentive renewable energy credit amount. [6 TR 1049.]

In rebuttal to Mr. Polich's claim that the Company has underestimated the amount of renewable capacity needed to meet the renewable standard and over estimated the capacity factors of the Company's renewable generation portfolio, Mr. Byron responded that he does not agree with Mr. Polich's assertions. Mr. Byron asserted that Mr. Polich's conclusion is based on his calculation for 2015 of a "capacity factor" for Company owned renewable generation of 64% and purchased renewable generation capacity of 52.75%. Mr. Byron stated Mr. Polich developed these capacity factors on REC utilization, as opposed to generation. 6 TR 1063. The actual capacity factors for generation in 2015 for Company owned wind generation is 31%, for Company owned solar generation is 13% and for purchased renewable generation is 39%. Exhibit A-31. Mr. Byron claimed that Mr. Polich misinterpreted the information as provided in the Company's Renewable Energy Plan, and therefore, Mr. Polich's claim has no merit and should be rejected. 6 TR 1064-1065.

During cross-examination, Mr. Byron stated that developed projections that used the same capacity factor as projected in the 21st Century Energy Plan were developed prior to the issuance of that report in 2005. Mr. Byron changed the wind energy capacity to 31%, when it was only 28% in the 21st Century Energy Plan. In addition, the projections were developed prior

to the issuance of Michigan's 21st Century Electric Energy Plan, issued in January 2007. 6 TR 1096.

b. Intervenor's Position

Although not explained in detail, the Attorney General's witness Mr. McGarry mentioned that a change in the capacity factor for wind generation could delay or jeopardize the plan because unforeseen circumstances may arise. Hence, he surmised, the ability of the plan to meet the intended renewable energy requirements may become uncertain and risky. Therefore, he recommended that the Commission reject the Company's REP because, he claimed, the analysis as presented does not allow the Commission to determine the reasonableness of the proposal. 6 TR 1428.

The Environmental Group's witness Mr. Polich testified that Edison has over estimated the capacity factor of its renewable generation portfolio and that the best wind production in Michigan is expected to only have a capacity factor of 35%. 6 TR 1294-1296.

c. Staff's Position

Staff agrees with Mr. Byron that Mr. Polich misinterpreted the Company's proposal. Both in the testimony and cross-examination, the term "capacity" has a variety of meanings, and thus can be easily misinterpreted. As Staff explained in the 21st Century Electric Energy Plan:

Prospective developers have indicated Michigan has considerable land area with estimated capacity factors of 30 percent or greater. ... Staff believes the 28% capacity factor used in modeling wind energy for the Plan is reasonably conservative. Michigan's 21st Century Electric Energy Plan; Appendix II; p. 141.

Staff urges the Commission to take Administrative Notice of this previous finding and rely upon its administrative expertise in deciding this issue.

3. Service Life Depreciation of Wind Turbines

a. Edison's Position

Edison's witness Martin L. Heiser believes 5.25% rate should be used to depreciate the wind turbine and associated equipment investment. This calculation is based on a 20-year average composite average service life for the major components of the turbine with a projected net removal cost ratio of 5%. This results in a recovery of 105% of the investment over the 20-year life. 5 TR 831-832; Exhibit A-19.

In rebuttal testimony, Edison's witness, Mr. Heiser states that Mr. Sancoucy seemed to ignore the fact that he assigned the generator and the blades a life of 25 years. Exhibit A-19. Mr. Heiser also did not agree with Mr. Sansoucy's recommendation that the Commission should require a 40 year depreciation life for the wind project because the industry appears to have coalesced around a 20-25 year depreciable life. In addition, he did not agree with his recommendation that negative salvage should be excluded from the depreciation rate pending a future study to be undertaken once greater cost history has been developed. 5 TR 838-839. During cross-examination, Mr. Heiser pointed out that the corresponding curve to an average service life of 20 years extends to 32 years, which is more in line with the current industry estimates. 5 TR 840. Mr. Heiser stated the depreciation rate issue will be revisited throughout the case. So, as we gain experience, we would adjust the rate to reflect the actual experience and life characteristics of those assets, he testified. 6 TR 894.

b. Intervenor's Position

Mr. Sancoucy, on behalf of the Environmental Group addressed this issue. Mr. Sancoucy explained that a number of the components, costs and items related to wind development are likely longer lived than proposed. Therefore, he recommended that the Commission should

require a 40 year life for the entire wind project or 2½% depreciation per year without negative salvage. 6 TR 1273.

c. Staff's Position

Staff agrees that assumptions regarding these issues for utility scale wind farms should be extensively reviewed before the Commission makes any determinations about accounting treatment. Staff recommends this subject be addressed generally in the Commission's rulemaking required under PA 295 Section 191 (MCL 460.1191), and more specifically in a special-purpose case established for this purpose. Because this issue will apparently affect both Edison and Consumers Energy Company, Staff believes the most efficient regulatory approach will be to make decisions following a full hearing in a special-purpose case.

4. Tire Fractionation

a. Edison's Position

Edison's witness Ms. Dimitry testified that the Company expects to utilize tall oil (a liquid rosin by-product of wood pulp industrial processes), biodiesel, biomass, and tire fractionation (vaporizing organics from whole tires) to generate RECs. 4 TR 493. Ms. Dimitry stated that she considers tires to be municipal solid waste, and that there is no clear definition in the legislation of municipal solid waste. 5 TR 728. She testified that she believed that anything that enters into a municipal solid waste landfill is considered municipal solid waste. 5 TR 728.

Edison's witness Mr. Byron stated that the Company is evaluating biomass and municipal solid waste opportunities with the intent to maximize the amount of RECs generated without increasing the PSCR cost of fuel consumed at a facility or exceeding the marginal cost of a REC or ACEC." 6 TR 1051. He also stated that he believes that tire fractionation will qualify as a renewable resource for the Company under MCL 460.10-11(i) (vi). He asserted:

[The Act] cites municipal solid waste (MSW) as a renewable energy resource. Unusable tires are typically disposed of in a special municipal solid waste facility.

Tire fractionation involves vaporizing the organics in a whole tire for introduction into the combustion zone of a coal-fired boiler. Detroit Edison believes that implementing fractionation at a coal plant does not meet the definition of a “gasification facility” defined in Section 7(a) which describes gasification as “a process that produces synthesis gas, composed of carbon monoxide and hydrogen”. Fractionation produces vaporized organics (more commonly known as hydrocarbons) and carbon char instead of carbon monoxide and hydrogen. [6 TR 1052-1053.]

Mr. Byron further stated that the Company intends to proceed with tire fractionation by continuing to evaluate the combustion of the vaporized organic and char in its boilers. He explained that the Company will not proceed with the installation of this project unless it receives a Commission Order confirming that the fractionation process results in the generation of qualified renewable energy credit portfolio under MCL 460.1027. 6 TR 1053.

In her rebuttal testimony, Ms. Dimitry stated she does not agree with Staff witness Mr. Stanton and Environmental Group witness Mr. Wright. She opined that the Company’s proposed fractionation project does qualify as renewable energy citing MCL 460.1011(i)(vi). She concluded that municipal solid waste, without exclusions, is eligible for use as a renewable resource. And, she proposed that tire fractionation is conversion of municipal solid waste. 4 TR 532.

b. Intervenor's Position

Mr. Wright requested the Commission not designate tire fractionation, and the vaporized organics, as a renewable resource. The Company’s proposal, he reasoned, does not indicate how much energy is required to fractionate the tires or the source of the energy. Mr. Wright stated:

As tires are manufactured using fossil resources, and with no accounting for the energy source used to fractionate the tires, the MPSC needs to deny the Detroit Edison's request to count tire fractionation as a renewable resource. [6 TR 1261.]

c. Staff's Position

Staff's witness Mr. Stanton stated in his testimony:

Staff believes if all relevant criteria are met, the conversion of waste tires to energy for use in electricity production may qualify for the production of advanced cleaner energy credits (ACECs). As a possible alternative, again assuming all relevant criteria are met, waste tires could be converted to energy for use in electricity production so that only the fraction of the tires that originated as biomass would qualify for the production of renewable energy credits (RECs). However, Staff is not aware of any practical means by which the biomass fraction of waste tires can be accurately identified, and the rate of conversion of that fraction of tires to RECs would be nearly the same as the ratio of conversion between ACECs and RECs. That is, 10 ACECs equal 1 REC. So, assuming all relevant criteria are met, Staff's recommendation is to treat electricity generation from waste-tire fuel as producing ACECs, not RECs. [6TR 1466-1467.]

Staff does not believe that scrap tires meet the definition of municipal solid waste (MSW) as a renewable energy resource for the purposes of PA 295. First, Staff notes that including tires as municipal solid waste that could qualify as biomass, under Section 11(i)(i) (MCL 460.1011(i)(i)), would necessitate negating the language in the Act that immediately precedes that definition. Section 11(i) indicates a "renewable energy resource" is one which "naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power." It does on to state that the definitions "does not include petroleum, nuclear, natural gas, or coal." And, "A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy... ." Any and all of those aspects of the definition could be understood to be negated if any and all municipal solid waste would be construed to be eligible for inclusion in the definition. Furthermore, the only other place in the legislation that refers to municipal solid waste are Sections 11(k)(ii) and 39(1)(b), which both are intended to restrict the use of municipal solid waste for being considered as a source of renewable energy under the Act. Staff also notes Section 39(1)(a), which states:

If a renewable energy system uses both a renewable energy resource and a nonrenewable energy resource to generate electricity, the number of renewable energy credits granted shall be based on the percentage of the electricity generated from the renewable energy resource.

Even if those concerns could be overcome, and municipal solid waste could be considered to be broadly eligible for consideration as a renewable fuel source under PA 295, Staff questions whether waste tires as intended for use as a fuel by Detroit Edison, ought to be considered municipal solid waste at all. Under Michigan's Solid Waste Act, Rule 100, it is not explicitly clear that tires are included in the definition of municipal solid waste; at least not collections of tires that are not the incidental waste from Michigan households. It is Staff's belief that under Michigan law, municipal solid waste is typically considered to be a waste from households, and that industrial or commercial collections of scrap tire waste are not considered as household waste.

For all of these reasons, Staff stands by the recommendations included in Mr. Stanton's testimony.

5. Solar Programs

a. Edison's Position

In its direct case, the Company requested creation of two solar programs, one utility-owned the other customer-owned. Edison's witness Ms. Dimitry testified that the Company-owned solar generation program would allow a "peak capacity of 15 megawatts." (4 TR 495) while the customer-owned program, which requires customer participation in the net-metering program, would allow a maximum capacity of five megawatts. The Company "would enter into long term contracts to purchase RECs from residential or small commercial customers....." 4 TR 488.

In her rebuttal testimony responding to Staff's witness Mr. Stanton's solar pilot program suggestions, Ms. Dimitry stated:

- A. No. Compared to the renewable energy pricing program proposed by Mr. Stanton on page 7, lines 1 through line 8 of his direct testimony, Detroit Edison believes that its proposed pilot solar programs are better aligned with PA 295 given both Detroit Edison's pilots' focus on solar

technologies (consistent with solar incentives provided under MCL 460.1039(2)(a)) and the compatibility of the Detroit Edison customer-owned pilot solar program with the new net metering program (Part 5, Sections 117-181). [4 TR 526.]

During cross examination, Ms. Dimitry agreed the five megawatt size of the program was partially due to the Company wishing “to learn before we scale up....” 4 TR 564.

b. Intervenor's Position

The Michigan Environmental Council raised concerns regarding the proposed utility-owned program and the capacity size of the proposed customer-owned pilot program. Their witness Mr. Wright testified that Edison did not include in its baseline calculation any credit for the solar PV capacity initially installed using a U.S. Department of Energy grant which was used as the basis for a voluntary renewable energy program operated between 1995 and 2002. He state that this program provided Edison with an opportunity to evaluate the solar resource in Edison's service territory. 6 TR 1261.

c. Staff's Position

Staff has several concerns regarding the proposed solar pilot program. To address these concerns, Staff proposes, according to the testimony of its witness Mr. Stanton, (a) opening the program to other technologies at different compensation rates, (b) eliminating the second meter, reducing costs and utilization of a measuring power supply inverter, (c) allowing for energy generation beyond the net-metering limitation of sizing the system to meet customer needs, (d) revise renewable energy prices to reflect actual costs, plus include a reasonable rate of return to avoid windfall profits. 6 TR 1461-1465. Mr. Stanton testified that acceptance of proposals “should take place within the next 60 days, so that a final pilot program design can be presented to the Commission for approval in time for implementation to begin as early as possible in the second half of 2009.” 6 TR 1465.

Staff believes the proposal to build 15 MW of service territory solar installations should be designed so that the Company must compete fairly against all comers to develop these resources, Mr. Stanton testified. 6 TR 1465. Mr. Stanton further testified that at a minimum, for the Company's distributed generation acquisition efforts, the Commission might enforce a restriction that the Company own and operate less than 50% of the total; with at least 50% of all capacity in the program available for competitive producers. 6 TR 1465-1466.

C. Request for Proposals Process

1. Edison's Position

Exhibit A-1 provides an overview of the renewable energy portfolio Edison proposed in its Renewable Energy Plan. The Exhibit shows that by 2029 the Company plan includes approximately 652 MW of PPA/REC/ACEC purchases, in addition to the Company's base renewable capacity. The acquisition of RECs under the Company's RE Plan will be made both with or without the associated energy. 4 TR 474. Edison developed its RE Plan to ensure that the Edison-owned portion of RECs in the Company's portfolio remained at or below the 50% limit outlined in MCL 460.1033(1)(a). 4 TR 476.

Edison's witness Ms. Dimitry said that Edison issued a Request for Proposals ("RFP") on December 23, 2008 to procure RECs and ACECs. She said the RFP was issued pursuant to the RFP guidelines approved by the MPSC in its December 4, 2008 Temporary Order in Case No. U-15800. 4 TR 487. Edison's witness Mr. Johnston testified that the Company developed the associated RFP evaluation methodology in consultation with the Commission Staff, prior to issuing the RFP. 6 TR 1166.

Ms. Dimitry acknowledged that PA 295 Section 21 (MCL 460.1021) requires the utility's RE Plan to describe its bidding process. 4 TR 469. Ms. Dimitry explained that future RFPs would be issued pursuant to the Commission's RFP guidelines and that after the Company's plan

is approved, it expects to issue additional RFPs. 4 TR 487. Ms. Dimitry testified on cross-examination that the Company plans to issue an RFP sometime late this year or early next year, but has not decided yet. 5 TR 712. Ms. Dimitry affirmed, on cross-examination, that the Company plans to have discussions with Staff regarding the design of an RFP or PPA as provided for in the Commission's RFP bidding guidelines. 4 TR 648. Ms. Dimitry clarified that the Company's RFP and bidding process documents for future RFPs have not been designed yet. 5 TR 679.

Mr. Johnston testified on rebuttal that he generally disagreed with Mr. Dolan's assertions and conclusions, and that he disputes Mr. Dolan's bases for claiming that Edison has failed to include statutorily required information about the bidding process. 6 TR 1177. Mr. Johnston explained that it is unreasonable to expect that Edison should have already determined each detail for RFPs and bid evaluation criteria for projects that will take place as much as 20 years in the future. 6 TR 1191. Mr. Johnston said that Edison has committed to utilizing the Commission's Guidelines for Competitive Requests for Proposals document. He then went on to say that this document includes 5 pages of guidelines and requirements. 6 TR 1193. In further support of Edison's position that the Company did provide sufficient information describing the bidding process in its RE Plan pursuant to MCL 460.1021(2)(d), Mr. Johnston's rebuttal testimony included a summary listing of Ms. Dimitry's and his testimony in regard to the Company's bidding process. TR 1194-1198. He then concluded that the Company's RE Plan adequately described the competitive bidding process. 6 TR 1198.

Mr. Johnston testified on rebuttal that he considered the developer "set aside" program in Michigan's RPS to be a compelling draw for third party developers and that he found curious MWPA witness Dolan's concern that third party developers would shun Michigan's program due to the RFP process. 6 TR 1200.

On rebuttal, Ms. Dimitry testified that an independent evaluator was not necessary given Edison's position that, on average, utility-owned projects will be more cost effective and beneficial to customers than contracted projects. 4 TR 523. Additionally, the Company provided through Mr. Johnston's direct testimony that an electric provider or its affiliate may not submit a proposal in response to its own request for proposals under this subdivision. 6 TR 1156. However, Mr. Johnston said that affiliates may submit proposals as the developer under MCL 460.1033(1)(a)(ii). 6 TR 1161.

When asked during cross-examination about protecting confidential information of potential competitors, Ms. Dimitry responded:

The people on my team who deal with the RFPs and bids are separate from our [renewable energy system] development people. And...the RFP information is on a secure platform that has limited access to the people involved in the RFP process. [5 TR 699-700.]

In his direct testimony, Mr. Johnston explained that the Commission's Code of Conduct prohibits the Company from providing its affiliates an unfair competitive advantage. He further clarified that Edison must not disclose relevant information to its affiliate which it did not publicly disclose to other likely renewable energy system developers. 6 TR 1163.

2. Intervenor's Position

Several intervenor witnesses assert there are serious flaws in Edison's proposals for acquiring renewable energy through request for proposal ("RFP") processes. These include witnesses Mr. Dolan (6 TR 1336-1376), Mr. Polich (6 TR 1276-1296) and Mr. O'Sullivan (3 TR 382-396). The topics covered include the lack of a clearly identified RFP process, proposals for the bid process design and REPA design.

Intervenor witnesses Mr. O'Sullivan and Mr. Dolan expressed concern over the lack of a clearly identifiable RFP process. Mr. O'Sullivan suggested that without specific details of the RFP, including, the solicitation process and ranking methodology, Edison will not receive the

highest quality or maximum number of proposals. 3 TR 388-389. Mr. Dolan suggested that not only is Edison's lack of detail surrounding the RFP inadequate, but that it failed to include elements required by PA 295 in regards to the competitive bidding process. Mr. Dolan referred to Section 21(1)(d) of the Act, which requires a provider to propose a competitive bidding process that describes the preparation, handling and evaluation of proposals. According to Mr. Dolan, Edison has failed to describe its competitive bidding process for the evaluation and procurement of renewable energy supplies. 6 TR 1339-1340. Dolan claims that Section 33(1)(a) "generally requires" a competitive bidding process be established before: contracts for construction or planning of self-build projects, transfers of renewable energy projects to the utility, or contracts to purchase RECs/ACECs are finalized. Dolan continues that while Edison often refers to and commits to providing a "fair and non-discriminatory" bidding process and abide by the guidelines set forth in the Commission's December 4, 2008 Temporary Order, details of this process are never provided or elaborated on. 6 TR 1341-1347. Further, Dolan suggests that the guidelines are simply a starting off point for the evaluation of an RFP, rather than a final or definitive test. 6 TR 1348-1349.

For the bid process design, recommendations include: (1) opening the RFP and bidding process to a collaborative working group for the purpose of making improvements to the RFP and informing potential bidders of the processes that will be used for evaluation; (2) the way confidential information received from bidders will be managed; (3) the use of an independent monitor to ensure fairness and credibility in the process; and (4) modifying the timeframe for the RFP and bidding process to allow ample time for bidders to prepare good proposals. The first three issues are addressed by witnesses Mr. Polich (6 TR 1292-1293) and Mr. Dolan (6 TR 1359-1361, 1365). The fourth issue is addressed by Mr. Polich (6 TR 1292) and Mr. O'Sullivan (3 TR 389).

Mr. Polich proposes an open meeting where the Commission and potential bidders to review the documents associated with the bidding process to adequately inform all bidders about the expectations they will need to meet in order to have their projects considered. 6 TR 1292. Mr. Dolan suggests a collaborative process would help develop consensus among stakeholders, confidence in the bidding process and clear up potential misunderstandings that might otherwise occur. 6 TR 1359.

Intervenor witnesses' Mr. Polich and Mr. Dolan emphasized the need to ensure that confidential information submitted as part of the RFP process is adequately protected. 6 TR 1293, 1365. Mr. Polich also believes that in order for the bidding process to be truly competitive, an independent monitor should be the only party to evaluate this information. 6 TR 1293.

Both Mr. Polich and Mr. Dolan suggested that an independent third party or monitor be responsible for evaluating the renewable energy proposals. 6 TR 1293, 1361. Mr. Dolan suggested that an independent monitor be used specifically for "non-monetized" elements and will help instill bidder confidence and credibility to the process as a whole. 6 TR 1361. Mr. O'Sullivan and Mr. Polich questioned the time frame that may be used with the RFP process. 6 TR 1292. Mr. O'Sullivan suggested a proper timeline to prepare solicitations and ensure a robust number of applicants would range from 90 to 120 days. 3 TR 389.

3. Staff's Position

The Commission's Temporary Order U-15800, Attachment D provides "Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy."

In addition to other requirements for conforming RFPs, these Guidelines state (pp. 3-4):

Each Provider shall develop a bid evaluation methodology in consultation with the Commission Staff to evaluate proposals received. Essential evaluation criteria shall be provided to all suppliers providing notice of intent to bid. In its

solicitation, each provider shall describe the evaluation criteria. The bid evaluation process may include an assessment of both price and non-price factors. For bids that do not require transfer of ownership of the applicable renewable energy system to the Provider, such methods shall result in a determination of least price conforming bid(s) from a qualified bidder.

The Provider may weigh non-price items and assign a corresponding bid price credit or bid price debit for differences between bids associated with the progress of developing a renewable energy system to supply the products or services to the Provider, the proposed schedule for completing the renewable energy system to supply the products or services to the Provider, the reliability of equipment, and other matters relating to the likely success of the proposal in providing the products or services to the Provider.

In the event the least cost conforming bid from a qualified bidder is of a quantity or size that will exceed the Provider's requirements, the Provider may negotiate a reduction in quantity or size so as to conform to the Provider's requirements.

Staff asserts it can effectively function as the independent monitor and evaluator of RFPs and the bid evaluation process, as proposed by interveners. Fulfilling this role, however, will necessitate development of a comprehensive list of criteria for Staff's consideration. Staff proposes the following criteria to be considered in its consultations with utilities:

1. Scope of RFP: Considering the types of renewable energy systems eligible to bid and the proposed handling of bids for bundled or unbundled RECs, ACECs, and EOCs, does this RFP (by itself or in conjunction with any other RFPs proposed for offering by this utility) unreasonably restrict from participation proposals that qualify under PA 295?
2. Information Required from Bidders:
 - a. Does the RFP require bidders to include any information that is not necessary for bid evaluation?
 - b. Are procedures in place to insure that any confidential information required of bidders will be protected from disclosure to all other prospective competitors, including the utility's affiliates?
 - c. If the utility itself is or might become a prospective competitor, due to the utility's plans to build, own, or operate facilities that can be construed to be in competition with a Provider, are procedures in place to protect competitively sensitive and confidential information from disclosure to Company personnel associated with the Company's own facility development efforts?
3. Bid Evaluation Criteria:¹⁰

¹⁰ In order to help Staff assess the relative costs of renewable energy development between

- a. Does the RFP, as structured, make the bid evaluation criteria as transparent as practical?
 - b. Are all binding reasons for bid rejection listed and clearly explained?
 - c. Are all variables that will affect the Company's choice of project listed in the bid evaluation criteria?
 - d. For each variable, is the range of possible weightings provided, with ample explanation to enable bidders to understand how the score for each variable will affect the selection of winning bids?
 - e. Will the required bidding price structure produce accurate, reliable comparisons among all variety of anticipated types of proposals?
4. REPA Contract Pricing Structure: Does the RFP provide for an energy, capacity and REC pricing structure that minimizes revenue risk to third-party developers?

Staff proposes that the final rulemaking under PA 295 Section 191 (MCL 460.1191) should require the utility to submit its proposed RFP[s] to the Commission prior to issuance. The Commission will file the RFP[s] in the appropriate docket and allow for a 30 day public review process for Staff to determine whether or not the RFP conforms to the final guidelines pursuant to MCL 460.1191. Upon approval, the utility shall issue the RFP[s]. Should the Commission determine that the proposed RFP[s] do not conform to the aforementioned guidelines, the Commission state its reasons for denial and provide the utility with an opportunity to submit an amended RFP[s] to the Commission for approval.

Under Staff's proposed methods, the utility will still be solely responsible for the review and selection of bids, with Staff providing monitoring and evaluation oversight adequate to insure procedural fairness and objectivity in the Company's application of scoring criteria. The

regulated utilities and independent power producers, the Commission should order that, on the final date of bid response to the respective RFP, the utility submit an evaluation of all contemporaneously planned or in-process self-build projects to the Commission. This evaluation will be completed in the same manner as independent bids, thereby enabling comparisons of the costs and risks associated with both self-built and independently developed projects. This evaluation will be held in confidence until used by Staff for purposes of the RE plan cost-reconciliation process. The utility evaluation would not be used directly in the aforementioned RFP, but only for the purpose of cost comparison in the proximate RE plan cost reconciliation process.

process will be completed when the selected contracts shall be submitted to the Commission for its review and requested approval, as provided by PA 295 Section 33 (MCL 460.1033).

In addition, Staff notes that the Commission's Temporary Order in MPSC Case No. U-15800, Attachment D, provides a detailed description of what information and requirements may be included in RFP[s] designed by the utility. Staff recommends that the final rulemaking under PA 295 Section 191 (MCL 460.1191) readdress the issues found on pages 2 and 3 of Attachment D, concerning proprietary or competitive information and bidding fees, in order to better align RFP[s] requirements with the considerations Staff has addressed in this Initial Brief.

III. Energy Optimization Plan

A. Incentive Mechanism

1. Edison's Position

Edison's witness Emmett Romine requested a provider performance incentive and proposed a mechanism that phases in an incentive with a graduated scale:

The chart shown on Exhibit A-2-EO (ERR-2) page 3 of 3 indicates the level of performance incentive to be awarded as a percentage of the energy savings target achieved. The performance incentive level is proposed to be phased in with the maximum incentive or 15% of program spend occurring if 105% or more of the target savings is achieved. [3 TR 249.]

* * *

This exhibit [Exhibit A-2-EO (ERR-2) page 3 of 3] shows the performance incentive that Detroit Edison earns as a percentage of the program's energy savings goal achieved. In 2009, Detroit Edison expects to achieve 109% of its energy savings target and is requesting \$4.01 million dollars as its performance incentive. In 2010 and 2011 Detroit Edison expects to have energy savings that meet 111% and 112% of its energy savings goal respectively. As indicated on line 23 of Exhibit A-2-EO (ERR-2) page 3, the proposed performance incentive associated with this level of program performance is \$5.52 million in 2010 and \$7.95 million in 2011. [3 TR 250.]

In his rebuttal testimony responding to the Attorney General's witness Michael J. McGarry, Sr., Mr. Romine argued that PA 295 legislation does not imply that a financial incentive mechanism would only apply to incremental savings beyond base target levels. 3 TR

265. Mr. Romine further testified that Staff's witness Mr. Ozar, Natural Resources Defense Council's witness Pamela Lesh, and the Attorney General's witness Mr. McGarry, proposed incentive mechanisms at levels that will fail to motivate performance beyond requirements because they are either unattainable or scaled in such a way as to provide no meaningful incentive opportunity. [3 TR 266-267.]

In his rebuttal testimony, Mr. Romine indicated why he disagreed with ABATE's witness James Selecky regarding the incentive mechanism:

No. I disagree with the premise of his argument. Detroit Edison does not argue that the performance incentive is a tool to mitigate lost revenues. Detroit Edison believes that decoupling is the appropriate tool for removing the financial disincentives associated with the lost revenues that will accompany its energy optimization programs and that its proposed incentive mechanism is intended to motivate EO plan performance in order to achieve and potentially exceed the targeted goals of the program.

I agree with Witness Selecky that various externalities create risk in the utility rate structure and that the shareholders generally bear that risk. However, the externalities he describes are events that have a random nature and could drive sales up as well as down. Each of his examples is quite different from an EO program where a utility is actually implementing and encouraging measures that are expected to reduce sales. [3 TR 263.]

2. Intervenor's Position

The Attorney General's witness Mr. McGarry asserted that the Commission should not approve the Company's proposed mechanism for calculating performance incentive because the incentive was too large compared to the extra savings achieved:

Section 75 of PA 295 states that the Commission may authorize a commensurate financial incentive for a provider exceeding the energy optimization performance standard. To me, a commensurate financial incentive means that any financial incentive should be equal in size or in proportion to the energy savings that exceed the targets. According to an exhibit of Company Witness Romine (Exhibit A-2-EO (ERR-2)), Detroit Edison proposes a performance incentive that is based on total amount spent.... Therefore, Detroit Edison is asking for more in financial incentive than extra savings earned. This, in my opinion, does not satisfy the Commission's Order of an incentive commensurate with savings. [6 TR 1437-1438.]

Mr. McGarry recommended creating an incentive mechanism that only considered the incremental savings above the required savings targets of Section 77 of PA 295. 6 TR 1438.

Natural Resources Defense Council witness Ms. Lesh offered support for the concept of an incentive mechanism and stated that their goal was that such incentive plan align with the utility's interests with its customers' interests as closely as possible. [6 TR 1308.] Ms. Lesh recommended an incentive with a more gradual scale than offered by the Company. She further suggested that the Commission could revisit the appropriate scale of achievement to incentive in the next EO Plan or in the proceeding that she suggested to determine whether additional energy efficiency savings may be cost effective, and therefore funded under section 95(4) of PA 295. 6 TR 1309.

ABATE witness Mr. Selecky recommended rejecting the Company's proposed incentives to achieve energy efficiency savings in excess of the statutory targets. He maintained that these incentives will not lead to the cost-effective procurement of additional energy efficiency resources. Rather, he testified, the incentives will burden customers with unnecessary costs and result in an inefficient use of customer funds that could otherwise be directed toward voluntary conservation efforts by end-use customers." 5 TR 799. Mr. Selecky further stated that a petition for a base rate increase is preferred to an incentive mechanism for compensating the Company for lost revenues:

The Company does not need an incentive mechanism to compensate it for exceeding the statutory energy efficiency saving targets. If such savings lead to lost revenues of a magnitude that would prevent DECo from earning its authorized rate of return, the appropriate remedy available to the Company is to petition the Commission for a base rate increase. [5 TR 804.]

3. Staff's Position

Staff witness Robert Ozar described the Company incentive mechanism as providing "excessively high incentive payments for small incremental consumption reductions beyond

minimum targets.” 6 TR 1476. He further asserted the Company mechanism was not consistent PA 295 requirements in that it did not provide an incentive that was proportional to the performance. 6 TR 1477. He testified:

The performance range (percent above target), however, for which the incentive mechanism operates is critically compressed. This compression causes the mechanism to plateau at the statutory maximum for actual performance that is likely in the range of uncertainty of an EO plan designed to meet the target. In the performance range beyond 5% above target, Edison’s mechanism provides for a fixed incentive equal to the statutory cap of 15% of spending. [6 TR 1477; emphasis in original.]

B. Recovering the Incentive in the Surcharge

1. Edison’s Position

Edison witness Mr. Romine testified that the Company considers the incentive a cost of the programs and believes it is appropriate to collect it as the program operates. [3 TR 250.]

In his rebuttal testimony responding to Staff’s and ABATE’s witnesses, Mr. Romine asserted that it is not unreasonable to include the incentive in the surcharge. He stated:

No. The positive customer impacts will occur immediately as the plans are implemented, not after some type of verification. Accordingly, it is reasonable to collect the incentive as the program is being implemented. In addition, Detroit Edison maintains that consistent with the legislation, the budget maximums and surcharge collection maximums should include the performance incentive cost, and any delay in collection of this cost could diminish future years’ EO budgets, and lead to future under recoveries of program costs. If by chance, the plan does not exceed a year’s annual target, the surcharges will be adjusted accordingly through the reconciliation process. [3 TR 268.]

2. Intervenors’ Position

The Attorney General’s witness Mr. McGarry expressed concerns about the Company’s proposal to include the financial incentive mechanism in the surcharge:

...[T]he Company is proposing collecting a performance incentive before ever realizing savings equal to their target, much less additional savings beyond the target. If the performance incentive is included in the EO surcharge, the incentive purpose based on achieving better than expected performance is lost. Furthermore, since Section 75 of PA 295 states that the Commission may offer an

incentive. DECo, therefore, should not include in its plan something that the Commission may choose not to do. [6 TR 1438; emphasis in original.]

ABATE's witness Mr. Selecky also opposed Edison's request to collect an incentive in the surcharge before any savings are achieved or verified. He testified:

Finally, the Commission should reject the Company's proposal to collect its performance incentive contemporaneously with each year's collection of energy efficiency program costs. This proposal is patently unreasonable, as it would require the Commission to assume that DECo would exceed the statutory energy efficiency targets before the Company has implemented its conservation programs and before the Commission has an opportunity to ensure that the level of achieved energy savings exceeds the statutory targets. As noted above, if the Commission determines that it is appropriate to grant an energy efficiency incentive mechanism to DECo, it should withhold payment of any incentive awards until the Commission and the independent third-party program administrator have verified the annual amount of energy efficiency savings achieved by the Company and the cost-effectiveness thereof. [5 TR 808-809.]

3. Staff's Position

Staff's witness Mr. Ozar opposed allowing Edison to collect an incentive before it was earned. He testified:

- Q. Does Staff recommend Commission approval of pre-paid incentives?
- A. No. Pre-paying performance incentives is inappropriate. Staff recommends that incentive payments be recovered after-the fact, in future surcharges. The annual reconciliation process is adequate and timely, in Staff's view to implement verification of savings levels and to adjust future surcharges to recover incentive payments. The after-the-fact approach also has the advantage of improved public perception vis-à-vis a before-the-fact collection. [6 TR 1480.]

C. Including Uncollectibles in the Surcharge

1. Edison's Position

Edison's witness Mr. Romine, requested approval to include an uncollectible provision in the EO surcharge. In support, he testified:

Uncollectible costs exclusively due to the EO program should be recovered through the EO recovery mechanism as an incremental cost of the program. The provision has precedent in The Detroit Edison Securitization Funding LLC, Case No. U-12478, where a provision for uncollectibles is included in the surcharge calculation. In an environment of declining sales and increasing uncollectibles, if the Company is forced to wait until a reconciliation process to collect these dollars, program funding could be adversely effected in the short term. [3 TR 251.]

In his rebuttal testimony, Mr. Romine testified in response the Attorney General's witness and the Staff witness who opposed the Company's proposal to include an uncollectibles expense in the surcharge. He stated that the legislation allows a provider to recover the actual costs of implementing its Plan and that these costs "merely represent the amount of expected surcharges that will not be collected from certain customers." 3 TR 270.

Mr. Romine also argued that it is not preferable to include uncollectibles from the EO program in a general rate case because the EO program is viewed by Detroit Edison as a stand-alone program that is separate from its other utility operations. Mr. Romine further asserted that any over or under recovery of EO surcharges, including uncollectibles associated with the program would be properly

Finally, Mr. Romine argued that no double-counting of uncollectibles in the EO program and the general rate case will occur because the Company will remove EO uncollectibles from the Uncollectible Expense True-Up Mechanism that it requested in its last general rate case. 3 TR 271.

2. Intervenor's Position

The Attorney General's witness Mr. McGarry opposed including uncollectibles in the Company's surcharges as being unreasonable:

Detroit Edison should collect only costs of the program, not for assumed failures of customers regarding the program. PA 295 lists the costs that may be included in the EO Plan. Uncollectibles is not listed. Therefore, Uncollectibles should not be added to the EO surcharge. Uncollectible expense is a base rate case issue and can be dealt during the next rate case. Furthermore, besides already including uncollectibles in its rate base, DECo has a tracker for uncollectibles reporting uncollectibles annually. Adding another mechanism for uncollectibles could lead to double recovery of uncollectibles through DECo's multiple avenues for uncollectibles. [6 TR 1436.]

3. Staff's Position

Staff's witness Mr. Ozar also opposed Edison's proposal and testified:

- A. Staff does not consider uncollectible expenses as a qualifying EO program cost. Uncollectible expenses are properly recovered in a utility's general rate case, where the reasonableness and prudence of collection methods and efforts can be evaluated. To include uncollectible expenses in EO surcharges, as Edison has proposed, would result in a free-pass on recovery, which we do not believe is in the public interest. [6 TR 1481.]

D. Self-Directed Customers

1. Edison's Position

Edison's witness Mr. Romine explained that self-directed customers' planned energy savings have already been credited to their overall EO savings goals. 3 TR 241. If a self-directed customer terminates its self-directed plan or fails to meet its planned energy savings, Edison's witness Mr. Ingrody testified that no reductions will be made to Edison's energy savings. 3 TR 185. Mr. Ingrody asserted that:

This is a fair and reasonable approach because Detroit Edison already will have planned for that customer's EO savings and possibly would be required to exceed annual spending caps or miss targets as a result of the shortfall. [3 TR 185.]

Mr. Ingrody further indicated that Edison is not required to verify savings for self-directed customers. Rather, he testified that PA 295 only requires customers that self-direct to

submit a biennial report to their electric provider that contains information regarding the energy efficiency measures taken under that self-directed plan during the two-year period. 3 TR 185.

2. Intervenor's Position

Natural Resources Defense Council witness Mr. Stone opposed the Company's analysis regarding self-directed customers and believes the Company should be responsible for verification. 6 TR 1316.

3. Staff's Position

Staff agrees with Edison's analysis that the Company is not responsible for verifying savings from a self-directed customer, but supports the Commission adopting procedures to ensure that those customers' savings are scrutinized. This interpretation is consistent with the direction provided in the Temporary Order in Case No. U-15800 in Attachment E:

4) Self-Directed Energy Optimization Plan for Electric Customers

* * *

c) A self-directed energy optimization plan shall be incorporated into the relevant electric provider's energy optimization plan. The electric provider shall be credited with the customer's projected energy savings from measures being proposed under a self-directed plan for purposes of determining annual incremental energy savings achieved by the provider. The customer's projected energy savings shall be adjusted to match the provider's method of weather-normalization.

d) All projects submitted by the customer are subject to field verification and evaluation.¹¹

Nonetheless, Staff would like to see an independent evaluation of the self-directed customer's application, and believes that Mr. Stone's suggestions have some merit. Staff recommends that the Commission address how self-directed customers' EO plans will be evaluated when developing the final rules implementing Act 295.

¹¹ Temporary Order, Case No. U-15800, Attachment E, pages 7, 9-10.

E. Michigan Energy Measures Database

Staff supports the accuracy of the Michigan Energy Measures Database and recommends that the Commission adopt its use for carrying Edison's EO Plan.

F. Evaluation Workgroups

1. Edison's Position

Edison's witness Mr. Romine indicated that Edison is willing to continue to seek input from key stakeholders, but opposes any mandatory collaborative. 3 TR 269.

2. Staff's Position

Staff's witness Mr. Ozar presented Staff's recommendation regarding Evaluation Workgroups:

- Q. Does Staff have a recommendation regarding the formation of an Evaluation Workgroup?
- A. Yes. Staff is pleased with Edison's proposed extensive evaluation process. In order to further strengthen the evaluation process, Staff believes that the formation of an evaluation workgroup of interested parties, that provide advice and counsel, has merit. An informal workgroup that convened on a regular basis would provide the opportunity for ongoing public/stakeholder input. We believe this would enhance the planning process given the tight processing schedule of EO plan proceedings. It is our recommendation that the Commission should direct its Staff to lead the workgroup. This will better ensure that un-biased recommendations on impact and process evaluations of energy optimization programs are elicited. [6 TR 1481-1482.]

H. Required Spending

1. Edison's Position

This issue centers on the argument that to the extent economic energy efficiency resources are available in excess of the statutory targets, that the Company's EO plan should pursue such resources through spending up to the statutory spending cap. In contrast, Edison limited its spending to a level below the cap, but sufficient to meet and marginally exceed the statutory targets.

Edison witness Mr. Romine testified that the Company's proposed spending does not exceed the maximum allowed on EO programs.

Using 2007, 2008, and forecast 2009 sales provided to me by Witness Uzenski to calculate the 2009, 2010, and 2011 spending limits respectively, and comparing these sales to the proposed 2009 – 2011 EO Plan expenditures provided by Witness Ingrody, I have concluded that the spending caps will not be exceeded. The table below summarizes this information. [3 TR 235.]

On rebuttal to NRDC witness Mr. Stone, Mr. Romine testified that a determination of reasonableness and prudence for the EO plan should not be predicated upon spending up to the maximums.

There is no basis for Witness Stone's position that spending less than the spending maximums is not prudent or reasonable. Quite the contrary, PA 295 requires Detroit Edison to achieve the energy optimization standard stated in Section 77 (1) within the spending caps stated in Section 89 (7). My direct testimony on pages 15 and 17 demonstrate precisely how the Company intends to achieve the required energy savings. In addition, Detroit Edison's plan is cost effective as demonstrated by the plan's USRCT score of 4.6 shown on Witness Morgan's Exhibit A-9-EO. Cost-effectively achieving the required energy savings within the spending maximum is clearly reasonable and prudent. [3 TR 256.]

Mr. Romine concluded that Mr. Stone's position has no basis in regards to spending more than necessary to meet the statutory targets.

The overarching requirements are to achieve the energy optimization standard each year and to do so in a cost effective manner... Detroit Edison's plan meets both these criteria. Witness Stone's suggestion does not provide a reasonable basis to reject the Company's plan.. [3 TR 256.]

2. Intervenor's position

Ms.. Lesh on behalf of NRDC recommended that Edison agree to increase the spending under the Plan to maximum levels. Additional spending is the least expensive way for DTE to meet the needs of their customers. Energy efficiency is the lowest means of meeting energy demand and reducing carbon emissions. Edison has projected an estimated savings of 6.6 million MWh resulting from all of the measures installed. The projected savings in 2009 total was nearly 160,000 MWh.

As valued by Detroit Edison, these savings are worth over \$13.6 million dollars in avoided power costs, some of which likely would leave Michigan as payments to out-of-state fuel and power producers. [6 TR 1303.]

Edison estimates a lifetime net present value of the power costs avoided by these savings of \$489 million. The increased spending would create opportunity to support local jobs, enhance the community, and will show we are doing all that we can do to minimize future costs.

The overall goal of an energy optimization plan should be to reduce the future costs of provider service to customers. In particular, an EO Plan shall be designed to delay the need for constructing new electric generation facilities and thereby protect consumers from incurring the costs of such construction. [6 TR 1304.]

NRDC believes it is important to align both the utility and consumers interests to provide an incentive for both to invest in energy efficiency.

Mr. Stone on behalf of NRDC recommended the Commission reject Edison's EO Plan unless the Company agreed to revise it such that programmatic and other spending totals the maximums allowed by the statute. Edison plans to spend less than allowed during the first three years of the six year plan. Both benefits and costs measured by Utility System Resource Cost

Test (USRCT), Total Resource Cost (TRC) Test, & Participant test emphasizes the cost effectiveness and of the portfolio and explains that energy efficiency investments offer a significant advantage for ratepayers. 6 TR 1316-1317. Both Mr. Stone and Ms. Lesh recommended allocating the extra funds to those programs with the highest potential savings and benefit to cost ratios, to expand the residential new construction program, to actively participate in the development of new Codes and Standards and to develop an emerging technologies program 6 TR 1318.

3. Staff's Position

Staff recommends that the Commission reject the NRDC's request for the Commission to reject Edison's plan unless the Company agrees to increase its spending up to the statutory cap. Staff notes that the reduced spending occurs in the first three years of the plan and not in the latter three-years. Clearly, the first three years of the plan is designed to ramp-up the new EO program in a manner that matches the ramped statutory savings targets. Increasing expenditures during this period carries significant risk since accelerated deployment of untested programs would reduce the opportunity of Detroit Edison to develop needed expertise. That being said, Staff recommends that the Commission take careful note of the NRDC's testimony on the potential for delaying the need to construct new electric generation facilities through the pursuit of economic energy efficiency resources beyond statutory savings targets. Staff agrees with the NRDC that EO benefits outside of the scope of Edison's proposed EO plan will likely be available for its customers and urges the Commission to consider an expanded EO program during Detroit Edison's EO biennial update (pursuant to Sec. 89 (7) authority for the Commission to approve spending in excess of the caps), or to approve a supplemental energy efficiency program during any Integrated Resource Plan (IRP) proceedings or during any Section 95(4) proceeding that may follow in the future.

V. Conclusion

In summary, Staff recommends that the Commission approve Detroit Edison's RE plan and proposed surcharges associated with the RE plan. Though Staff does believe several of the concerns raised by the intervenors are important to address, the Commission will have ample opportunity to make adjustments to the renewable energy plans being implemented under PA 295. Some of those opportunities include: in the development of final rules under PA 295 Section 191 (MCL 460.1191); in the processes of reviewing and approving REPA contracts and the Company's proposed experimental solar program; in a renewable cost reconciliation case under PA 295 Section 49 (MCL 460.1049); in the Company's next RE Plan Case under PA 295 Section 21(8) or 21(9) (MCL 460.1021(8)-(9)); or, in one or more special-purpose cases initiated on the Commission's own motion.

Staff recommends that the Commission approve Edison's EO Plan. On the basis of Staff's review of Edison's proposed EO plan in light of the requirements of 2008 PA 295 and the Commission's Temporary Order in MPSC Case No. U-15800 (Temporary Order), Staff recommends that the Commission approve Detroit Edison's EO Plan and Proposed Surcharge associated with the Plan. Thus, Staff recommends that the Commission find Edison's EO plan both reasonable and prudent with respect to its proposed spending levels and savings target. Staff further recommends that the Commission reject the Company's proposal to include estimated uncollectible EO surcharges in the surcharge and reject the Company's proposed financial incentive mechanism and adopt Staff's proposed alternative mechanism. Staff also recommends that the Commission take careful note of NRDC's testimony on the issue of the potential for economic energy efficiency resources outside of the scope of Edison's EO plan. Staff

recommends that such issue be addressed in the next biennial EO filing in the context of a Section 89 (7) authorization to exceed the EO spending caps, or a Section 95(4) proceeding to approve a supplemental energy efficiency program, or an IRP proceeding. With respect to the NRDC's recommendations regarding evaluation, measurement and verification, including issues relating to the Michigan Energy Measures Database, Staff recommends that the Commission not reject Detroit Edison's EO plan on the basis of such issues. Staff asserts that such issues deserve additional attention, but recommends instead, addressing and resolving these issues through any combination of the following:

- 1) Collaborative procedures;
- 2) the Commission's rulemaking activity under PA 295 Section 1981(2) (MCL 460.1091(2));
- 3) an energy optimization cost reconciliation case under PA 295 Section 73(1) (MCL 460.1073(1));
- 4) the Company's next EO Plan Case under PA 295 Section 73(1) (MCL 460.1073(1));
- 5) or one or more special-purpose cases initiated on the Commission's own motion.

Further although Staff finds many of the concerns raised by the Intervenors to be meaningful and also important to address, Staff does not agree that any of those concerns rise to the level needed to find that Edison's RE or EO plans are either unreasonable or imprudent. Staff

recommends those issues not be addressed in the time frame required by the 90-day RE and EO plan case schedule but as suggested, in any combination of alternative forums.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION
STAFF**

Patricia S. Barone (P29560)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

Dated: May 5, 2009
15806 Brief

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own motion,
regarding the regulatory reviews, revisions,
determinations, and/or approvals necessary for
THE DETROIT EDISON COMPANY to fully
comply with Public Acts 286 and 295 of 2008.

Case No. **U-15806**
(e-file paperless)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Pamela A. Walters, being first duly sworn, deposes and says that on May 5, 2009, she served a true copy of the Michigan Public Service Commission Staff's Brief upon the following parties via e-mail as plainly indicated on the attached Service List.

Pamela A. Walters

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

Tina L. Bibbs, Notary Public
Clinton Co., acting in Ingham County, Michigan
My commission expires: 11-13-14

U-15806
SERVICE LIST

The Detroit Edison Co

Michael J. Solo, Jr.
Bruce R. Maters
Jon P. Christinidis
The Detroit Edison Company
Legal Department
One Energy Plaza, 688 WCB
Detroit, MI 48226-1279
solom@dteenergy.com
christinidisj@dteenergy.com
mpscfilings@dteenergy.com

The Detroit Edison Co

William K. Fahey
Fahey Schultz Burzych Rhodes, PLC
4151 Okemos Road
Lansing, MI 48864
wfahey@fsblawyers.com

Michigan Sustainable Energy Coalition

Robert B. Nelson
Jeremy J. Burchman
Fraser Trebilcock Davis & Dunlap, PC
124 W. Allegan St., Ste. 1000
Lansing, MI 48933
rnelson@fraserlawfirm.com
jburchman@fraserlawfirm.com

Energy Michigan

Eric J. Schneidewind
Varnum Riddering Schmidt & Howlett, LLP
201 N. Washington Square, Suite 810
Lansing, MI 48933
ejschneidewind@varnumlaw.com

ABATE

Robert A. W. Strong
Clark Hill, PLC
151 S. Old Woodward Avenue
Birmingham, MI 48009
rstrong@clarkhill.com

ABATE

Thomas E. Maier
Clark Hill, PLC
212 E. Grand River Avenue
Lansing, MI 48906
tmaier@clarkhill.com

RES North America, LLC;

Lafarge Midwest, Inc.;

Michigan Wholesale Power Ass'n;

LS Power Associates, L.P.;

New Covert Generating Company, LLC

Jon D. Kreucher
Rodger A. Kershner
Howard & Howard Attorneys, PC
450 W. Fourth St.
Royal Oak, MI 48067
jkreucher@howardandhoward.com
rkershner@howardandhoward.com

Constellation NewEnergy, Inc.

John M. Dempsey
Jennifer L. Copland
Dickinson Wright PLLC
301 E. Liberty, Ste. 500
Ann Arbor, MI 48104
jdempsey@dickinsonwright.com
jcopland@dickinsonwright.com

Natural Resources Defense Council;
Michigan Environmental Council;
Ecology Center, Environmental Law &
Policy Center

Christopher M. Bzdok
Jeffrey L. Jocks
Olson Bzdok & Howard, PC
420 E. Front St.
Traverse City, MI 49686
chris@envlaw.com
jeff@envlaw.com

Michigan Community Action Agency Assoc.

Don L. Keskey
Clark Hill PLC
212 E. Grand River Avenue
Lansing, MI 48906
dkeskey@clarkhill.com

Administrative Law Judge (ID MAIL)

Hon. Barbara Stump
Administrative Law Judge
Michigan Public Service Comm.
6545 Mercantile Way, Ste. 14
P.O. Box 30221
Lansing, MI 48909
stumpbl@michigan.gov

Meleah Geertsma
Environmental Law & Policy Center
35 E. Wacker Drive, Suite 1300
Chicago, IL
mgeertsma@elpc.org

Natural Resources Defense Council

Rebecca Stanfield
Natural Resources Defense Council
101 N. Wacker Dr., Ste. 609
Chicago, IL 60606
rstanfield@nrdc.org

AG

John R. Liskey
Assistant Attorney General
Tobacco and Special Litigation Div.
G. Mennen Williams Bldg., 7th Fl.
P.O. Box 30212
Lansing, MI 48909
liskeyj@michigan.gov

Nextera Energy Resources, LLC

Bruce Goodman
Varnum, Riddering, Schmidt & Howlett, LLP
333 Bridge Street, NW
P.O. Box 352
Grand rapids, MI 49501
bgoodman@vrsh.com